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A Compleat Collection OF STATE-TRYALS, AND PROCEEDINGS UPON Impeachments for HIGH TREASON, AND OTHER CRIMES and MISDEMEANOURS; FROM The Reign of King *HENRY* the Fourth, TO The End of the Reign of Queen *ANNE*.

The Fourth Volume.

With an Exact Alphabetical Table *to the Whole.*

LONDON;

Printed for Timothy Goodwin, againſt *St. Dunſtan's* Church in *Fleet-Street*; John Walthoe in the *Middle-Temple* Cloyſters; Benj. Tooke at the *Middle-Temple* Gate in *Fleet-Street*; John Darby in *Bartholomew-Cloſe*; Jacob Tonson againſt *Katherine-Street* in the *Strand*; and John Walthoe *Jun.* againſt the *Royal-Exchange* in *Cornhill*. M. DCC. XIX.

Complete Collection

OF

STATE-TRYALS,

AND

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FROM

The Reign of King RICHARD II. to the Year 1700.

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A Compleat

A Compleat

COLLECTION

OF

TRYALS, &c.

The Tryals of ROBERT CHARNOCK, EDWARD KING, *and* THOMAS KEYES, *at the Seſſions-Houſe in the* Old-Baily.

Die Mercurii 11° *Martii*, 1695. *Anno Regni Regis* Gulielmi *Tertii, Octavo.*

Publiſhed by AUTHORITY.

THIS Day the Tryals of *Robert Charnock*, *Edward King*, and *Thomas Keyes*, who were Indicted at *Hicks*'s *Hall* on this Day ſevenight, upon a ſpecial Commiſſion of *Oyer* and *Terminer* for High Treaſon, in compaſſing the Death of the King by a barbarous Aſſaſſination, in order to further and aſſiſt an Invaſion into this Kingdom from *France*, and Subverſion of the Government, were proceeded upon in Manner following.

After opening of the Court, at which were preſent a great many of the Nobility, Members of Parliament, aud other Perſons of Quality, the Petty Jury returned by the Sheriff of *Middleſex* to try the Priſoners, were all call'd over, being in number above Eight-ſcore, and conſiſting of Baronets, Knights, Eſquires, and Gentlemen, and the Appearances of thoſe who anſwered to the Call were Recorded; and Six of the Judges, *viz.* The Lord Chief Juſtice *Holt*, the Lord Chief Juſtice *Treby*, the Lord Chief Baron *Ward*, Mr. Juſtice *Nevill*, Mr. Juſtice *Powell*, and Mr. Juſtice *Rokeby*, being upon the Bench, the Priſoners were called for to the Bar, and there Arraigned upon the ſaid Indictments.

Clerk of Arraignments. Robert Charnock, hold up thy Hand: (Which he did.) *Edward King*, hold up thy Hand: (Which he did.) *Thomas Keyes*, hold up thy Hand: (Which he did.) You ſtand Indicted in the County of *Middleſex* by the Names of *Robert Charnock*, late of the Pariſh of St. *Clements Danes* in the County of *Middleſex*, Gent. *Edward King* of the ſaid Pariſh and County, Gent. and *Thomas Keyes* of the ſame Pariſh and County, Yeoman, for that You the Fear of GOD in your Hearts not having, nor the Duty of your Allegiance weighing, but being moved and ſeduced by the Inſtigation of the Devil, as falſe Traytors againſt the moſt Serene, moſt Illuſtrious, moſt Clement, and moſt Excellent Prince, our Sovereign Lord *William* the Third, by the Grace of GOD, of *England*, *Scotland*, *France*, and *Ireland*, King, Defender of the Faith, *&c.* your Supreme, True, Lawful, and Undoubted Sovereign Lord, the Cordial Love, and true and due Obedience, Fidelity, and Allegiance, which every Subject of Our Lord the King that now is, towards him Our ſaid Lord the King ſhould bear, and of Right ought to bear, withdrawing, and utterly to extinguiſh intending and contriving, and with all your Strength purpoſing, deſigning and conſpiring the Government of this Kingdom of *England* under him Our ſaid Sovereign Lord the King that now is of Right happily and duly Eſtabliſhed, altogether to ſubvert, change and alter; as alſo Our ſaid Sovereign Lord the King to Death and final Deſtruction to put and bring, his Faithful Subjects and the Freemen of this Kingdom of *England* into intolerable and miſerable Slavery to *Lewis* the *French* King to ſubdue and ſubject, the 10th Day of *February*, in the Seventh Year of the Reign of Our ſaid Sovereign Lord the King that now is, and divers other Days and Times, as well before as after, at the Pariſh aforeſaid, in the County aforeſaid, falſely, maliciouſly, deviliſhly and traiterouſly, did compaſs, imagine, contrive, purpoſe, deſign and intend Our ſaid Sovereign Lord the King that now is, to Slay, Kill, and Mur-

Murder, and a miſerable Slaughter amongſt the Faithful Subjects of Our Lord the King throughout this whole Kingdom of *England* to make and cauſe. And the ſame moſt abominable, wicked and deviliſh Treaſons and traiterous Contrivances, Intentions and Purpoſes of yours aforeſaid to fulfil, perfect, and bring to Effect, you the ſaid *Robert Charnock*, *Edward King*, and *Thomas Keyes*, and very many others, falſe Traytors to the Jurors unknown, afterwards, to wit, the ſaid 10th Day of *February*, in the Year aboveſaid, at the Pariſh aforeſaid in the County aforeſaid, and divers other Days and Times, as well before as after, there and elſewhere in the ſame County, falſely, maliciouſly, adviſedly, clandeſtinely, traiterouſly, and with Force and Arms, *&c.* did meet, propoſe, treat, conſult, conſent and agree our ſaid Sovereign Lord the King by lying in wait, to Aſſaſſinate, Kill and Murder: And that execrable, horrid, and deteſtable Aſſaſſination and Killing the ſooner to execute and perpetrate, afterwards, to wit, the ſame Day, Year and Place laſt mentioned, traiterouſly did treat, propoſe, and conſult of the Ways, Manner and Means, and the Time and Place where, when, how, and in what Manner Our ſaid Sovereign Lord the King, ſo by lying in wait the more eaſily you ſhould Kill, and did conſent, agree and aſſent, that Forty Horſemen, or thereabouts, of you the ſaid *Robert Charnock*, *Edward King*, and *Thomas Keyes*, and the ſaid other Traitors unknown, and others by them to be hired, procured and paid, with Guns, Carbines and Piſtols with Gun-Powder and leaden Bullets charged, and with Swords and other Arms armed, ſhould lie in Wait, and be in Ambuſh, Our ſaid Sovereign Lord the King in his Coach being when he ſhould go abroad to ſet upon, and that a certain and competent Number of thoſe Men ſo armed upon the Guards of Our ſaid Sovereign Lord the King then and there attending upon him, and being with him, ſhould attack, and ſhould overcome and ſubdue them, whilſt others of the ſaid Men ſo armed Our ſaid Sovereign Lord the King ſhould Aſſaſſinate, Kill, Slay and Murder: And alſo that You the ſaid *Robert Charnock*, *Edward King*, and *Thomas Keyes*, your Treaſons and Traiterous Intentions, Deſigns and Contrivances aforeſaid, to execute, perpetrate, fulfil, and fully to bring to Effect afterwards, to wit, the Day and Year laſt aboveſaid at the Pariſh aforeſaid, divers Horſes, and very many Arms, Guns, Piſtols, Swords, and other Weapons, Ammunition, warlike Matters, and military Inſtruments, falſely, maliciouſly, ſecretly and traiterouſly did Obtain and Buy, Collect and Procure, and cauſe to be Bought, Obtained, Collected and Procured with that Intention, the ſame in and about the deteſtable, horrid and execrable Aſſaſſination, Killing and Murdering of Our ſaid Sovereign Lord the King, as aforeſaid, to be Uſed, Employed and Beſtowed againſt the Duty of your Allegiance, and againſt the Peace of Our Sovereign Lord the King that now is, his Crown and Dignity, as alſo againſt the Form of the Statutes in ſuch Caſes made and provided.

How ſay you *Robert Charnock*, are you Guilty of the High Treaſon whereof you ſtand indicted or not Guilty?

Charnock. My Lord, I deſire, I may have a Copy of this Indictment; that I may adviſe with Council upon it before I plead.

* *Lord Chief Juſtice* Holt.

* *L. C. J.* Pray Mr. *Charnock*, will you ſpeak out, that we may hear what you ſay.

Charnock. My Lord, I find here is a very bad Crime that is laid to my Charge; I deſire that I may have a Copy of the Indictment, to adviſe with Council upon. And that I may have Council to aſſiſt me in my Tryal, and to direct me, who am an ignorant Man in theſe Matters, how to manage my ſelf according to the New Act made this Seſſions of Parliament, for regulating Tryals in Caſes of High Treaſon.

L. C. J. Have you not had Council already to adviſe and direct you, Mr. *Charnock?*

Char. My Lord, I had Notice on *Wedneſday* that I ſhould be tried this Day, and it was *Saturday* laſt before I could get my Council to come to me.

L. C. J. And what did your Council adviſe you? Did they tell you, you were to have a Copy of your Indictment, by virtue of the late Act of Parliament?

Char. My Lord, though the Act does not take force as to ſome things till the 25th of this Month, yet the Equity of that Act, it being now reduced into a Law, is conceived to reach to Caſes of the like Nature before the 25th, and I deſire the Act may be read.

L. C. J. You ſhall have it read if you will, but of what Avail or Benefit it will be to you I cannot tell; for you your ſelf take Notice that it is an Act of Parliament made this Seſſion, and is not to take Effect until the 25th of this Month. You now here ſtand indicted before the 25th, and for a Treaſon committed before, and therefore you can't claim, nor have any Benefit or Advantage by this Act; but you are to be proceeded againſt according to the Law before, and the Practice uſed in all Proceedings againſt other Perſons in your Circumſtances. And it is the known Practice and received for Law, in all Times before this New Act was made, That no Copy of an Indictment for High Treaſon ſhould be granted, nor Council aſſigned, or permitted to aſſiſt the Priſoner in making his Defence: True it is, a Copy of the Indictment has been often deſired, but as true that it has as often been denied

Char. My Lord, the Equity of this Act (it being now an Act of Parliament) is now in force, as much before the 25th of this Month as after.

L. C. J. Equity is nothing in theſe Caſes: You are here tried by the Law, and we are bound to go in all ſuch Caſes according to the Rules of Law, and are not to be guided by any equitable Conſideration, further than the Law it ſelf does allow us.

Char. But, my Lord, the Ground of that Act which is the Reaſonableneſs and Equity that all Priſoners ſhould be made capable of fairly defending themſelves is now in force, I ſay: And I hope your Lordſhip and the Court will look upon it to be reaſonable that I ſhould have the Benefit of that Equity.

L. C. J. I tell you we are not here in a Court of Equity, but muſt proceed according to the Rules of Law; and the Law you now ſpeak of does not yet commence.

Char. My Lord, I am informed, for I am very ignorant in theſe Matters my ſelf, that there is nothing that I now deſire which is contained in this Act, but what was Law before the making of this Act, though the Practice may have been otherwiſe.

L. C. J. Then I muſt tell you, Mr. *Charnock*, you have been very much miſinformed; for if

all

all that is contained in this Act of Parliament that you mention was Common-Law before, there would have been no Occaſion for the making a new Act of Parliament.

Char. My Lord, I do not ſay that all Things in this Act of Parliament were Law before, becauſe there are ſeveral Things in it that have not been Law before. But, my Lord, there are ſeveral Things beſides; and particularly thoſe two Things which I now deſire, a Copy of the Indictment and Council to aſſiſt me, were things that were agreeable to Law before; and I muſt take the liberty to appeal to a Judge that I ſee upon the Bench, my Lord Chief Juſtice *Treby*, as to his own Opinion, and deſire he would pleaſe to declare whether formerly in a Conference between the Lords and the Commons he did not deliver his Opinion, That it was the Common Law, that a Priſoner ſhould have a Copy of his Indictment and Council to aſſiſt him.

L. C. J. Here is my Lord Chief Juſtice *Treby*, you had beſt to apply your ſelf to him for his Opinion.

L. C. J. *Treby.* Pray Sir, What is your Queſtion you would ask me?

Char. My Lord, I am here for my Life, and muſt take all the Advantages that I can; I am here Arraigned for a very grievous Offence, I deſire I may have a Copy of the Indictment, and Council to aſſiſt me in my Defence. Here is an Act of Parliament, out of the Equity of which I apprehend, I ought to have ſome Advantage; for I am informed that what I deſire was Common Law before the making of the Act; and particularly that your Lordſhip's Opinion in a Conference between the two Houſes was, that the Priſoner ought to have thoſe Advantages by the Common-Law.

L. C. J. *Treby.* Then, Sir, I take your Queſtion to be this; You would have my Opinion to be declared, That this Act which was lately paſs'd for regulating Tryals in Caſes of High Treaſon, and all the Particulars in that Act were Common-Law before.

Char. No, My Lord, I do not ſay that all the Particulars in the Act were Common Law before.

L. C. J. *Treby.* Then pray, Sir, name your Particulars, and I will endeavour to give you an Anſwer.

Char. My Lord, the Particulars that I do ask are theſe, Firſt, that I may have a Copy of the Indictment, and Council to adviſe me, becauſe it is a grievous Crime I ſtand here accuſed of, and that I may have them to aſſiſt me at my Tryal in Court: This I do inſiſt upon from the Equity of the Act of Parliament, and your Lordſhip's Opinion at the Conference that it was Common Law before.

L. C. J. *Treby.* As to my Opinion about the having a Copy or Council, I do not think or believe, that I ever ſaid that it was Common Law.

Char. My Lord, I beg your Pardon; I was informed your Lordſhip had delivered ſuch an Opinion, at a Conference between the Lords and the Commons: But I deſire the Aſſiſtance of Council, becauſe I my ſelf am ignorant of the Law; and particularly as to this Point, whether I am not entitled to the Equity of this Act of Parliament; for it now having paſs'd both Houſes of Parliament, and had the Royal Aſſent, it is a good Law; and though it be to take its Commencement on the 25th of this Month, yet that which is the Law of all Laws, the Reaſon and Equity of it is, and always will be the ſame.

L. C. J. No, Mr. *Charnock*, that does not follow, that becauſe the Wiſdom of the Law-makers has thought it to be equitable *de futuro*, therefore it ſhould be Law now; which as I told you before, is the Rule that we are to go by; it is Equity and Juſtice, that the Proceedings be according to this Act of Parliament, from and after the 25th of this Month; but it is not Juſtice that ſuch Proceedings ſhould be till then, becauſe not according to Law.

Char. My Lord, the Ground of all Laws is Equity, and certainly it cannot be Equity, that a Priſoner ſhould make his Defence againſt an Accuſation in Writing, without having a Copy of it.

L. C. J. The time of the Court muſt not be ſpent in this Manner, you have been already told, that by Law you are not to have a Copy of the Indictment; but you are to plead without having any Copy; for there is no Law now in being that allows the giving of ſuch a Copy, and 'tis but a ſhort Queſtion that you are asked in Order to your Tryal; *viz.* Are you Guilty or not Guilty?

Char. My Lord, it is impoſſible for me to go to Tryal preſently, and without the Aſſiſtance of my Council.

L. C. J. Why, had you not Notice of your Tryal?

Char. My Lord, I confeſs, I had notice upon *Wedneſday* laſt.

L. C. J. Had you not your Council with you ſince that?

Char. Yes, my Lord, I had on *Saturday* laſt; but from that time I have not been able to prepare my ſelf, as I think I ought; and I cannot conceive but that I ſhould have the Aſſiſtance of ſome Council to direct me in my Tryal; for here is a very great Crime, and hainous Charge laid againſt me in this Indictment, and I am very ignorant in all Law Proceedings.

L. C. J. It is very reaſonable that there ſhould be convenient Notice given to all Perſons in your Circumſtances; and truly this Day Sevenight, is a very convenient Notice; eſpecially you having had, by your own Confeſſion and Acknowledgment, Council with you in the mean time.

Charnock. But, my Lord, what is the Advantage of having Notice, if one have not Privilege of Pen, Ink and Paper, and one's Council and Friends coming to them, and Privacy without the preſence of the Jaylor.

L. C. J. What ſay you that are of the King's Council, Was there Council allow'd to come to them?

Mr. Attorney General. My Lord, there was Order given that their own Council that they deſired ſhould come to them. *Sir* Thomas Trevor.

Mr. Baker. My Lord, as ſoon as ever they deſired Council there was an Order for it, and left with the Jaylor, that he ſhould permit the Council to come to them and be with them in private.

L. C. J. Then though you had not your Council come to you till *Saturday*, it was your own Fault, for you had an Order for Council, as ſoon as you deſired it; and even from *Saturday*, is a reaſon-

able Time enough to prepare for anſwering the Queſtion, whether Guilty or not Guilty.

Char. I ſuppoſe Mr. *Bale* is in Court, who gave notice on *Wedneſday*, and I acknowledge he came upon the *Thurſday*, and asked if I would have any Body come to me; and he took then the Names of the Council that I deſired might come to me; and told me he would carry them to Mr. Attorney General, and ſee what his Opinion was of them; I ſuppoſe he did ſo: For upon *Friday* he came again, and brought me an Order for it; but when that Order was brought, the Council that was deſired was not to be had, or at leaſt with very great Difficulty, becauſe it was the time of the Aſſizes, or very near it, and Council were gone or going out of Town; ſo that we could not have the Advantage of the Order for Council.

L. C. J. Look you Sir, We think you have had convenient Notice, with Liberty of conſulting whom you had a mind to; if you have neglected your Opportunity of conſulting them, you muſt blame your ſelf, and no Body elſe; we muſt go on according to Law.

Mr. Att. Gen. My Lord, they had the Liberty of naming their own Council, and the Names were brought to me, and as ſoon as ever they were ſo brought, thoſe that were named had Leave to go to the Priſon to them, and they had a further Order than the firſt, which was, that their Friends ſhould be permitted to come to them; but that was not, as it was not convenient to be, in private; but the other Order was, that the Council ſhould ſpeak with them in private, and not in the Preſence of the Jaylor.

L. C. J. Pray hear what Mr. Attorney ſays, that your Council was ordered to be with you in private.

Char. But there was no Order, my Lord, for my Sollicitor to be with me in the abſence of the Jaylor, who is the only proper Perſon for the conſulting with, and for going about to ſummon the Witneſſes.

L. C. J. We think you have had convenient Notice, and all the Allowances that can be in ſuch a Caſe. Ask him to plead.

Cl. of Arr. Robert Charnock, Are you Guilty of the High Treaſon whereof you ſtand indicted, or not Guilty?

Char. My Lord, I hope you will give me ſome more Time to get my Witneſſes, that are now abſent; ſeveral of them are Ten Miles out of Town; and therefore, I would beg your Lordſhip to give me ſome time.

L. C. J. Why, is Ten Miles ſuch a Diſtance, that you could not have your Witneſſes between this Day Seven-night and this Day? but beſides, Mr. *Charnock*, what you now urge is out of time, you ſpeak too ſoon to put off the Tryal, for there can be no Tryal till Iſſue joined; and that cannot be till Plea pleaded.

Char. My Lord, I was never inſtructed in Querks of Law, nor bred up to the Law; and I hope your Lordſhips will take care that I be not hurt for Want of Knowledge in the Forms of Law.

L. C. J. You may aſſure your ſelf, Mr. *Charnock*, you ſhall not be hurt by your Ignorance in the Law: All the Harm you will receive will be for having done contrary to the Law, and there is none of your Council, if they have been faithful to you, but muſt tell you the ſame Things that we tell you now.

Char. My Lord, if I am to have no Council, I muſt deſire that the Court would be pleaſed to take the greater Care of me: For, as I have been informed, that was the Reaſon of the Practice of denying Council, that the Court ſhould be of Council for the Priſoner.

L. C. J. Mr. *Hardeſty*, ask him whether he be Guilty or not Guilty.

Cl. *of Ar. Robert Charnock*, Are you Guilty, or not Guilty?

Char. Not Guilty.

Cl. *of Ar. Culprit*, how will you be Try'd?

Char. By God and my Country.

Cl. *of Ar.* God ſend you a good Deliverance. *Edward King*, How ſay you, Are you Guilty of the High Treaſon whereof you ſtand indicted, or not Guilty?

King. My Lord, I beg the ſame Favour that Mr. *Charnock* has done, that I may have ſome more time to prepare for my Tryal, and a Copy of the Indictment, and Council aſſigned.

L. C. J. But you hear what has been ſaid to Mr. *Charnock* upon thoſe Points, and the ſame Rule that was given in his Caſe, you muſt expect will be in your Caſe.

Cl. *of Ar.* What ſay you, Are you Guilty or not Guilty?

King. Not Guilty.

Cl. *of Arr. Culprit*, how wilt thou be Try'd?

King. By God and my Country.

Cl. *of Ar.* God ſend thee good Deliverance. *Thomas Keyes*, are you Guilty of the ſame High Treaſon or not Guilty?

Keyes. My Lord, I have had no Council at all.

L. C. J. But you might have had if you would; you had an Order for it as well as the others.

Keyes. My Lord, I was a Servant to Captain *Porter*, I was not able to Fee any Council.

L. C. J. But you can tell whether you are Guilty or not Guilty.

Cl. *of Ar.* Art thou Guilty or not Guilty?

Keyes. Not Guilty.

Cl. *of Arr. Culprit*, How wilt thou be tryed?

Keyes. By God and my Country.

Cl. *of Arr.* God ſend thee good Deliverance.

Charnock. My Lord, I deſire I may have the Favour of Pen, Ink and Paper, upon my Tryal.

L. C. J. Yes, yes, you ſhall have it; and if you have a mind to it, you ſhall have the Indictment read to you in Latin.

Char. My Lord, my Ignorance in Forms of Law made me not ask that before, becauſe I did not know whether I ſhould properly ask it or not: And I do not know whether I ſhould ask it properly now.

L. C. J. Yes, it is a very proper time to ask it, and you ſhall have it, if you have a mind to it.

Char. My Lord, I do really deſire it, if it be a proper time for me to have it.

L. C. J. Read the Indictment in Latin.

Char. And now my Lord, I hope your Lordſhip will pleaſe that I ſhall have Pen, Ink, and Paper, that I may make the beſt Obſervations I can, ſince I cannot have a Copy.

Cl. of Arr. *Juratores pro Domino Rege ſuper Sacrum ſuum preſentant quod Robertus Charnock, nuper de Parochia Sancti Clementis Dacorum, in Com. prædicto, Generoſus; Edwardus King, nuper de Parochia Sancti Clementis Dacorum in Com. prædicto, Gene-*

Generosus; & *Thomas Keyes, nuper de Parochia Sancti Clementis Dacorum, in Com. prædicto, Yeoman, timorem DEI in cordibus suis non habentes, nec debitum Ligeanciæ suæ ponderantes, sed instigatione diabolica moti & seducti, ut falsi Proditores contra serenissimum, illustrissimum, clementissimum & excellentissimum Principem, Dominum Gulielmum Tertium, DEI Gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Regem, Fidei Defensorem, &c. Supremum, verum, legitimum, legalem & indubitatum Dominum suum; cordialem dilectionem, ac veram & debitam obedientiam, fidelitatem & ligeanciam, quas quilibet subditus dicti Domini Regis nunc erga ipsum Dominum Regem gereret, & de jure gerere tenetur, subtrahentes & penitus extinguere intendentes & machinantes, & totis suis viribus excogitantes, designantes & conspirantes, gubernationem hujus Regni Angliæ sub ipso Domino Rege nunc de jure feliciter & debite stabilitam omnino subvertere, mutare & alterare, nec non eundem Dominum Regem ad mortem & finalem destructionem ponere & adducere; ac subditos suos fideles, & liberos homines hujus Regni Angliæ, in servitutem intolerabilem & miserrimam Ludovico Regi Gallico subjugare & mancipare decimo Die Februarii, Anno Regni dicti Domini Regis nunc septimo, & diversis aliis Diebus & vicibus tam antea quam postea, apud Parochiam prædictam in Com. prædicto, falso, malitiose, diabolice & proditorie eum fassaverunt, imaginati & machinati fuerunt, excogitaverunt, designaverunt & intendebant dictum Dominum Regem nunc occidere, interficere & murdrare———*

Char. What Word was that last, Sir?

Cl. *of Ar. Murdrare.*

Char. That is an odd Word, I can't understand what it means.

L. C. J. It is a Term of Art, the Signification of it is to Murder: ——Go on Mr. *Hardesly.*

Cl. of Ar. *Ac stragem miserabilem inter fideles subditos ipsius Domini Regis per totum hoc Regni Angliæ facere & causare, & easdem nefandissimas, nequissimas & diabolicas proditiones & proditorias machinationes, intentiones & proposita sua prædicta perimplend' perficiend' & ad effectum redigendum ipsi iidem Robertus Charnock, Edwardus King, & Thomas Keyes, & quam plurimi alii falsi proditores Juratoribus prædictis ignoti, postea, scilicet eodem decimo die Februarii, Anno supra dicto, apud Parochiam prædictam, in Com' prædicto, ac diversis aliis diebus & vicibus tam antea quam postea, ibidem & alibi in eodem Com. falso, malitiose, advisate, clandestine, frauditorie ac vi & armis,* &c. *conveniebant, proposuerunt, tractaverunt, consultaverunt, consensaverunt & agreeaverunt ad ipsum Dominum Regem ex insidiis & dolo percutiend'* *Anglice* To Assassinate, *interficiend' & Murdrand'; & ad execrabilem horrendam & detestabilem Assassinationem Anglice* Assassination, *& interfectionem illas citius exequend' & perpetrand' postea Scilicet eisdem die, Anno, & Loco ultimo mentionatis, proditorie tractaverunt, proposuerunt, & consultaverunt de viis, modis, & mediis ac tempore & loco ubi, quando, qualiter, & quomodo Dictum Dominum Regem sic ex insidiis facilius interficerent, & consenserunt agreeaverunt & assenserunt quod quadraginta homines Equestres, aut eo circiter de ipsis Roberto Charnock, Edwardo King & Thoma Keys & prædict' aliis proditoribus ignotis ac aliis per eos conducend' procurand' & impendend' cum Bombardis, sclopis & sclopetis, pulvere Bombardico & globulis plumbeis oneratis, & cum gladiis ensibus & aliis armis armatis insidiati forent & essent in subsessa, Anglice* in Ambush, *ad eundem Dominum Regem in Rheda sua, Anglice* his Coach, *existentem, quando foris iret invadend'; quodq; quidam & competens numerus de hominibus illis sic armatis in satellites, Anglice* the Guards, *ipsius Domini Regis eum tunc ibidem attendentes, & secum existentes agressi forent, & eos devincerent, & expugnarent, dum alii eorundem hominum sic armatorum ipsum Dominum Regem percuterent, interficerent, occiderent & Murdrarent; & etiam iidem Robertus Charnock, Edvardus King & Thomas Keys ad proditiones & omnes proditorias intentiones, designationes & machinationes suas prædictas exequend' perpetrand' perimplend' & plenarie ad effectum redigend' postea scilicet die & Anno ultimo supra dictis apud Parochiam prædictam diversos equos & quam plurima arma, bombardas, sclopos, enses & gladios, & alia armamenta, munitiones & res Bellicosas & instrumenta militaria falso, malitiose, secrete & proditorie obtinuerunt, emebant, colligerunt & procuraverunt, ac emi, obtineri, colligi, & procurari causaverunt, ea intentione ad illa in & circa detestabilem, horrendam & execrabilem Assassinationem, interfectionem & Murdrum dicti Domini Regis ut præfertur utend', occupand' & impendend' contra Ligeanciæ suæ debitum & contra pacem Dicti Dom. Regis nunc, Coronam & Dignitates suas, nec non contra formam Statut' in hujusmodi Casu edit' & provis.*

Char. My Lord, I desire the Indictment may be read again, for there is so great a Noise in the Court, and that Gentleman has not the most perfect delivery; he is more used to Law *Latin* than to any other. But I beg I may have it read again, that I may as perfectly as I can understand it.

The Indictment was read again in *Latin.*

L. C. J. Look ye, you that are the Prisoners, every one of you has the Liberty to Challenge 35 of those that are returned to serve upon the Jury, that is to try you, without shewing any Cause; now if you will all joyn in the same Challenge, then we can Try you all together, as ye are altogether jointly in the Indictment; and save the Time and Trouble that will otherwise be unavoidable. But if you will not joyn in the same Challenge, but every Man challenge for himself, as by Law he has Liberty to do, we must be forced to try you single, and therefore we would know of you, whether you design to joyn in your Challenge or not.

Char. My Lord, I hope the Court will give me leave to have my Sollicitor by me during my Tryal, that I may be instructed in some Measure how to manage my self, and when it is proper for me to speak, and what.

L. C. J. No, we can order no such Thing, you must speak for your self.

Char. My Lord, I am Ignorant of the Methods of Law, and may make a great many Mistakes and Slips, and omit what may be material to be observed for my Defence, and therefore shall the more need a Friend or Sollicitor to be by me, to mind me of it.

L. C. J. No, we cannot direct any such Thing by Law. What say you as to your Challenges?

Char. As to the Jury, I had not a Copy of the Pannel till Yesterday, and I have been informed, that it is usual to have a Copy of the Pannel Ten Days before the Tryal; they are Gentlemen that I have no Knowledge of, nor can come at any Account of their Qualifications, so as to make proper Challenges.

L. C. J. You have the same Priviledge that is ordinarily given to Persons in your Condition.

Mr.

Mr. Att. Gen. There was Order given for a Copy of the Pannel to be delivered.

L. C. J. That was not of Right, but of Favour; and it is a Practice that has of late obtained; but for what you talk of 10 Days, that never was in any Caſe, nor is it practicable; you have the ſame Favour ſhewn you, that all other Priſoners have, and you can expect no more: But you do not anſwer the Queſtion, whether you will joyn in your Challenges or not.

Char. It is an indifferent Thing to me my Lord.

L. C. J. Do you agree to it, Mr. *King?*

King. My Lord, I do not well underſtand it, I am ready to do any Thing I ſhould.

L. C. J. What ſay you *Keys?*

Keys. My Lord, I have had no Council at all, to adviſe me about any Thing.

L. C. J. I tell you what the Law is in ſuch Caſes; You may every Man of you Challenge 35 peremptorily without Cauſe, but if you do not all agree in the ſame Challenges, ye cannot be tryed together by the ſame Jury: But the Court muſt ſeparate you, and try you every one ſingle.

Char. My Lord, I have got a Copy of the Pannel, if theſe Gentlemen that are by me do agree to joyn in the Challenge, I am very well content; it is indifferent to me.

L. C. J. Do you underſtand what is ſaid to you, Mr. *King*, and Mr. *Keys?* Every one of you may without ſhewing any Cauſe, except againſt 35 of thoſe that are returned of the Jury, which are to try you, if you have no Mind that thoſe ſhould be Sworn; but then if each of you do ſeverally Challenge 35, ye cannot be tried by the ſame Jury.

Char. I hope, my Lord, if I do Challenge, as I do not know how I ſhall be enabled without knowing their Qualifications, the Court will put me in mind when I come near the Number, that my challenging may not injure me; becauſe I am ignorant in the Law, and perhaps may ſlip in point of Number; and therefore, I would beg that your Lordſhips would allow me a Sollicitor to aſſiſt me, and put me in Mind, that I may not run into Errors.

L. C. J. You have been told over and over, that we cannot do that, the Court will take care that you be informed in Time, that you do not exceed in challenging a greater Number than you ought: What ſay you, Mr. *King?* Do you agree that one ſhall make challenges for you all?

King. I do agree, that whatſoever Exception Mr. *Charnock* makes, I will abide by.

Char. My Lord, I cannot but think it hard, that I have not either Council or Sollicitor; my Council that I had are out of Town.

L. C. J. Why, was there no Council but thoſe that are gone the Circuit?

Mr. Att. Gen. My Lord, he had Order firſt for one Council and then for another, and whomſoever he named he had Order for.

L. C. J. If you will chuſe none but thoſe you cannot have, that is your own Fault; You Mr. *Keys*, will you joyn in the Challenge?

Keyes. Yes, with all my Heart.

Cl. of Ar. Then you the Priſoners at the Bar, thoſe Men that you ſhall hear called and perſonally appear, are to paſs between our Sovereign Lord the King, and you, upon Tryal of your ſeveral Lives and Deaths: If therefore you, or any of you, will challenge them, or any of them, your Time is to ſpeak unto them as they come to the Book to be Sworn, and before they be Sworn.

Then thoſe of the Pannel that had appear'd were called, and the Priſoners challeng'd 33. And the Names of thoſe that were Sworn are as follows.

Samuel Harwer,	*Simon Smith,*
Jonas Morley,	*Thomas Dunck,*
Anthony Nurſe,	*Richard Heath,*
Jaſper Hodgsden,	*John Mills,*
William Farnborough,	*James Ketwitch* and
William Bird,	*Chriſtopher Redknap.*

Then Proclamation for Information, and the Witneſſes appearing, was made in uſual Form.

Cl. of Ar. Robert Charnock, hold up thy Hand, (which he did;) *Edward King*, hold up thy Hand, (which he did;) *Thomas Keys*, hold up thy Hand, (which he did;) You Gentlemen of the Jury look upon the Priſoners, and hearken to their Cauſe; They ſtand Indicted by the Names of, *&c.* (*prout* in the Indictment, *mutatis mutandis*) ——— And againſt the Form of the Statutes in that Caſe made and provided. Upon this Indictment they have been Arraigned, and thereunto have ſeverally pleaded, Not Guilty, and for their Tryal have put themſelves upon God and their Country, which Country you are; your Charge is to Enquire of them, and every of them, whether they be Guilty of the High Treaſon whereof they ſtand Indicted, in manner and form as they ſtand Indicted, or Not Guilty; if you find them, or any of them Guilty, you are to inquire what Goods or Chattels, Lands or Tenements they had, at the Time of the High Treaſon committed, or at any Time ſince. If you find them, or any of them Not Guilty, you are to inquire whether they fled for it; if you find that they, or any of them fled for it, you are to inquire of their Goods and Chattels, as if you had found them Guilty; if you find them not Guilty, nor that they did fly for it, you are to ſay ſo and no more; and hear your Evidence.

Mr. Mountague. May it pleaſe your Lordſhip, and you Gentlemen of this Jury; The Record that has been now read unto you, is an Indictment of High Treaſon, which charges the Three Priſoners at the Bar, *Robert Charnock*, *Edward King*, and *Thomas Keys*, with a Traiterous Conſpiracy, and Deſign to Subvert the Government of this Kingdom, and to Murder the King, and to bring the Subjects and Freemen of this Kingdom into Slavery and Subjection to the *French* King; and to this End the Indictment ſets forth; That upon the Tenth of *February* laſt, and divers other Times, as well before as after, at the Pariſh of St. *Clements Danes*, in the County of *Middleſex*, theſe Three Priſoners at the Bar, with divers other Traytors unknown, did Conſult and Agree, to Aſſaſſinate the Perſon of Our Sovereign Lord the King, as he was riding in his Coach; and did likewiſe agree, that Forty Horſemen of which they themſelves were to be Part of the Number, ſhould lye in Ambuſh, and ſet upon the King, ſo being in his Coach, and upon the Guards that were to attend him: And it likewiſe Charges them with buying Horſes and Arms, for the Execution of this Wicked and Villainous Intention; to this they have pleaded Not Guilty. we ſhall call our Witneſſes and prove this Matter upon them; and then we doubt not, but you Gentlemen will do Juſtice according to your Evidence.

Mr.

Mr. Att. Gen. My Lord, and you Gentlemen of the Jury, theſe Gentlemen at the Bar ſtand Indicted for a moſt Horrid and Barbarous Conſpiracy, to Aſſaſſinate, and Murder his Majeſty's Royal Perſon; Gentlemen, this Aſſaſſination was to be ſeconded with an Invaſion from *France*, where Troops lay ready at *Calais*, as ſoon as the diſmal Stroke was given, to have Landed upon our Coaſts; which if it had taken effect, we had not only ſuffered that moſt unſpeakable Loſs of the King, but it would have made an End of all our Liberties and Laws at once.

Gentlemen, This Offence in its Nature, is ſo Horrid and Barbarous, that as it needs no Aggravation, ſo it is incapable of having any, by any Words that can be uſed; for the very Naming of an Aſſaſſination of a King, carries ſuch Horror and Deteſtation in its ſelf, to all honeſt People, that it is impoſſible to aggravate it by any Expreſſions that can be uſed about it. But there is this peculiar Conſideration to be had, by all *Engliſh* Men, who love their Country, that this deſigned Aſſaſſination upon the Perſon of His Preſent Majeſty, was to take away the Life of a King, who every Body knows firſt ventured his own Life, to reſtore our Religion, Laws and Liberties, when they were juſt Expiring under the Oppreſſion of Popery and Tyranny. And as he ventured his Life firſt to Reſtore 'em; ſo he has ſince upon all Occaſions, with the utmoſt Hazard, expoſed His Royal Perſon to the moſt imminent Dangers, for the preſerving and maintaining our Religion, Laws and Liberties, againſt the Power and Violence of the Common Enemy; this Conſideration to all true *Engliſh* Men muſt have a very great Weight, and create the greateſt Horror and Deteſtation, both of the barbarous Deſign, and of all thoſe who had any Concern or Hand in it, to attempt upon the Life, not only of a King, but of ſuch a King.

Gentlemen, when you hear the Evidence that we ſhall offer to you, to prove this bloody Conſpiracy againſt theſe Priſoners, I doubt not but that there will be enough, and more than enough, to ſatisfie all true hearted *Engliſh* Subjects, and all People that have a Deſire to preſerve our Conſtitution and Government, in what Danger we and our Poſterity were of being utterly ruined, and involved in a Common Deſtruction. I ſhall not detain you longer with any Diſcourſe about the Hainouſneſs of this Offence, becauſe every Man's own Thoughts cannot but ſuggeſt to him, how diſmal the Conſequences muſt have been, if ſo fatal a Stroak had been given.

But, Gentlemen, I muſt crave Leave to take up ſo much of your Time as to open how this Bloody Execrable Conſpiracy was firſt framed, and afterwards carried on by the Priſoners at the Bar, together with others, till it was very near putting in Execution, had not the infinite Mercy of God prevented it, by a timely Diſcovery.

Gentlemen, this Conſpiracy was firſt framed and conſulted upon the laſt Year; there were ſeveral Conſultations and Meetings, at ſeveral Places about the Town, for this purpoſe; then and at thoſe Conſultations and Meetings, there were preſent Captain *Porter*, the Priſoners, and others of whom you will have an account from the Witneſſes; and at that Time they had an Expectation of Commiſſions from the late King, to Authorize the Deſign; that not coming, they yet reſolved to put it in Execution before the King went away. But becauſe the *French* Troops were then not in a readineſs to come over hither, to protect them, after the Execution of their bloody Deſign, it was neceſſary for them to fly thither for ſhelter; and therefore they endeavoured to procure a Veſſel to be ready to carry them over to *France*. But they could not get a Veſſel time enough; and then the King's going over into *Flanders* quickly after, prevented the Execution of the Deſign for that Time, and ſo Matters reſted till the King's Return.

About Two or Three Months ago, Sir *George Barcley*, who is an Officer in the late King *James*'s Guards in *France*; and ſome other Officers, with Sixteen or Eighteen Troopers in thoſe Guards, privately came over from *France* to put this Deſign in Execution; and he did acquaint Mr. *Porter* and Mr. *Charnock* with the Deſign, knowing that they had been engaged in the Matter before, and ſo could not but expect that they would readily aſſiſt. This Deſign was treated and conſulted of between 'em, at ſeveral Times, and in ſeveral Places, at Captain *Porter*'s, and Mr. *Charnock*'s Lodgings in *Norfolk-ſtreet*; at the *Globe* Tavern in *Hatton-Garden*, the *Nags-head* Tavern at St. *James*'s, and ſeveral other Places; ſeveral Conſultations and Meetings were had between the Priſoners at the Bar, and others, whom you will hear named at theſe Meetings; ſeveral Ways and Methods were propoſed, how it ſhould be beſt effected; it was propoſed by ſome, that it ſhould be done by Ambuſcade, that ſhould be laid near the King's Houſe at *Richmond*, ſuch a number on Foot were to lye in the Wood, there ready to Attack the King as he came by, and the reſt of the Conſpirators at the ſame Time to fall on the Guards. But this Method was not ſo well approved of, as that which was afterwards propoſed and agreed to: That is, there were to be three Parties of them, and the Place was the Lane, lying between *Brentford* and *Turnham-Green*, at the end next *Turnham-Green*, which the King uſed to paſs through, upon his return from *Richmond*; The Order and Method of the Deſign was this; Sir *George Barcley*, with Eight or Ten more was to attack the Coach, and by forcing into it, to have killed the King, and all in it, and the reſt were to attack the Guards, in two Parties, on each ſide of the Lane, whereof Mr. *Charnock* and *Porter* were to command one, and Brigadeer *Rookwood* the other. In order to ſee how feiſible this Deſign might be, the Priſoner *King*, Captain *Porter*, and *Knightly*, were to go and ſurvey the Place; and the next Day after that Conſultation, they went to view the Ground, and did very carefully do it, both on this ſide the Water, and on the other ſide the Water; and they came back and met the reſt of the Company at the *Nagg's-Head* Tavern late at Night, to give an Account what they had done in order to this Enterpriſe. It was agreed the Number ſhould be about Forty; Sir *George Barcley* was to make up about Twenty, Mr. *Charnock* was to furniſh Eight, Captain *Porter* Seven, and ſo in other Proportions, in all to make up the Number of Forty; which they thought were enough to effect and accompliſh the Deſign.

In order to make this Matter the more ſure, they did appoint Two to lodge and wait at *Kenſington*, near the Guards; who were to give notice, when the King went abroad: And they had their ſeveral Perſons aſſigned to whom they ſhould give notice, who thereupon were to ſend Orders to the ſeveral Parties; one of which was

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Chambers, who was to give Notice to the Priſoner at the Bar Mr. *Charnock*, and there was one *Durance*, who was to give Notice to Sir *George Barcley*; and when ſuch Notice was given, then they were to ſend Orders to the ſeveral Perſons, who were to be concerned in this bloody Buſineſs, to come at the time appointed, to be diſpoſed of into their ſeveral Poſts.

Gentlemen, in order to the furthering of this Deſign, they did likewiſe ſend *Durance* to go and view, and give them an Account of the moſt convenient Inns at *Brentford*, and *Turnham-Green*, and the Places adjacent; which were leaſt lyable to Obſervation, where the Men might be the moſt conveniently diſpoſed of, to lie ready againſt the time, when they were to execute this barbarous Aſſaſſination; accordingly he went, and took an Account of the ſeveral Inns within that Compaſs, and they were to be Billeted by Two or Three in an Inn, ſo as not to be obſerv'd; Sir *George Barcley* and his Party at *Turnham-Green*, and the reſt at *Brentford*.

Gentlemen, after they had thus laid the Deſign, *Saturday* the 15th of *February* was the firſt Time pitched upon for the putting it in Execution, if the King went abroad, as he uſed to do, upon *Saturdays*, to *Richmond* to Hunt; and if they had notice from *Durance* and *Chambers*, that he was ſo to do, which notice they had; and every thing was prepared in Order to have perpetrated this villainous Deſign; but it happened that the King went not abroad that Day, of which they had notice about Noon from *Chambers* to *Charnock*, and *Charnock* ſent Word ſo to *Porter*'s Lodgings, and then the Order for their getting together was countermanded, and the Note, by which *Charnock* ſent Word, was ſubſcrib'd with the Name of *Robinſon*; which you will hear is a Name he goes by, as well as by that of *Charnock*.

Thus they were diſappointed at that time, but they were not diſcouraged from purſuing this inhumane Enterprize; but reſolved to go on the next Opportunity that ſhould be given. And to omit ſeveral Things that intervened, which the Witneſſes will give you an Account of, on the *Friday* following they met again, to have every thing ready againſt the next Day, which was *Saturday* the 22d of *February*; when they expected the King would go abroad, as he uſually did on that Day of the Week; and that Meeting was at the *Sun* Tavern in the *Strand*, and there were preſent Captain *Porter*, Sir *William Perkins*, Sir *George Barcley* and Mr. *Charnock*; and at that time there was a Diſcourſe amongſt them about the Diſappointment, which they had had the Week before, and ſome of them had a Jealouſy that a Diſcovery had been made of their Deſign: But then upon further Conſideration, They concluded, if it had been ſo, they ſhould not have met there, but ſhould have been taken up: And therefore they concluded the King's ſtaying at Home that Day was but Accidental, and ſo reſolved to put their Conſpiracy in Execution the next Day.

While they were there, ſeveral Perſons for whom Captain *Porter* had undertaken, that is, one *Cranborne*, *Kenrick*, and *Keyes*, the Priſoner at the Bar, came to *Porter*; theſe were carried into a nother Room, and Commanded all to be ready the next Day, when it was reſolved to put the Aſſaſſination in Execution: And then Captain *Porter* asked *Kenrick* for *Sherborne*, who it ſeems had been undertaken for; but it was anſwer'd, That he asked ſo many Queſtions about the Matter, that he did not think fit to truſt him.

The next Morning they met again at Captain *Porter*'s Lodgings; and there met, as the Witneſſes will tell you, amongſt others, Mr. *Pendergraſs*, Mr. *Keyes*, and Mr. *King*; *King* brought a Meſſage to Captain *Porter* from Sir *George Barcley*, to know the Names of thoſe that were concerned, and upon that Meſſage Captain *Porter* writ down the Names of his Men, who were for his *Quota*, and ſent the Liſt by *Cranborne* to Mr. *Charnock*, to add his Liſt to it of the Men he was to have under him; *Cranborne* afterwards came back, and brought the Liſt that Captain *Porter* ſent, with the additional Liſt ſent by Mr. *Charnock*, written with his own Hand, and ſubſcribed *R. C.* and *Cranborne* told them that *Chambers* had ſent Word, that the King would go out that Morning: At the hearing of which there was very much Joy amongſt them; for they hoped then their wicked Deſign would be put in Execution that Day. There was a Diſcourſe then likewiſe, that *Porter* had a Piece which carried Six Bullets; and this, it was ordered, ſhould be put into the Hands of *Pendergraſs*, who was to be one of Sir *George Barcley*'s Men to attack and fire into the King's Coach.

This was upon *Saturday* the 22d of *February*, when they had News that the King was to go abroad, and every Thing was to be put in Execution at his Return from *Richmond*. From Captain *Porter*'s Lodgings they went to the *Blue Poſts* in *Spring Garden*; but about 12 a Clock there came News from *Chambers*, one of the orderly Men at *Kenſington*, that the King did not go abroad that Day: This put them into a very great Confuſion, they then thought ſome Diſcovery muſt needs be made becauſe of the Diſappointment two *Saturdays* together; and *Keys*, the Priſoner at the Bar, came up and told them, that the Guards were all come back in a Foam, and the King's Coaches were brought back to the *Meuſe*: And this confirmed them in their former Jealouſy that the Matter was diſcovered; upon which Captain *Porter*, Mr. *Pendergraſs* and Mr. *Keyes* went together to lye hid ſome time; but they ſaid they would ſend *Keyes* to Mr. *Charnock*, to let him know where they might be heard of; and if the matter was not diſcovered they would ſtill go on to put it in Execution: But they could not part without drinking ſome Trayterous Healths, which the Witneſſes will tell you of, to the Reſtoring of the late King and his Queen, and the Prince of *Wales*; and after all, one of the Company taking an Orange in his Hand, began a Health to the Squeezing of the Rotten Orange; and in this Manner it was drunk by all of them before they parted, tho' they were under the Apprehenſion at that time of being diſcovered already.

This is the Beginning and Progreſs of the ſeveral Conſultations that were had for the Carrying on this execrable Trayterous Conſpiracy. I have opened it ſhortly to you, but you will hear it much fuller in its ſeveral Parts by the Witneſſes. By what I have opened, you cannot but obſerve, that it was very near coming to be executed, if there had not been a Diſcovery of it time enough, thro' the Providence of Almighty God, to prevent it. They had agreed, after the intended Aſſaſſination to keep together, till they came near the Town, and then they were to lie

hid

hid till the *French* Troops landed, which they were assured of were ready upon the least Intimatioh of the Success of this Conspiracy.

Gentlemen, every Body may guess at the dismal Consequences that would have follow'd, had this bloody Design taken Effect; and I am sure, as we and our Posterity could not have expected any thing less than the perpetual Yoke and Burden of Slavery and Popery, if it had pleased God to permit this Conspiracy to take effect; so I hope we shall always remember the merciful Hand of Providence, that has detected and disappointed it.

Gentlemen, I shall not detain you any longer; I have opened unto you Part of that which will more fully be made out by the Witnesses; only I would observe, that the Providence of God has not only made a Discovery to prevent the Execution of this abominable Villany, but hath brought this Conspiracy so far to light, by such unquestionable Testimony, that no Man can doubt of the Reality of it, which I hope will raise in every honest Man's Mind an Abhorrence and Detestation of those Principles, upon which so villanous and barbarous a Design was founded; and I think I may say, that after the Evidence you will hear this Day, no one will pretend any Doubt of the Truth thereof, but either such as are sorry for the Discovery, or such as knew too much of the Conspiracy before. I shall trouble you no further, but call our Witnesses, who will give you a clear and full Account of this Conspiracy. Swear Captain *Porter*. *(Which was done.)*

Mr. *Soll. Gen.* Captain *Porter*, I would not lead you with any Question, but pray will you give the Court and the Jury an Account what you know concerning any Conspiracy about assassinating the King, and when it was to be done, and where, and how, and by whom; and particularly what relates as to that Matter to the Prisoners at the Bar.

Charnock. My Lord, there are two Things that I must beg of the Court, in Relation to the Witnesses that are to be produced, and the Evidence that is to be given against me at this time: And the first is, That before any of the Witnesses give any Evidence against me, the rest that are to be sworn and produced, may be kept out of Court, till they that are called have severally given their Evidence, that one may not hear what the other says; That I suppose is but reasonable in a Case of this nature, and what was never denied, but always allow'd, as I have been informed.

L. C. J. There is but one Witness sworn, and I believe, that there are none of the rest here.

Char. Yes, my Lord, here is one Gentleman in Court whom I suppose to be an Evidence, and that is Mr. *De la Rue.*

L. C. J. If there be any others of the Witnesses let them withdraw till they be called for; let there be some Body to look after them and attend them. *(Which was accordingly done.)*

L. C. J. Mr. *Charnock*, you have your Desire as to this matter, all the rest of the Witnesses are withdrawn.

Char. My Lord, there is another Thing that I have to beg of the Court, and that is, in relation to the Evidence in general, That if there be any Thing prov'd to be spoken in company, and talked of by Way of common Discourse, or only in jollity in ordinary Conversation, that may not be interpreted as a Proof of any settled Design or Practice.

L. C. J. Look you, Mr. *Charnock*, who can tell what the Evidence will be until it be given; you will hear what is deposed by the Witnesses, and you have Pen and Ink, and may make such Observations as you think fit: When the Witnesses are heard, you will have all the Advantage that can be allowed you, and you may then propose your Objections to the Matter of their Evidence; which, no doubt, will have their just weight with the Court: In the mean Time, have you any Exception to this Man's being a Witness? If you have no Exception against him, then he must give his Evidence; and after he has delivered himself, and the King's Council have done with him, you are at Liberty to ask him what Questions you think fit.

Mr. Soll. Gen. Captain *Porter*, I desire you will acquaint the Court and the Jury what you know of any Conspiracy to take away the Life of his Majesty, when it began, in what Manner it was carried on, how far it proceeded, how it came to be disappointed, who were concerned in it, and what relates to the Prisoners at the Bar, as to their Share therein.

Capt. *Porter*. My Lord I am unfortunately ingaged in this Matter, and have made a frank Discovery, to make the King all the Atonement I can, for having been concerned in such a Design. Some Weeks before this Conspiracy for Assassinating the King was in hand, there came to my Lodging———

Mr. Att. Gen. Captain *Porter*, I would not interrupt you, but to put it into a Method, and order of Time, will you please to recollect your self, and give the Court and the Jury an Account of your Knowledge about the first Beginning of this Conspiracy the last Year; I would not lead you, and therefore I ask you the general, and no particular Question.

Charnock. My Lord, I suppose that any Question about what was done the last Year is not at all to the purpose in this Case, for there is nothing mentioned in the Indictment of the last Year.

L. C. J. It is in the Indictment diverse Days and Times, as well before as after.

Charnock. The Crime for which we are accused is laid to be the 10th Day of *February*, 1695.

L. C. J. The Day is not material, but only a Circumstance, but in Form some Day before the Indictment preferred must be laid; and tho' the Day mentioned in the Indictment is the 10th of *February*, yet it is also said, that the Things contained in the Indictment, of which you are accused, were done likewise at diverse Days and Times, as well before as after, and so the Indictment comprehends even what might be done the last Year as well as this.

Charnock. I beg the Favour of the Court in this Matter, for sure the 10th of *February* last can no way be supposed to be in the last Year.

L. C. J. I told you before, the Day is not material, nor are the Witnesses nor the King's Council tyed up either to the particular Time or Place, mentioned in the Indictment, so it be within the County, and before the Indictment preferred. All that is to be regarded is, that no Evidence be given or admitted of any other Species of Treason, but what is contained in the Indictment; for a Man may certainly be indicted for a Treason committed this Year, and upon his Tryal Evidence may be given of the same Treason committed the Year before.

Charnock. But then how can a Man prepare for his Defence?

Mr. Att. Gen. The Time is but a Circumſtance, it may certainly be proved at another Day than what is laid in the Indictment, and yet very good Proof; and ſo it is in all other Caſes, as well Civil as Criminal.

Charnock. Mr. Attorney General has ſaid enough I think to confute himſelf; for if one Year may be put in the Indictment, and another Year brought in in the Evidence, how ſhall any Man be able to apply himſelf to his Defence, whoſe Thoughts run only upon the Time laid in the Indictment. I hope neither the Court nor the King's Council will come ſo hard upon us, as to put our Thoughts quite out of all Order, that when we apprehend we are only to defend our ſelves againſt what is ſaid to be done this Year, we muſt afreſh prepare our ſelves to anſwer what was done the laſt Year.

L. C. J. It is always ſo; for Form ſake, there is a particular Time laid in the Indictment, but the Proof is not to be tyed up to that Time; but if it be proved at any Time before or after, ſo it be before the Indictment preferred, it is well enough. And not without great Reaſon, for the Treaſon conſiſting in imagining and compaſſing the King's Death, which may be manifeſted by diverſe Overt Acts, ſome before, ſome on, and others ſince, the Tenth of *February*, yet they are Evidences of one Treaſon, which is the Compaſſing the King's Death.

Char. Then we may be under an Obligation to give an Account of all the Tranſactions of our Lives, if that be the Rule.

L. C. J. No, not ſo neither, for that very Treaſon aſſign'd in the Indictment muſt be proved, and therefore you are only to give an Anſwer to that, and nothing elſe.

Char. But, my Lord, it may give a great Looſe, and much hinder our Defence; for as it is now deſired that Proof may be given of what was done laſt Year, at the ſame Rate, the (as well before and after) may ſignify ſeven Years ago.

L. C. J. And ſo it may if your Conſpiracy reach'd ſo far, or did then begin, and was afterwards purſued, this is not any Thing that is unuſual, but the Common Law is plain in it. Well, what ſay you, Mr. *Porter?*

Capt. *Porter.* My Lord, I will give you an Account, if your Lordſhip pleaſeth, of what was done this Year; and if any Queſtions afterwards be thought fit by the King's Council to be now asked me, about what paſſed before, I will anſwer them very readily.

Mr. Att. Gen. Well then go on your own way, we will reſerve our ſelves till afterwards.

Capt. *Porter.* Some Weeks before this Deſign was on Foot, for aſſaſſinating the King, Sir *William Perkins*, when he was in Town, was at the ſame Place where Mr. *Charnock* and I did lodge; it was about the latter End of *January:* He asked Mr. *Charnock* where he would be at Night; and I told them, if they were not about private Buſineſs, I would meet them. He told me, there were ſome Friends come from *France*, and that ſomething was a doing that would be for the Service of the King: I told them, if any Thing of that Nature was a doing, I would readily engage in it; and they told me I ſhould know it very ſoon. A little after I fell Sick of the Gout, and could not ſtir from my Chamber: Bnt then Mr. *Charnock* did acquaint me that Sr. *George Barcley*, and thoſe that came from *France*, had brought a Commiſſion to raiſe and levy War upon the Perſon of King *William*, and he asked me how many I could bring to joyn with them, if the King landed; I deſired to conſider of it, and he told me Sr. *George Barcley* would come to him about it. Accordingly, he and *Holmes* came to the Houſe where we lodged, in *Norfolke-ſtreet*, and there they were in private with Mr. *Charnock*, and afterwards, becauſe I was lame, and could not ſtir, they came into my Room, and Sr. *George Barcley*, told me he was glad to ſee me in good Health, but ſorry to find me Lame, but he hoped to ſee me abroad in a little Time; and I told him, I hoped ſo too. They ſaid they were going then to ſome Company, and they hoped to ſee me afterwards. After that there were ſeveral Meetings that we had, particularly at the *Globe-Tavern* in *Hatton-Garden*, the *Naggs-Head* at St. *James-Street*, and the *Sun-Tavern* in the *Strand*, and in all theſe Places we did conſult together, which was the beſt Way, and where was the beſt Place to Aſſaſſinate the King, when he came from Hunting. Sr. *George Barcley* told us he had ſome Money to buy Horſes, but not much, he had as much as would furniſh about Forty. Capt. *Charnock* ſaid, he would bring ſix or ſeven Men, that ſhould come out of the Country, Sr. *William Perkins* ſaid he would lend five Horſes, three to be mounted by Men of his own, the other two by ſuch as ſhould be provided. I promiſed to bring ſeven Men with Horſes, and Sr. *George Barcley* ſaid, that *Lowick* and others that came over with him from *France*, would engage in the Deſign, and make up the Number. I deſired very much to ſee the Commiſſion that came from the late King, and asked Mr. *Charnock* about it, he ſaid he never ſaw it, but Sr. *William Perkins* told me, he had ſeen it, and that it was all writ with King *James* his own hand, and ſigned by himſelf. All this was agreed to, and then there were Conſultations in what Method it was to be done. Several Propoſals there were; one was to ſet upon him as he came from *Richmond* by the *Road*, others when he was upon Horſeback at *Cue*. Sr. *George Barcley* was for having it done by Ambuſcade in the *Park* by *Richmond*, and therefore deſired me to go with Mr. *Knightly*, and view the ſeveral Places and Ground there abouts, to find out which was the moſt convenient Place. The Day before we were to go, Capt. *King* came to me, and would know if we were to go about ſuch a Matter, and proffered to go with us. I told him I had never a Horſe, but he ſaid, he would get one. We went that Night to the *Swan* at *Knights-Bridge*, and there we lay, and went the next Day to view the Ground, and came the next Evening to the Company, to give an Account, what we had done; and upon the Account that we gave, Sr. *George Barcley*'s Mind was altered, and it was agreed to do it in the *Lane* coming from *Branford* to *Turnham Green*, and the particular Manner was agreed on too. There was one *Rookwood* that was to command one Party of Sr. *George Barcley*'s Men to attack the Guard; he told us, he had bought twenty Horſes which were to be employed in this Expedition; they were to be divided in three Parties, and Sr. *George Barcley* was to have four out of each of the other Parties, and to ſeize upon the King's Coach, and to Shoot into it, and kill the King, and all thoſe that were with him:

And

And this was to be done on the 15th of *February*, which was a *Saturday*, and the King uſually went to *Richmond* on *Saturdays*. We had two Orderly Men (as they were called) who were to lie at *Kenſington*, to give Intelligence, when the King and the Guards went out, the one was *Chambers*, and the other one *Durant*, a *Flemming*, I think, or I do not well know what Country-man he was; and *Durant* was to bring an Account when the Guard went out, and *Chambers* when the King went out, and when we had Notice that the King was gone, we were to go by 3. or 4. in a Party to prevent Suſpicion, and we were to be diſperſed in the ſeveral *Inns* about *Brentford* and *Turnham Green*. Sir *George Barcley* was to be at the King of *Bohemia*'s Head; and we ordered a Man to give Notice to him when the King landed, and then he was to give Notice to us, and ſo we were to form our ſelves into our ſeveral Bodies, to take our ſeveral Poſts as were agreed upon. I asked him what he thought to do when the Matter was over, how we ſhould diſpoſe of our ſelves? He told me, we need not fear any Thing, but might go to Town and lie ſtill, and that there would come a ſufficient number from abroad ready to aſſiſt us. That 4. or 5000 *French* were to divert in *Scotland*, and the King would be near the *French* Shore with a ſufficient Army. On *Friday* before the 22*d*, when it was to have been executed again, we met at the *Sun-Tavern* in the *Strand*; and there diſcourſed, for a Matter of half an Hour, about the former Diſappointment, and ſeveral in the Company were afraid the Deſign was diſcovered; but then I told them, if it had been ſo, ſure we ſhould have been taken up before now; upon which it was agreed, then let us reſolve upon it again to Morrow, and ſo it was reſolved upon. Cap. *Charnock* ſaid, he could not ſtay, becauſe he ſhould want ſome Men that were come up out of the Country on purpoſe. I ſaid, I was afraid my Horſes were Sick, and could not be uſed in the Service. And Sir *William Perkins* thereupon undertook to furniſh me, and told Mr. *Charnock* and me he had ſent to Mr. *Lewis* that belongs to the Earl of *Feverſham*, to procure ſome, having, as he ſaid, promiſed ſo to do. I ſent the next Morning to have a Note for two, by Mr. *Cranburne* and he ſent me a Note back again by *Cranburne*, that he had ſent to Mr. *Lewis*, and Mr. *Lewis* ſaid, he would help him to three Horſes, with Saddles, Holſters and Piſtols, and deſired the Liſt of my Men, which I ſent him, and he ſent it me back again with the Liſt of his own, and then I ſhewed it to Mr. *De la Rue*, and we were preparing all Things for the Execution of this Deſign, and preſently after News came, that the King did not go out that Day neither; upon which I ſaid I would go out of Town, and I asked Cap. *Pendergraſs* to go with me, and we ſent *Keys* to bring Linnen unto us, but he did not come until the *Wedneſday*, and upon the *Thurſday* we were taken.

Mr. *Att. Gen.* Captain *Porter*, you mention ſeveral Conſultations, at ſeveral Times and Places; who were preſent at any, and which of them? were any of the Priſoners at the Bar there, and which?

Capt. *Porter*. There was Mr. *Charnock*, and Mr. *King*, at all of them.

Mr. *Att. Gen.* What do you ſay about *Keys*? What was he?

Capt. *Porter*. He was my Servant a Year and a Half.

Mr. *Sol. Gen.* Was he acquainted with the Aſſaſſination?

Capt. *Porter*. Yes he was, and was preſent at moſt of the Conſultations. He hired Horſes for me to be imployed in the Buſineſs. On the firſt *Saturday* he hired two, I gave him Money for them, and did know upon what Account they were hired.

Mr. *Att. Gen.* Was he preſent when News was brought of the Diſappointment?

Capt. *Porter*. Yes, he was both Times.

Mr. *Att. Gen.* You are ſure he was preſent then?

Capt. *Porter*. Yes, the ſecond Time he ſaid, that he met the King's Guards that were come back all in a Foam, and that he had ſpoke to one of my Lord of *Oxford*'s Regiment, and that ſomething was mutter'd upon which he feared a Diſcovery.

Mr. *Att. Gen.* Did *Keyes* agree to be one of the Men, that ſhould be concerned and Act in this Buſineſs?

Capt. *Porter*. Yes, He did.

Mr. *Att. Gen.* What Quality is he of? What is his Profeſſion?

Capt. *Porter*. He uſed formerly to help to dreſs me, and he was to look after my Linnen and Equipage.

Mr. *Sol. Gen.* Had he not been a Trumpeter? Was not that his Profeſſion?

Capt. *Porter*. He was a Trumpeter, and uſed ſometimes to entertain us with his Trumpet.

Mr. *Conyers*. You ſpeak of a Meeting at the Sun Tavern in the *Strand* upon *Friday*, the 21 of *February*, where it was reſolved to execute this Attempt upon the next Day.

Capt. *Porter*. Yes, there was ſuch a Meeting.

Mr. *Conyers*. Was *Keys* there at that Time.

Capt. *Porter*. He was not in the Room where we were, but he was in another Room in the ſame Houſe, where I went out to him, and there was he, *Cranbourn*, and *Kenrick*.

Mr. *Conyers*. Pray what did you go to them for?

Capt. *Porter*. I went to acquaint them what was reſolved upon; and I told them they were reſolved to do it the next Day, to which they agreed, but that I thought my Horſe's would not be ready, but I hoped I ſhould get ſome other.

Mr. *Conyers*. Pray, what other Diſcourſe had you in that Company: With whom and about what?

Capt. *Porter*. Mr. *Kenrick* came to me with his Arm in a String; either he had broke his Arm, or pretended ſo to have done. I then asked him for Mr. *Sherbourn*, whom he had mentioned before to me, as one that was likely to be concerned: He told me Mr. *Sherbourn* asked a great many Queſtions about the Deſign, which he did not think fit to Anſwer; I thanked him for telling me ſo, and ſaid I would not ſend to him.

Mr. *Cooper*. Pray Captain *Porter* give me leave to ask you one Queſtion, can you remember what Number of Men *Charnock* was to provide for this Enterprize?

Capt. *Porter*. He promiſed ſeven or eight Men, ſome of which ſhould bring their Horſe's out of the Country, others he would borrow or hire for them.

Mr. *Att. Gen.* Pray, Sir, was there any Body ſent to take an Account of the Inns about the Place where this Aſſaſſination was to have been Executed?

Capt. *Porter*. Yes, Mr. *Durant* was, and he did bring us an Account of the ſeveral Inns about *Brent-*

Brentford and *Turnham* Green.

Mr. *Att. Gen.* As to the Liſt of Men, which you ſay you ſent to *Charnock*, and he ſent you back with a Liſt of his Men, pray can you tell whoſe Hand that Liſt of his Men was in.

Capt. *Porter.* I know Captain *Charnock*'s Hand very well, and to the beſt of my Knowledge, it was his own Hand, and ſubſcribed, *R C.*

Mr. *Att. Gen.* Sir you have given an Account of the Meeting the 22*d* at your Lodging.

Charnock. I was not there he ſays.

Mr. *Att. Gen.* Firſt let me ask you, how came it that it was not put in Execution the 15*th*, for that you did not tell us before?

Capt. *Porter.* I tell you, Sir, it was becauſe the King did not go out that Day, according as we had Notice, that he intended to do: *Durant* wrote firſt Word that the Guards were gone before, upon which I went for my Men, and about Noon I received a Note from Mr. *Charnock* that the King did not go out that Day.

Mr. *Att. Gen.* Pray what Name was ſubſcribed to that Note?

Capt. *Porter. R. Robinſon*, which was a Name he uſed to go by ſometimes.

Mr. *Att. Gen.* And pray in whoſe Hand was that Note?

Capt. *Porter.* To the beſt of my Knowledge it was Captain *Charnock*'s, I know his hand very well

Mr. *Att. Gen.* My Lord, if the Priſoners will ask him any Queſtions they may.

L. C. J. Will you ask him any Queſtions?

Char. My Lord, in the firſt Place I deſire the Judgment of the Court, whether he be a legal Evidence or no. I conceive he is not, and I hope your Lordſhips will think ſo too: For he makes himſelf a Criminal by his own Confeſſion, and that of a very hainous Crime, and it is equal in my Judgment, (and as I have been adviſed, who I muſt ſtill ſay am ignorant in theſe Matters) as if he had confeſt it upon an Indictment, and then the Law can take no Notice of him as a good Witneſs. And if he were no legal Witneſs then, I take it by the ſame Reaſon he is no legal Witneſs now: For the Crime is the ſame, and it is an Acknowledgment in open Court.

L. C. J. Look you, Mr. *Charnock*, if it had been a Confeſſion upon an Indictment, it would have been a Conviction, which would have had quite another Operation, but it not being upon an Indictment, it is no Conviction, and therefore he is a legal Witneſs, tho' he does acknowledge himſelf to be guilty of the Crime.

Char. Then, my Lord, he is looked upon as no good Evidence, in my Judgment, becauſe he is a Criminal.

L. C. J. He is a legal Evidence, tho' he does confeſs himſelf guilty of the Crime.

Char. He owns himſelf a Partner in a bloody Deſign, and to convict me he ſwears, to take away my Life, to ſave his own. I cannot imagine why he ſhould be accounted a legal Witneſs, that is a Party by his own Confeſſion in ſuch a Matter.

L. C. J. Pray, who can tell better what was intended and done in ſuch a Conſpiracy than he that was a Party in it?

Char. My Lord, he has forfeited his Life by his own Confeſſion, and now he would by Swearing againſt me take away my Life to ſave his own.

L. C. J. Whatſoever Objections you have againſt the Credit of his Teſtimony you may make what Uſe of them you can in the proper Time; but for any Thing that yet appears he is a legal Witneſs.

Charnock. My Lord, I know not how far he is a Legal Witneſs, therein I muſt be governed by the Judgment of the Court; but ſure it will take away from the Credibility of his Teſtimony, his own Acknowledgement of his being guilty of ſuch a Crime. Tho' he may be a Legal Witneſs, he cannot be a good one. And I hope the Gentlemen of the Jury will conſider of it, when a Man comes to take away other Mens Lives to ſave his own, by accuſing them of Crimes which he acknowledgeth himſelf to be guilty of.

L. C. J. Look you, Mr. *Charnock*, for that matter, it is ſo in all Caſes of this nature, not only in Caſes of High-Treaſon, but of Robberies and Burglaries, and the like, where the Parties concern'd are and always have been allow'd to be good Witneſſes againſt their Accomplices in thoſe Crimes. Will you ask him any Queſtions, Mr. *Charnock?*

Charnock. My Lord, here is another Thing, which, I apprehend, I have Reaſon to object againſt the Teſtimony of this Witneſs; he does not only ſwear to ſave his own Life, and take away another's to deſerve the ſaving of his own, but there is in this Caſe Swearing to get a Reward, for there is a Reward of 1000 *l.* a Piece promiſed by Proclamation, for the Apprehenſion of this Man and others. And not only a Pardon but the 1000 *l.* to any of thoſe in the Proclamation who ſhall diſcover and take any of the proſcribed Perſons. Now, where a Man ſtands accuſed by Proclamation, and his own Life is thereby concerned, and a Reward is propos'd for any of the Conſpirators diſcovering and apprehending the others, it is a hard Matter to admit any one that acknowledgeth himſelf guilty of ſuch a Crime, to prove a Priſoner guilty of that Crime under thoſe Circumſtances. Beſides, my Lord, I have known this Gentleman, and tho' he may have had an Eſtate, yet ſince I have Reaſon to ſuſpect, and perhaps it may be very well known, that the Fortune he had is laviſhed away; to make up that Damage, he may be tempted to undertake this Way of Swearing. So I think he cannot be a good Evidence, and I hope your Lordſhip will think ſo too, and that he is to receive no Credit or Countenance before an honeſt Jury, as I doubt not theſe Gentlemen are that are to try us.

L. C. J. Mr. *Charnock*, do not miſtake your ſelf, he is to have no Reward by the Proclamation unleſs he had come in voluntarily, and apprehended one of the others; for only thoſe that apprehend any of the Perſons named in the Proclamation, are to receive any Part of the Reward, not any of the Witneſſes againſt any of them; the Reward is for the Apprehenſion, whether they be found guilty or not guilty.

Char. But ſtill, my Lord, he cannot be a good Witneſs, for it looks as if he was a Man that was willing to have become an Evidence, becauſe we, whom he has accuſed, particularly my ſelf, were permitted to be taken, and then in the mean while he ſeems to withdraw, only that he might be taken as a Colour. For my Part, I know not, but that it may be a Contrivance of his own, to be colourably taken up, becauſe he is ſo willingly an Evidence, as the Jury may perceive he is.

L. C. J. It is certainly a very hard Matter, if not impoſſible, to diſcover Crimes of this Nature, if the Accomplices in thoſe Crimes ſhall not be allowed to be good Witneſſes againſt their Fellow-Conſpirators.

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Charnock. My Lord, I muſt ſubmit to the Judgment of the Court that he is a legal Witneſs. But tho' I ſhall not preſs upon the Legality, yet I muſt ſay he is not a good Witneſs for all the Reaſons that I have urged.

L. C. J. Nay, he is a very good Witneſs, if he be a legal Witneſs; but the Credit of what he ſays, as in all other Caſes, muſt be left to the Jury, who are Judges of the Matter of Fact, and the Credibility of the Witneſſes.

Char. My Lord, when Perſons will own themſelves guilty of joyning in ſo barbarous a Crime as we ſtand indicted for, and accuſed of, ſure there will be little Credit due to their Teſtimony.

L. C. J. His Credit muſt be left to the Jury, who are the Judges of it; now if you will ask no Queſtions, I muſt ſpeak to the reſt; Mr. *King* will you ask him any Queſtions?

Char. I ſpeak this only in general; but I have ſome Remarks that I have made upon the Evidence that has been given, out of which, when I have told you of them, Queſtions may ariſe, which it may be fit for me to propoſe, and I ſhall deſire your Lordſhips Leave accordingly.

L. C. J. Look you Mr. *Charnock*, you ſhall be heard all that you have to ſay, when your Time comes for your Defence, and to make what Obſervations upon the Evidence you pleaſe. But the Matter is now, whether you will think fit to croſs-examine the Witneſſes that are produced for the King, or to ask them any Queſtions.

Char. My Lord, I have taken ſome Notes of what has been ſaid, and I deſire I may make the beſt Uſe of them that I can.

L. C. J. You may make what uſe you will of your Notes, and make what Obſervation you will to make any Queſtion you ask intelligible.

Char. My Lord, Capt. *Porter* in his Evidence hath ſaid, That this Conſpiracy was in the latter End of *February*. Now I apprehend his Oath is not valuable upon this Indictment, becauſe the Offence is laid the Tenth of *February*, and ſo his Conſpiracy that he talks of, was after the Time laid in the Indictment.

L. C. J. I believe you miſtake him, Sir.

Mr. *Att. Gen.* If he pleaſes to ask him, I ſuppoſe he will find himſelf miſtaken.

Capt. *Porter*. My Lord, I ſay the latter End of *January*; if I ſaid *February* I miſtook.

L. C. J. And ſo it muſt be; for the two and Twentieth of *February*, was to have been the ſecond Time for the Execution of the Deſign, and ſeveral of the Conſpirators were taken the next Day.

Char. My Lord, I deſire Capt. *Porter* may be asked, where it was, and when, that I brought Sir *George Barcley* and Mr. *Holmes* into his Company?

Capt. *Porter*. It was the Beginning of *February*, at my Chamber in the ſame Houſe where Mr. *Charnock* lodged, and I was then Sick of the Gout.

Char. My Lord, I declare it, I know nothing of it. Then he ſays we had ſeveral Meetings, particularly at three ſeveral Taverns; by what I can obſerve, there is no Time at all, nor at any of thoſe three Places that there was any Sort of Conſpiracy for the Aſſaſſinating of the King.

L. C. J. Yes, He ſays, that you met at thoſe Places, where you did conſult about Aſſaſſinating of the King, and the Ways and Methods how it ſhould be carried on, and that you was at thoſe Conſults; for Mr. Attorney asked him particularly, Whether you that are the Priſoners were there? and he ſays, ay.

Char. He ſays, that we met at the *Nagg's-head* Tavern in St. *James's-Street*, where it was agreed that he and *Knightly* ſhould go and view the Ground, to ſee which would be the moſt convenient Place; and that they came the next Night to give an Account according to our Deſire. Now, my Lord, I was there at Dinner, and Capt. *Porter* did come in at Night; and if you do remember, Captain, you could not pull off your Boots well, and complained of the Gout, and was very peeviſh; and ſaid you had been at *Mortlack*, and had met with a Friend there; that is all that I know. There was Capt. *King* and Mr. *Knightly* indeed; who ſent for ſome other Cloaths, but it cannot be pretended that there was any Crime tranſacted at that Time; for you cannot imagine, that I would have to do in any ſuch Matter amongſt Porters and Meſſengers that were to go on common Errands.

L. C. J. I will only put you in a right Method; You may ask what Queſtions you will now; but you are not to make your Obſervations upon the Witneſſes to the Jury till the King's Evidence be given, for then your Time will come for your Defence.

Char. My Lord, It may be I may forget then what may be proper for me to inſiſt upon. If your Lordſhip would pleaſe to allow me a Sollicitor to put me in Mind, I ſhould be the better able to manage my ſelf.

L. C. J. You may be helped by your Notes; but you have been told over and over, we can allow no Sollicitor.

Char. My Lord, Captain *Porter* ſays, I told him there was ſuch a Commiſſion brought by Sir *George Barcley* from King *James*; he ſays indeed, I told him I never ſaw it; and I do not know how I could, becauſe I do not believe there ever was any ſuch, and it is improbable there ſhould be any ſuch.

L. C. J. Mr. *Charnock*, I would not hinder you from ſaying any Thing that would be proper for your Defence, nor will interrupt you when your proper Time comes.

Char. My Lord, what I ſay is as to what Captain *Porter* has evidenced, and I would make Obſervations upon one Part of the Evidence after another, as it is given.

L. C. J. But that is not regular, according to the Courſe of Evidence, and will introduce a Confuſion. You may ask any Queſtions of the particular Witneſſes, as they are in order, if you will; but your Obſervations, as to your own Defence, you muſt defer, till the Witneſſes are heard, that ſo the Evidence may be entire, and your Defence entire; therefore if you will ask him any Queſtions, ſay ſo.

Char. No, my Lord.

L. C. J. Then Mr. *King*, will you ask him any Queſtions?

King. Captain *Porter*, Did I mention any Thing, or was there any Diſcourſe when you and I, and Mr. *Knightly*, as you ſay, went out to view the Ground about killing the King?

Capt. *Porter*. The Day before we went, we dined together, and it was at the *Naggs-head*, and he asked if I was to meet *Knightly*, and go and view the Ground, in order to ſettling the Deſign, which was then talked of, and conſulted about; and Captain *King* deſired to go with us, and we lay at *Knights-Bridge*; and when we were about it, we diſcourſed ſeveral Times of the Nature of the Place; and Captain *King* did not approve of the Place on this Side the Water, but liked the

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Ambuſcade better which was to have been on the other ſide the Water.

L. C. J. Will you ask him any more Queſtions?

King. No, my Lord.

L. C. J. Well then, What ſays the other Man, *Keys?* Will he ask him any Queſtions?

Keys. My Lord I have had no Body to adviſe me, no Council; I was only a Servant to Captain *Porter.*

Mr. Att. Gen. If then they have done with him, before he goes, I deſire to ask him one Queſtion. What Diſcourſe, or Treaty, or Conſultation about this, or ſuch like a Matter, there was the laſt Winter, and between whom?

Capt. *Porter.* There were ſeveral Meetings and Conſultations the laſt Winter between Capt. *Charnock*, Sir *William Perkins*, and my ſelf, about ſuch a Thing; and we Thought that the quickeſt Way to bring in the King, and reſtore him to his Crown, was by knocking King *William* on the Head; and there were ſeveral Meetings about the Ways of doing it.

Mr. Att. Gen. Who elſe were there at thoſe Meetings?

Capt. *Port.* There were ſeveral others in Company.

Mr. Att. Gen. But the Meaning of my Queſtion is, who of the Priſoners.

Capt. *Porter.* I cannot remember any but Capt. *Charnock.*

Mr. Att. Gen. Pray will you acquaint us with the Reaſon why it was not done at that time.

Capt. *Porter.* We wanted a Commiſſion from *France*, which we thought was a neceſſary Authority for us to act by.

Mr. Att. Gen. You ſpeak of a Liſt that was brought you again from *Charnock*, with the addition of thoſe Names that were his Men; pray at that time was there no Diſcourſe about a particular Gun that was ſomebody's, and that one in the Company was to have, to be employed in this Service?

Capt. *Porter.* My Lord, I ſaid, I had a Muſketoon that carried 6 or 8 Bullets, that Capt. *Pendergraſs*, who was one of the Four out of my *Quota*, that was to go with Sir *George Barcley*, ſhould have if he pleaſed.

Mr. Att. Gen. Capt. *Porter*, I would not lead you, but were there any particular Directions given? and what touching the particular Imployment of that Gun?

Capt. *Porter.* I remember I told Capt. *Pendergraſs*, if the Coach made any great haſte to get away, he might eaſily hinder that by killing, or laming one of the Horſes with that Gun.

Mr. Att. Gen. Pray recollect your ſelf, Sir, was *King*, the Priſoner at the Bar, preſent at that Diſcourſe?

Capt. *Porter.* Capt. *King* was then in my Room at *Maiden-lane*, where I then lay, being removed from my Lodging at *Norfolk-ſtreet.*

King. Do you ſay that I heard any ſuch Diſcourſe?

Capt. *Porter.* I cannot ſay you heard it, but you was preſent then.

Mr. Att. Gen. Was there not ſome Diſcourſe about a Defect of the Numbers that were appointed, and expected to join in this Thing.

Capt. *Porter.* My Lord, I told you I wanted a Man, and that was *Kenrick*, who had his Arm in a String; and Mr. *De la Rue* brought one that I knew not, and ſome of the Company went to the *Blue-Poſts* to tarry there whilſt I came to them, and Capt. *King* was preſent when the News was brought us of the Diſappointment, and then I reſolved to go out of Town.

Mr. *Att. Gen.* The next Witneſs, My Lord, that we call is Mr. *De la Rue*, and we deſire he may be ſworn. Which was done.

Mr. *Sol. Gen.* Mr. *De la Rue*, we would deſire you to acquaint the Court and the Jury, what you know of any Deſign or Conſpiracy to Aſſaſſinate the King, when it began, how it was carry'd on, and by whom, and by what Methods.

Mr. *De la Rue.* My Lord, this Conſpiracy hath been carrying on a great while, for ſome Years. And it originally came from Col. *Parker*, eſpecially as to my Knowledge of it; and that was 5 or 6 Years ago, at St. *Germains*, when I was there: He propoſed it to me, and ſaid he would propoſe it to my Lord *Melfort*, who was King *James*'s Secretary in *France.* Two Years after, he came over into *England*, it was a little before the Buſineſs of *La Hogue*, and he would have had me come over into *England* with him; upon which I applyed my ſelf to my Lord *Melfort*, to know whether I ſhould come over hither yea or no: My Lord *Melfort* adviſed me to ſtay there a while, for, ſaid he, you will find there is ſomething a doing which will pleaſe you. But nothing being done, after that I came to *England*, and ſuffered a very tedious Confinement here. I became acquainted with Mr. *Charnock* and Capt. *King* abroad; I have been with Mr. *Charnock*, Mr. *King*, Mr. *Porter*, Mr. *Goodman* and Col. *Parker*, here in Town ſeveral Times, and at ſeveral Places. And now I come to what was a doing the laſt Year. In the Months of *January*, *February*, and *March*, till the King's going to *Flanders*, there were ſeveral Conferences, and Conſultations about this Matter, between Sir *William Perkins*, Capt. *Porter*, and others; I cannot ſay that ever I was in Company with *Goodman* at that Time, when we talked of any Thing of this Nature. But Capt. *Charnock* carried me to Sir *William Perkins*, whom I had never ſeen before, to the *Mitre-Tavern* in St. *James*'s Market, and there I was asked if I would be concerned in the Eaſing us from the Yoke that then lay upon us. I asked which way it was to be done, for I could not underſtand what was meant, but the taking off the King, and therefore I asked which Way it was to be done. Then they asked me, whether I knew where Capt. *Stow* lived; and they imployed me to go to his Lodgings, and appointed me to meet them at the *Star-Tavern* in *Whste-Fryars.* They were there before me, when I had met with the Captain, and brought him thither; but that they thought not a fit Place to conſult in, and therefore they went to *Bromfield*'s Coffee-houſe, and there they did talk ſomething of it; but they took one another aſide, and talked privately among themſelves, which I took ſome Obſervation and Notice of; and upon Enquiry I was told it was becauſe there was an Old Gentleman in the Company, whom they did not care to acquaint with any Thing of the Matter, becauſe he was too Old to have any Hand in it, and they would acquaint none with their Reſolutions, but thoſe that were to be Actors in the Deſign. My Lord, I was not often in their Company after that, but I heard from Time to Time, how Matters went on, and I heard from Capt. *Porter* particularly, that they had been at *Turnham-Green* and liked the Place very well, and that the Deſign was to take the King off, or elſe to hurry him away to *Rumney-Marſh* alive, and carry him into *France.*

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Charnock. Surely this is not any Evidence, becauſe Captain *Porter* only ſpoke of it, and it is by Hearſay, and we are not concern'd what other People talk of.

Mr. At. Gen. Pray who was in the Room, when the Propoſals were made?

De la Rue. What Propoſals do you mean, Sir?

Mr. At. Gen. At the Tavern in St. *James's-ſtreet.*

De la Rue. At the Coffee-houſe there was a little Talk of it between themſelves; but they would not talk much, they ſaid, becauſe there was an old Gentleman there, who was too old to engage, and they would have none but Actors; that I underſtood to be the Reaſon why they talked one with another ſo: But I taking Notice of their Privacy, whenever I asked *Charnock* of it, he referr'd me to Captain *Porter.* But withal he told me ſeveral Times, that he believed it would come to nothing. The Deſign was to carry the King alive into *France*, if they could; if they could not take him alive, then to aſſaſſinate him, and pretend it was done by a Random Shot. He told me alſo, they had ſent to King *James* for a Commiſſion to execute this Matter, and to authorize them to carry the King into *France*, if they could take him; and then if they could not, they agreed to excuſe themſelves, as I ſaid, by pretending that he was killed by a Random Shot. It ſhould ſeem (as I underſtood) the Commiſſion was delay'd a long Time, and then they reſolved to execute the Deſign without a Commiſſion; and within a few Days before the King was to go to *Flanders*, I was told, all was ready. But then they wanted a Ship to carry him off when they had taken him; and there met at the *Roſe* Tavern, as I remember, Captain *Porter* and Sir *William Perkins*; but I cannot tell whether Mr. *Charnock* was there or not. I asked them if they had concluded upon the Matter; they told me, it was concluded upon, and as I remember, they told me Captain *Charnock*, or *Robinſon*, (for he went by both Names) was to have a Recommendation to ſome Body at *Deal*; and there they were to hire a Veſſel, and I was asked whether I would go with him: I told them, I would. But then the King went a little after for *Flanders*; and they had no Time to compleat the whole Affair, and ſo the Buſineſs was put off, till the King's Return this laſt Winter.

Mr. At. Gen. Well, What ſay you to any Thing ſince?

De la Rue. This Year in the Months of *November* and *December*, Mr. *King*, the Priſoner at the Bar, told me, that there would a Major General come over from *France*, and that there was a Man of Quality about the Town, that offered to diſburſe two or three Thouſand Pounds, if King *James* would give Order for it: And this was, as I ſuppoſe, to buy Horſes to be engaged in this Matter, and he would tell me more a while after. A Month or two after, he told me he was out of Money about it, which could not be had: I was brought in by Captain *Porter*, and they communicated this to me, about the latter End of *January*, or the Beginning of the Month of *February*; they told me there was a Major-General come over from *France*, and there were a great many People come over beſides; and there would be ſomething ſpeedily put in Execution, which would be for the King's Service.

L. C. J. Who told you this?

De la Rue. Captain *King*, the next Time I ſaw him, he told me he wanted a Saddle with Holſters, it was the 7th of *February*, on *Friday* Night, for he was to go out of Town with ſome Friends, about ſomething in Order to this Affair, he deſired me to lend him one; but I had none, I told him, but I would write to Captain *Porter*, to procure one for him; and he told me he was to go with *Knightly*, *Durant*, and others, to ſee whether the King went to *Richmond* or to *Hounſlow*; becauſe they were told, the King had altered his Journey from *Richmond* to *Hounſlow.* He afterwards told me, he went out with his Friends, and the *Sunday* Morning he comes to me, and told me, there was the rareſt Place for the Execution of the Deſign againſt the King, that was poſſible to be thought of; if they ſhould have ſtudied never ſo long, and deſired a convenient Place, they could not have had ſuch another. It was within a Quarter of a Mile of the King's Houſe at *Richmond*, in a Lane that leads to the Houſe, and ſo narrow, that the Officers and the Guard could go but very few a-breaſt, hardly broad enough for a breaſt; and there was to be an Ambuſcade behind the Park Pales, and the other Side was the River; and, ſays he, we will have all the Pales ſawed ſo far, that when the King's Coach comes into the Place, the Pales ſhall be broke down, and we will have a Parcel of Horſe ready, that ſhall be ſure to do the Work with the Guards; and when we fire, they ſhall take Notice to make their Attack. *Durant* deſires to command this Party; and they were to be dreſſed in Country-Men's Habit, that they might the leſs be taken Notice of: And he ſaid 10 or 12 Men on the other Side would beat 100 of the Guards in that Conſternation, eſpecially we having the Park Pales before us to defend us. He asked me if I would be one of the Ambuſcade. I told him, I had rather be one of thoſe on Horſeback to ſecure the Retreat, and I would rather attack the Guards. It was late, and ſo *King* and I went Home; and the next Day I went to ſee Captain *Porter*, when he was ill of the Gout. This was *Sunday*, the 9th of *February*; we did go to *Porter*, and he was in his Chamber, and two or three more, and they were talking of indifferent Things: He asked for Captain *Charnock*, and they ſaid he was gone out; but he takes out Captain *Porter* into the Yard to talk with him by himſelf; and what he ſaid to him, I ſuppoſe was to tell him what he had told me before: Says Captain *Porter* to him, I have taken care of a Horſe for you; we will ride out on *Tueſday* next to ſee the Place. Mr. *Porter*, and Mr. *King*, and, as I was told, Mr. *Knightly*, went to *Knightsbridge*, and lay there all Night; and the next Day they went out of Town to view the Place. I was at *Porter*'s Lodging on the *Monday*, but I was told there by *Keys* and his Landlady, that he lay that Night at the *Swan* at *Knightsbridge*, and was to go out the next Day. On the *Tueſday* Morning I was coming back from *Kenſington*, which was the 11th of *February*, and when I was coming along the Street I met with *Keys*, and aſk'd him where he was going? ſays he, I am going to Sir *William Perkins* with a Lerrying Trumpet; for it ſeems he was raiſing a Troop of Horſe, as *Porter* told me afterwards; and within a little Time afterwards, I ſaw Captain *Porter* at the End of *Norfolk-ſtreet*, and he told me they would all be together at the *Nagg's-head* about 7 or 8 a Clock. I went, and expected to be admitted, and asked if Captain *Porter* was there; they told me he was above, but there were ſeveral other Perſons with him; and there was a Coach at the Door which had brought two *Scotch* Gentlemen, of which I thought Sir *George Barcley* was one, whom I heard to be in

Town.

Town. I desired to speak with Captain *Porter*; they told me he was busy above in Company, and could not be spoke with; by which I saw they were not willing that I should come there amongst them, which I took very ill. Captain *King* came out to me, and was talking with me at the Door, and Captain *Charnock* comes with another to the Door in a Coach: I saw him, but when, I suppose, he perceived me, he pulls himself back into the Coach, as if he had no Mind to be seen; but finding he could not avoid it, he comes out, and asks me if I would not go up stairs into the Company: I told him, No, I hear they are busy, and because I was not invited up at first, I would not trouble them. I was then thinking of going to my Lord *Shrewsbury*'s Office immediately, to get some Messengers immediately to apprehend them; but then I thought I had not enough to discover their Intentions, and make it out against them, but I should have, one Time or another. I did not see Captain *King* till *Saturday* afterwards at 12 a Clock, and I was then at *Charnock*'s Lodging, to see whether he was gone out, that I might be able to give the King the better Account; they told me, he was at the *Blue Posts* in *Spring Garden*: I would not go and dine there, but went home, and afterwards went thither; and *King*, told me, the King did not go out that Day; I told him that I heard so, and would come and see them after Dinner. At this Meeting at *Spring Garden* I saw *Keys* was one, and *Kenrick*, and *Sherbourn*, and *Bryerly*, and two that I did not know. This was *Saturday* the 15th. On *Sunday* the 16th, I met Mr. *King* at *St. James's-street*, and we went thence to the *Dog* Tavern, and there we supped together, and he told me Sir *George Barcley* had brought over Sixteen of the Guards, and two Officers, and a Brigadier, and a Sub-Brigadier; and he told me the Day before, that he knew some of them, and was going to meet them; for they were *en Cachet*, as he called it in *French*, and did not stir abroad without Leave, and were subsisted at the Rate of 4 *s.* a Day, as the Guards were here. He told me, he had been lately with them a Drinking. I asked him whither they went; he told me, to the *Bear* Tavern in the *Strand*; and he told me, Mr. *Charnock* and Captain *Porter* had several Conferences with them, to contrive how to take off his Majesty, to Murder and to Assassinate him. And he told me——

Charnock. My Lord, I desire he may be ask'd, whether he was at the *Bear-Tavern* with these Men.

L. C. J. What he says about this Matter, is what *King* told him.

Char. That is not Evidence, my Lord.

L. C. J. That is true, not to affect you, but only Mr. *King*.

De la Rue. Captain *King* told me besides, that Mr. *Charnock* did not argue like a Souldier, and reflected upon him for it; for he said, he seemed to desire to have his Post in as little Danger as was possible. And for Mr. *Porter*, he did not approve of him; for he told me he had as much Fat in his Brains, as he had in his Body. I remember those Words he said; and that what he and *Durant* had proposed, was rejected, that was about the Ambuscade: For it was said, that after all their Consideration, Sir *George Barcley* was not sure of Horse enough to carry them off afterwards; wherefore they resolved to Assassinate his Majesty in the Lane coming from *Brentford* to *Turnham-Green*; and Sir *George Barcley* was to command Eight Persons to assault the King, and those that were in the Coach; and Mr. *Charnock* was to attack the Guards in the Rear; and one *Rookwood*, with a Party that came from *France*, and Captain *Porter*, in two Wings, were to attack the two Sides of the Guards. I remember on *Sunday* Night I asked him if he had a good Sword, for I wanted one; and I said to him, Where is your Sword-Cutler? He told me, On the other Side of the Way; and he was sent for to bring a good Sword, and I chose one that was but a little Blade, which he thought would do best, and was ridiculing Captain *Charnock*'s Sword, as being too broad, and of three or four Finger's Breadth. I liked his Sword, and spake to the Man to get me one like his; and he said a *Tuesday*, that he had sent him to my Lodging, but I had not seen him. On *Tuesday*, the 18th of *February*, I went to him, and asked him, whether I should see him in the Afternoon? He told me, No; for he was to go out with *Knightly* to buy Arms. Shall I see you then at Night? said I. I cannot tell whether you can or no, said he. I cannot remember any Thing more that passed upon the 18th. But I spoke to Mr. *Charnock*, whom I met near his Lodging in *Norfolk-street*, and desired to have a Word with him towards the Water-Side: I asked him, how the Matter in hand went? Says he, I find People that were sanguine, and hot, and forward, are now grown cold: I believe the King has Notice of it, and the Thing has taken Air; for he has not been abroad a good while. He was not abroad on *Saturday*, as he usually does go; and I hear, that upon *Friday* Night it was agreed in Council, to take up several People. Said I, Does the Business go on? No, says he, I believe it is off, because we apprehend the Thing has taken Air; besides Things of such a Nature are not to be communicated to so many, nor delayed, both which are very dangerous; not above Three People should know of it. Said I, How then would they get enough for the Execution? If they be not acquainted with the Design, they will never engage. Well, said he, I believe they are quite off of the Thoughts of it; but you may depend upon the main Business, that will be very speedily, which was the Landing of King *James*. While I was talking, comes *Bryerly* from Captain *Porter*; and after him, came Captain *King* in a Coach, and asked me, if I would go Home with him? I told him, No, I was not going Home, but was going into *White-Fryers*, and I took my Leave of them; and nothing past more, that I remember, at that Time. On *Wednesday* Morning I went to Capt. *Charnock*'s, thinking to learn something how Matters went on; but he was closer, and more reserv'd than before. I asked him to lend me a good Sword. He said, he had none, but Mr. *Porter* had a good broad flaming Sword, which I thought to be the Sword that Capt. *King* mentioned to be his: And we had little Talk that Day; for I had Business to do, and I left him pretty soon on the *Wednesday*. Next Day after, I went to Captain *Porter*'s Lodging, who was removed from *Norfolk-street* into *Maiden-head-lane*, to one *Brown* a Surgeon's, and very few People knew where he was, but those that were of the Party in this Business; and I went into another Room, into the Dining-Room, because his Room had not a Fire, and he came in to us, and I told him what I had heard from Mr. *Charnock*, that the Thing was quite off. He told me, he heard nothing of it, but found all People that

were

were concerned, as resolute for the Execution of it, as ever they were.

Char. My Lord, he speaks of what Capt. *Porter* told him; that is nothing to me.

L. C. J. No, it is not, nor will it ever be urged against you; it is but Hear-say from another. Go on, Sir.

De la Rue. I stay'd there but a short Time: But Captain *Charnock*, since you speak of this Matter, I only say, I told Captain *Porter* what you told me, that you thought they were off of the Business, and that it had taken Air; and I asked him what he thought. Says he, I know nothing of any Alteration; I believe they are as resolute as ever they were: For they fully purpose, that if the King goes abroad on *Saturday* Morning, we will have all ready. And he told me how it was to be done. He desired me to lie with him on *Friday* Night, that we might prepare every thing against the next Day: But I could not do that; and therefore he bid me send at Nine, or thereabouts. I told him I would be at my Lodging about that Time, if he would send to me, to be sure about Seven or Eight a Clock in the Morning. About that Time in the Morning Captain *Porter* sends to me again; a Servant-Maid came to me, for the *Black* that used to attend him, used only to go abroad at Nights, and was not seen to go in and out a Days, for Fear of being taken Notice of; because, as I said, none but those that were of the Party knew that he lodged there. I dress'd my self, and went to Captain *Porter*'s Lodging. He was in Bed, but presently he rises, and told me in French, *Toutes Parties sont prests*, All things are ready: And when he was up, he put on his Boots; and by and by, in comes Mr. *Kenrick*; and after him, in comes Mr. *Keys*; and after him, Mr. *King* and Mr. *Pendergrass*: And Captain *King* takes Mr. *Porter* into another Room, and there they were whispering a while, but I did not hear what they said; but *King* told me afterwards, he did not observe that I was in the other Room. The Question then was asked of *Cranbourne*, When he saw Sir *George Barcley*? He said, he just came from him: And then Captain *Porter* takes a Pen and Ink, and writes down a List of the Persons that he was sure of, and puts me down first. What, says Mr. *Pendergrass*, are you the Captain? I told him, I believed I was in before the rest of the Company that were there. Then Captain *Porter* sends Mr. *Cranbourne* with the List to Captain *Charnock*'s Lodgings; and in the mean Time, when Mr. *Cranbourne* was gone, Capt. *Porter* told me, that Mr. *Pendergrass* was to be one of the Eight under Sir *George Barcley*, that were to Assassinate the King, and now, says he, I am going to lend him a Gun that will carry six or eight Bullets. Says Captain *King* thereupon to him, I hope you will not fear to break the Glass Windows. No, says he, I will have a Hand or a Finger in the Business. By and by came in News, that *Chambers*, one of the orderly Men, as they called them that lay at *Kensington* to give Intelligence, had sent Word that the King was to go abroad, and the Guards were gone out. *Durant* was to stay last, to see when the King went out. *Chambers* had been there all the Week. Mr. *Cranbourne* came back, and told Captain *Porter*, that *Chambers* had sent to Captain *Charnock*, that the King would go out that Day. At which all the Company seemed joyful. Captain *Porter* told me likewise of several Disappointments that they had, both as to Time, and as to Men; particularly that one Major *Lowick* had engaged to bring two Men, and that one of them had told his Wife, that he was to mount for King *James*'s Service; and she went and cried after him when he went to the Coffee-house; and so he was forced to abscond, and so we lost three: And also told me, that *Kenrick* said he had broke his Arm; and when Captain *Porter* asked for *Sherbourne* whom *Kenrick* had talked of, he said he asked so many Questions that he durst not trust him; so that they had lost Five or Six in the whole: And there was one *Plowden* that they were disappointed of besides, whom they had very much reckon'd upon. When Mr. *Cranbourne* brought back the List that Captain *Porter* sent to Captain *Charnock*, there were added to it several Names, which Captain *Porter* said were the Names of the Men that were to be under Captain *Charnock*, and that it was his Hand; and at the Bottom there were the Letters *R. C.* which I thought stood for *Robert Charnock*. The Names made up about seventeen or eighteen: I told him, I thought there had been more. He told me, there would have been more, but that they were under some Disappointments, as I told you before. He asked me to get him some Men to supply the Defect, and I proposed some Names, to make him believe I was hearty in the Business: We agreed to go to the *Blue-Posts* in *Spring-Garden*, and I went under Pretence to get the Men, and came and told them, I had got them, and I found Mr. *Pendergrass* there, and I took Mr. *Keys* thither, and Mr. *Porter* sent Mr. *Cranbourne* to Captain *Charnock* several times; by and by Word was brought that *Chambers* had sent Word, the King would not go abroad that Day; upon which they all look'd very blank: And *Keys* came two or three Times in, and went out again; he was several Times up and down, at last he came and told us, the Guards were returned from *Richmond* foaming; and he went down again to learn further Intelligence, and within a little Time came and told us, the King's Coach was returned to the *Mews* Gate, and the People very much wondred what should be the Reason, that the King did not go a Hunting for two *Saturdays* together as he used to do. They seemed to be in a very great Consternation at this News, and Captain *Porter* said he resolved to go out of Town, and asked me if I would go: I told him, No; I had a Suit in *Doctors Commons*, and I would go to my Proctor and Lawyers to consult about it. Then he asked Mr. *Pendergrass* to go with him, which he agreed to do; and Captain *Porter* sent *Keyes* up to give the rest of the Company an Account, that there was no Occasion for them then, and so they dispersed.

Charnock. Did I go out of Town can you tell?

Mr. *De la Rue.* Now you put me in mind, Mr. *Cranbourne* brought a Message from you about that Time to Captain *Porter*, that Sir *George Barcley* desired to speak with him at his Lodgings. Captain *Porter* was then apprehensive of Bayliffs meeting with him; and, says he, he knows this, I wonder he would not come to me: But he did not go to him, but resolved speedily to go out of Town; and *Keys* was to give an Account where he was in the Country, that if Occasion was he might be sent for. This is all I can at present recollect, only, I beg your Pardon, I remember, there were several disloyal Healths drunk in the Company, at several Times, as the restoring the late King, the Health of the Prince of *Wales*, the late Queen, and the *French* King; and particularly, I remem-

ber, when the News of the Diſappointment was, Mr. *Porter* took an Orange in his Hand, and ſqueezed it, and gave it into the Hand of the next Perſon to him, whom he drank to, and began a Health to the Squeezing the rotten Orange; and ſaid, Though we are diſappointed one Day, I hope to have another: And *Keys* was at Dinner with them all the Time, and every Body drank it, I did not ſee any Body refuſe it, but it went from one to another quite round.

Mr. Att. Gen. Pray, Who were there at that Time?

De la Rue. All the Company pledged the Health, and Mr. *Keys* was there.

Charnock, Pray was I there?

De la Rue. No.

King. Was I there?

De la Rue. No, there were none of the Priſoners, but Mr. *Keys*, who belonged to Mr. *Porter*'s Party; Mr. *King* for his Part belong'd to Sir *George Barcley*'s Party.

Mr. Att. Gen. My Lord, before we go to another Witneſs, I deſire to know whether the Priſoners will ask this Witneſs any Queſtions

Char. You ſay, there was a Note of Names ſent by me to Captain *Porter*, Pray do you know my Hand writing.

De la Rue. I cannot ſay, I have ſeen you write, or that I ſaw you write that; but I have ſeen your Writing ſeveral Times, and I believe it to be your Hand.

Char. Why ſo, have you any of my Writing?

De la Rue. I have received ſeveral Notes from you, which I believe are your Writing.

Char. But you do not ſwear, that they were my Writing, or that this was my Writing.

De la Rue. I tell you, you have ſent ſeveral Notes to me at ſeveral Times, and you have owned the Meſſages came from you, and I do believe it was your Hand-writing, becauſe it was like the reſt: And Captain *Porter* told me, it was your Hand-writing.

Mr. Att. Gen Pray did Mr. *Keys* uſe to ſit down at Table with Mr. *Porter?*

De la Rue. Yes, in all Companies he was treated as familiarly as a Companion, and no Ways as a Servant; and dined and ſupped at the ſame Table with the reſt.

Mr. Att. Gen. What was done after that the News was brought of the King's not going abroad, and Captain *Porter* reſolving to go into the Country?

De la Rue. When Captain *Porter* was gone, the Company broke up; and away goes I to Captain *Charnock*, to ſee him, about Four of the Clock in the Afternoon. When I came there, his Landlady told me there was a great deal of Company: But I deſired her to go in, and tell him that I was there. She did ſo; and he ſent and deſired me to come in. I did ſo, and I ſaw ſeveral Perſons there. There was one *Douglas*, and one *Trevor*, and four Troopers of my Lord of *Oxford*'s Regiment, and a Trumpeter that was his Servant in *Ireland*, when he was a Captain in *Parker*'s Regiment; I know Captain *Charnock* was a great Croney of *Parker*'s, and he ſent Letters by me to him: I have ſeen ſome of the Letters that *Parker* ſent; and they were drinking the ſame Healths as were drunk before at the *Blue Poſts*, to the Reſtoring King *James*, the Queen, the Prince of *Wales*, and the Grand Monarch (as they called him) the *French* King.

L. C. J. Who was in Company then?

De la Rue. Mr. *Douglas*, Mr. *Trevor*, four Troopers of my Lord of *Oxford*'s Regiment, one *White*, one *Lowthorp*, and one *Maſon*, whom I know when I ſee very well; Mr. *Charnock*, one Day in the Summer, asked me to go and drink a Bowl of Punch, which I was unwilling to do; but he muſt needs preſs me, and he carries me where *Maſon* and *Lowthorp* were, at the *George Inn* in *Piccadilly*; whence we went to the Prince of *Orange*'s Head, and Captain *Charnock* ſpent in Wine and other Liquors upon them a great deal of Money. This was half a Year ago in the Summer Time, but I do not remember that I ſaw thoſe two, *Lowthorp* and *Maſon*, afterwards, till the 22d of *February*.

Mr. Att. Gen. Is this all that you can ſay as to the Priſoners?

De la Rue. This is all at preſent that I can recollect.

Mr. Att. Gen. Then for the Satisfaction of the Court and Jury, give us an Account when you firſt made a Diſcovery of this Conſpiracy, and in what Manner, and to whom.

De la Rue. The laſt Year I had diſcovered it if it had come to a Head, and been ripe enough to have been put in Execution; I did then deſign to acquaint the King with it; but it coming to no Head then, I deferr'd troubling the King with it: And now this Year I deſigned (had the King gone out the 15th of *February*) to have prevented any Miſchief, but they had Notice that he was not to go: But my Way was, to have put them all into the King's Hands, by getting two or three General Officers to be acquainted with it; and dividing ſome of the Guards into ſeveral Parties in the Lanes between *Brentford* and *Turnham-Green*, and ſo have ſurprized them and their Horſes in the ſeveral Inns that they were quartered in. But upon *Monday* the 17th of *February*, leſt they ſhould alter their Reſolution, and I ſhould happen not to be acquainted how it was to be done, I went to a General Officer of my Acquaintance, that is, Brigadier *Lewſon*, to acquaint him with the Matter; but he was gone out of Town with Collonel *Fitz. Patrick* and another: I went then to *Durant*'s Lodgings for a Colour, and it was told me, he had been out all Night. I went again to Brigadier *Lewſon*'s, but he was not in Town, and I left Word for him, that the next Day I would wait upon him, and deſired he would not go out till I came to him. I went, he was not then at home, but I afterwards met with him, and acquaints him with this Buſineſs, and begs of him to acquaint the King with it that Day, which he told me he would. He asked me which Way I purpoſed to put them into the King's Hands. I told him the beſt Way and ſafeſt for me, was for his Majeſty to go out on the 22d, for the Party that was to execute this Deſign, were not to go out of Town till the Afternoon, to be at *Brentford*, when the King came back from Hunting, and that they ſhould have two or three Troops of Horſe by Parties to have ſeiſed them and their Horſes in the ſeveral Inns and Publick-Houſes, where they were diſperſed. He ſaid, it was not ſafe to run that Hazard, but he would offer it to the King, and let me know his Mind. He ſent to me the next Day, and told me, he had acquainted the King with it, who deſired to know who they were that were concerned in it; then I gave him the Names of thoſe that I knew, and where they lived. I dined with him on *Thurſday*, and told him what had paſſed on the *Wedneſday*

neſday Morning between Captain *Charnock* and I, and what *Porter* ſaid about it on *Wedneſday* Night; and after Dinner he ſaid he would go again to the King and acquaint him with it; and that I ſhould come to him on *Friday* Night, which was the Reaſon I was not there with Captain *Porter*, where Sir *George Barcley* and they were together; for I went to the Play to paſs away the Time. When I came home to my Lodging, I found there were a Couple of Letters from the Brigadier, to whom I went, and he told me, the King was deſirous to ſee me: I told him I would wait on him to the King with all my Heart. I went with him to *Kenſington*, and was introduced to the King by my Lord *Portland*, where I think I told the King what I have told the Court now.

Mr. Att. Gen. What Day do you ſay it was you diſcover'd it to the King?

De la Rue. Brigadier *Lewſon* acquainted the King upon the *Tueſday* Night before, and that had been done the Day before, if I could have met with him; but it was *Friday* Night that I was with the King.

Mr. Att. Gen. Will they ask him any Queſtions?

Char. No, my Lord; I do not think that any Thing he ſays againſt me is material at all.

De la Rue. My Lord, I remember one thing more; that upon *Tueſday* Night Mr. *King* told me he had my blue Coat on.

Mr. Att. Gen. Have you any Thing more to ſay as to *Keys*.

De la Rue. *Keys* was the only Man that told me of the Meetings.

Char. Where was it that you ſay I pull'd my ſelf back in the Coach?

De la Rue. It was at the *Nagg's-Head* in St. *James's-ſtreet*, and he came out of the Coach, and asked me to go up; but I took it ill to be refuſed before, and becauſe I was not invited up at firſt, I refuſed, and ſaid, I had Buſineſs elſewhere, and went away.

L. C. J. Will you ask him any more Queſtions?

Char. No; yet I think I would ask him one Queſtion more. You ſay, Sir, I carry'd you once to the *George* Inn in *Piccadilly*, where there were *Lowthorpe* and *Maſon*: Are you ſure it was the *George* Inn?

De la Rue. Yes, ſure.

Char. Are you poſitive it was the *George* Inn?

De la Rue. I believe ſo, I took it to be that Inn.

Char. You did ſwear it poſitively, that it was the *George* Inn before.

De la Rue. I ſaw thoſe two Men ſince, which was on *Sunday* the 23d, at *Kenſington*, and they ſaid they did quarter at the Inn in *Piccadilly*, where you carried me to them.

Char. Pray, where abouts is the *George* Inn in *Piccadilly*?

De la Rue. The Inn that I ſpeak of is about the Middle of *Piccadilly* upon the left hand.

Char. There is but one *George* Inn in all *Piccadilly* that ever I heard of, and that is at the further End, there is no ſuch Sign in the Middle.

L. C. J. He is not ſo poſitive as to the Sign, but as to the Place.

Char. I appeal to every Body, if he did not ſwear before poſitively, that it was the *George* Inn in *Piccadilly*.

De la Rue. I do ſay, it was to an Inn in *Piccadilly*; and *Lowthorpe* told me on *Sunday* the 23d at *Kenſington*, they were quarter'd at an Inn in *Piccadilly*, I take it to be the *George* Inn, if it be not the *George*, I know not what Sign it is, but I think it is not very material what the Sign was.

Char. Yes, it is all material to us; and I think it is very material for every Man to take care how he forſwears himſelf.

L. C. J. No, it is no forſwearing himſelf, when he is not poſitive as to the Sign.

Char. But I hope every Body conſiders, that he did ſwear it was the *George* Inn, and there is no ſuch Inn there.

De la Rue. This I did not think of, to take ſo much Notice of it then, as to mind what the Sign was; 'twas you carried me thither.

Char. It was your Intereſt to mind every Particular; for according to your own Words, you had been a Trapanner half a Year before.

De la Rue. I have told you already, I intended never to have been an Evidence; but to put you into the King's Hands, and prevent the Execution of the Deſign, and I beg'd of the Council to be excuſed from giving any Evidence, but I could not by any Means get my ſelf excuſed.

L. C. J. Will Mr. *King* ask any Queſtions?

King. No.

L. C. J. Well, what ſay you *Keys*, will you ask him any Queſtions?

Keys. My Lord, he ſays I drank the Health to the Squeezing of the *Orange*, and the other Healths: I was not in the Room while any ſuch Healths were drunk, nor did I ſit down while I was there, nor do I know any thing of the Horſes upon my Word, that he ſpeaks of.

Mr. Att. Gen. Then if they have done with him, there is a noble Lord, whom he has mention'd, as being preſent when he diſcover'd this to the King, who we deſire may be examined touching that Matter: We muſt humbly pray my Lord *Portland*, that he will pleaſe to be ſworn.

L. C. J. Hold my Lord the Book, and ſwear him. Which was done.

Mr. Att. Gen. My Lord, I humbly ask your Lordſhip this one Queſtion, Whether Mr. *De la Rue* did make any Diſcovery of this Matter in your Preſence to his Majeſty, on *Friday* the 21ſt of *February*.

E. of *Portland*. Yes he did.

Mr. Att. Gen. Your Lordſhip has heard what he ſaid now: Was it to the ſame Purpoſe?

E. of *Portl.* Yes, to the very ſame Purpoſe, and he did it before he went in to the King to me, being brought to me by his own Deſire: It was all the ſame in Subſtance as he has told you now; and afterwards he was brought to the King on *Friday* Night, and there he ſaid the ſame Things.

Mr. Soll. Gen. This Gentleman did it not to ſave his own Life, but the King's. Our next Witneſs, my Lord, is Mr. *Pendergraſs*. (Who was ſworn.)

Mr. At. Gen. But before we go on to another Evidence, I would ask Mr. *Porter* one Queſtion, and that is, What is become of the Liſt which you ſpoke of?

Capt. *Porter*. I burnt that Liſt.

Mr. At. Gen. Why did you ſo?

Capt. *Porter*. Becauſe I thought the Thing was diſcover'd, and it was not fit to have ſuch a Paper remain.

Mr. Soll. Gen. Mr. *Pendergraſs*, pray will you tell my Lord and the Jury what you know about this Matter, how you came to be acquainted with it, who were concerned in it, and when and how it was to be done.

Capt. *Pendergraſs.* My Lord, about the 11th of *February* laſt, I was ſent to by Capt. *Porter*, where I was in the Country, to come to Town; the 13th of *February* I met him at the *Blue Poſts* in *Spring Garden*; we dined there, and he told me of a Deſign that was on foot, to take away the King's Life, and that Sir *George Barkeley*, and other Officers, were come on purpoſe out of *France*, in order to execute the ſame. I was very uneaſy when he told me of the thing, but I ſaid nothing, till I had an Opportunity of waiting upon my Lord *Portland*, which I did as ſoon as I could, and acquainted him with the whole Matter of the Deſign, and deſired him to acquaint the King: This was upon the *Friday* Night, which was the 14th, and he told me the King had a mind to ſpeak with me; and afterwards my Lord *Portland* carried me into the Kings Cloſet, where the King ask'd me ſome Queſtions. I told him what I knew of the Deſign, but deſir'd to be excus'd from naming any Perſons, becauſe my Intention was only to prevent ſuch a barbarous Action, and I was reſolv'd not to be a Witneſs. The King promiſed me I ſhould be ſafe, and preſs'd me to name them, and aſſur'd me I ſhould not be forc'd to come in as an Evidence; upon which I did tell all that I knew, and went out of Town with Mr. *Porter*, as reſolving not to be an Evidence; but being ſatisfied, after we were taken, that Mr. *Porter*, who had engaged me in it, had himſelf diſcover'd, and accus'd me, I thought my ſelf diſcharged from any Obligation of Honour in concealing it, and am willing to give an Account of any thing that I know.

Mr. *Att. Gen.* We know you do it voluntarily, as you did it at firſt honourably, and therefore, Sir, we deſire you would pleaſe to give an Account of your Knowledge in the Matter.

Capt. *Pendergraſs.* My Lord, as I told you before, the 11th of *February* I was ſent to by Capt. *Porter* into the Country, where I was with Mr. *Bryerly*, to come to Town; accordingly the 13th which was the *Thurſday*, I came to Town with Mr. *Bryerly*, and found Capt. *Porter* at the *Blue Poſts* in *Spring Garden*, and we dined there. There was *Keys*, and *Bryerly*, and *Porter*, and I in company, where he acquainted me with the Deſign. We had no further Diſcourſe that Day; the next Day we dined at the *Roſe Tavern* in *Covent Garden*, where there was *King*, *Bryerly*, *Cranbourne*, *Porter*, and I dined together.

King. Pray, was it by way of Rendezvous or ſet Meeting?

L. C. J. Holt. Look you, you muſt ſtay your time before you ask any Queſtions of the Witneſſes; you ſhall be heard, when your time comes, as fully as you deſire. Go on Sir.

Capt. *Penderg.* This was *Friday* the 14th of *February*, we had ſome Diſcourſe about the Matter; Capt. *King* and Capt. *Porter* went away, and then I went to my Lord *Portland*'s, and was by him introduced to the King. The 15th, I came to Capt. *Porter*'s Lodgings, and he was getting ready, in expectation of notice whether they ſhould execute the Deſign that Day or no. While he was getting ready, I goes to the *Blue Poſts*, where was *Kenrick* and *Sherbourne*, and Mr. *Bryerly*, and there we were drinking a Glaſs of Wine, and in comes *Durants*, who was an orderly Man that lay at *Kenſington* to give Intelligence; and *Bryerly* directed him to Capt. *Porter*'s Lodgings to carry the Intelligence which he brought, that the King intended to go out that Day; upon that he went away to his Lodging, and Capt. *Porter* came a little time after, booted, to the *Blue Poſts*, and there he din'd; within an Hour or two after Capt. *Porter* came in, Mr. *Charnock* ſent a Note to Capt. *Porter*, to tell him, the King did not go that Day, and ſo there muſt be Counter Orders; Capt. *Porter* told me it was his Hand; the Note was ſigned *R. Robinſon*, and he ſhewed me the Note, and acquainted me and the reſt of the Company, that they were diſappointed that Day, ſince the King did not go; there we dined, and drank a Bottle of Wine. The next time we met there was Mr. *King*, and Mr. *Keys*, and Mr. *de la Rue*, at Mr. *Porter*'s Lodgings; this was *Saturday* the 22d in the Morning, there we had ſome Diſcourſe of the matter; and Capt. *Porter*, upon notice from Capt. *Charnock* of the King's intending to go abroad, had ſent a Liſt of his Men, and receiv'd back a Liſt of Capt. *Charnock*'s, and Capt. *Porter*, and *De la Rue*, and we went to the *Blue Poſts* to dine, where we had an account afterwards, that the King did not go, and ſo there was another Diſappointment; and a little after *Keys* came in, and ſaid, the Guards were come home all in a foam, and the Kings Coaches come back to the *Mews*. Capt. *Porter* then thought all was diſcover'd, and ſays he, I will go into the Country, Mr. *Pendergraſs*, will you go with me? With all my Heart, ſaid I, ſo we ſent *Keys* to get our Horſes ready; we lay at *Epſom* that Night, and from thence to another Place we went the next Day, where we lay till *Thurſday* Morning, when Capt. *Porter*, Mr. *Keys* and I was taken together, the Place was called *Leatherhead*, in *Surrey*, whence we were brought up to Town, and have remained Priſoners ever ſince.

Mr. *Att. Gen.* Which of the Priſoners were there preſent upon the *Saturday* the 22d at Capt. *Porter*'s Lodgings?

Capt. *Pendergraſs.* There was Capt. *King* and Mr. *Keys*.

Mr. *Att. Gen.* Pray was there any Diſcourſe about a Gun, and who was to have it?

Capt. *Pend.* Capt. *Porter* told me there was a Musketoon that he had would carry 6 or 8 Bullets, and I ſhould have it, being to joyn with Sir *George Barcley* to ſet upon the King's Coach, and directed me to be ſure to ſhoot ſome of the Horſes to ſtop their Courſe if they ſeemed to drive furiouſly away; and Mr. *Cranbourn* was the Perſon that carried the Meſſages from Mr. *Charnock* to Mr. *Porter*.

Mr. *Soll. Gen.* Do you remember Sir, that *Keys* ſaid the Guards were come back?

Capt. *Pendergraſs.* Yes, and that they were all in a Foam, and the Coaches were come back to the *Mews* Gate, and one of my Lord of *Oxford*'s Regiment told him there was ſomething extraordinary mutter'd among the People, upon which they concluded it was diſcovered.

Mr. *Att. Gen.* Will the Priſoners ask him any Queſtions?

Char. King, and *Keys.* No.

Mr. *Att. Gen.* Then I muſt beg the Favour of my Lord *Portland* to give himſelf the further trouble of acquainting the Court how this Gentleman behaved himſelf in reference to this Diſcovery.

E. of *Portland.* My Lord, it was, as he has acquainted you. This Gentleman came to me upon the *Friday* Night, and told me of it; and then upon the ſame *Friday* Night, which was the 14th, I think the Night before the firſt time that it was to have been executed, and declared his Abhorrence of ſuch a barbarous Buſineſs: And he told

told me his Design of coming into it, and keeping Company with them was to save the King's Life by acquainting me with it, and discovering it, which he would do upon a Promise that he should not be used as an Evidence, nor pressed so much as to name Names, which Promise I made him, and the same Promises were made him that Day seven-night, when I carried him to the King. But the King pressing him to name their Names, assuring him he should be safe and not forced to be an Evidence, he did then name the Names under that Promise from the King.

Mr. *Att. Gen.* Pray my Lord, who was by then besides your Lordship?

E. of *Portl.* My Lord *Cuts*.

Mr. *Att. Gen.* We must desire my Lord *Cuts* will please to be sworn. [*Which was done.*]

Mr. *Soll. Gen.* Pray, my Lord, will you please to acquaint the Court and the Jury what happen'd at that time.

L. Cuts. My Lords, I was in the King's Closet that same *Friday* Night when Mr. *Pendergrass* was brought in there: 'Twas, as near as I can remember, between 12 and 1 a Clock at Night; no Body was present but my self, with the King, when my Lord *Portland* came in with this Gentleman: All that he said to the King at first was, that he had a Discovery to make of a Design to assassinate his Person, if that his Name might not be made use of, nor he forced to be an Accuser or a Witness. And therefore desired to be excused if he said no more; then desiring the King not to go out the next Day, but to take care of himself, because there were some Persons had resolved to assassinate him coming home; but beg'd to be excus'd from naming Names, for he said he would rather die than betray his Friend, and he thought it enough that he had saved his Majesty's Life. It was above half an Hour before the King could perswade him to name Names, and he would not, till the King had given him his Word and Honour that he should not be obliged to be a Witness, and then he did name the Names. Afterwards, when Captain *Porter* and Mr. *Pendergrass* were taken, as my Station obliged me to give Orders, and require Intelligence, and assist at the securing and examination of the Conspirators, I happen'd to see them before they were carried into the Council, and presently knew Mr. *Pendergrass* to be the Person that was with the King that *Friday* Night; I had a great Compassion to see Gentlemen and Officers, whom I had some Knowledge of before, in such a Condidition, and I told them naturally what my Opinion was: Mr. *Porter* did seem sorry for what he had done, and inclin'd to make the King that Atonement for his Fault which he has now done. When I came out and told Mr. *Pendergrass* this, and that Mr. *Porter* had named him, and owned the whole Matter, I only gave him my Opinion upon it, that I thought he was discharged from any Obligation of Friendship; and he seemed then inclined to do the same likewise that Mr. *Porter* had done.

Mr. Soll. Gen. Swear *Thomas Berthram.* [*Which was done.*] Pray do you give my Lord and the Jury an Account how long you have known Mr. *Charnock* to be engaged in this Conspiracy: Tell your whole Knowledge as to him.

Mr. *Berth.* The 8th or 9th of *February* last I was crossing *Covent-Garden*, I light upon one Mr. *Trevor*, who is now in *Newgate*, and he told me he was going down to Mr. *Charnock*'s Lodgings, and that he heard him say he wanted to speak with me: I told him he had no Business with me nor I with him that I knew of: But he prevailed upon me to go with him, and when we came to Mr. *Charnock*'s Lodgings, he met me in the Entry.

Mr. *Sol. Gen.* Who did?

Mr. *Berth.* Mr. *Charnock* did. He told me he wanted to speak with me, and took me into a back Room, because he had Company in his own; and he told me the King, that is, King *James*, was a coming, and there was a Piece of Service to be done before he could come, and if I would assist in it, it would answer my Expectation. I asked him what was to be done? He answered, you must only go abroad to take the Air, you will see several of your Acquaintance there. I desired to know what was to be done? He said it was to cut off this Spark, or to take off this Spark, I can't tell which, and then the King will come home quietly.

Mr. *Att. Gen.* Who were to cut him off?

Mr. *Berth.* The Party that I was to meet when we rode out to take the Air.

L. C. J. Who did they say they were to take off.

Mr. *Berth.* He said we must take off this Spark, or cut off this Spark, I can't tell which, which I understood to be the King.

Mr. *Att. Gen.* How long had you known *Charnock?*

Mr. *Berth.* By Times, seven Years.

Mr. *Comper.* How came you acquainted with him?

Mr. *Berth.* We were in the Army together; he was a Lieutenant in Col. *Parker*'s Regiment, and I was a Trooper there then.

Mr. *Sol. Gen.* What Discourse was there between you and *Charnock* after you heard there were Warrants out?

Mr. *Berth.* Sir I have not yet done with what past at his Lodgings. He asked me if I would accept of being one in the Business? I told him I could not engage in it, for I had disposed of my self otherwise. So we came out of that little Room, and he desired me to come into his Room and drink a Glass of Wine: There were three or four Gentlemen that I did not know; and then there was one Mr. *Chambers*, and Mr. *Trevor*, and Mr. *Lee* which Mr. *Chambers* fetch'd afterwards in there.

Mr. *Att. Gen.* He would not be engaged there because he had otherwise disposed of himself: Indeed, he was engaged with Sir *William Perkins.*

Mr. *Berth.* After I came in I observed great Whisperings among the Company, and frequent calling out of Mr. *Charnock* for private Discourse; but there was no other particular Discourse about this matter that Night.

Mr. Soll. Gen. Pray when did you see Mr. *Charnock* again, and where?

Mr. Berth. At another time, which was the 22d of *February*, I met him at *Lincolns-Inn* back Gate; and meeting me there, he called me aside, and took me within the Inn upon the Pav'd-stones, we took a Turn there: He told me Warrants were out against us as he heard, and we had as good, if I would come to his Lodging, go out to *Kensington* and do the Work at once and take him off, and then we shall be quiet, and have the King peaceably here. I am sure he cannot say that I do him a word of wrong in what I have said, he knows it all to be true.

Mr. Comper. Has any Body else engaged you in this Matter? Do you know one *Lowick?*

Mr.

Mr. Berth. If that be neceſſary I will tell it. But this is all that I know of any thing of the Priſoners; only Mr. *Charnock* did ask me as to Mr. *Trevor*, what I thought of him, whether he might truſt him? I told him he might do what he pleaſed.

L. C. J. H. Mr. *Charnock* will you ask him any Queſtions? for his Evidence relates only to you.

Char. No, I think not. Pray did I ſend for you.

Mr. *Berth.* I met Mr. *Trevor*, and he told me, he was coming to your Lodgings, and that you deſired to ſpeak with me: And when I came, you told me your ſelf you wanted to ſpeak with me: Indeed I knew no Buſineſs you had with me, or I with you.

Mr. *Att. Gen.* We have one more Witneſs, and that is one Mr. *Boyſe*. [*who was Sworn.*]

Mr. *Sol. Gen.* Pray Mr. *Boyſe* will you give an Account when you were ſpoke to about this Deſign, and by whom.

Mr. *Boyſe.* On *Friday* the 14th of *February* I went to viſit Mr. *King*, and he was the firſt that ever told me of the Buſineſs; it was in his own Chamber, he told me there was a great Undertaking in Hand, and he had put my Name into the Liſt, and if I would make one, I ſhould have a Horſe; and he asked me if I had any Boots? I ſaid no. He deſired me to ſee if I could get any, and to meet him in the Afternoon at the *Roſe Tavern* in *Covent Garden*; but in the mean time he bid me go to Mr. *Knightley* and he would inform me further. I went to Mr. *Knightley*, and I came to Mr. *King* again in the Afternoon at the *Roſe Tavern*, and he deſired me not to be out of the way the next Day, but to be at my Lodging, and he would come or ſend for me; and I had Twenty Shillings of him to buy Boots, and he ſtill referr'd me to Mr. *Knightley*: When I came to Mr. *Knightley* I was told there was Nothing to be done that Day: But I was deſired to be always in the way, for the Buſineſs would ſoon be over. This is all the Diſcourſe that Day. After that I met Mr. *King* ſeveral times, who ſtill referr'd me to Mr. *Knightley*, and when I asked him for my Horſe, he told me I ſhould have one allotted for me time enough; and when this thing was done we ſhould be happy: But he never told me it was to take off the King.

Mr. Att. Gen. Pray what did you underſtand was to be done?

Mr. *Boyſe*, I did believe I ſhould know further of it; for I would not have engaged till I did know. But he did not tell me it was to take off the King, or what it was. This to the beſt of my Memory, is what I know of the matter.

Mr. Att. Gen. Pray when did you come from *France?*

Mr. *Boyſe.* He told me indeed ſeveral were come from *France*, and that the King would land very ſpeedily.

Mr. Att. Gen. But when did you come?

Mr. *Boyſe.* I came the beginning of *June* laſt.

Mr. *Att. Gen.* Do you remember nothing about Sir *George Barcley?*

Mr. *Boyſe.* Yes, he told me Sir *George Barcley* would Command the Party, and that there were about 40, or 45, that were concerned in the Deſign.

Mr. *Sol. Gen.* Do you remember nothing elſe?

Mr. *Boyſe.* No truly, I do not remember any thing more concerning Mr. *King*.

L. C. J. H. Mr. *King* will you ask him any Queſtions? for what he ſays relates only to you.

King. No my Lord.

Mr. *Att. Gen.* Then we have done my Lord; we reſt it here till we hear what they can ſay.

L. C. J. H. Mr. *Charnock*, The King's Council have done all the Evidence they deſign to give, and now is your time to make your Defence.

Charnock. My Lord, I have taken ſome Notes of the Evidence, and made ſome Remarks, which muſt be my Defence; and I ſhall take them in Order of Time as they were given: The firſt is Capt. *Porter*; and the main Evidence he hath given againſt me, is my informing him that Sir *George Barcley* was come from *France*, with a Commiſſion all written with King *James*'s own Hand, thereby authorizing us to raiſe War againſt the Perſon of King *William*. But then he ſays at the ſame time, I told him I never ſaw it; and I know not how I ſhould; for it is impoſſible to ſee a Thing that is inviſible, a Thing that never was in being, and to ſuppoſe that ever there ſhould be ſuch a Commiſſion under the King's own Hand, and writ with his own Hand, is ſuch a Contradiction to all Senſe and Reaſon, that no rational Man can be guilty of; and therefore I hope the Court and the Jury will conſider of it, and reject it all as a fooliſh, idle, nonſenſical Fiction and Story. It is very well known that King *James* has always had, and ſtill has, notwithſtanding his preſent Sufferings and Circumſtances, his Miniſters of State about him, in how ſlender a Condition ſoever they may be, or be repreſented to be. He has my Lord *Middleton* as his Secretary of State, he has been all along with him, and it is not ſuppoſable that he ſhould put himſelf to the Trouble of Writing any Commiſſions with his own Hand, when there were others enough to do it for him, and he need only ſign the Top of it *James R.* much leſs is it ſuppoſable, that he ſhould give any ſuch Commiſſion as this that they ſpeak of, and Write it all with his own Hand, and that Sir *George Barcley* ſhould bring it over. This is ſuch a nonſenſical ridiculous Story as ought to be rejected with Scorn and Contempt, and is only fit to be laughed at: I hope every Body will look upon it as ſuch, and think that ſuch Evidence is very incredible.

My Lord, Another Thing that I obſerve out of Capt. *Porter*'s Evidence is this, he ſays, he and I was to command a Party; he knows what he himſelf intended to do, but I am ſure I know of no Party that I was to command. It is all a Dream a meer Dream and a Fiction. He thinks fit to acknowledge his own Guilt of a very bad Crime, and he may accuſe himſelf as long as he will, but I think that will not make me Guilty of any ſuch Thing, only becauſe he ſays ſo: He does not ſay what Men they were, or who they were; and it cannot be an Overt-Act, unleſs he can tell who they were. He ſays Sir *George Barcley* and I met at the *Sun Tavern* in the *Strand*, and at ſeveral other Places where this Matter was diſcourſed of, and a great many were ſuppoſed to be in the Aſſaſſination, to the Number of Forty; but he does not mention any thing then of its being diſcourſed who they were to be: And is it ſuppoſable when the Deſign he talks of was ſo near being put in Execution, it ſhould not be known who ſhould engage in it? For my part, I deny that ever I was with him at any Place where Sir *George Barcley*, or any Body elſe, talked of any ſuch thing. When I was examined before the Council, my Lord Keeper asked me when I ſaw the Duke of *Berwick?* I thought it not fit to

anſwer

anſwer that Queſtion, becauſe I knew the Duke of *Berwick* was out-lawed here, and I might accuſe my ſelf if I acknowledged having been in his Company, tho' it were at St. *Germains*. But I ſaid I never believed he was in *London*, and I do not believe he was. I heard that Colonel *Parker* was in *England*, but I did not ſee him; and as to the Major-General and other Officers, they talk of, it is all a Jeſt to me, and it is no way at all to be believed or credited; that becauſe other Men have Notions of Caſtles in the Air, I muſt be ſo fooliſh as to believe ſuch Impertinencies too. He ſays I ſent him a Liſt of Men, and written with my own Hand, and ſubſcribed with the two Letters of my Name; he does not ſwear he ſaw me write it, and Similitude of Hands was never thought good in Criminal Cauſes; and I believe it was never look'd upon for Law, that it ſhould be a good Evidence for a Man to ſwear ſuch a Writing was another Man's own Hand, unleſs he ſays he ſaw him write it, and kept it in his own Cuſtody till it ſhould be produced as Evidence, and produce it in open Court, and not let it go out of his Cuſtody till then. All theſe things, I apprehend, the Law judges neceſſary to make a good Proof of a Writing to be of a Man's own Hand; but here is nothing of that here: Here is nothing produced, nor does he ſay he ſaw me write it; and ſo I think it all goes for nothing, a meer idle Invention of his own. My Lord, upon this Evidence there is not any poſitive Proof of my doing an Overt Act, by buying of Arms or Horſes, or writing Letters, or any thing of that Nature; and I hope if I ſpeak irregularly, your Lordſhip will pardon me; I am no Lawyer, and I have no Aſſiſtance but my own nonſenſical Notes to depend upon for my Defence. My Lord, he ſpeaks about Horſes that were to be provided, but there is no Proof of that; I never bought any Horſes, or borrowed any; nay, nor is there any Proof, that while this bloody Aſſaſſination that he owns himſelf to have contrived and carried on, was on foot, I had ſo much as a Horſe any where, and that I ſhould be ſo vain to get Men to engage in ſuch an Expedition with me, and have never a Horſe my ſelf, is very ſtrange. The Conſpiracy he ſays was depending a long while, and whenever it was to be put in Execution, we were to go expeditiouſly to work, leaſt it ſhould be diſcover'd; and 'tis very ſtrange then that I ſhould never have provided the leaſt thing in the World to do it with! neither Arms, nor Horſe, nor any thing: For there is no Proof of any ſuch thing againſt me, but only Talk, as he is pleaſed to ſwear, to take my Life to ſave his own: And I hope your Lordſhip and the Court will declare to the Jury, that here is no Evidence of any Overt Act againſt me.

My Lord, there is another Thing he ſays againſt me: He ſays he had a Note from me by the Name of *Robinſon*, to countermand the Orders upon the 15th: My Lord, the Truth of that would depend very much upon the producing of that Note, then it would be ſeen whether it was my Hand, and what it contained, and what it related to: For my part I utterly deny I ever ſent any ſuch Note wherein there was a Word of the King, or of any Fact of this Nature that was to be committed, or any thing relating to it, if it were true that I had written any Note to him at all; and I hope the Jury will conſider, and the Court will direct them ſo to do: For I know not that they are any more skill'd in the Law than my ſelf, and therefore I hope your Lordſhip will give them ample and true Directions, what is Law and what is not Law, and what is Evidence and what is not Evidence; and this cannot be Evidence to affect me at all, there being nothing that doth appear or is produced.

My Lord, he ſays, there were Four that were to go with Sir *George Barcley*, that were to be appointed out of each Party; he does not ſay I named any, nor does he name any himſelf; but it ſeems they knew what was to be done; and truly if any Thing was to be done, they knew it themſelves (and no Body elſe that I know of) who ſwear to ſave their Lives, and get a Reward. If the Four were to be out of the Party, which he calls his own, he knows them beſt, and I believe the Party was his own, and the Plot his own too, and no Body's elſe; he does not ſay that I appointed any one, he only ſays there were Four to be appointed out of a Party, which Party was in *Nubibus*, and ſo is the whole Deſign, unleſs it be in his Head, fram'd there by his own Invention, for it only exiſts there that I know of.

My Lord, theſe Obſervations I make upon Captain *Porter*'s Evidence: The next Witneſs is Mr. *de la Rue*, and he is a very good Evidence indeed, if Hearſay be to be believ'd; he ſays I was very ſhie of Diſcourſing with him about it, that I told him it would come to Nothing, without ſaying what would come to Nothing, not that the Plot would come to Nothing, for there was nothing at all ſpoken of any Plot, much leſs of a Deſign to aſſaſſinate the King. This is all that he ſays, as to me of his own Knowledge, all the reſt relating to me is but what Captain *Porter* told him. But to begin with the Beginning of his Evidence, he ſays one Thing which is very Odd, that at the *Roſe-Tavern*, the laſt Year, there was a Conſultation about carrying King *William* away into *France*, in a Veſſel alive, and that Sir *William Perkins* ask'd him whether he would go along with me to *Deale*, to procure a Veſſel to carry the King over; he might as well have ask'd him to go with me to *Conſtantinople*, or any other Place in the World, as to *Deale*, and about any other Employment, as that. A pretty Sort of Thing, that I ſhould go to *Deale* to hire a Veſſel to carry the King over into *France*; I that know no Sea-Man, or any Maſter of a Veſſel at *Deale*, that I ſhould be employ'd to hire a Ship before the Deſign was form'd, as he ſays, it was not come to an Head. If we had got the Prince of *Orange* into our Power: If we had King *William* in our Power, how was it poſſible we ſhould ever have carry'd him to *Deale*, I cannot but think any one would believe us Mad-men to entertain ſuch a Chimera in our Heads. What nonſenſical Stories are all theſe, that we ſhould carry King *William* to *Deale*, and I hire a Ship to tranſport him to *France*; I hope the Jury, and all that hear it, will conſider what ridiculous Stuff, theſe Men talk of, as Evidence againſt Men for their Lives. Then he talks of my coming in a Coach to the *Nagg's-Head* Door, where I was very ſhie of letting him ſee me, and afterwards when I came out ask'd him to go into the Company; but he was angry that they had deny'd to admit him before, and ſo would not go up: What a ſtrange Sort of a contradictory Story is all this? here was a Conference it ſeems appointed the Night before to be at that Place, when Captain *Porter*, and Captain *King*, and Mr. *Knightly* were juſt come from

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viewing the Ground, and were to make their Report, and *Porter* told him of it, and yet they would not admit him, and I was ſhie of him, and yet ask'd him to go up: What contradictory Nonſenſe is this? it muſt needs be look'd upon as improbable or impoſſible to be True, that I ſhould ask him to go up into ſuch a Company, where ſuch a mighty Conference was to be had about ſuch a great Tranſaction, when I had ſhewn my ſelf apparently ſhie of him, by falling back in the Coach, as being unwilling to let him ſee me; I hope the Jury will conſider the ſelf Contradictorineſs and Improbability of ſuch Evidence. Then there is another Thing, and that is, what he ſays Captain *King* ſaid, he did not believe it would come to any Thing, becauſe he did not like me as being no Soldier, for I was for keeping out of Danger, and having an eaſie Poſt: If he means I had no Mind to be in a Plot, he was in the Right of it, for no Man in his Senſes would ever be engaged in any ſuch deſperate Deſigns, where there is ſuch apparent Deſtruction in view; ſo I cannot apprehend what there is in that of any Objection againſt me, or any Proof that I had a Hand in this Plot, becauſe I deſired to keep out of Danger. It was ſaid that I was to have attacked the King, with Sir *George Barcley*, but Captain *Porter* ſays, we were to be together, to attack the Guards; and both can't be True, nor indeed is either of them True, but a Figment and Invention of their own: Then he ſays he ask'd *Keys* for a good Sword. and he told me I had a very good one: 'Tis true, I had a Sword, I always wore one, but it does not follow that that was to be employ'd upon ſuch an Enterprize as this. And then he tells you a Story again of Captain *Porter*'s having a broad flaming Two-edg'd Sword. But what is all this to the Purpoſe? Does this prove any Thing againſt me, that I conſented to, or was engaged in any ſuch bloody Deſign as this. He ſaith that on *Wedneſday* he came to me, and ask'd me of the Affair, how it went on; he doth not ſay what the Affair was, nor he doth not ſay it was about killing the King; nor indeed is it probable it ſhould be, for he ſays I was always ſhie of him, and that he could never get any Intelligence but from Captain *Porter*. He ſaith I told him it was a Thing would not admit of being delay'd, and that only Three People ſhould know ſuch a Thing, but ſtill he doth not tell you what this Thing was, and therefore I do not apprehend how this ſhould affect me, as Evidence of my intending to aſſaſſinate the King. He ſaith he had it from Capt. *Porter*, that Mr. *Chambers* was an orderly Man, a Word I do not underſtand, to convey Intelligence to me; and that *Duraut* was an orderly Man, to convey Intelligence elſewhere: Still this is all but what Captain *Porter* told him, and there is no Proof that I ſent Mr. *Chambers* any where; *Chambers*, I acknowledge I know, he is a poor Man, and my Lord Chief Juſtice *Treby*, I ſuppoſe, cannot but Remember that he was in Priſon, and try'd before him, upon the Account of Pyracy; I muſt needs ſay, I thought him an honeſt Man, becauſe he had ſerv'd with me in *Ireland*: I knew he was in great want, and therefore I gave him his Diet and Lodging; there is no Proof that I furniſhed him with Money, but I acknowledge I did with Bread and Drink, to keep him from Starving; that I think was an Act of Charity, but it cannot be interpreted, nor is there any Proof to warrant it, that it was with any ill Deſign, or that I gave it him to hire him or engage him to any ſuch Purpoſe. My Lord, they would make it as if the Perſons that were intended to be imploy'd in this pretended Plot, were to be regular Troops, and to have Courts of Guard, and to be diſpos'd of into Quarters, and this was to be done by theſe orderly Men: I profeſs I know not what to make of it, it is ſuch a Medley, a Fancy, and a Chimera, that it is perfectly Unintelligible, whether theſe were to be general Officers, or private Centinels, or what. Then my Lord, he ſaith *Cranbourne* brought a Liſt from me to Captain *Porter*, with *R. C.* at the Bottom: *Firſt*, that does not prove that it was my Liſt, nor doth that *R. C.* being at the Bottom of the Liſt, make me a Partner in this Conſpiracy. Then he ſaith that *Cranbourne* came to the *Blue-Poſts*, as from me, to acquaint them of the Diſappointment, becauſe the King did not go out that Day: Surely, my Lord, I need not trouble you with ſaying any Thing to this, for it is all, as to me, but Hearſay; and what am I concern'd in that which other People talk amongſt themſelves? tho' they do uſe my Name, how can I help that? My Lord, he ſaith himſelf that he intended to diſcover this Conſpiracy a Year ago, but the Thing failing then, which how ridiculous it was I obſerved before, he let it alone for that Time; but when I met him at the *Nag's-Head* Door, and he was ſo angry for their not admitting him into their Company, which was three Weeks before this Deſign they talk of was to be executed, he had a Mind to go to the Secretaries, and get Warrants and Meſſengers to apprehend us; and he ſaith he hath often come to me, to ask about the Affair, as he calls it, but I was ſtill reſerv'd and ſhye, and told him nothing would come of it. From all this I would obſerve that I have very good Reaſon to look upon him to be no Evidence, not only for the ſame Reaſon that I objected againſt Mr. *Porter*, that by his own Acknowledgment he is *Particeps Criminis*, but his coming to me after he reſolved to diſcover, plainly declares, that he ſet himſelf to be a Trapanner, and no Trappanner can in the Judgment of any honeſt or underſtanding Man, be a credible Perſon as an Evidence to take away any Man's Life: I am ſure what he ſaith of my Shyeneſs to converſe with him, and his own frequent Attempts to converſe with me, ſhews plainly, he was willing to Trapan me, for ſo he himſelf ſaith. He came to me ſeveral Times, and took me aſide, to ask how the Affair went on, but he did it only to enable himſelf, to make the better Diſcovery, which makes him Ten thouſand Times worſe, than if he had only gone at Firſt and told what he pretends he knew, and afterwards forbore the Company. Beſides, my Lord, as to Trapanning, I have read in a Book of Sir *Robert Atkins*, that to be *Particeps Criminis*, proves a Perſon to be a bad Man, and conſequently not ſo Credible, eſpecially if it can appear the Witneſs has Trapan'd the Priſoner into the committing the Crime; then the Witneſs will appear to be guilty of a far more higher Crime than the Priſoner, and therefore ought not to be believ'd as a credible Witneſs againſt the Priſoner, for he is a credible Witneſs that has the Credit of being a good and honeſt Man, which a Trapanner cannot have; and this Trapanning proves withal that the Trapanner did bear a Spight, and Malice againſt the Perſon Trapanned, and intended to do him a Miſchief, and deſign'd to take away his Life: Shall ſuch a one, *ſays he*, be a credible Witneſs, and be believed againſt him? *God forbid!*

My

My Lord, as to Mr. *Pendergraſs*, who is the next Witneſs, I do not take my ſelf to be much concerned in all he ſaith. I think I have ſeen him but once of a great while, and that was on the *Wedneſday* or *Thurſday* before I was taken up; but, my Lord, I have this to ſay to his Evidence, I deſire your Lordſhip to obſerve I was not in the Proclamation, though he was: They took Occaſion to have me ſecured as a Colour, or to ſave Expences, I ſuppoſe, while they themſelves went out of the Way, to have their Names put into the Proclamation; that ſome Body might colourably take them, and get the King's Money. All that he ſaith of me, is, that *Cranbourne* brought Meſſages from me: One Time I writ a Note, ſign'd *R. Robinſon*; another Time I ſent a Liſt ſubſcribed *R. C.* and that *Porter* ſhew'd him them both; but all this is but Hear-ſay, ſtill out of the Mouth of *Porter*, and can be no Proof at all againſt me. He ſaith, upon the Diſappointment he and they went to *Epſom*, which to me ſeems a very remarkable Thing; for if he ſay true, it is plain, this was before by him diſcover'd at Court; and to me it ſhews, that he had a ſtrong Deſign of getting Money, and taking away Peoples Lives upon that Account; and that Captain *Porter* was in the ſame Deſign: For *De la Rue* ſaith, Captain *Porter* ask'd him to go with them, as well as *Pendergraſs*. Now can it be ſuppoſed, that theſe three ſhould agree to go together, unleſs they were in a Combination, as it appears they now are? And I cannot but think, the Court and the Jury will think it reaſonable to believe: For if I was in a Plot of ſuch a Nature as this, and ſhould hurry out of Town after I had diſcover'd it, with three or four of the People that were concern'd in it, and ſome of them afterwards pretend to be Diſcoverers too, no Body in the World can believe but they contriv'd the Thing amongſt themſelves, and went out of Town only for a Colour, that they might be put in the Proclamation, and pretend to be taken, to entitle themſelves to the Reward.

L. C. J. Really, Mr. *Charnock*, I am loth to interrupt you in any Part of your Defence, but I do not underſtand what you mean by this, and I very willingly would underſtand you if I could.

Char. My Lord, I ſay, I look upon it, that they were all combin'd together in a Deſign to get the King's Money, and take away our Lives; that *Porter* ſhould deſire them to go with him, into the Country, and particularly Mr. *Pendergraſs*, who diſcover'd this to the King, and then that he ſhould agree to go with him.

L. C. J. Truly, I do not underſtand the Force of your Argument; that becauſe upon the ſuppoſed Diſcovery, Captain *Porter* went to *Epſom*, and Mr. *Pendergraſs* went with him, therefore this muſt be a Deſign between them to get the King's Money, I cannot any Way ſee how that muſt follow.

Char. Pray, my Lord, to what End ſhould he run out of Town, upon the Apprehenſion of the Diſcovery, and with Captain *Porter* too, when he actually had got the King's Promiſe that he ſhould be ſafe, and not be a Witneſs, unleſs it were a Combination between them, in order to ſet up as Witneſſes againſt us, to get the King's Money?

L. C. J. I'll tell you, why he was willing to go with Captain *Porter*, becauſe he had not a Mind that the Diſcovery he had made, ſhould be any Way known to have come from him; for you ſee how unwilling he was to name Names, and ſo kept Captain *Porter* Company ſtill, as his Friend, reſolving not to be an Evidence againſt him.

Char. Well, my Lord, after all, I hope, what he ſaith cannot be look'd upon as any Evidence againſt me; becauſe whatſoever he ſaith relating to me, is about the Notes and Meſſages that he ſaith were brought to Captain *Porter*, and all of it can amount at the utmoſt to Hearſay from other People's Mouths. My Lord, the laſt Evidence that I apprehend relates any Way to me, is that of Mr. *Bertram*, and he talks of what I ſhould ſay to him upon the ninth of *February*, that I ſhould take him into a back Room into my Lodgings, and there tell him, That there was ſomething in Hand for the Reſtoring King *James*, but there was ſomewhat to be done firſt to take off the Spark, or I do not know what, nor do I believe any Body elſe doth know how to make any thing of it. It is a very improbable Thing, that this Matter which was to be ſo great a Secret, and which I ſhould ſay, was not fit to be communicated to above Three People at once, I ſhould ſend for a private Trooper, for he was no otherwiſe, to communicate ſo great a Matter to him; beſides that, I cannot, nor, I believe, can any Body elſe tell what to make of the Words, *Taking off the Spark*, how to conſtrue that to make it an Evidence of an Intention to kill the King. It might be probable I might ſay. there was a Noiſe that King *James* would come, for it hath been in the *Gazettes* and the publick Prints, that there was ſuch an Expectation, and Preparation for it on the Coaſt of *France*; but it is not probable, I am ſure it is not true, that I ſhould ſay there was ſomething to be done firſt, for the *taking off the Spark*. Evidence of a Thing of this Nature ought to be plain and clear, and diſtinct: He doth ſay nothing that I talk'd to him of Killing the King, or of Aſſaſſinating him, or of my asking him to be one in any ſuch Thing, and that I furniſh'd him with Arms, and an Horſe on any ſuch Deſign, but only that he might ride out, and take the Air, and there he ſhould meet with ſome of his Acquaintance: What unaccountable looſe Stuff, is all this? It is very ſtrange, my Lord, that if I liked the Man ſo well, as I muſt do if I would ſend for him to communicate a Thing of this Nature to him, that I ſhould not put it into a Method, that he might be one with us in the Execution of it: But there cannot be any Thing inferred of that Nature, for which we ſtand accuſed, from any Words that he ſaith were ſpoken. My Lord, he doth ſay indeed that he told me, that he had diſpoſed of himſelf otherwiſe; but that is no more certain, nor can be referred to any particular Thing, than the reſt, He might diſpoſe of himſelf to a Friend, he might diſpoſe of himſelf to his Wife; but what is all that to this Purpoſe? And he might indeed, if King *James* came, diſpoſe of himſelf to aſſiſt him, or to oppoſe him, or to let it alone; but all this is nothing to the Buſineſs for which we are here to be try'd, it's all looſe, idle, impertinent Talk, and not at all to the Purpoſe. And then he ſaith, that afterwards I met him at *Lincoln's-Inn* back Gate, and took him into *Lincoln's-Inn*, and told him, there were Warrants out, and we had as good do the Buſineſs preſently. My Lord, I do remember I met him at *Lincoln's-Inn* Gate, and it was upon *Saturday* the Day before I was taken up, and it was about Twelve a Clock at Noon, and I did hear there were Warranss out, but there never was that Intimacy between him and me, that I ſhould deſire him to come to my Lodging, or that I ſhould ſupport him in any Sort. My Lord, I have made

a few Remarks to your Lordſhip and the Jury, upon the Evidence; I am ſenſible I have given the Court a great deal of Trouble, but I hope you will conſider it is for my Life, and my All, and I hope you will be of Opinion, that the Evidence produced againſt me is frivolous and weak, and that the Witneſſes have a very bad Cauſe of it, ſince all that they talk of, if it were true, is only Diſcourſe, and they are forced to ſupply in Words, what they want in Fact.

L. C. J. Have you any more to ſay, Sir?

Char. Yes, my Lord, I deſire to take Notice to the Court and the Jury, that the Buſineſs of bare Words was never look'd upon in Law as an Overt Act to prove a Man guilty of High Treaſon, nor that ſeveral Perſons met together doth prove a Conſpiracy. Theſe Perſons proving that I met with them doth not prove that I was concerned in the Aſſaſſination, nor that I conſented to any ſuch Thing; beſides, my Lord, I am taxed in the Indictment with buying Arms and Horſes for this Buſineſs; but there is not one Word of it proved, or of my riding out to view the Ground, nor any thing, that I was to be concern'd about this villanous Act. My Lord, if I had bought any Arms, that had not been an Overt Act of it ſelf; it muſt be proved firſt that I bought them with ſuch an Intent to employ them about ſuch a Buſineſs; and it neither is, nor can be proved, that I furniſh'd any Body with Horſes or Arms: And therefore the bare Buying of Arms of it ſelf, as far as I am informed of the Law, would be no Proof of an Overt Act. To prove an Overt Act of Treaſon by the buying of Arms, it muſt be prov'd that I declar'd ſome way that I bought them with ſuch an Intent, or elſe it is no Proof at all; but now if you have no Evidence that I bought any Arms at all, I look upon it that there is no Poſſibility to make that an Overt Act. If you pleaſe, my Lord, to bear with me to give you the Trouble of Reading ſome ſhort Notes, which I have takeh out of ſome Law-Books about Overt Acts.

L. C. J. No, the Court won't think it any Trouble: Make your Defence as well as you can, and take your own Way.

Char. Ey Lord, I hope you will allow what hath been collected out of the Books of Law as to Overt Acts: There is *Hale*'s *Pleas of the Crown* is poſitive in it, That an Overt Act muſt be alledged in every Indictment, and proved; That Compaſſing the Death of the King by bare Words, is no Overt Act. Now if bare Words be no Overt Act, why then all the Conſpiracy that is here proved, ſuppoſing all to be true that is ſaid, it is no Overt Act; for it is all but Words ſtill. And bare Conſpiring is no Overt Act, according to my Lord *Coke*'s Opinion in his *Third Inſtitutes*; and the utmoſt of all that any of them prove againſt me is, that I did ſay ſo, and ſo, which is but bare Conſpiring. Pray, my Lord, let me know upon what Law it is that I am Indicted and Try'd, I ſuppoſe it is upon 25 *Edw.* 3.

L. C. J. Yes, you are, and only upon that Statute.

Char. My Lord, *Coke*, in his *Third Inſtitutes*, ſaith, The Open Act muſt be manifeſtly proved. If divers conſpire the Death of the King, and the Manner how, and thereupon provide Weapons, Powder, Poiſon, ſend Letters, or the like, for the Execution of the Conſpiracy, or Preparation be made by ſome Overt Act, to depoſe the King, or take him by Force, or by ſtrong Hand, or impriſon him; theſe are ſufficient Overt Acts, to prove the Compaſſing the King's Death. But by this it is plain, that bare Conſpiring is not Treaſon, as wanting a ſufficient Overt Act to declare the Intention. Now, my Lord, I ſay, that in all this Evidence that hath been given againſt me, there is not one Overt Act proved of my Providing Arms, or ſending Letters, or the like. And the ſame Page of the ſame Book, the *Third Inſtitutes*, Chap. *High-Treaſon*, upon the Words *proveable Attaint*, it muſt be by Overt Act, it muſt be upon direct and manifeſt Proof, not upon conjectural Preſumptions or Inferences, or Strains of Wit: So that the ſtrongeſt Preſumptions upon the whole Earth will never be able to make an Overt Act, without plain and manifeſt Proof. And, my Lord, I do inſiſt, here is not plain and manifeſt Proof, or any Overt Act, but only Preſumptions in the whole Scene of the Thing. I muſt beg the Favour of the Court as to one particular Thing. Your Lordſhip, no doubt, knows the Law very well. I am here an ignorant Man, unable to defend my ſelf by the Forms of Law; but I hope your Lordſhip and the Court will not let me ſuffer any Damage upon that Account. You are always preſumed to be of Council for the Priſoners; and I look upon it as aſſured, that you will do that Juſtice to Perſons in our Circumſtances, as truly to inſtruct the Jury how they ſhall behave themſelves in Relation to this Matter that is now upon Enquiry before them. Particularly, my Lord, I deſire they may be told plainly and truly, what is Proof of an Overt Act, and what is not; and when your Lordſhip ſums up the Evidence, you will tell the Jury directly and plainly, what is Legal Evidence, and what is not; and then what is ſufficient Proof of any one Overt Act or Species of Treaſon; and that you would not leave it to the Apprehenſion of the Jury, what they do believe, but inform them really and truly what is Legal Evidence, and what of that Sort hath been given to Day. My Lord, here is a ſtrange Sort of Thing, a Conſpiracy, which conſider'd in the general bath neither Head nor Tail; how many there were to be is uncertain. In the Indictment is ſaid, there were Forty Men to do this Fact upon the King in his Coach, and for Attacking the Guards. Can it be ſuppoſed, that any Man in his Senſes would do ſuch an Act as this, without Reſpect to have Security for himſelf and his Family, or thoſe he is concerned for? I know not how great Wits theſe People be in other Things, but I am ſure they ſhew no Wit in this, I look upon it to be ſo deſperate a Thing. The Guards are at leaſt treble the Number, and better appointed; and that Forty ſhould go to aſſault treble the Number, and in divided Bodies too, that were only to mix Fury and Malice with Reſolution, to be torn in Pieces by the Mob upon an apparent viſible Diſappointment. And when we had done this, and made this Attempt, where were we to go? We had no *Aſylum* that we can hear of, nor Caſtle or Fort to retire to, nor none that were to back or aſſiſt us; and I am ſure no Man in his Wits would undertake a deſperate Attempt without Aſſurance of a Retreat. If I was reſolved to kill any Man, I would propoſe to my ſelf ſome Place, to which I might repair for Shelter and Safety when I had done. If then we were in our Senſes, it cannot be imagined we ſhould ever engage in ſo apparently deſtructive a Deſign. We ought rather to have been confin'd to *Bedlam*, than any other Place, if we could be thought guilty of ſo much Raſhneſs and Folly. My Lord, I pretend not to make any particular

Reflections

Reflections upon these Gentlemen that have given Evidence here; but only I must take leave to say in general, That there are none of them, but that if they have had any Fortunes in the World, their Circumstances as to that Matter are now much altered; and if any Persons will be Evidence against others for their Lives in Hopes to repair those Fortunes, and concerning Matters in which they were engaged themselves in, as they do acknowledge, and if it be true, it must be thro' the Desperateness of their Fortunes, it is the most barbarous and inhumane Sort of Evidence that ever was given by any that ever had any Sense of Honour, and must be a base Reflection upon any who pretend themselves to be Gentlemen: And I hope the King will think them upon that Account very little deserving Credit. My Lord, I hope your Lordship will please to consider, that what I have offer'd is but what my own sudden Thoughts could suggest to me out of the confused little Remarks I have been able to make upon the Evidence; and it is the more confused and immethodical, because I could have no Council to assist me. I would only put your Lordship in Mind once more, of what I earnestly desire and insist upon from your Lordship, that you would tell the Jury plainly and truly what Evidence it is the Law requires to convict any Person of the Crime, for which I stand accused; what Things are necessary to make up that Evidence, what is a Legal Proof of an Overt Act, and what Overt Acts have been plainly and manifestly proved against me in this Case, and not leave the Construction of the Evidence to the Apprehension or Inclination of the Jury. This is all the Favour that I have to beg of the Court, and I hope I need not doubt the Justice of the Jury.

L. C. J. Have you done, Sir?

Char. Yes, my Lord.

L. C. J. Then what say you, Mr. *King?*

King. My Lord, I must insist upon a great many Things that Mr. *Charnock* hath said. But as to what relates to my self, Captain *Porter* saith, I went with him and Mr. *Knightley* to view the Ground where this Design was to be executed. Truly, my Lord, I did go abroad with Captain *Porter* and Mr. *Knightley*; but it was meerly to take the Air, and no other Thing. Truly, my Lord, I have not taken any Notes of the Evidence, nor have I had any Council to assist me, and so I am not very capable of making my Defence.

L. C. J. Well, have you any more to say?

King. As to Mr. *De la Rue*, he doth not pretend to say, I did ever tell him of any Thing of a Design of destroying the King: And as to the Sword he speaks of, he knows I always wore one, and ever had one.

L. C. J. Well, is this all you have to say?

King. And as to Mr. *Pendergrass*, he saith, he saw me at the *Rose* Tavern in *Covent Garden*, where we discoursed something of the Matter; but he tells you not what that Matter was, nor what the Discourse was. And as to Mr. *Boyse*, he doth not tax me with any Design of killing the King: Nay, he saith, I did not mention any such Thing to him. And as to the Matter of an Overt Act, what is an Overt Act and what not, and what is good Proof of it, and what not, I must refer to your Lordship and the Court.

Char. My Lord, I beg your Pardon, there is one Thing I forgot to offer to your Lordship, There is no Place laid in the Indictment, nor no Set Number of Men ascertained.

L. C. J. At present you are out of Time, for that you might have spoke to it before the Evidence was given, or you may speak to it after the Verdict is brought in, if there be Occasion.

Char. My Lord, I am ignorant in the Forms of Law.

L. C. J. If you will observe any Thing out of the Evidence, you may, now is the Time.

Char. My Lord, I think the Evidence is inconsistent with the Indictment: For the Indictment doth say positively, that there were Horses and Arms bought and provided. Now if this be an essential Overt Act, as I apprehend it is, according to my Lord *Coke*, to prove the Compassing the King's Death, then there hath been no Evidence to support this Indictment; for there is no Proof of the Buying of any Horses or Arms.

L. C. J. They tell you there were Forty provided.

Char. My Lord, I have taken some Notes, as well as I could, upon reading of the Indictment; and in the first place it is said, That it was agreed there should be Forty Horse-men armed of us, *Robert Charnock*, *Edward King*, and *Thomas Keys*; which I take to be Nonsense and impossible.

Mr. Att. Gen. But there is, *and others* in the Indictment too.

Char. It is *Quadragint' Homines equestres de ipso* Roberto Charnock.

L. C. J. And divers others, to the Jurors unknown. May not they make Forty? Thirty seven and you Three will make Forty.

Char. That *divers others* is so uncertain, that no one can tell whether it be five or five thousand; and I know not what will make an Indictment void, if Uncertainty will not.

L. C. J. But your Time of Exceptions to the Validity of the Indictment is not now, we are now only upon the Tryal of the Fact.

Char. My Lord, I was advis'd by my Council that if I could find a Flaw in the Indictment, I must mention it, and take the Advantage of it before the Summing up.

L. C. J. You were not well advised; for after the Jury is sworn, we are only to have Regard to the Fact, and we are now upon the Tryal of the Fact; and the only Thing we have under Consideration upon the Fact and the Evidence is, Whether upon this Evidence that hath been given, you are guilty or not of the Fact that's charg'd upon you in the Indictment?

Char. My Lord, I crave your Pardon, and I hope you will take no Advantage of my Ignorance, not being used to these Proceedings.

L. C. J. As to what you said at first, that there was no Overt Act proved, because there is no Proof of buying Horses or Arms; it is true, that is one Overt Act laid in the Indictment, and there is some Evidence given of it; but what that Evidence will amount unto will be a farther Consideration by and by.

Char. There was another Observation, my Lord, that I have made upon the Indictment, that it is uncertain upon the Word *tunc*; there is no Time assigned, nor no Place: Pray what Time doth this *tunc* refer too?

Mr. Att. Gen. When the King went out.

L. C. J. But these Things are not proper now, I tell you we are upon the Fact. Mr. *King*, have you any more to say? because Mr. *Charnock* interrupted you.

King. My Lord, if there be any Objection that Mr. *Charnock* hath made, would be of any Advantage to me, I hope you will let me be heard by my Council, that I may have the Benefit of it.

L. C. J. I tell you, that is not proper now; you may have the Benefit of any Objection of that Nature, if there be an Occaſion, after the Verdict: Now we are only conſidering the Evidence upon the Iſſue, Guilty or not Guilty; and you are now to apply your ſelves to that.

King. My Lord, I think I have anſwered all the Evidence.

L. C. J. Well then, Mr. *Keys*, What have you to ſay for your ſelf?

Keys. My Lord, all that I have to ſay is, I was a Servant to Captain *Porter*, and I did nothing but by his Order.

L. C. J. Is that all you have to ſay?

Keys. Yes, my Lord.

L. C. J. Then I muſt tell you, no Man is ſuch a Servant that the Commands of his Maſter can excuſe him for committing High-Treaſon.

Keys. I did but obey his Commands.

L. C. J. But I tell you again, no Man is ſo much under the Command of his Maſter, as that he ought to obey him, if he command him to commit High-Treaſon. It is proved you bought Horſes, and he told you upon what Deſign, and you engaged in it.

Keys. I did not hear any Thing of it, my Lord. My Maſter was pleaſed to jeſt with me ſeveral Times, and he might ſay a great many Things that I did not much regard.

L. C. J. You were by when your Maſter, as you call him, promiſed Mr. *Pendergraſs* his Musketoon, and Mr. *King* told *Pendergraſs*, he hoped he would not fear breaking the Glaſs Windows.

Keys. Indeed I do not remember any ſuch Thing.

L. C. J. And there are ſeveral other Particulars ſworn againſt you: But have you any Thing more to ſay?

Keys. Nothing, but that I did what my Maſter order'd me to do.

L. C. J. Have you all done then? If you have any more to ſay, you muſt ſpeak it now, becauſe you cannot ſpeak after the King's Council have ſummed up; they muſt have the laſt Word: Have you any Witneſſes to call, or any Thing more to ſay?

Char. No, my Lord, we have nothing more to ſay, but leave it to your Lordſhip entirely.

Mr. Soll. Gen. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am of Council in this Caſe for the King againſt the Priſoners at the Bar, and I think the Matter hath been fully proved as Mr. Attorney at firſt opened it; That there was a Deſign of an Invaſion on this Kingdom from *France*, and of an Inſurrection within this Kingdom, to abet that Invaſion, and as an Inducement to both, of a barbarous and abominable Aſſaſſination upon the Perſon of the King, and that the Priſoners at the Bar had an Hand in this Conſpiracy.

Now, Gentlemen, I muſt tell you, That for the two firſt Parts of this Deſign, the Invaſion and the Inſurrection, we have given you no other Evidence now, but ſome ſhort Hints, that ſuch a Thing was intended; and we did it purpoſely for this Reaſon, becauſe the Priſoners, tho' they were concerned too in thoſe other Parts of this Plot, yet they are not now indicted for that Matter, but only for a direct Conſpiracy to murder and aſſaſſinate the King: We have Abundance of Witneſſes to prove the other Parts at ſeveral Times againſt a great many as well as them; but we confine our ſelves now to this Particular, as it ſtands charged againſt theſe Perſons in the Indictment.

Gentlemen, There is an Overt Act alledged in the Indictment, as it by Law is neceſſary to do, to prove the Treaſon, which is Compaſſing the Death of the King; and it is by Law a good Overt Act, That they did at ſuch a Place, that is to ſay, the Pariſh of St. *Clements* in the County of *Middleſex*, on the 10th of *February* laſt, conſult and agree to carry on ſuch a Deſign; now it is not material, as my Lords the Judges will tell you, in Point of Law, to prove all the ſeveral Conſultations to be in that Pariſh, nor to have been upon the Day alledged in the Indictment; for if it be any Day before or after the Times ſpecified in the Indictment, ſo it be before the Indictment preferr'd, and if it be at any Place within the County wherein the Indictment is laid, it is ſufficient; the Thing that is material to be proved, is, Whether they did meet upon ſuch a Deſign before the Indictment, within this County.

This Deſign, Gentlemen, we in Law call High-Treaſon; the higheſt Crime that our Law, or the Law of any other Government, takes Notice of, and it very well deſerves to go under that Name; for it tends to ſubvert the very Foundations of the Government, without which no Subject is ſafe; and to bring all into Confuſion and Deſolation, by taking away the Life of the King, who is the Head of this Government; which Life the Law makes ſacred above all others, becauſe without that be ſafe, there can be no Safety to any particular Perſon.

Gentlemen, We have proved this bloody Conſpiracy moſt fully againſt all the Priſoners at the Bar: I will not take up ſo much of your Time, as to repeat every Particular of the Evidence that hath been given; but only ſhortly remind you of what hath been materially ſaid againſt each of them by the Witneſſes that have been produced.

Againſt Mr. *Charnock*, there is firſt Mr. *Porter*, who hath ſworn, That he and others met, and conſulted about this Deſign, agreed upon it, and on the Ways and Methods for carrying it on; and he names the Places where, and the Times when thoſe Conſultations were had: Then there is Mr. *De la Rue*, who ſaith, he ask'd Mr. *Charnock*, how the Affair went on? and he anſwered, he was afraid it would come to nothing; that ſhews he was willing it ſhould come to ſomething, though perhaps he might be fearful whether it would take Place or no. Mr. *Pendergraſs* ſaith, Mr. *Charnock* ſent a Note to Mr. *Porter* to countermand the Orders for the 15th, ſubſcribed by the Name of *Robinſon*; but that is only a concurring Evidence to that of Captain *Porter*, who ſaid before, he had ſuch a Note; but *Bertram* tells you, That he ask'd him if he would be one in the Deſign to take off the Spark? And that after he heard Warrants were out, he would have had him joined in the putting it in immediate Execution, and aſſured him there would be Safety in ſo doing.

Againſt Mr. *King*, there are the ſame Witneſſes, Mr. *Porter*, and Mr. *De la Rue*, who tell you of the Diſcourſes at Captain *Porter*'s Lodgings, where

Mr.

Mr. *Pendergraſs* was likewiſe, who tells you the Times, *viz.* the 15th and 22d of *February* laſt, the Days when this wicked Deſign was to have been put in Execution, and there they conſulted about Carrying it on. Mr. *Boyſe* likewiſe tells you of the Diſcourſe he had with *King*; he would not indeed directly tell him, what the Deſign was, but Mr. *Boyſe* did ſuſpect what it might be; for Mr. *King* told him Sir *George Barcley* was come, and Mr. *Boyſe* ſhould have a Horſe, and make one, and it would ſoon be over.

Then for *Keys*, there are three poſitive Witneſſes againſt him; there's his Maſter, as he calls him, Captain *Porter*, who ſwears, That *Keys* knew of it, and conſented to it. Mr. *Pendergraſs* ſaith, *Keys* was one that met at Captain *Porter*'s the 15th of *February*, to put the Deſign in Execution that Day. *De la Rue* tells you, *Keys* was in the Chamber at that Time, and in other Places, conſulting about it, and ſo muſt needs know of it, and conſent to it. So that Gentlemen, if you believe theſe Witneſſes, as I ſee no Reaſon offered to the contrary, we have moſt manifeſtly proved upon them all three, the Matters charged in the Indictment.

As to what they ſpeak of the Witneſſes being Trepanners, and ſwearing them out of their Lives to ſave their own; it is plain, the Priſoners deſigned to trepan the King out of his Life, and ſome the Priſoners would have trepann'd to have join'd with them in that Deſign, who honeſtly and honourably diſcover'd it, and now the Priſoners Danger is a Safety to the Nation.

Gentlemen, They argue againſt the Belief of this Conſpiracy, from the Improbability that any Perſon ſhould be ſo deſperate to engage in ſo wicked a Deſign. Truly had this been a Matter that had been only talked and diſcours'd of once, that might have been the better alledg'd; but when there have been ſo many Meetings at ſeveral Times and Places, and ſuch Methods taken for the putting this Conſpiracy in Execution, and after a Diſappointment one Day, put off to another; nay, and as it hath been prov'd, it hath been a Project that hath been tranſacting for ſeveral Years, from one Year to another, and all this made as manifeſtly evident, as Proof by Teſtimony can make it; the Objection of Improbability will ſoon vaniſh into nothing; and I hope you will think, as I believe all the World doth, or will after this Tryal, That there hath been ſuch a barbarous, bloody Conſpiracy, as in the Indictment is alledg'd, and that theſe Perſons are guilty of it, and that you will give your Verdict accordingly.

Mr. Conyers. My Lord, I would only add to what Mr. Sollicitor hath ſaid, ſome few Obſervations that have been omitted of the Evidence that hath been given againſt the Priſoners.

The Treaſon charged, is a Deſign of Aſſaſſinating the King's Perſon, the Overt Acts laid in the Indictment are ſeveral Meetings and Conſultations in order to the bringing it to Effect, and the providing Men and Horſes to put it in Execution.

This Charge we have fully proved againſt the ſeveral Priſoners at the Bar, by two Witneſſes at the leaſt, and it is manifeſt that they were all concern'd in the ſeveral Meetings and Conſultations for the Carrying on this Deſign.

As for Mr. *Charnock*, Mr. *Porter*'s Evidence is very full as to his providing Arms and Horſes; and there is beſides, Mr. *De la Rue*, who though he met him at the Tavern, and not being admitted at firſt, took it ill, yet afterwards at two Meetings he did diſcourſe with him about it; and *Bertram* gives an Account, how he would engage him in it.

As to Mr. *King*, there is not only Captain *Porter*, who teſtifies, that he dined with him the 14th of *February*, where they did diſcourſe of this intended Aſſaſſination, but *De la Rue* likewiſe, that ſaid, there was a Meeting appointed for *Porter*, and *King*, and another, to go and take a View of the Ground; and the Priſoner himſelf owns he did ride out with them, but he would have it only to take the Air: Captain *Porter* tells you, it was to ſee which was the moſt convenient Place, and that the Place pitched upon was the Lane between *Brentford* and *Turnham-Green*.

And for *Keys*, there are two poſitive Witneſſes, Capt. *Porter* and Mr. *De la Rue*, that he was at the *Blue Poſts*, and at Mr. *Porter*'s Lodgings when this Matter was conſulted of, and particularly that he came and gave an Account of the Diſappointment the ſecond Day, upon the Guards coming back.

Beſides, Mr. *Porter* gives an Account in general, of ſeveral that were to provide Arms, Horſes, and Men; and Mr. *Bertram* proves that Mr. *Charnock* told him, the Deſign was to take off the Spark, and then the Time would come, that King *James* would come back quietly. Mr. *Boyſe* ſwears, *King* told him on the 14th of *February*, that he was to go out upon a Deſign the next Day, and that he ſhould have a Horſe provided, which next Day, the 15th, is by all the Witneſſes agreed to be the firſt Time appointed for the Aſſaſſination; and Mr. *Bertram* adds, that he met with *Charnock* the 22d, who told him Warrants were out, and it was beſt to go and do the Buſineſs preſently, and deſired him to come to his Lodgings, and he went to his Lodgings, and found ſeveral Perſons there—

Charnock. He does ſay no ſuch Thing, Sir.

Mr. At. Gen. He does ſay, that Mr. *Charnock* deſir'd him to come to his Lodgings.

Mr. Conyers. As I apprehend him, he ſays, he went thither in the Evening on the 22d.

Mr. At. Gen. He ſays, Mr. *Charnock* would have had him come, but he did not, the Time that he was at his Lodging, was before.

Mr. Conyers. My Lord, if I miſtake, I beg Pardon of the Court, and of the Priſoner too.

L. C. J. As I take it, there is no coming to his Lodging at all, but the 9th or 10th of *February*.

Mr. Att. Gen. He ſays, the 9th of *February* he met with *Trevor*, who carry'd him to *Charnock*'s Lodgings, and then he would have engaged him in the Deſign of Taking off the Spark; the Meeting of the 22d was afterwards in *Lincoln*'s-*Inn*, and there was no going to the Lodging that Day.

Mr. Cowper. My Lord, I am very loth to take up any of your Time; but I would beg the Favour to obſerve two or three Paſſages relating to this Matter, which have not been obſerved yet; and ſhall only mention ſo much as I think has been omitted.

The Defence that has been made, has been principally by Mr. *Charnock*; and upon his Defence, it ſeems, the Reſt do depend; therefore I would beg Leave to make ſome few Remarks upon the Defence that he has made. He ſays, That all the Evidence is but Hearſay, as to him, and no Overt Act of his own proved; but, my Lord, I queſtion not, if the Evidence be looked into, it will

appear

appear ſufficient not only to prove him guilty beyond Contradiction, of all that is charg'd upon him in the Indictment; but particularly, that he was the principal Agent (under Sir *George Barclay*) in carrying on this whole Conſpiracy.

For Captain *Porter* tells you, That *Charnock* firſt acquainted him with Sir *George Barclay*'s Coming over with the Commiſſion; that *Charnock* brought Sir *George Barclay* to the Lodgings, where they both lay; that they had ſeveral Meetings, at which he was always preſent, and a main Promoter of the Deſign; That he agreed to find a principal Quota of the Perſons that were to be concerned; particularly, That he was to find Eight Men, and ſeem'd always moſt zealous for the Execution of it.

Then as to Mr. *King*, it is plain, That *Knightley*, and Captain *Porter*, and he, went to view the Ground; and Mr. *De la Rue* tells you, what Report *King* made of that View; That with great Joy *King* acquainted him, they had found the rareſt Place in the World for the Execution of their Deſign, a Wood hard by the King's Houſe at *Richmond*; and then he opens the whole Manner of the Ambuſcade, and the Deſign.

Charnock. It is at the Liberty of any Body to ſwear what they pleaſe; but I hope the Jury will conſider the Nature of the Evidence.

Mr. *Comp.* Mr. *De la Rue* tells you further, ſomething more than Hearſay, as to Mr. *Charnock*; That he ask'd Mr. *Charnock* about the Matter, what was like to come of it? And he anſwered him, That he feared the Succeſs of it; for that a Thing of ſuch a Nature was not to be truſted to above Three. Which could not refer to the intended Invaſion, and the Inſurrection; for as to that, it is plain from the Nature of the Thing it ſelf, that it muſt be communicated to a great many, or elſe they could not be ready to aſſiſt in it: And therefore it is evident, it was the Aſſaſſination which he was in haſte to have executed, ſaying, it had been delay'd too long, and that was as dangerous as communicating it to too many.

My Lord, I ſhall make my Words good to you, and rather than take up your Time in making Repetition of what has been ſaid, I will chuſe to break my Method, and omit what might be further obſerved: It is true, it was a Miſtake of the Day as to *Bertram*'s Evidence of his Going to *Charnock*'s Lodging, but that is not material; for it is in Proof, he did go to his Lodgings the 8th or 9th of *February*, and there *Charnock* told him that King *James* was a coming; but there was a Service to be done firſt, to take off the Spark, and then the King would come in quietly; if that Deſign took Effect, it would anſwer his Expectation: He was to ride out to take the Air, and meet ſome of his Acquaintance, and after all was over, we ſhould be very happy. The Words indeed were ſomething dark, but yet the Intent and Meaning of them are pretty manifeſt, not only from the Words to take off the Spark, but becauſe this Action, whatever it was, was to precede the Invaſion of King *James* with the *French* Forces, and was to be done in Order to it, and therefore could not be meant of it, nor of joining with it.

My Lord, I ſhall trouble you no further, but ſubmit to your Direction.

L. C. J. Gentlemen of the Jury, Theſe Three Priſoners at the Bar, (*viz.*) *Robert Charnock*, *Edward King*, and *Thomas Keys* ſtand indicted of High-Treaſon, for conſpiring, compaſſing, and imagining the Death and Deſtruction of the King, and that in a very bloody and barbarous Manner, by Way of Aſſaſſination; and the Indictment charges them, that they did meet and conſult with divers other Traitors unknown to the Jurors, and there did reſolve upon this Aſſaſſination, and Horſes and Arms were prepared and provided for the Execution of it.

The Queſtion, Gentlemen, that you are to try is, Whether theſe Perſons who ſtand now thus accuſed, are guilty of this Crime or not? And you have heard a very long Evidence; Five Witneſſes have been produced, and they have given upon this Occaſion a very large Account of the whole Tranſaction, which I will obſerve to you as briefly as I can.

In the firſt Place, Gentlemen, you are told, how there had been a Deſign forming, even for ſome Years, for the Reſtoring of the late King *James*, and the Depriving and Depoſing of this King. It ſeems it was a Deſign before the Buſineſs of *Cape la Hogue*, which you remember very well was in the Year 1692. about the Time of the Burning a great Part of the *French* Fleet by Admiral *Ruſſell*; but this Deſign, though it met with ſeveral Diſappointments, yet did not die, it had its Ebbings and its Flowings, ſometimes it was higher, and at other Times lower; and in Winter was Twelve Months it began to be more vigorouſly proſecuted than at any Time before, ſince the *La Hogue* Buſineſs; and then there was a Reſolution fram'd of attempting the Perſon and Life of the King, which appears by Capt. *Porter*'s and Mr. *De la Rue*'s Teſtimony. And great Hopes were conceiv'd amongſt them, that it might be effected before the King went over into *Flanders*; but it ſeems they wanted a Commiſſion from Abroad, (which they thought neceſſary as an Authority for them to act under) which not coming in Time, the King went over to *Flanders*, and ſo for that Time the Execution of it was deferred.

Gentlemen, after the King's Return from *Flanders*, the Proſecution of this Deſign was reſumed, and Intimation was given, that a Commiſſion was brought over by Sir *George Barclay* from King *James*, which was to make War upon the Perſon of King *William*, who was called therein, as you may ſuppoſe, the Prince of *Orange*: And you are told by Captain *Porter*, that at that Time, he and Mr. *Charnock* lodged together in one Houſe in *Norfolk-ſtreet*, and that Mr. *Charnock* told him Sir *George Barclay* was come with ſuch a Commiſſion from King *James*, and imparted to him the Deſign of Aſſaſſinating and Murdering the King, and that would be the readieſt Way to bring home King *James*: He asked Captain *Porter*, whether he would engage himſelf in the Matter. It ſeems Mr. *Porter* did freely and readily engage in it, and was in good earneſt; and therefore there were ſeveral Meetings at ſeveral Places, in order to conſult and contrive how they might bring it to paſs.

Gentlemen, you are further informed, that there were ſeveral Meetings at the *Globe-Tavern* in *Hatton-Garden*, another at the *Naggs-Head* in St. *James's-Street* in *Covent-Garden*, and at the *Sun-Tavern* in the *Strand*, and that Two of the Priſoners at the Bar, Mr. *Charnock* and Mr. *King* with divers others, were at thoſe Meetings, and *Keys* was at

ſeveral

ſeveral of them, and there it was agreed and reſolved, that the King ſhould be Murthered as the beſt Way to bring in the late King.

This being ſettled and reſolved upon as fit to be done, the next Conſideration was in what manner it might be effected, and two Ways were propoſed, one by way of Ambuſcade on the other Side of the Water near the King's Houſe at *Richmond*, the other in the Lane that leads from *Brentford* to *Turnham-Green*, upon the King's Return from *Richmond*, ſome Evening; for it ſeems it is uſual for the King to go to a Houſe he has on the other Side of the Water, to divert himſelf once a Week upon the *Saturday*, and to return in the Evening.

Theſe two Places being propoſed, the one on this, the other on the other Side of the Water, there was a Difference in Opinion among the Conſpirators, which of the Places would be the beſt and moſt proper: And in order to ſettle that Matter, it was reſolved upon, that ſome Perſons ſhould be ſent to view the Ground in both Places, and make their Report to the reſt; and the Men agreed upon, were Captain *Porter* and Mr. *Knightley*, to whom Mr. *King* added himſelf, and accordingly they did go out of Town together to take a View of theſe Places.

Here the Court was interrupted by Mrs King, *the Priſoner's Mother, who in a very outragious violent Manner, got into the Court; but being removed, the* Lord Chief Juſtice *proceeded.*

L. C. J. Gentlemen, I was ſaying that this View was taken by thoſe Perſons that undertook it; and the Night of that Day they had viewed the Places, upon their Return, they made a Report to their Accomplices, and thereupon it was reſolved to relinquiſh the Ambuſcade, and that the Attack ſhould be made in the Lane that leads from *Brentford* to *Turnham-Green*.

The Time that was fixt upon for this Execution was *Saturday* the 15th of *February*: There were two Men that were appointed to lodge at *Kenſington*, whom they called orderly Men, a Title that they gave them: Theſe were to give Notice at what Time the King and the Guards went out, the one was to give Notice firſt of the Guards going, the other was to give Notice when the King went: When Notice was brought them that the King was gone abroad, the Conſpirators were to be ready to go after in ſmall Numbers, and were to be quartered and diſperſed in the ſeveral Inns about *Brentford* and *Turnham-Green*, to be gathered into the ſeveral Bodys, upon Notice of the King's Return, when the King came over, then they were to make the Attack in this Manner. Captain *Porter* and Mr. *Charnock*, with one *Rookwood* were to attack the Guards, and Sir *George Barcley*, and his Party, were to come up to the King's Coach, and fire into it, and kill the King, and every one that was in it; and of that Party Mr. *Pendergraſs* was deſigned to be one, and he was to have had a *Musketoon* from Captain *Porter*, that would carry ſeven or eight Bullets: Theſe Conſpirators, and the Perſons that were to be concerned, were in all Forty, or ſome few more in Number.

But, by great Providence, this bloody Deſign was diſcovered, as was told you, by one of the Witneſſes Mr. *Pendergraſs*, a Day or two before it ſhould have been put in Execution; and ſo His Majeſty did forbear going out that *Saturday* the 15th. But they having Notice that the Guards were gone, and after that receiving an Account that the King did not go, it very much alarm'd theſe Conſpirators; but notwithſtanding this, as you have been told, they were reſolved not to lay aſide the Proſecution of this Deſign, but were rather bent upon executing it the next Opportunity that ſhould offer itſelf, for which purpoſe Diverſe of the Conſpirators did meet together, and did conſult whether it was fit further to proceed, particularly upon the *Friday* the 21ſt Day of *February* at the *Sun-Tavern* in the *Strand*, divers of them met, and there they had Diſcourſe of the Matter, and were troubl'd at the Diſappointment, and were reſolved to purſue it, and for that purpoſe, agreed to be in a Readineſs upon the next Day, and as ſoon as they ſhould have Notice, that the King was gone from *Kenſington*, they would proſecute it in the ſame Manner, in which they had formerly agreed.

It ſhould ſeem, ſome of the Men that they had engaged were gone off, and others were provided in their ſtead, but there was an other full Diſcovery made, before that, by Mr. *De la Rue*, by which their wicked Purpoſe was a ſecond Time diſappointed.

Gentlemen, upon the Diſcovery of this Deſign, it was thought very fitting to take all poſſible Care, for preventing ſuch a diſmal Stroke, and for puniſhing ſuch hainous Offenders, there was a Proclamation iſſued for the Apprehenſion of a great many of them that abſconded, which had a very good Effect, by the taking of ſeveral of them, beſides thoſe that were taken up by Warrants before, and theſe three Priſoners now at the Bar, are indicted for this horrid and traiterous Conſpiracy, and for purſuing this wicked Deſign, and are now upon their Tryal for it.

Now Gentlemen, you have heard the Evidence, which you are to conſider of in Relation to theſe Priſoners, and how far they are affected by it. I muſt tell you, that Captain *Porter*, gives a very full Evidence againſt all Three, he tells you how and in what manner they were all engaged, and what Parts they had all in the Proſecution of this bloody Enterprize. As for Mr. *Charnock*, he ſeems to have been a remarkable Perſon in almoſt all the Parts of it, a great Carrier on and Promoter of it, was to be an Actor in it, and provide his Number of Men: and it ſeems he was a Perſon much truſted by Sir *George Barcley*, and he ſpoke to Mr. *Porter*, of a Commiſſion that Sir *George Barcley* brought with him from King *James*, which was to levy War upon the Perſon of King *William*, which it ſeems was underſtood, to authorize them to Aſſaſſinate the King. Mr. *King* went to view the Ground, and *Charnock* and he were at the ſeveral Conſultations, and *Keys* was at *Porter*'s Lodgings, and at divers other Conſults, when the carrying on of this Deſign of aſſaſſinating the King, was debated and reſolved upon. Mr. *Porter*'s Evidence you have heard at large, and I doubt not you take good Notice of it, and the King's Council have repeated the moſt material Parts of it, therefore I need not do it again. And as to Mr. *Charnock*, you have heard what Evidence is given by *De la Rue* and *Bertram*; for tho' Mr. *Charnock*, ſays all that is teſtified by the other Witneſſes, is only Talk and Diſcourſe, and that bare Words are not High Treaſon, but there muſt be ſome Overt-Act; therefore you are here to conſider particularly

cularly what the other Witneſſes ſay againſt him, and whether another Overt-Act is not proved. *De la Rue*, (who was one of the Diſcoverers, and (as he tells you) he reſolved ſo to be ſo ſoon as he could get a perfect Knowledge of the whole Deſign) does inform you, that between the 15th. and 22d. of *February*, he met Mr. *Charnock*, and enquired of him, how the Buſineſs went, to which *Charnock* returned anſwer, That the Deſign did languiſh, ſaying, that People were not ſo warm as formerly, and did believe the King had Notice, for that he had not been abroad on *Saturday*; that too many were acquainted with it, and therefore Thought it might come to Nothing: But the main Buſineſs, which was the Landing of King *James*, would be ſpeedy; and though the Diſcourſe may be reckon'd only Words, yet they do import, at leaſt acknowledge, to the carrying on this Deſign before that Time.

But then conſider what you are told by *Berthram*, another of the Witneſſes, that he being inform'd by *Trevor*, that Mr. *Charnock* would ſpeak with him, he thereupon went to Mr. *Charnock*'s Lodgings, where *Charnock* took him aſide into a Back-Room, and told him that King *James* was a coming, and there was great Hopes of reſtoring him; but there was ſomething to be done to facilitate it, which he would do well to joyn in: And when he asked what it was, *Charnock* told him, he muſt go abroad and take the Air, where he would meet with ſome of his Acquaintance; and there was no way to effect it, but by taking off the Spark; and by doing that Thing, it would moſt probably be brought about, that King *James* ſhould be reſtored. Now, though it was not directly ſaid, they were to kill the King; yet it is manifeſt what was meant by it: For the Taking of no one Perſon in *England*, beſides King *William*, could conduce to the Return of the late King. And for his Encouragement, he told him further, that if *Berthram* would undertake the Doing of it, it would anſwer his Expectations. And then you are told again by *Berthram*, that he met *Charnock*, at *Lincolns-Inn-Gate*, upon that very Day that it was laſt to have been executed, which was the 22d of *February*, where *Charnock* told him he ſuſpected a Diſcovery was made, and that there were Warrants out againſt them; and that therefore the beſt Way was, to go immediately and take him off, and then all would be well.

Now I muſt tell you, Gentlemen, that what he ſays, that bare Words are not Treaſon, is very true in ſome Caſes: For looſe Words ſpoken, without Relation to any Act or Deſign, are not Treaſon, or an Overt-Act; but Arguments, and Words of Perſuaſion, to engage in ſuch a Deſign or Reſolution, and directing or propoſing the beſt Way for effecting it, are Overt-Acts of High Treaſon, as much as if two agree together to Kill the King, tho' the Agreement be Verbal only, and not reduced to Writing: Likewiſe, conſulting together for ſuch a Purpoſe, is an Overt-Act of Treaſon. For it is the Imagination, the Compaſſing and Deſigning the Death of the King, that is the Treaſon. For the Law is very careful of the Perſon of the King, and hath fully provided for his Safety; and this Treaſon is the firſt Species mention'd in the Statute. But there is no Way of diſcovering thoſe Compaſſings or Imaginations, in order to puniſh a Traitor, but by ſome external Act, that may be ſufficient to manifeſt ſuch an Intention and Purpoſe; and that which is a ſufficient Manifeſtation of ſuch a Deſign, is an other Overt-Act: But there have been proved ſeveral Meetings, and Conſultations and Propoſals at thoſe Meetings, about the Ways and Methods for bringing about the Deſign of Aſſaſſination. And it was never yet doubted, but to meet and conſult how to kill the King, was an Overt-Act of high Treaſon. Beſides, Mr. *Charnock*'s endeavouring to engage *Berthram* in this Enterprize, and the Argument he uſed to perſuade him to it, that it was a Means to reſtore the late King, and telling him it would anſwer his Expectation, is another Overt-Act. And therefore, how far Mr. *Charnock* is Guilty of the Charge in the Indictment, you are to determine when you have well conſider'd the Nature of the Evidence, and what Anſwer Mr. *Charnock* hath made to it; which ſhall be open'd to you by and by.

Then, Gentlemen, concerning Mr. *King*, who is the next Man, he has theſe Witneſſes againſt him: Captain *Porter* ſays, that he was very frequently at the Meetings and Conſultations, and that he came to him when he and *Knightley* were to view the Ground, and deſir'd to be one of them, and they went together, and did view the Ground; this was ſome Time before the 15th of *February*, in the ſame Week.

And you may alſo remember the Evidence given by Mr. *De la Rue*, That Mr. *King* told him about *November* or *December*, that a Major-General would come from *France*, and that Money was to be advanced; and that after Captain *Porter* and Mr. *King* told him, that the Major-General was come. On *Friday* the 7th. of *February*, *King* ſaid he was to go out of Town with *Knightley* and *Durant*, to know whether the King went to *Richmond* or *Hounſlow*. Being inform'd the King had a Deſign to go to *Hounſlow*; and being return'd, on the *Sunday* following, Mr. *King* did ſay they had found out the rareſt Place, and the fitteſt that could be for that purpoſe, within a Quarter of a Mile of the King's Houſe at *Richmond*; and that there was to be an Ambuſcade, and asked the Witneſs whether he would be one in the Ambuſcade; but he liked it not, but had rather attack the Guards. He had been at the *Dog-Tavern* with Mr. *King*, and diſcourſing about this Undertaking, Mr. *King* the Priſoner had told this Witneſs, that ſeveral of the Guards were come from *France*, and that ſeveral Conferences were had about Taking off the King; and he did not approve of Mr. *Charnock*, in regard he did not talk like a Soldier, and was for an eaſie Poſt without Danger; and as for Captain *Porter*, he had another Objection againſt him, he had as much Fat in his Brains as he had in his Body; and ſo the one wanted Skill, and the other Wit. But ſtill Mr. *King* owned his being concerned in the carrying on of this Deſign of Aſſaſſination; for after the Deſign of the Ambuſcade was diſapproved of, and agreed that the Guards ſhould be Attack'd, and the King in his Coach, at *Turnham Green*; he, by Diſcourſe with *De la Rue*, expreſſes his Conſent to it: beſides, he told *Pendergraſs*, who was to be one, and to have *Porter*'s Gun to ſhoot the King, he hoped *Pendergraſs* would not be afraid to break the Glaſs Windows.

Mr. *Keys* ſtands upon it, for his Part, that he was only a Servant to Captain *Porter*, and if he had done any Thing amiſs, it was no more than what his Maſter bid him do; and that he knew of no Deſign; and that it was a hard Thing that he ſhould be troubled in this Matter; for if a Maſter ſend his Servant to buy Horſes or Arms,

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if he does not know how they are to be imployed, afterwards it doth appear they are to be imployed in Aſſaſſinating the King, that the Servant ſhould be puniſhed for obeying his Maſter. But the Queſtion is, whether *Keys* knew what the Deſign was, Captain *Porter* ſays he did know when he hired the Horſes, for what Purpoſe they were to be uſed. And he ſays further, that he was with them at many of the Conſults at the *Globe-Tavern* and other Places, where he did Eat and Drink with them, and was privy to the Deſign, and concerned in it.

Then Gentlemen, by the other Evidence it is proved, that he was in Company ſeveral Times when the Deſign was diſcourſed of, and that he was uſed as a Companion to Captain *Porter*, and uſed to ſit and eat and drink with him and the reſt of them at the ſame Table; and when they drank to the Reſtoration of the late King, and to the Squeezing of the rotten Orange, *Keys* was there, and pledged the Health, which ſhews the Intention of the Man; and this was upon *Saturday* the 22d. And when News was brought that the Deſign was diſappointed by the King's not going abroad that Day, he went out to get Intelligence, and brought in Word that the Guards were come home, and that all their Horſes were in a Foam, and the King's Coaches returned to the *Mews*; all which is Evidence that he knew of the Deſign and conſented to it. So that I muſt leave it to you upon the whole, though there be a great deal more Evidence than I have mentioned, you are the Judges how far it amounts to prove them Guilty.

But then, Gentlemen, as to what they ſay, that the Witneſſes do teſtify by Hear-ſay, that's not Evidence; but what they know themſelves, or heard from the Priſoners; and ſo Mr. *Charnock* inſiſts upon it, that what Mr. *De la Rue* ſays againſt him, is moſtly what Captain *Porter* told him, and therefore cannot make a Proof by two: It is true, and therefore I did omit repeating a great Part of what *De la Rue* ſaid, becauſe as to him it was for the moſt part Hear-ſay: But whatſoever Evidence has been given of any Fact done within the Witneſſes own Knowledge, or of any Conſult or Diſcourſe of the Priſoners themſelves, that you are to take Notice of as good Evidence, and conſider of it.

But then there is another Thing that is objected againſt the Evidence, and that is, as to the Fairneſs and Credibility of it, becauſe the Witneſſes, eſpecially Mr. *Porter*, by their own Acknowledgment, are involved in the ſame Crime, and therefore cannot be good Witneſſes againſt others. Now as to that Objection, I muſt tell you firſt, that Priſoners under thoſe Circumſtances are good legal Witneſſes, but their Credits, as in all other Caſes, are left to your Conſideration. But Secondly, As to the Weight of this Objection againſt their Credit, you may conſider that Trayterous Conſpiracies are Deeds of Darkneſs as well as Wickedneſs, the Diſcovery whereof can properly come only from the Conſpirators themſelves; ſuch Evidence has always been allowed as good Proof in all Ages; and they are the moſt proper Witneſſes, for otherwiſe 'tis hardly poſſible, if not altogether impoſſible, to have a full Proof of ſuch ſecret Contrivances; ſuch Diſcoveries are to be encouraged in all Governments, without which there can be no Safety: And though Men have been guilty of ſuch Hainous Offences, in being Partakers or Promoters in ſuch Deſigns, yet if they come in and repent, and give Teſtimonies thereof by diſcovering the Truth great Credit ought to be given to them, for ſuch Evidence was ever accounted good. Beſides, as to two of them, *De la Rue* and *Pendergraſs*, which were the firſt that diſcovered, before they were apprehended, or ſuſpected themſelves to be in Danger, and therefore do not ſwear to ſave their own Lives, but reſolved upon it to ſave the Life of the King. And Mr. *Pendergraſs* had not any Deſign to be an Evidence, who, though he diſcover'd it almoſt as early as he knew it, yet refuſed to tell the Names, upon a Principle of Honour, till he had the King's Word that he ſhould not be preſs'd to come in as a Witneſs; and he tells you himſelf the Reaſon why he refuſed then, and why he comes in now, becauſe Capt. *Porter* was his Friend, to whom he was obliged, and he never intended at firſt to diſcover his Name, nor afterwards to be Evidence againſt him; but upon Capt. *Porter*'s being taken, and diſcovering himſelf and his Witneſs, he thought then he was abſolved from all that Obligation, and therefore reſolved to appear as a Witneſs againſt the reſt: And this doth not depend only upon the Credit of *Pendergraſs*, but alſo upon the Teſtimony of my Lord *Portland*, and my Lord *Cutts*, who have given you a full Account of the Manner of it.

And Mr. *De la Rue* tells you, That it was his Deſign at firſt, even a Year ago, if the Conſpiracy had ſo far proceeded, as to be ready to be put in Execution, he would have endeavoured to have prevented the Miſchief, by acquainting the King with it; And he gives you an Account how he revealed it to Brigadier *Lewſon*, and to my Lord *Portland*, and after to the King, which is confirmed by my Lord *Portland*; ſo that theſe are Witneſſes beyond all Exception, and if ſuch Evidence as this be not allowed to be good, the Government can never be Secure againſt ſuch Villainous Enterpriſes and Wicked Machinations.

Gentlemen, This is not Trepanning, for it doth not appear by any Evidence, nor have I heard the Priſoners pretend that theſe Perſons did go about to ſeduce them into the Deſign, but indeed were endeavoured to be ſeduced into it themſelves; and though they kept them Company afterwards, yet it was only with a Purpoſe to acquaint themſelves with the real Intentions of theſe Wicked Men, which is Lawful and Juſt in order to the making a full Diſcovery of their ſo Dangerous a Villany; and therefore they ought to receive all Countenance for doing ſo great a Service to the Government, without Undergoing the Imputation of being Trepanners.

Gentlemen, there is no more occurs to me at preſent, that is material to be obſerved or taken Notice of, I leave it to you, you have heard what the Witneſſes ſay againſt the Priſoners, you have heard what the Priſoners have ſaid for themſelves, you are the Judges of this Fact; If you are not ſatisfied that here has been ſufficient Evidence given to prove them Guilty, you will acquit them; but if you are ſatisfied, that upon the Evidence and all the Circumſtances of this Caſe, that they are Guilty, I ſuppoſe you will diſcharge your Conſciences, and give your Verdict accordingly.

Then the Jury withdrew to conſider of the Evidence, and in leſs than half an Hour returned, and found all the three Priſoners Guilty of the High-

Treaſon for which they were Indicted, and the Court Adjourned till ſix a Clock that Evening.

Poſt Meridiem eodem Die.

ABout Seven a Clock the Lord Mayor, and the Common Serjeant, with as many of the Court as would make a *Quorum*, came upon the Bench, and by Proclamation in uſual Form, the Court was reſumed, and the Priſoners called to the Bar to their Judgment.

Cl. of Arraignments. Robert Charnock, hold up thy Hand. (which he did) You ſtand convicted of High Treaſon, for Conſpiring the Death of our Sovereign Lord the King by Aſſaſſination, What can you ſay for your ſelf, why the Court ſhould not give Judgmeut upon you to die according to the Law?

The Jaylor firſt made him to kneel; and then, when he roſe up, he ſpoke as follows.

Charnock. Sir, I have a great deal to ſay, if I knew when was the proper Time to apply my ſelf to the ſaying what I have to ſay.

Mr. Com. Serj. You are now called to, to know what you have to ſay.

Charnock. Sir, I would put this Queſtion, becauſe I am ignorant in Forms of Law, Whether it be practicable for me to ſay any Thing before Judgment, or not? For I have no Pardon to plead to hinder the Judgment; and therefore I would know, if it be practicable to ſay any Thing before Judgment.

Mr. Com. Serj. Yes, Sir, it muſt be before Judgment; becauſe what you are called to. and asked now, is what you have to ſay in Arreſt of Judgment.

Charnock. I have many Things to ſay as to Obſervations I made out of the Indictment, and upon my Tryal, if this be my Time to offer them.

Mr. C. Serj. Yes, Sir, it is your only Time.

Char. Then, Sir, I think the Fact is ill laid: We are indicted here for High Treaſon, in Conſpiring the Death of the King, and no Overt Act is proved againſt me; I ſpeak for my ſelf, I ſuppoſe theſe Gentlemen will ſpeak for themſelves.

Mr. C. Serj. At preſent you are the only Perſon that is asked the Queſtion; therefore pray go on, and ſay what you have to ſay in Arreſt of Judgment. You ſay the Indictment is ill laid, wherein is it ſo.

Char. I do find fault with the Indictment, becuuſe it is laid for Aſſaſſinating the King; and all that is proved againſt me, was, That I was in Company where ſuch a Thing was diſcours'd of: Now I am adviſed, and my own Reaſon tells me, that being in Company is no Proof of my giving my Conſent to the Thing; and without my Conſenting, there can be no Overt Act to make me guilty of the Treaſon. It is ſaid, *that I and my Accomplices*, though there are none named but us Three, *did meet together, and conſult of this Matter, and that we bought and provided Horſes and Arms:* Which I take to be the only Overt Act. And of all theſe Things, there is not one Tittle proved; and therefore, with Submiſſion to the Court, the Indictment is naught in that Reſpect. And this I think I may ſpeak, not only for my own Sake, but for the Sake of theſe Gentlemen that ſtand by me; if there be nothing proved againſt us of an Overt Act, as laid in the Indictment, we ought not to be condemned.

Mr. Com. Serj. Look you, Mr. *Charnock*, you move nothing againſt the Indictments, but only run into the Proof: That Matter is quite at an End, and we cannot enter into any Debate about it; you have had a fair and a legal Tryal, and upon that Tryal the Jury has found you Guilty.

Charnock. I have not had a fair, and an equal Tryal, Sir.

Mr. C. Serj. Yes, you have had both a fair and a legal, and an equal Tryal.

Charn. If you pleaſe to leave out the Word *Legal*, becauſe it perhaps may be according to the ſtrict Forms of Law: But I ſay it was not a fair and an equal Tryal, becauſe in the laſt Act of Parliament, which was made for regulating Tryals in Caſes of Treaſon, the Equity and Reaſonableneſs of a Priſoner's having that which was denied me; that is, a Copy of the Indictment, and Council, is laid down as the Ground and Reaſon of making the Act; and without that it had never been made: It is in the Preamble of the Act, which I have looked upon ſince I went out of Court; and though as to the Time of the Commencement, there is a certain Day prefix'd, yet the Equity of the Act is always the ſame, and that Equity I take my ſelf to be entitled unto; and therefore being denied the Benefit of it, I think I had not an equal and a fair Tryal.

Mr. Com. Serj. Sir, you have very unreaſonably objected this Matter of this Act of Parliament at your Arraignment, and upon your Tryal, and now; but your Objection is of no Moment or Validity in the World: For the Act is to commence *in futuro*, and you are tryed according to the Courſe of Common Law before that Act can take place; and it is the Common Law only that this Court can proceed by, and you be tryed by.

Char. Sir, I inſiſt not upon the Law itſelf, but only upon the Equality of it, and the Reaſonableneſs of the Thing.

Mr. Com. Serj. Courts of Juſtice are to go according to Rules of Law, and that is equal that is according to thoſe Rules: I ſay again, Sir, you have had a fair, a legal, and an equal Tryal, and have been treated with all the Candor and Temper, that I believe was ever ſhewn to any Perſons in your Condition.

Char. I had not Council allowed me to aſſiſt me.

Mr. C. Serj. The Law allows it you not; if it had, you ſhould have had it.

Char. Then my Council were ignorant People, to inſtruct and adviſe me, that by the Equity of this Act I ought to have it.

Mr. Com. Serj. It was never practicable before, nor can be, till the Time that this Act takes Place.

Char. Sir, I cannot argue with the Court in Matters of Law; but as to the Evidence, I ſay, it did not come up to the Indictment.

Mr. C. Serj. If you have any Thing to except againſt the Indictment, that is very proper for you to do, and if you will propoſe it, we will hear you.

Char-

Char. Sir, I find fault with the Indictment in ſeveral Particulars; all the Facts are laid in the Pariſh of St. *Clements Danes*, and there is not one Fact proved to be done there.

Mr. C. Serj. It is not material that the Facts ſhould be proved to be done in the particular Pariſh laid in the Indictment; it is ſufficient, if they be proved to be done in the County.

Char. There is not one Fact proved to be done in that Pariſh.

Mr. C. Serj. All that is againſt the Evidence, which we cannot at all take Notice of after the Verdict.

Char. I inſiſted upon ſeveral Things, whereby it was impoſſible that the Evidence could be true, and mentioned ſeveral Things, wherein the Indictment was erroneous, and the Evidence not conſiſtent with it, or at leaſt not of ſuch Validity as to affect me; all which Things if I might have had Council to argue for me in Point of Law, (and I look upon it as a very great Hardſhip that it was denied me,) as likewiſe that my Lord Chief Juſtice over-rul'd what I offered about Trepanners, as I take theſe Witneſſes to be, out of Sir *Robert Atkins*'s Book, and what I quoted out of my Lord *Hales*'s Pleas of the Crown, and *Coke*'s Inſtitutes.

Mr. C. Serj. Mr. *Charnock*, If you pleaſe to offer any Point of Law to the Court to ſtop Judgment, we are ready to hear it; but you ought not to reflect upon the Court.

Char. Where a Man is dying, ſure he may have Leave to take Notice of what Hardſhips he has lain under.

Mr. C. Serj. Pray, Sir, hear me; No Men that ever ſtood in your Place have had more Indulgence and Favour ſhew'd them, nor, I believe, ſo much neither. Thoſe of us that are here, and were at your Tryal, do think you do very much amiſs, to make any Reflections upon the Court after you were ſo fairly dealt with. If you have any Thing that is material to offer in Arreſt of Judgment, pray let us hear it: But we muſt over-rule all Diſcourſes of this Nature, it is a vain Sort of Diſcourſe, and will be of no Uſe or Service to you at all.

Char. Truly I know not what it is poſſible for me to urge which you will think to be material, if I cannot urge falſe Latin and Inconſiſtencies. There have been heretofore Arreſts of Judgment, and that muſt ſure have been upon ſome Error or other.

Mr. C. Serj. It is true, but you aſſign none; you abound in Words, but will not offer any Thing that is fit for you to offer.

Char. Sir, I aſſign this particularly as an Error, and if it be not I cannot tell what is: I am upon my laſt Legs, and ſtand here for my Life, and ought to be allowed all legal Advantages. One particular Thing is this, Whether the Scene of the Fact being laid to be at the Pariſh of St. *Clement Danes* there ought not to be Proof that ſuch Facts were done there; and if ſo, Whether it be not an Error, that there was no Proof of any one Fact done there? And then the next Thing is, we are charged to have bought Horſes and Arms in the Indictment, and there was no Proof of any Horſes or Arms bought, I am ſure as to me there was not.

Mr. C. Serj. I told you before, all this is to no Purpoſe, you enter into the Evidence, which is Matter of Fact, which is all over, and we can-

not enter into any Conſideration of it, therefore pray do not ſpend our Time, but if you have any Thing that is an Objection to the Frame of the Indictment let us hear it.

Char. Then I think that the Indictment is uncertain; it ſays, *quadraginta Homines equeſtres aut circiter de ipſis* Roberto Charnock, Edwardo King, & Thoma Keys; this is either not true, or it is Nonſenſe: For if there be forty Horſemen, or thereabouts, of *Robert Charnock*, *Edward King*, and *Thomas Keys*, that cannot be true, for they can't make forty; and if you take in the *aliis Proditoribus ignotis*, that will make it uncertain, and that Uncertainty will make the Indictment void.

Mr. C. Serj. I thought my Lord Chief Juſtice had ſatisfied you as to that Objection; you repeat but Part of the Sentence: It is ſaid, *de ipſis* Roberto Charnock, *& prædictis aliis Proditoribus ignotis, ac aliis*, that is certain enough, I thought we ſhould have heard no more of that frivolous Objection, but you had been ſatisfied with the Judge's Anſwer to it.

Char. I am ſatisfied in Point of Fact that they conſtrued it ſo; but theſe are the Words of the Indictment as they were read to me.

Mr. C. Serj. You ſhall have the Words read to you again. Read them.

Cl. of Arraignments. Quod quadraginta homines equeſtres aut eo circiter de ipſis Roberto Chernock, Edwardo King, & Thoma Keys, *& prædictis aliis Proditoribus ignotis ac aliis.*

Mr. C. Serj. You took but Part of the Sentence, or elſe you could never have made that Objection.

Char. Then, Sir, here is *tunc & ibidem*, what is that?

Mr. C. Serj. You can eaſily tell that ſure; it is *then and there.*

Char. What, *ibidem*? What Word is that?

Mr. C. Serj. It is the beſt Word that could be uſed, what Word would you have had?

Char. Tunc & ibi is *then and there.*

Mr. C. Serj. No, *ibidem* is a better Word, and is always uſed in our Pleadings at Law.

Char. Then I have only this in general to ſay; Whether it be poſſible for a Man that is ignorant in Forms of Law to defend himſelf without Council? I muſt deſire Council to look into the Indictment and to aſſiſt me.

Mr. C. Serj. That is what we cannot allow by Law, unleſs you offer ſomething that may be ſuch an Objection, as the Court ſhall think fit to have argued by Council.

Char. But how ſhall I, that am ignorant in the Law, know how to offer you that which you will think fit to hear Council to?

Mr. C. Serj. You may offer any Thing that you think is an Exception, and the Court will conſider of it; for I think it is my Duty, and every Man's that has the Honour to ſit here by the King's Commiſſion, to lay as much Weight upon any Objection that a Priſoner does offer, as it will bear; but if nothing be offer'd that is of the leaſt Weight or Moment, we being to do our Duty equally between the King and the Priſoner, we cannot allow Council when there is nothing before us to allow it upon.

Charn. You will not, it ſeems, let me have ſuch Aſſiſtance as I may offer you ſomething material.

Mr. C. Serj. You know well enough we cannot do it, pray do not ſpend our Time to no Purpoſe.

Char. Nay, Sir, if you be in Haſte, I will not trouble you any longer.

Mr. C. Serj. You have no Reaſon to ſay we are in Haſte; I am ſure you have had all the Indulgence and Patience that could be; you are at Liberty to offer any Thing that you can, but to ſpend the Time of the Court in bare Words is not reaſonable.

Char. The Law was never my Practice, Sir, nor Study: I perceive whatſoever I offer ſignifies nothing; therefore I beg your Pardon for the Trouble I have given you; I ſhall not attempt to offer any thing further.

Mr. C. Serj. You may offer what you will, we will hear you.

Char. Sir, I perceive whatſoever I ſay is unacceptable, and ſo I had as good let it alone.

Mr. C. Serj. You ſhall be heard to ſay whatever you think is for your Intereſt to ſay.

Char. I thought theſe Things were for my Intereſt to offer; but I ſee it is to no Purpoſe; therefore I have no more to ſay, I have done.

Mr. C. Serj. You may offer what you will, and you ſhall be heard with all the Patience and Candour imaginable.

Char. I ſee it is impoſſible for me to offer any Thing that the Court will think material; therefore it is in vain for me to ſpeak, and trouble my ſelf and the Court with what will be of no Uſe to me.

Cl. of Arraignments. Edward King, hold up thy Hand, (*which he did.*) You ſtand convicted of the ſame High-Treaſon; What can you ſay for your ſelf, why the Court ſhould not give Judgment upon you to die according to Law?

Then he was made to kneel and riſe up again.

King. What Mr. *Charnock* has ſaid, all of it I do imagine to be material; and ſince he is not to be heard, I have done; I can ſay no more.

Cl. of Ar. Thomas Keys, hold up your Hand; you are in the ſame Caſe with the Priſoner that went laſt before you: What can you ſay for your ſelf why the Court ſhould not give Judgment upon you to die according to the Law?

He was made to kneel and riſe again.

Keys. Sir, I have had no Council, nor no Aſſiſtance, ſince I have been in Priſon.

Mr. C. Serj. That you alledged upon your Tryal, and you were then told you might have had Council if you had thought fit; for you had an Order for it, and you come too late to offer any Thing of that Nature now. But the Queſtion that is now ask'd you is, what you have to ſay for your ſelf, why Judgment ſhould not paſs upon you?

Keys. I was only a Servant.

Mr. C. Serj. You have been told that will not excuſe a Man in ſuch a Caſe.

Keys. I cannot help it, Sir, I have done; I hope you will take care of my Wife and Children when I am gone.

Then Proclamation was made for Silence, whilſt Judgment was in giving; which the Common Serjeant, ſitting down upon the Bench, pronounced thus:

Mr. C. Serj. Robert Charnock, Edward King, and *Thomas Keys*, the Priſoners at the Bar; You have been ſeverally indicted for High-Treaſon; you have pleaded Not Guilty, and put your ſelves for your Tryal, upon the Country, which Country have found you Guilty: You have had the Benefit of a fair, lawful, indifferent, and equal Tryal, according to the Laws of this Land; thoſe very Laws, which you are charged in this Indictment to have conſpired to ſubvert. It is a Crime of the higheſt Nature that the Law knows: You are Gentlemen of liberal Education, and I hope this will bring you to ſome Reflection, both upon the State of your own Caſe, and the Blackneſs of your Offence, in the Time you have to live, which I fear is but ſhort: It is certainly the hainouſeſt Crime that any Perſons can be guilty of; the Murdering of a Prince in cold Blood, and Involving your Country in Slaughter and Confuſion. I have nothing more to do, but to pronounce the Judgment that the Law has provided for ſuch Offenders, and which the Court doth award:

That you go from hence to the Place from whence you came; and that from thence you be drawn upon a Hurdle to the Place of Execution, where you are ſeverally to be Hanged by the Neck, and cut down alive; your Bowels and Privy-Members to be cut from your Bodies, and to be Burnt in your View; your Heads to be cut off, your Bodies reſpectively to be divided into Four Parts; which Heads and Quarters are to be at the King's Diſpoſal: And God have Mercy upon your Souls.

Char. Sir, I deſire we may have the Favour to have our Friends and Relations come to us while we are in Priſon.

Mr. C. Serj. You ſhall have all the Liberty of your Friends and Relations coming to you, that you can reaſonably deſire.

Char. And I hope we ſhall have no hard Uſage in Priſon.

Mr. C. Serj. No, God forbid you ſhould; you may aſſure your ſelf you ſhall have none.

Then the Seſſions of Peace for London, *and of Goal-delivery of* Newgate *for* London *and* Middleſex *were adjourn'd unto* Saturday *the* 21ſt *of* March *inſtant.*

And *Charnock, King*, and *Keys*, were Executed according to the Sentence, on *Wedneſday* the 18th of *March*, 169½. at *Tyburn.*

The TRYAL of Sir JOHN FREIND, *Knight.*

Publiſh'd by AUTHORITY.

Die Lunæ viceſimo tertio Martii, 1695. *Anno Regni Regis* Gulielmi *Tertii Octavo.*

At the Seſſions-Houſe in the Old-Baily, *this Day came on the Tryal of Sir* John Freind, *Knight, for High-Treaſon, in Compaſſing and Imagining the Death and Deſtruction of his preſent Majeſty King* William, *upon an Indictment found by the Grand-Jury for the City of* London, *upon the Seſſions of* Oyer *and* Terminer *and Gaol-Delivery of* Newgate, *on* Saturday *the* 21*ſt inſtant.*

Clerk of Arraignments.

CRYER, make Proclamation.

Cryer. Oyez, Oyez, Oyez. All Manner of Perſons that have any Thing more to do at this General Seſſions of the Peace, Seſſions of *Oyer* and *Terminer*, holden for the City of *London*, and Gaol-Delivery of *Newgate*, holden for the City of *London*, and County of *Middleſex*, adjourned over to this Day; Draw near, and give your Attendance, for now they will proceed to the Pleas of the Crown for the ſaid City, and County; and God ſave King *William*.

Cl. of Arr. Make Proclamation again.

Cryer. Oyez. You good Men of the City of *London*, ſummoned to appear here this Day, to try between our Sovereign Lord the King, and the Priſoner that is to be at the Bar; anſwer to your Names as you ſhall be called every Man at the firſt Call, upon Pain and Peril that will fall thereon.

Then the Petty Jury were all called over, and the Appearances of thoſe that anſwered to the Call were recorded.

About Ten a Clock the Lord Chief Juſtice Holt, *the Lord Chief Juſtice* Treby, *Mr. Juſtice* Nevill, *and Mr. Juſtice* Rokeby, *came into the Court; and there being a great Confluence of the Nobility and Gentry there preſent, the Priſoner was order'd to be brought to the Bar: Which was done accordingly.*

Cl. of Arr. Sir, *John Freind*, hold up thy Hand.

Freind. My Lord, I humbly move that I may have one *William Courtney* (who is to be a principal Witneſs for me at my Tryal, and is now a Priſoner in the *Gatehouſe*) ſent for.

* Lord Chief Juſtice *Holt.*

**L. C. Juſt.* Is he your Witneſs, Sir *John?*

Freind. Yes, my Lord, *William Courtney* is his Name.

L. C. J. Sir *John*, why did not you ſend, and deſire this before?

Freind. My Lord, I did not hear of him, while laſt Night; and I humbly beſeech your Lordſhip, that you will pleaſe to let him be ſent for.

The Judges conſulted among themſelves.

L. C. J. Look ye, Sir *John Freind*, I'll tell you, if you'll appoint your Agent to come hither, you ſhall have an *Habeas Corpus ad teſtificandum:* But indeed you might have ſent this Morning, and then the Writ might have been got ready.

Freind. My Lord, I did not know ſo much; for it was laſt Night before I underſtood that he was to be a Witneſs.

L. C. J. You might have ſent laſt Night, or this Morning, and you ſhould have had a Warrant for the Writ.

Freind. I aſſure your Lordſhip, I did not know ſo much.

L. C. J. Well, ſend your Agent, or your Sollicitor, and you ſhall have a Warrant for the Writ.

Freind. I beſeech your Lordſhip, that he may be ſent for, and that the Meſſenger may make haſte.

L. C. J. Let your Sollicitor come to my Clerk, and he ſhall have it.

Freind. My Lord, if you pleaſe to give a Rule of Court for it, I ſuppoſe it may be done preſently.

L. C. J. No, no, Sir *John*, it muſt be by Writ, the Keeper of the *Gatehouſe* elſe cannot bring him.

Fr. My Lord, that will be a long Time before it can be done, I deſire nothing but that I may have him here to give his Evidence for me.

L. C. J. It will be got ready preſently; I believe he will be here Time enough for you to make uſe of his Teſtimony.

Fr. But, my Lord, ſuppoſe he ſhould not be here: It would be a great Hindrance to me, and a greater Injury to my Tryal.

L. C. J. No, no, Sir *John*, you need not fear any Thing of that Nature, we are not in ſuch Haſte; we will not ſpur you on: But the Warrant ſhall be made; and do you make what Haſte you can to get the Writ, and your Witneſs brought.

The Lord Chief Juſtice gave Order to Mr. Maſon *his Clerk, to prepare a Warrant for an* Habeas Corpus, *directed for the Keeper of the* Gatehouſe, *to bring* William Courtney *immediately hither to give Evidence.*

Cl. of Arr. Sir *John Freind*, hold up thy Hand. (which he did.)

You

You ſtand Indicted in *London* by the Name of Sir *John Freind*, late of *London*, Kt. for that, Whereas there had been for a long time, and yet is, an open, and notoriouſly publick, and moſt ſharp, and cruel War by Land, and by Sea, had, carried on, and proſecuted by *Lewis* the *French* King, againſt the moſt Serene, moſt Illuſtrious, and moſt Excellent Prince, our Sovereign Lord *William* the Third, by the Grace of God, of *England*, *Scotland*, *France*, and *Ireland*, King, Defender of the Faith, *&c.* All which time the ſaid *Lewis* the *French* King, and his Subjects were, and yet are Enemies of our ſaid Lord the King, that now is, and his Subjects. You the ſaid Sir *John Freind*, a Subject of our ſaid Sovereign Lord the King, that now is, of this Kingdom of *England*, well knowing the Premiſſes, not having the Fear of God in your Heart, nor weighing the Duty of your Allegiance, but being moved and ſeduced by the Inſtigation of the Devil, as a falſe Traytor againſt the ſaid moſt Serene, moſt Clement, and moſt Excellent Prince, our ſaid Sovereign Lord *William* the Third, now King of *England*, *&c.* your Supreme, True, Natural, Rightful, Lawful, and Undoubted Sovereign Lord; the cordial Love, and the true, and due Obedience, Fidelity and Allegiance, which every Subject of our ſaid Sovereign Lord the King, that now is, towards him our ſaid Sovereign Lord the King, ſhould and of right ought to bear, withdrawing, and intending utterly to extinguiſh, and contriving, and with all your Strength, purpoſing, deſigning, and endeavouring the Government of this Kingdom of *England*, under our ſaid Sovereign Lord the King that now is of Right, duly, happily, and very well Eſtabliſhed, altogether to Subvert, Change, and Alter, and his Faithful Subjects, and the Freemen of this Kingdom of *England*, into intolerable, and moſt miſerable Slavery, to the aforeſaid *French* King, to Subdue, and bring, the firſt Day of *July*, in the Seventh Year of the Reign of our ſaid Sovereign Lord the King that now is; and divers other Days and Times, as well before as after, at *London*, in the Pariſh of St. *Peter Cornhill*, in the Ward of *Limeſtreet*, falſely, maliciouſly, deviliſhly, and traiterouſly, did compaſs, imagine, contrive, purpoſe, and intend, our ſaid Sovereign, the Lord the King that now is, then your Supreme, True, Natural, Rightful, and Lawful Sovereign Lord, of and from the Regal State, Title, Honour, Power, Crown, Command, and Government of this Kingdom of *England*, to Depoſe, caſt Down, and utterly to Deprive; and our ſaid Sovereign Lord the King to Death, and final Deſtruction to put, and bring, and the aforeſaid *Lewis* the *French* King, by his Armies, Soldiers, Legions, and Subjects, this Kingdom of *England* to Invade, Fight with, Oovercome, and Subdue, to move, incite, procure, and help, and a miſerable Slaughter among the Faithful Subjects of him, our ſaid Sovereign Lord the King, throughout this whole Kingdom of *England*, to make and cauſe; and that you the ſaid Sir *John Freind* to the aforeſaid Enemies of our ſaid Lord the King, that now is, then, and there during the War aforeſaid, Traiterouſly were adhering and aſſiſting; and the ſame your moſt impious, wicked and deviliſh Treaſons, and traiterous Compaſſings, Intentions, and Purpoſes aforeſaid, to fulfil, perfect, and bring to effect; and in proſecution, performance, and execution of that traiterous Adheſion, you the ſaid Sir *John Freind*, as ſuch a falſe Traitor, during the War aforeſaid, to wit, the ſame Firſt Day of *July*, in the Year aboveſaid, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, and divers other Days and times, as well before as after, there and elſewhere in *London* aforeſaid, falſely, maliciouſly, adviſedly, ſecretly, and traiterouſly, and with Force and Arms, *&c.* with one *Robert Charnock* (late of High-Treaſon, in contriving, and conſpiring the Death of our ſaid Sovereign Lord the King, that now is, duly convicted and attainted) and with divers other falſe Traitors, to the Jurors unknown, did meet, propoſe, treat, conſult, conſent, and agree, to procure from the aforeſaid *Lewis* the *French* King, of his Subjects, Forces, and Soldiers, then and yet Enemies of our ſaid Sovereign Lord the King that now is, great Numbers of Soldiers and Armed Men, this Kingdom of *England* to Invade and Fight with, and to levy, procure, and prepare great Numbers of Armed Men, and Troops and Legions againſt our ſaid Lord the King that now is, to riſe up and be formed, and with thoſe Enemies at and upon ſuch their Invaſion and Entry into this Kingdom of *England*, to join and unite, Rebellion and War againſt him our ſaid Lord the King, within this Kingdom of *England*, to make, levy, and wage, him our ſaid Lord the King ſo as aforeſaid to Depoſe, and him to Kill and Murder; and moreover with the ſaid falſe Traitors, the ſame Firſt Day of *July*, in the Year aboveſaid, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, Traiterouſly you did conſult, conſent, and agree to ſend the aforeſaid *Robert Charnock* as a Meſſenger from you the ſaid Sir *John Freind*, and the ſame other Traitors unknown, unto and into the Kingdom of *France*, in Parts beyond the Seas, unto *James* the Second, late King of *England*, to propoſe to him, and deſire of him to obtain of the aforeſaid *French* King, the Soldiers and Armed Men aforeſaid, for the Invaſion aforeſaid to be made; and Intelligence and Notice of ſuch their Traiterous Intentions, and Adheſions, and all the Premiſſes unto the ſaid late King *James* the Second, and the ſaid other Enemies and their Adherents, to give and exhibit; and them to inform of other particular Things and Circumſtances thereunto relating; as alſo Intelligence from them of the ſaid intended Invaſion, and other Things and Circumſtances concerning the Premiſſes, to receive, and the ſame to you the ſaid Sir *John Freind*, and the ſaid other Traitors in this Kingdom of *England*, to ſignify, report and declare, in Aſſiſtance, Animation, and Aid of the ſaid Enemies of our ſaid Lord the King that now is, in the War aforeſaid, and to incite and procure thoſe Enemies the more readily and boldly to Invade this Kingdom of *England*; and the Treaſons and Traitorous Contrivances, Compaſſings, Imaginations, and Purpoſes of you the ſaid Sir *John Freind* aforeſaid, to perfect and fulfil, and all the Premiſſes the ſooner to execute, manage and perform, you the ſaid Sir *John Freind*, during the War aforeſaid, ſo as aforeſaid continued, *to wit*, the ſame Firſt Day of *July*, in the aboveſaid Seventh Year of the Reign of our ſaid Lord the King that now is, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, falſely and traiterouſly did procure and obtain to your ſelf, and did receive and accept of a certain Commiſſion or Writing, purporting it ſelf to be a Commiſſion, under

and

and from the aforeſaid *James* the Second, late King of *England*, to conſtitute you the ſaid Sir *John Friend* to be a Collonel of Horſe in the Army by you and the other falſe Traytors againſt our ſaid Lord the King that now is, within this Kingdom of *England* to be levied and formed; and in purſuance of the ſaid pretended Commiſſion by you the ſaid Sir *John Freind* ſo obtained and accepted of, and your Treaſons and all your Traiterous Intentions aforeſaid, the ſooner to execute, perform, fulfil, and perfect, You the ſaid Sir *John Freind* afterwards, (to wit) the ſame Firſt Day of *July*, in the Seventh Year aboveſaid, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, Falſely, Maliciouſly, Adviſedly, Secretly, and Traiterouſly, Divers Soldiers, and Armed Men, and ready to be Armed, with Force and Arms, *&c.* To Raiſe, and Liſt, and War and Rebellion againſt our ſaid Lord the King, within this Kingdom of *England* to make and wage; And to and with the ſaid Enemies of our ſaid Lord the King, Foreigners and Strangers, Subjects and Soldiers of the ſaid *Lewis* the *French* King, being about to invade this Kingdom of *England*, at and upon their Invaſion, and Entry into this ſame Kingdom, then ſhortly expected to be made, Themſelves together with You the ſaid Sir *John Freind* to join and unite, and in Troops and Legions to form, did Raiſe, Liſt, and Retain, and did procure to be Raiſed, Liſted, and Retained; And divers Sums of Money, in and about the Raiſing, Liſting, and Retaining of the aforeſaid Soldiers, and Men Armed, and ready to be Armed upon the Account aforeſaid, upon the aforeſaid Firſt Day of *July* in the Seventh Year aboveſaid, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, Falſely, Maliciouſly, and Traiterouſly, did give and pay, and cauſe to be paid; and thoſe Soldiers and Men, for the Treaſons, Intentions, and Purpoſes aforeſaid, then and there, and long after, you had in readineſs. As alſo the ſame Firſt Day of *July*, in the Seventh Year aboveſaid, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, Divers Horſes, and very many Arms, Guns, Carbines, Piſtols, Swords, and other Weapons, Ammunition, and Warlike Things, and Military Inſtruments, Falſely, Maliciouſly, Secretly, and Traiterouſly You did Obtain, Buy, Gather, and Procure, and cauſe to be Bought, Gathered, Obtained and Procured, and in Your Cuſtody had and detained, to that Intent to uſe the ſame in the ſaid Invaſion, War and Rebellion, againſt our ſaid Sovereign Lord the King that now is, Him our ſaid Lord the King of, and from the Regal State, Crown and Command of this Kingdom of *England* to Depoſe, Caſt Down, and Deprive, and him to Kill and Murder, and all the Treaſons, Intentions, Contrivances and Purpoſes of You the ſaid Sir *John Freind*, as aforeſaid, to fulfil, perfect, and fully to bring to Effect; againſt the Duty of Your Allegiance, and againſt the Peace of our ſaid Sovereign Lord the King that now is, His Crown and Dignity; as alſo againſt the Form of the Statute in this Caſe made and provided.

What ſay'ſt thou, Sir *John Freind*, Art thou Guilty of this High-Treaſon whereof thou ſtandeſt Indicted, or Not Guilty?

Freind. Not Guilty, my Lord.

Cl. of Arr. Culpritt, How wilt thou be Tryed?

Freind. By God and my Country.

Cl. of Arr. God ſend thee good Deliverance.

Friend. I don't know any thing of it, I am as Innocent as the Child unborn.

The Warrant for the Habeas Corpus *was Signed by the Lord Chief-Juſtice* Holt, *and delivered to the Priſoner, who ſent it away to the* Crown-Office *by his Sollicitor, to get the Writ ſealed.*

Freind. My Lord, I have ſomething to move, if your Lordſhip pleaſe to hear me, and the reſt of my Lords the Judges; That if any Matter of Law do ariſe upon my Trial, I may be heard by my Council, that you may not deſtroy me without Law.

L. C. Juſt. Look you, Sir *John Freind*, if any Matter of Law do ariſe at your Trial, and you will tell us what that Matter of Law is, and the Court ſee that it is a Matter of Doubt, we can, and ought, and no Queſtion ſhall aſſign you Council; but that is time enough when ſuch Matter does ariſe.

Freind. My Lord, It is well known to your Lordſhip, and all the Court, that I am not a Lawyer; but, I hope, as you are of Council for the King as Judges of Law, ſo you will be of Council for me; for I am not a Lawyer, and cannot know, whether any Matter that ariſes be Law or no; and therefore I humbly beſeech your Lordſhip to be ſo juſt and kind, as to tell me whether it be Law or not Law, and I ſubmit my ſelf to your Lordſhip's Direction.

L. C. Juſt. Sir *John Freind*, We are bound to tell you when any Thing of that Nature appears before us, and to let you have all the Benefit of the Law that poſſibly you can have; for we are obliged to be indifferent between the King and you.

Freind. My Lord, I don't queſtion it. I deſire alſo I may have Pen, Ink, and Paper.

L. C. Juſt. Yes, yes, by all means. (*And he had them.*)

Cl. of Arr. Cryer, Make Proclamation.

Cryer. Oyez: You Good Men of the City of *London*, ſummoned to appear here this Day, to Try between our Sovereign Lord the King, and the Priſoner that is at the Bar, who have been called, and made Default, anſwer to your Names, and ſave your Iſſues.

Then the Defaulters were call'd over.

Cl. of Arr. You the Priſoner at the Bar, theſe Men that you ſhall hear call'd, and perſonally appear, are to paſs between our Sovereign Lord the King and you, upon Trial of your Life and Death; If therefore you will challenge them, or any of them, your time is to ſpeak unto them as they come to the Book to be ſworn, before they be ſworn.

Cryer. Call *Thomas Clerk.*

Freind. Pray, Sir, how many may I challenge?

L. Ch. J. Look you, Sir *John*, you may challenge, that is, except againſt 35, without ſhewing any Cauſe: If you don't like them to be of the Jury, you may refuſe them; and as many others, as you have Cauſe to except againſt.

Fr. My Lord, I humbly beſeech you, that becauſe perhaps I may miſtake in numbring, that I may have timely Notice before the 35 be excepted againſt, or elſe it may occaſion me a great deal of Prejudice.

L. C. J. Sir, the Clerk ſhall take Care of that, he ſhall inform you how many you challenge, and you ſhall receive no Prejudice of that Kind, or by any Slip in point of Form.

Cl. *of Ar.* Cryer, call *Thomas Clark.* (*who appeared.*)

Fr.

Fr. Pray Sir, muſt I not ſee the Gentleman?

L. C. J. Yes, yes, by all Means. (*He was ſhewn to him.*)

Fr. You may ſwear Mr. *Clark*; I do not except againſt him. I deſire but honeſt Gentlemen, and I ſhall come off I warrant you: I am as innocent as the Child unborn.

L. C. J. Swear Mr. *Clark*.

Cl. *of Ar.* Hold him the Book; (*which was done*) look upon the Priſoner, you ſhall well and truly try, and true Deliverance make between our Sovereign Lord the King, and Priſoner at the Bar, whom you ſhall have in Charge, according to your Evidence. *So help you God.*

Cl. *of Ar. Nathan Green.*

Fr. I except againſt him.

Cl. *of Arr. Thomas Emms.*

Fr. I accept of him for a Juryman, I have nothing to object againſt him. (*He was ſworn.*)

Cl. *of Ar. Francis Byer.*

Fr. Pray let me ſee him, (*he was ſhewn to him*) I do except againſt him, I challenge him.

Cl. *of Ar. Benjamin Dry.*

Fr. I except againſt him.

Cl. *of Ar. James Demew.*

Fr. I accept him, I have nothing to ſay againſt him, I would have him to be a Juryman.

Mr. *Demew.* My Lord, I am not a Freeholder.

L. C. J. Sir *John*, Do you challenge him peremptorily, or do you challenge him for Cauſe?

Fr. My Lord, I do not challenge him at all, I accept of him.

* *Sir* Thomas Trevor.

* *Mr. Attorn. Gen.* If he have no Freehold, we that are for the King will except againſt him; for I would not have any Body that is not a Freeholder ſerve upon the Jury.

Cl. *of Ar. Henry Hunter.*

Fr. Pray, my Lord, is this Gentleman that was called before laid aſide? He is not one that I challenge.

L. C. J. No, no, he is challeng'd by the King's Council, as no Freeholder.

Fr. Then he is only ſet aſide, I ſuppoſe, I ſpeak it for this Reaſon, I would not be miſtaken in my Number.

L. C. J. Care ſhall be taken of all that, he is not to be reckoned as one that you challenged, he is challenged for want of Freehold by the King's Council.

Cl. *of Ar.* What ſay you to Mr. *Hunter*?

Fr. I accept of Mr. *Hunter*, let him be ſwore. (*which was done.*)

Cl. *of Ar. John Cox.*

Mr. *Cox.* My Lord, I have no Freehold in *London.*

Mr. *Att. Gen.* Then let him be ſet aſide.

Cl. *of Ar. George Bodington.*

Fr. I except againſt him.

Cl. *of Ar. John Hedges.*

Fr. I except againſt him.

Cl. *of Ar.* You challenge him Sir, do you?

Fr. Yes, yes, I do.

Cl. *of Ar. John James.*

Fr. I challenge him.

Cl. *of Ar. Thomas Poole.*

Fr. I accept of him. (*He was ſworn.*)

Cl. *of Ar. Peter Parker.*

Fr. I accept of him. (*He was ſworn.*)

Cl. *of Ar. George Grove.*

Fr. I except againſt him, for I have him not in my Pannel.

L. C. J. How comes that?

Fr. I can't tell, my Lord, I have been kept alone while *Saturday* laſt, only that worthy Gentleman (bowing to Mr. *Baker*, the Proſecutor for the King) was with me to give me Notice of my Tryal before.

Cl. *of Ar. Nathaniel Wyerſdale.*

Fr. I challenge him.

Cl. *of Ar. Samuel Blewitt.*

Fr. I challenge him.

Cl. *of Ar. James Bodington.*

Fr. I challenge him.

Cl. *of Ar. John Wolfe.*

Fr. Sir, I do aſſure you I have him not in my Pannel, upon my Word. I challenge him.

Cl. *of Ar. Samuel Jackſon.*

Fr. I accept of him. (*He was ſworn.*)

Cl. *of Ar. Nathaniel Long.*

Fr. I accept of him. (*He was ſworn.*)

Cl. *of Ar. Richard Chiſwell.*

Fr. I challenge him.

Cl. *of Ar. George Child.*

Fr. I accept of him. (*He was ſworn.*)

Cl. *of Ar. William Walker.*

Fr. I accept of him. (*He was ſworn.*)

Cl. *of Ar. John Wills.*

Fr. I challenge him.

Cl. *of Ar. John Hibbert.*

Fr. I challenge him.

Cl. *of Ar. John Pettit.*

Fr. I challenge him.

Cl. *of. Ar. James Robinſon.*

Fr. Sir, he is not in my Pannel upon my Word.

Cl. *of Ar.* He is in the Original Pannel.

Mr. Sheriff *Buckingham.* My Lord, here is the Original Pannel, and here's his Name here; and there is not a Perſon in this Pannel, but what was originally put in, except it be about five or ſix at the End, and this is none of them.

Fr. I challenge him.

Cl. *of Ar. Thomas Hollis.* (*He did not appear.*)

L. C. J. Pray, Sir *John*, who had you that Copy from? Who gave it you?

Fr. My Sollicitor.

Mr. *Trotman.* My Lord, he had none from me I am ſure: I received the Pannel from the Sheriff, but no Body, from Sir *John*, was ever with me for a Copy.

Fr. My Lord, my Sollicitor brought it to me on *Saturday* Night.

L. C. J. Who is your Sollicitor, that gave you that Copy?

Fr. His Name is Mr. *Burleigh*, my Lord.

L. C. J. Where is he? Let's ſee this Mr. *Burleigh.*

Fr. My Lord, he is gone to the Crown Office it ſeems, for the *Habeas Corpus.*

Mr. *Juſtice Rokeby.* It is your own Sollicitor that has put the Abuſe on you, if it be ſo.

Cl. *of Ar. Thomas Hollis.* (*He did not appear.*)

L. C. J. Pray, Sir *John Freind*, how many have you in all?

Fr. In Number my Lord, would you have me tell you how many I have in Number?

L. C. J. Aye, in Number, in your Copy of the Pannel.

Mr. Sh. *Buckingham.* In the Pannel there are above Fourſcore.

Fr. I have ſeventy one, my Lord.

Then Thomas Hollis *appeared.*

Cl. *of Ar.* Do you challenge him, Sir?

Mr. Sh. *Buckingham.* Pray let the Secondary produce his Pannel that he had from my Brother and me,

me, and I am ſure the Court will find they were all named in that Pannel.

Mr. *Trotman.* My Lord, I have the Pannel, but they never came to me for a Copy, as I expected: I had got one ready; if Sir *John Freind*, or any Perſon for him, had ſent to me, they might have had it.

Mr. Sh. *Buckingham.* And theſe People that are not in Sir *John Freind*'s Pannel, are none of the half dozen that were added, when we came to the Knowledge of them, that they were Freeholders.

L. C. J. When were they added Sir?

Mr. Sh. *Buck.* They were added on *Friday* in the Afternoon, and it ſeems he never came for the Pannel to the proper Officer, and thoſe that he objects againſt were not added, but are in the original Pannel.

L. C. J. Truly I can't ſee any Body is to blame in this Matter but your own Sollicitor.

Mr. *Trotman.* My Lord, I aſſure you I had made a Copy, and I wondered I did not hear of them: I do not know where he got this Copy.

L. C. J. Treby. In truth if you would not ſend to the proper Officer for a Copy, when you might have had it, you muſt be content with what you have; for no Body is bound to give you a Copy unleſs you ask for it.

L. C. J. Well, what ſay you to *Thomas Hollis?*

Fr. I challenge him, my Lord, for he is not in my Pannel.

Cl. *of Ar. John Sherbrook.*

Fr. I accept of him. (*He was ſworn.*)

Cl. *of Ar. James Blackwell.*

Fr. He is not in my Pannel, upon my Word, my Lord.

L. C. J. I can't help it, he is in the Sheriff's Pannel that is returned here.

Fr. I challenge him.

Cl. *of Ar. Thomas Gardner.*

Fr. I accept of him.

Mr. *Gardner.* My Lord, I am no Freeholder in the City.

Mr. *Juſtice Rokeby.* Mr. *Gardner*, have you not lately convey'd away your Freehold?

Mr. *Gard.* No, indeed, my Lord, I never had any.

Cl. *of Ar. William Prince.*

Fr. I accept of him. (*He was ſworn.*)

Cl. *of Ar. John Simons.*

Fr. I challenge him.

Cl. *of Ar. Robert White.*

Fr. I challenge him.

Cl. *of Ar. Joſeph Morewood.*

Fr. I accept him; his Name is *John* I ſuppoſe, for ſo it is in my Pannel.

Cl. *of Ar.* No, it is *Joſeph.*

Mr. *Morewood.* My Name is *Joſeph.*

Fr. Well, Sir, I accept of you, I don't queſtion but you are an honeſt Man. (*He was ſworn.*)

Cl. *of Ar.* Cryer, countez. *Thomas Clark.*

Cryer. One, *&c.* (*So of the reſt to the laſt.*)

Cl. *of Ar. Joſeph Morewood.*

Cryer. Twelve good Men and true, ſtand together, and hear your Evidence.

The Names of the Jury were theſe.

Thomas Clark,	Jur.	*Nathaniel Long,*
Thomas Emms,		*George Child,*
Henry Hunter,		*William Walker,*
Thomas Poole,		*John Sherbrook,*
Peter Parker,		*William Prince,* and
Samuel Jackſon,		*Joſeph Morewood.*

Cl. *of Ar.* Cryer, make Proclamation.

Cryer. O yes. If any one can inform my Lords the King's Juſtices, the King's Serjeant, the King's Attorney General, or this Inqueſt now to be taken, of the High-Treaſon whereof the Priſoner at the Bar ſtands indicted, let them come forth, and they ſhall be heard; for now the Priſoner ſtands at the Bar upon his Deliverance: And all others that are bound by Recognizance to give Evidence againſt the Priſoner at the Bar, let them come forth and give their Evidence or elſe they forfeit their Recognizance; and all Jury-men of *London*, that have been called, and have appeared, and are not ſworn may depart the Court.

Cl. *of Ar.* Sir *John Freind*, hold up thy Hand, (which he did.) You that are ſworn, look upon the Priſoner, and hearken to his Charge: He ſtands indicted by the Name of Sir *John Freind*, late of *London*, Knight, (*prout* in the Indictment, *mutatis mutandis.*) And againſt the Form of the Statute in that Caſe made and provided. Upon this Indictment he hath been arraigned, and thereunto hath pleaded not guilty, and for his Tryal hath put himſelf upon God, and the Country, which Country you are; your Charge is to enquire, Whether he be guilty of the High-Treaſon whereof he ſtands indicted, or not guilty; if you find him guilty, you are to enquire what Goods and Chattels, Lands and Tenements he had at the Time of the High-Treaſon committed, or at any Time ſince; if you find him not guilty, you are to enquire if he fled for it? if you find that he fled for it, you are to enquire of his Goods and Chattels, as if you had found him guilty; if you find him not guilty, nor that he did fly for it, you are to ſay ſo, and no more, and hear your Evidence.

Mr. *Mountague.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury; This is an Indictment of High-Treaſon, that is brought againſt Sir *John Freind*, the Priſoner at the Bar, for aſſociating with, and aiding the King's Enemies, with a Deſign to procure an Invaſion from *France*, and to raiſe a Rebellion within this Kingdom, and this was to depoſe the King, and to reſtore the late K. *James*; and in order to the Effecting theſe his wicked Purpoſes, the Indictment ſets forth, That the firſt of *July* laſt, he did meet, and conſult, and agree with one Mr. *Charnock*, (a Gentleman ſince tryed, convicted and attainted of High-Treaſon) how they ſhould procure an Army from *France*, to come and invade this Kingdom: And ſhould raiſe a ſufficient Number of Men, to facilitate the Landing of the *French*; and the Indictment particularly charges the Priſoner at the Bar, with ſending Mr. *Charnock* into *France*, to the late King *James*, to acquaint him with the Deſign, and to deſire him to procure a great Number of Forces from the *French* King, to come here, and land within this Kingdom: And the Indictment does likewiſe charge him with procuring, and receiving a Commiſſion from the late King *James* to conſtitute him, the Priſoner at the Bar, a Colonel of Horſe; and likewiſe with laying out and expending, and paying ſeveral Sums of Money in liſting and keeping Soldiers, and Men in pay under him, which were to be in his Regiment; and with laying out ſeveral Sums of Money in buying Arms, and Horſes for this Invaſion and Rebellion that was thus deſigned to be made, and raiſed within this Kingdom. To this, Gentlemen, he has pleaded not Guilty; we ſhall call our Witneſſes, and prove the Fact, and we do not doubt but you will find him ſo.

Freind. Prove this if you can, it cannot be.

Mr. *Att. Gen.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury; the Priſoner at the Bar,

Sir *John Freind*, ſtands Indicted of High-Treaſon, in Compaſſing, and Imagining the Death of the King, and likewiſe in Adhering to the King's Enemies.

Gentlemen, the Overt-Acts laid in the Indictment to prove this Treaſon, are theſe.

That the Priſoner at the Bar, did accept a Commiſſion from the late King *James*, to raiſe a Regiment of Horſe in this Kingdom, in order to joyn with the *French*, when they Invaded it; and there were ſeveral Meetings, and Conſultations between him, and ſeveral others whom you will hear named by the Witneſſes, upon which it was Reſolved to ſend a Meſſenger, one *Charnock*, into *France*, to deſire the late King *James*, to prevail with the *French* King to get a Number of Men, in all 10000, with an Aſſurance, that they would Aſſiſt him with a Number of Horſe when he came: And in Purſuance of this Deſign, the Priſoner at the Bar did raiſe Men, and pay ſome Sums of Money for their Subſiſtence, and Liſted, and had them in Readineſs; and provided Horſes and Arms. Theſe are the Overt-Acts laid in the Indictment; the Evidence that will be produc'd to you, to prove this Treaſon, and theſe Overt-Acts, will be in this Manner.

Gentlemen you will ſee by the Evidence, that there has been a Deſign and Conſpiracy on Foot for ſeveral Years, to Aſſaſſinate the King's Perſon, and to have an Invaſion from *France* at that Time, by armed Force here to ſubdue this Kingdom. The Priſoner at the Bar, Sir *John Freind*, I think about two Years ago had a Commiſſion ſent him from the late King *James*, to raiſe a Regiment of Horſe: There were ſeveral other Commiſſions ſent likewiſe, but one was ſent to the Priſoner, which he accepted of; and in purſuance of it, he appointed ſeveral Officers, and Liſted ſeveral Men for that Purpoſe, and expended ſeveral Sums of Money for the raiſing, and ſubſiſting of them.

Gentlemen, you will hear that his Lieutenant-Colonel was to be one *Blaire*, and his Major was to be one *Slater*; and this *Slater*'s Father was a Clergy-Man, and he undertook to bring in a Troop of Clergy-Men that had refuſed to take the Oaths. One of his Captains was one *Evans*, one *Richardſon* was another; and there were ſeveral other Officers whom you will hear named by the Witneſſes, that were appointed and ingag'd to make up the Regiment.

Gentlemen, you will hear further by the Witneſſes, that about *May*, or *June* laſt, they having rais'd a conſiderable Number of Men, there were ſeveral Meetings had between the Priſoner at the Bar, and ſeveral other Perſons, in order to ſend ſome Perſon over to get Forces from *France*, to Invade this Kingdom. The firſt Meeting, that you will hear of, was at the *Old King's Head-Tavern* in *Leaden-Hall-Street*, and there were preſent the Priſoner at the Bar, my Lord of *Aylesbury*, my Lord *Montgomery*, Sir *John Fenwick*, Sir *William Perkins*, Mr. *Charnock*, (who was lately Condemned and Executed for the Deſign of Murdering the King) Mr. *Porter*, and one *Cook*. At that Meeting you will hear what their Debates were, and what their Reſolutions: After ſeveral Debates, who they ſhould ſend, they reſolved to ſend Mr. *Charnock*, to go into *France*, to deſire the late King *James* to get 10000 Men of the *French* Troops, to land upon our Coaſts, about 8000 Foot and the reſt Horſe and Dragoons: And they did Impower him in their Names, to aſſure the late King *James*, that they would, when ever he Landed with his *French* Troops, be ready to aſſiſt him with near two Thouſand Horſe among them.

Upon this, Gentlemen, Mr. *Charnock* undertook to go upon this Meſſage: But about a Week after they met again, for he was unwilling to go upon ſuch an Errand, without having a full Reſolution and Aſſurance from theſe Gentlemen that were thus Engag'd, that he might ſatisfie the late King what they would certainly do. So they met again about a Week after, and that was at a Tavern in St. *James*'s-*Street*, near Sir *John Fenwick*'s Lodgings, one Mrs. *Montjoyes*, there was the Priſoner at the Bar, my Lord of *Aylesbury*, and moſt of the ſame Company that were at the Meeting before: And Mr. *Charnock* deſired to know, if they did agree to what had been Propos'd and Reſolv'd on before; for he was unwilling, and did not care to go without a full Aſſurance of the Performance. They did all agree, and deſir'd that he would go with all Speed, and that he ſhould aſſure King *James*, they would be ready to meet him, if they had Notice where he would Land.

Pray, Gentlemen, obſerve the Time when theſe Meetings were. It was in *May* or *June* laſt ſoon after the King was gone to *Flanders*; and they thought this a fit Opportunity, when the King's Forces were drawn out of *England* into *Flanders*, for carrying on the Campaign, then was the proper Time, according as they diſcours'd the Matter, the People being as they ſaid, generally Diſſatisfied, and but few Forces in *England* to oppoſe them.

Mr. *Charnock* accordingly went over into *France*, and about a Month after return'd again, and acquainted them that he had told King *James* their Reſolution, and how they would aſſiſt him, and what they deſired of him, and, in ſhort, had delivered his Meſſage: But that King *James* told him, he thank'd them very much for their Kindneſs and Readineſs to aſſiſt him; but at that Time the *French* King could not ſpare any Forces, nor could it be all that Summer, and ſo there was nothing to be done; and thereupon it reſted till the laſt Winter.

Then, Gentlemen, you will hear that the laſt Winter the Deſign was renewed again, about *January* laſt: For Sir *George Barcley* came over from the late King, being a Lieutenant in his Guards there, and then they entered into a Conſpiracy to aſſaſſinate the King; and that was to be done firſt, to facilitate the Invaſion, which was to follow immediately upon the Execution of the Aſſaſſination: For they thought they cou'd have no Aſſurance of Succeſs in their Invaſion, as long as the King lived; and I hope every one will take Notice, how precious that Life is to us, when it is ſo apparent to all the World, that our Enemies cannot hope for any Succeſs to their Enterprizes and Deſigns to deſtroy us, but by taking that Life away.

Gentlemen, this very Conſpiracy, you will hear the Priſoner at the Bar was acquainted with, and privy to, even this Aſſaſſination; tho' indeed you will hear he did not much approve of it, becauſe he thought it would be a Diſſervice to the late King's Affairs; but he was at ſeveral Meetings with Mr. *Porter*, and Mr. *Charnock*, and Sir *William Perkins*, and ſeveral others that were Conſpirators in that Deſign, and was acquainted with it, as you will hear by the Evidence.

Gentlemen, you will hear further, that about *January* laſt, the Invaſion being intended to be quickly made, the Priſoner at the Bar, Sir *John Freind*

Freind, had frequent Meetings with *Blair*, that was Lieutenant-Colonel, and other Officers, to conſider and prepare how to be in a Readineſs. About that Time the Priſoner at the Bar, Captain *Blair*, and one Captain *Ridley*, met at a Place in *Exchange-Ally*, and there they diſcourſed among one another; and there *Ridley* ſaid there was a conſiderable *Roman-Catholick* that was ſent to King *James*, and he wou'd bring the laſt Orders; and Sir *John Freind* ſaid he knew of it very well, it was ſo, and he hoped he ſhou'd have them brought very quickly.

At another Time, the Priſoner at the Bar, and *Blair* his Lieutenant-Colonel, met at *Jonathans*'s Coffee-Houſe, and the Priſoner took him up in his Coach, and carried him along with him, and there they had a great Diſcourſe of the Affairs of the Regiment. The Priſoner at the Bar, Sir *John Freind*, told *Blair* they muſt be very good Husbands of their Money: For if the Invaſion ſhould miſcarry, he ſhou'd not have Money enough to carry on his Trade, but he would take Care about ſome Officers that had not Money to mount themſelves; but a great many were to prepare for themſelves at their own Charges, and for thoſe that were to be under them. They had likewiſe then ſome Diſcourſe about the *Thoulon* Fleet coming about, and that he thought it not adviſeable till the *Thoulon* Fleet came round. He ſaid he wou'd not put a Foot in the Stirrop till that were done; and that he wou'd keep out of the Way till all was in a Readineſs, and adviſed Captain *Blair* to do ſo too.

Gentlemen, you will find it further proved, that about *May* laſt, the Priſoner at the Bar paid 20*l.* to this Captain *Blair*, who had laid out Moneys in the Affairs of the Regiment, and this was to Re-imburſe him what he had ſo laid out; and it was in this Manner. You have all heard, I ſuppoſe, of one Colonel *Parker*, who being taken upon his coming over from *France*, was a Priſoner in the *Tower*, but made his Eſcape from thence, to which Eſcape the Priſoner at the Bar was privy. This Eſcape coſt 300 *l.* as you will hear, and the Priſoner laid down 100 *l.* of it. But this was to be repay'd him again: But how was it? There was one *Johnſon* a Prieſt, a Conſpirator likewiſe in this Deſign of Aſſaſſinating the King, and he undertook and promiſed, that the late King ſhould pay this 100 *l.* And accordingly one *Piggot* went over into *France*, and had this 100 *l.* paid him by King *James*, to repay it to Sir *John Freind:* But he thought fit to keep the Money, and Sir *John Friend* cou'd not get it of him, and he durſt not ask it, becauſe he knew the Conſideration was not fit to be made Publick. But he told Captain *Blair* I cannot pay you the Money out of my own Pocket; but *Piggot* ought to pay me, who has received this Money of mine. If you will prevail with *Johnſon*, who got this Money from the late King to be paid to *Piggot*, to perſuade *Piggot* to pay 20 *l.* I will allow it in Part of the Money he is to pay me, and you ſhall have it. Captain *Blair* did prevail with *Johnſon* to perſuade *Piggot* to pay this 20 *l.* and Captain *Blair* did receive it, and Sir *John Friend* did agree to allow it to *Piggot* out of the 100 *l.* due to him.

Gentlemen, at another Time, about *Chriſtmas* laſt, there was another 20 *l.* paid by Sir *John Freind*'s Order and Direction, by *Piggot* to *Blair* upon the ſame Account, by the Mediation of *Johnſon* the Prieſt; and this was paid and allow'd as being laid out in the Affairs of the Regiment before, he being intruſted as Lieutenant-Colonel, to look after the Regiment.

Gentlemen, I have now open'd the Subſtance of the Evidence; the Particulars you will hear from the Witneſſes themſelves. If I have open'd it amiſs, you will take Care, when the Witneſſes are produc'd, to obſerve what they ſay, who will tell you what really was done, and will rectifie any Miſtake of mine: For I wou'd have no ſuch Miſtake do the Priſoner at the Bar any Prejudice.

Mr. *Sol. Gen.* Gentlemen, Mr. Attorney has open'd the Nature and Courſe of our Evidence ſo fully, that I ſhall make no Repetition of any of the Particulars; but call our Witneſſes and prove it in Order as it hath been open'd. And firſt, we call Captain *George Porter*, (who came in.)

Freind. My Lord, before Mr. *Porter* is ſworn, I deſire to know whether he is a Roman Catholick, or a Proteſtant?

L. C. J. Why do you deſire that? Is not a Roman Catholick a Witneſs? Though he be a Roman Catholick, that's no Objection to his being a Witneſs.

Freind. My Lord, I deſire to ask him the Queſtion, whether he be a Roman Catholick or no?

L. C. J. Sir *John Friend*, it is not a proper Queſtion.

Freind. My Lord, a Man ought to know what Profeſſion they are of, that are Witneſſes againſt him for his Life.

L. C. J. Will you ask him whether he be a Chriſtian or no?

Freind. My Lord, I deſire to know whether he be a Papiſt or a Proteſtant.

Mr. *At. Gen.* If Mr. *Porter* be willing to tell you he may; but it is not a proper Queſtion.

L. C. J. Eſpecially before he is Sworn; he is not Entitled to ask any Queſtions whatſoever, till he be Sworn.

Freind. My Lord, I beſeech you let me have the Queſtion anſwered.

Mr. *Sol. Gen.* Sure you don't conſider, that the Anſwer to that Queſtion is to accuſe himſelf; you don't conſider the Conſequences of it.

Freind. Pray, my Lord, let me have my Right.

L. C. J. The Queſtion is whether it is your Right or no.

Freind. My Lord, I would not trouble the Court if I cou'd help it, but my Life and All is at Stake, and I muſt make the beſt Defence I can.

L. C. J. Indeed your Queſtion is improper in itſelf; but if he have a Mind to tell you, and anſwer voluntarily, he may.

Freind. I humbly beg your Lordſhip that he may anſwer the Queſtion.

L. C. J. I cannot ſee you have a Right to have this Queſtion anſwered you.

Freind. Mr. *Porter*, you are a Gentleman, and I deſire you will anſwer whether you be a Roman Catholick or not.

Mr. *Sol. Gen.* Before he does anſwer, I deſire he may be acquainted with the Danger: He was born a Proteſtant, no doubt, and then turning Roman Catholick, he ſubjects himſelf to a very ſevere Penalty.

L. C. J. Sir *John Freind*, I told you your Queſtion was not proper to be ask'd.

Friend. Pray, my Lord, let him anſwer the Queſtion, it will be of great Uſe to me in my Tryal; pray let me have my Right.

L. C. J. You ſhall have all the Right done you that can be; but in the firſt Place, if a Man be a Roman Catholick, notwithſtanding his Religion, he

is a good Witneſs: And beſides that, it may be his anſwering the Queſtion may ſubject him to ſeveral Penalties; at leaſt he is liable to Proſecution upon ſeveral Acts of Parliament that are very penal; and therefore it is by no Means to be ask'd.

Freind. My Lord, I pray only that he may anſwer the Queſtion.

L. C. J. No Man is bound to anſwer any Queſtion that tends to make him accuſe himſelf, or ſubject him to any Penalties.

Fr. My Lord, I do with Submiſſion deſire it, and it is no great Matter for him to ſay whether he be Papiſt or Proteſtant.

L. C. J. If it be no great Matter, then why do you inſiſt upon it? But perhaps it may be a great Matter in the Conſequence of it to him; a Man therefore is not obliged to anſwer any ſuch Queſtions.

Fr. I beſeech your Lordſhip, let him anſwer the Queſtion.

L. C. J. You have my Opinion; if you will, you ſhall have the Opinions of the reſt of the Judges: My Opinion is, That the Queſtion ought not to be anſwer'd.

L. C. J. *Treby.* Since your Lordſhip's Pleaſure is, That we ſhould deliver our Opinions upon this Point, I muſt declare, I am of the ſame Opinion, That no Man is bound to anſwer any Queſtions that will ſubject him to a Penalty, or to Infamy. If you ſhould ask him, whether he were a Deer-ſtealer, or whether he were a Vagabond, or any other Thing that will ſubject him to Puniſhment, either by Statute or by Common-Law, as whether he be guilty of a Petty Larceny, or the like, the Law does not oblige him to anſwer any ſuch Queſtions.

Fr. Well, I hope the Jury will conſider it, that he will not anſwer the Queſtion; and therefore they are to take it for granted that he is ſo.

L. C. J. *Treby.* And now to this preſent Purpoſe, to ask a Man whether he be a *Popiſh* Recuſant, is to ſubject him to Danger: For when you ask him that Queſtion, if he were not bred up in that Religion, then for him to own himſelf of that Religion now, is to own as great a Crime as that you are charged with. If it were not ſo, but he was always bred in that Religion, yet there are very great Penalties that he is ſubject to, as, the Confiſcation of two third Parts of his Eſtate, and ſeveral other Things that he may be liable to, if he ſhould diſcloſe that upon his Anſwer to the Queſtion, which without this Diſcovery could not be prov'd perhaps. We muſt keep the Law ſteady and even between the Priſoner and the Witneſs.

Mr. Juſtice *Nevil.* I am of the ſame Opinion, it does ſubject him to a Penalty; and unleſs he will voluntarily anſwer it of himſelf, I think it cannot be demanded of him: For he may ſubject himſelf to a Proſecution by it.

Mr. Juſt. *Rokeby.* I think, it is not a Queſtion that can of Right be impoſed upon him; he may anſwer it, if he will; but he is under no Obligation to anſwer it, becauſe it may tend to accuſe himſelf of a Crime for which he may be proſecuted, and likewiſe will ſubject him to other Penalties, which the Law cannot compel him to ſubject himſelf to.

Then Captain Porter *was ſworn.*

Freind. I hope, Gentlemen of the Jury, you'll conſider this.

Mr. *Soll. Gen.* Mr. *Porter*, do you know Sir *John Freind*, the Priſoner at the Bar?

Capt. *Porter.* Yes, Sir.

Mr. *Sol. Gen.* Pray then will you give my Lords and the Jury an Account what Meetings you have had with him, where thoſe Meetings were, and when, and what paſt between you, about inviting the *French* over hither, or for a Riſing here.

Capt. *Porter.* My Lord, about the latter End of *May* laſt, or the Beginning of *June*, we had two Meetings, one was at the *King's-Head* in *Leaden-hall-ſtreet*, the other at Mrs. *Mountjoy*'s in St. *James's ſtreet*. At the firſt Meeting there were preſent my Lord of *Aylesbury*, my Lord *Montgomery*, Sir *John Freind*, Sir *William Perkins*, Sir *John Fenwick*, Mr. *Cook*, Captain *Charnock*, and my ſelf; after Dinner Mr. *Goodman* came in: Now at both thoſe Meetings it was conſulted of, and agreed, to ſend Captain *Charnock* into *France* to King *James*, to deſire him to borrow of the *French* King 10000 Men to come over hither, 8000 Foot, 1000 Horſe, and 1000 Dragoons. Captain *Charnock* ſaid, He did not care to go upon a fooliſh Meſſage, and therefore deſir'd to know what they would have him to acquaint King *James* with, and aſſure him of. They all agreed to meet the King, whenever they had Notice of his Landing, with a Body of 2000 Horſe; of which every one in particular was to bring their *Quota* where-ever he would appoint.

Mr. *Attorn. Gen.* When was the ſecond Meeting?

Capt. *Porter.* That was at Mrs. *Mountjoy*'s.

Mr. *Att. Gen.* But I ask you when it was? how long after the firſt?

Capt. *Port.* I believe it was about a Fortnight after, or ſo.

Mr. *Att. Gen.* What was that Meeting for?

Capt. *Port.* The ſecond Meeting was to confirm the firſt. Capt. *Charnock* informed me, that he was to go within 3 or 4 Days, and therefore deſir'd to have a Meeting before he went.

Mr. *Att. Gen.* What Diſcourſe was there at that ſecond Meeting? What Occaſion was there for it?

Capt. *Port.* Capt. *Charnock* deſired the Meeting once more before he went, to ſee whether we all kept our Reſolution.

Mr. *Soll. Gen.* Pray, what do you know of Sir *John Freind*'s Agreeing to raiſe a Regiment of Horſe?

Capt. *Port.* I know nothing of that Matter, but what I have heard ſeveral People talk; but I have heard him ſay he would be as ready as any Man, whenever the King came: And I have heard from Captain *Charnock*, and from Sir *William Perkins*, that he had a Commiſſion to be a Colonel of Horſe.

Mr. *Att. Gen.* Pray, Sir, upon that ſecond Meeting, who were preſent?

Capt. *Port.* I told you, Sir, the Priſoner at the Bar was preſent at both Meetings.

Mr. *Sol. Gen.*. Who elſe were there?

Capt. *Port.* My Lord of *Ailesbury*, Sir *William Perkins*, Capt. *Chernock*, and I cannot tell whether my Lord *Montgomery* and Mr. *Goodman* were there; Mr. *Cook* and my ſelf were there, but the Priſoner at the Bar I am ſure was there.

Mr. *Soll. Gen.* Pray Capt. *Porter*, will you remember and recollect your ſelf, who were at the firſt Meeting?

Capt. *Port.* I have named them already, Sir.

Mr. *Soll. Gen.* Name them again then.

Capt. *Port.* My Lord of *Ailesbury*, my Lord *Montgomery*, Sir *John Freind*, Sir *William Perkins*, Sir *John Fenwick*, Captain *Charnock*, Mr *Cook*, and my ſelf; we dined there, and after Dinner Mr. *Goodman* came in.

Mr.

Mr. *Att. Gen.* Pray, Sir, when did you ſee Mr. *Charnock* after this, and what Diſcourſe had you with him about his Journey and the Succeſs of it?

Capt. *Port.* I never ſaw him till three or four Days after our Riot Buſineſs in *Drury-lane*, upon the Account of which I had been a Priſoner in *Newgate*.

Mr. *Att. Gen.* Well, and what did he ſay to you?

Capt. *Port.* He told me that he had been in *France*, but that King *James* told him, the *French* King could not ſpare ſo many Men that Year; and withal, that he had been with Sir *John Freind*, and the ſeveral other Perſons, with Meſſages from the King, but I do not know whether he had been there or no, only as he told me, that he had been, and brought that Anſwer.

Mr. *Att. Gen.* Pray now tell us, what other Meetings you have had about this Matter this Winter.

Capt. *Port.* I was once with Sir *George Barclay* and Sir *John Freind*, at the *Nag's Head* in St. *James's ſtreet*; I cannot tell what Diſcourſe they had, they whiſpered among themſelves.

Mr. *Att. Gen.* Who elſe was there?

Capt. *Port.* There was Sir *George Barclay*, Sir *William Perkins*, my ſelf, Mr. *Ferguſon*, and one *Humes*.

L. C. J. Where was that do you ſay?

Capt. *Port.* At the *Nag's Head* in St. *James's-ſtreet*.

Mr. *At. Gen.* Was there any Body elſe there that you can remember?

Capt. *Port.* Captain *Charnock* came in after Dinner, but I cannot ſay he din'd there.

Mr. *Att. Gen.* And who elſe do you remember?

Capt. *Port.* There came in one *Harriſon* after Dinner; he is a reputed *Romiſh* Prieſt, and goes by the Name of *Johnſon*.

Mr. *Mountague.* Pray, Capt. *Porter*, what was that Meeting for?

Capt. *Port.* They had ſeveral Whiſperings among themſelves, but what they diſcourſed of I cannot tell.

Mr. *Mountague.* Pray, did Sir *John Freind* ſay any Thing that you heard at that Meeting.

Capt. *Port.* Sir *George Barclay* did ſay, That ſome People that were not ſo violent had written over into *France* to ſtop this Buſineſs; upon which ſaid I, I hope you will have no Letter to Night. Upon which Sir *John Freind* ſaid, Is there any Thing that is hid behind the Curtain? If there be, I am not fairly dealt withal; I will proceed no further.

Mr. *At. Gen.* If Sir *John Freind* has a Mind to ask him any Queſtions, he may.

L. C. J. Pray, Capt. *Porter*, let me ask you this Queſtion, Did all that were preſent at the firſt Meeting, at the *King's-head* in *Leadenhall-ſtreet*, agree to ſend Mr. *Charnock* into *France* to the late King?

Capt. *Port.* Yes, my Lord.

L. C. J. All of them?

Capt. *Port.* Yes; we deſir'd Capt. *Charnock* to anſwer to the King for us that we would meet him at the Head of 2000 Horſe.

L. C. J. Did Sir *John Freind* agree to it?

Capt. *Port.* Yes, I do poſitively affirm he did.

L. C. J. Then at the ſecond Meeting, which, you ſay, was at Mrs. *Mountjoy*'s, what was ſaid then?

Capt. *Port.* We did agree all, That Capt. *Charnock* ſhould go on with the Meſſage that was reſolved upon at the firſt Meeting; and we would go on with the Buſineſs, and he ſaid he would go away in two or three Days.

Mr. *Att. Gen.* Will Sir *John Freind* ask him any Queſtions?

Fr. I will only ask him if they have done, whether he has any Thing more to ſay.

Capt. *Port.* No, Sir.

L. C. J. The King's Council have done with him.

Fr. Then, my Lord, I will hear all they can ſay, and when I have heard the whole Evidence, I ſhall know how to anſwer to it.

L. C. J. Before you go, Captain *Porter*, I would ask you, What Anſwer Mr. *Charnock* brought back from *France*?

Capt. *Port.* I ſay, I did not meet with Captain *Charnock*, till after I came out of *Newgate* for the Riot Buſineſs, and then he told me, he had been there, and he had acquanited the ſeveral Gentlemen with the Meſſages he had brought from King *James*, who thank'd them for their Kindneſſes, but the *French* King could not ſpare ſo many Men that Year.

Mr. *Soll. Gen.* Then the next that we call is *Brice Blair*, (who was ſworn.) Pray, Sir, do you know the Priſoner at the Bar, Sir *John Freind*?

Capt. *Blair.* Yes, my Lord; and I am very ſorry to come on ſuch an Account as I do now againſt him. I am ſorry for it with all my Heart——

Mr. *Att. Gen.* Well, Sir, pray will you give an Account, what you know of Sir *John Freind*'s having a Commiſſion from the late King to be a Colonel of Horſe, and when it was, and how; pray tell my Lord, and the Jury the whole Matter.

Capt. *Blair.* All that I can ſay to this Buſineſs is written in my Paper, and I refer to my Paper.

Mr. *At. Gen.* You muſt not refer to your Paper, Sir, you muſt tell all what you know.

L. C. J. He may look upon any Paper to refreſh his Memory.

Capt. *Bl.* I did ſee the Commiſſion, Sir, and I read it.

Mr. *At. Gen.* What Commiſſion was it, Sir?

Capt. *Bl.* It was a Commiſſion from King *James*, to Sir *John Freind*.

Mr. *At. Gen.* Where did you ſee it, Sir?

Capt. *Bl.* I ſaw it in his Lodgings at the *Strand*, when he lived near the *Strand* in *Surry-ſtreet*.

Mr. *At. Gen.* Who ſhew'd it you?

Capt. *Bl.* He ſhew'd it me himſelf.

Mr. *At. Gen.* What was it for?

Capt. *Bl.* It was for Raiſing a Regiment of Horſe.

Mr. *At. Gen.* When was it that you did ſee it? How long ago was it?

Capt. *Bl.* It is well near two Years ago, or thereabouts, as I remember.

Mr. *At. Gen.* Who was to have been Colonel of that Regiment.

Capt. *Bl.* He was nominated to be Colonel of it himſelf in the Commiſſion.

L. C. J. Who was the Commiſſion directed to?

Capt. *Bl.* It was directed to him, to Sir *John Freind*.

L. C. J. Well, and what was done upon it? who were to be the Officers?

Capt.

Capt. *Bl.* He promiſed me to be his Lieutenant Colonel; and I had the ſame from Mr. *Harriſon*, and there were ſeveral Letters that I ſaw, that came from my Lord *Melford* and Secretary *Caroll*, who were with King *James*.

Mr. *At. Gen.* What other Officers were there appointed?

Capt. *Blair.* There was one *Richardſon* was to be one of his Captains, and there was one Mr. *Fiſher* was to be another, and one *Hall* another; *Fiſher* was to be his eldeſt Captain, and one Capt. *Evans* was to be his Captain Lieutenant, and one Captain *Vernatti* was to be another.

Mr. *At. Gen.* Do you remember who was to be his Major?

Capt. *Bl.* No, Sir, I think I cannot be poſitive as to that. I ſpoke to Capt. *Barneſly*, that had been a Lieutenant in King *James*'s Service, to be a Lieutenant, and ſometimes he accepted, and ſometimes he refuſed it.

Mr. *At. Gen.* Pray, what did you do as Lieutenant Colonel upon this Matter?

Capt. *Bl.* I endeavour'd all I could to get Officers for them; and to raiſe Troops. I endeavour'd to get what Men I could my ſelf.

Mr. *Soll. Gen.* Pray what did you do? what Officers did you procure for him?

Capt. *Bl.* I told you *Vernatti* and *Fiſher*, and one Mr. *Hall* that lives at *Deal*.

Mr. *At. Gen.* What Troops did you get under you? Did you engage any to ſerve under you?

Capt. *Bl.* What? I my ſelf, Sir, Do you mean?

Mr. *At. Gen.* Yes, I do.

Capt. *Bl.* Yes, Sir, I did.

Mr. *At. Gen.* Can you name any of them?

Capt. *Bl.* Yes, Sir, if I make uſe of my Paper.

Mr. *Soll. Gen.* You may make uſe of your Paper to refreſh your Memory.

Capt. *Bl.* There is a Paper of Names that I gave in before the Council.

L. C. J. Mr. *Baker*, have you his Paper there? let him ſee it to refreſh his Memory.

Mr. *Baker.* I have none of the Papers, my Lord, they are all ſent before the Council.

Mr. *At. Gen.* Pray, Sir, can you tell who was to have been your Lieutenant in your Troop?

Capt. *Bl.* One Mr. *Bertram*.

Mr. *Mountague.* You ſay, Sir, you were conſtituted Lieutenant Colonel; pray, who conſtituted you, and made you ſo?

Capt. *Bl.* I had only a Promiſe of it from Sir *John Freind*.

Mr. *At. Gen.* Pray did you lay out any Monies for Sir *John Freind?* or did he ever pay you any Money afterwards?

Capt. *Bl.* Yes, I have had ſeveral ſmall Sums of Money from Sir *John Freind*.

Mr. *At. Gen.* Pray, what was it for?

Capt. *Bl.* It was to drink with the Men that belonged to the Regiment, and encourage them.

Mr. *At. Gen.* Pray did Mr. *Piggott* pay you any Sums of Money? and by whoſe Order?

Capt. *Bl.* Yes, he paid me firſt 20 *l.* and afterwards he paid me another 20 *l.*

Mr. *At. Gen.* By whoſe Order was that, Sir?

Capt. *Bl.* It was by the Order of Sir *John Freind*.

Mr. *At. Gen.* Pray, Sir, how do you know that Sir *John Freind* order'd him to pay it you?

Capt. *Bl.* Becauſe it was the Money that *Piggott* had received to repay Sir *John Freind*, what he had advanced for the furthering of *Parker*'s Eſcape out of the Tower.

Mr. *At. Gen.* How do you know that he advanced any Money for procuring *Parker*'s Eſcape?

Capt. *Bl.* He told me ſo himſelf.

Mr. *At. Gen.* How much did Sir *John Freind* ſay he had advanced for that Purpoſe?

Capt. *Bl.* He told me 100 *l.*

Mr. *At. Gen.* How did he tell you he was to be paid it again?

Capt. *Bl.* He told me, that King *James* ordered the Payment of it at *France*, when *Piggott* went over, which was immediately afterwards: and I had of that, firſt 20 *l.* and afterwards 20 *l.* by the Order of Sir *John Freind*.

M. Soll. Gen. Pray, Sir, did Sir *John Freind* tell you what *Piggott* had received in *France?*

Capt. *Bl.* Yes, he ſaid *Pigott* had received 100 *l.* in *France*; and he did not pay it him, but if I could get 20 *l.* of him, he would allow it.

Mr. *At. Gen.* Pray about what Time was it that the firſt 20 *l.* was received?

Capt. *Bl.* I have ſet it down in my Paper; there it is.

Mr. *At. Gen.* But can't you tell about what Time it was?

Capt. *Bl.* It was about laſt *May*, or *June*, the firſt 20 *l.* was paid.

Mr. *At. Gen.* When was the laſt 20 *l.* paid.

Capt. *Bl.* It was after I was ſick, about *Michaelmas*.

Mr. *Cowper.* Pray, Sir, who was by when the laſt 20 *l.* was paid.

Capt. *Bl.* Mr. *Piggott* paid me the laſt 5 *l.* of it, (for I received it at ſeveral Payments from Mr. *Piggott*) but the laſt 5 *l.* was before Sir *John Friend*) at *Jonathan*'s Coffee-Houſe.

Mr. *Soll. Gen.* Pray do you know any Thing of Sir *John Friend*'s Receiving any Letter from King *James?*

Capt. *Bl.* Yes, he told me he had a Letter from King *James*.

Mr. *Soll. Gen.* How long ago was that?

Capt. *Bl.* Truly, I cannot tell.

Mr. *Soll Gen.* I don't ask you the preciſe Day, but was it within a Twelve Month?

Capt. *Bl.* Yes, I believe it might be thereabouts.

Freind. My Lord, I deſire he may ſpeak out; for I don't hear half he ſays.

L. C. J. Repeat it to him again.

Capt *Bl.* Sir, you told me you had received a Letter from King *James*.

Freind. My Lord, I ſhall anſwer to this all afterwards.

Mr. *Sol. Gen.* Pray, had you at any Time any Diſcourſe with Sir *John Freind* about one *Slater?*

Capt. *Bl.* Yes, I had.

Mr. *Soll. Gen.* Pray tell what that was

Capt. *Bl.* He told me he was to bring him in ſeveral Officers; and that he had intended to make two Lieutenant-Colonels, whereof Captain *Slater* was to be one; but when he ſaw I was not ſatisfy'd with that, he ſaid he ſhould command a Troop of Non-ſwearing Parſons, and they ſhould be an independent Troop.

Mr. *Sol. Gen.* You ſay that *Slater* was to command that Troop.

Capt. *Bl.* Yes, and it was to be an independant Troop.

Mr. *At. Gen.* I think you ſay that he and you met at *Jonathan*'s Coffee-houſe.

Capt. *Bl.* Yes, we did ſo.

Mr. *Att. Gen.* Pray what Diſcourſe had you there?

Capt.

Capt. *Bl.* I called him aside and desired to speak to him; and it was when Mr. *Fisher* told me of this Plot, and desired me to speak to him, a little before this horrible Conspiracy broke out. And I told him what I heard from *Fisher*, and from *Harrison* the Priest about it; and he told me that he had heard of it, and he was afraid it would ruin King *James*, and his Affairs.

Mr. *At. Gen.* What was it that you told him you had heard.

Capt. *Bl.* This last horrid Thing, the Conspiracy against the King's Life.

Mr. *Cowper.* Was it before it broke out that he told you he knew of it?

Capt. *Bl.* Yes, it was shortly before it broke out.

Mr. *At. Gen.* Pray, did you meet with him again? and did he carry you in his Coach at any Time?

Capt. *Bl.* Yes, he did, Sir.

Mr. *At. Gen.* What Discourse had you then, when you was with him in the Coach?

Capt. *Bl.* He took me in his Coach to St. *Martins le grand*, and, says he, I will do nothing till the *Thoulon* Fleet meet with the *Brest* Fleet; at that Time perhaps we shall be all taken up; but, says he, you may sculk about the Town better than I can; and therefore I'll keep my self private; and we must be as good Husbands of our Money as we can; for Money will be very scarce. What do you think you shall need, says he? Truly, Sir, says I, I can't tell; that must be according as I am mounted. For I found I had a few indigent Officers at that Time.

Mr. *At. Gen.* Pray, what were you to do?

Capt. *Bl.* We were to sculk up and down; and when he asked me, what Money I should need, I told him I could not tell; for there were several indigent Officers, most of which begg'd at that Time; and here is a Letter that I had from Sir *John Freind*, to confirm my Receiving Money from him.

Mr. *Att. Gen.* Is that Sir *John Friend*'s own Hand?

Capt. *Bl.* Yes, Sir, it is.

Mr. *At. Gen.* Then put it in, give it hither.

(*It was delivered in to the Attorney General.*)

Mr. *Soll. Gen.* Pray, what have you heard Sir *John Freind* say of Sir *John Fenwick*'s being concerned in this Matter?

Capt. *Bl.* I heard him say, that he believed, that he should command the Party that he was engaged in, and that Sir *John Fenwick* had Four Troops of Horse, that lay near *Reading* to be employ'd.

Mr. *Soll. Gen.* For what Purpose?

Capt. *Bl.* To be in Readiness upon the Descent.

Freind. Gentlemen of the Jury, I can't hear a Word, I hope you hear.

Mr. *At. Gen.* Pray, Sir, look upon that Letter; you say you had that Letter from Sir *John Freind*, pray who is that *H* that is mentioned in it?

Capt. *Bl.* It means *Harrison*, alias *Johnson*, the Priest.

Mr. *At. Gen.* Pray, what was that Letter written for?

Capt. *Bl.* It was about the last 20 *l.* that I was to receive from *Piggott*.

Mr. *At. Gen.* Is that Sir *John Freind*'s Hand?

Capt. *Bl.* Yes, I think so.

Mr. *At. Gen.* Have you seen Sir *John Freind* write?

Capt. *Bl.* Yes, I have seen him write, and I think it is the same Hand.

Mr. *At. Gen.* Then we desire it may be read.

Then a Jury-man desired he might be asked, Whether he saw Sir John Freind *write that Letter?*

L. C. J. What say you, did you see him write that Letter?

Capt. *Bl.* No, my Lord; it came to my Lodging.

Mr. *At. Gen.* Did ever he own to you he had writ you such a Letter?

Capt. *Bl.* Yes, he did.

Mr. *At. Gen.* Pray, let it be read; read it all, for it is but short.

Cl. *of Ar.* (Reads.)

For Captain *Blair*, These.

SIR, Tuesday *Morning.*

YOU may much wonder you have not received an Answer of yours before now: I have been afflicted with the Gout in my Hand and Foot, that I have not been able to put Pen to Paper; (I thank God) I am somewhat better, and do hope to be in London *a* Thursday *next, about the Hour of Twelve, at* Jonathan's *Coffee-House, if the Weather do not prevent me; if it do, I shall not come before* Monday *following: I do desire you for to meet me about that Hour; for it is not convenient for to write a Note to Mr.* H. *for some Reasons I shall give you, when I see you. I wish you good Health. I am,*

SIR,

Your Affectionate Friend, and Servant,

John Freind.

Jury-man. Pray, Sir, what Date is it of?

Cl. *of Arr.* It has no Date but *Tuesday* Morning.

Mr. *At. Gen.* Did Sir *John Freind* meet you on the *Thursday*, according to this Letter?

Jury-man. My Lord, I desire he may be asked, How this Letter came to him, whether by the Penny Post, or how?

Capt. *Bl.* I don't know, I believe it was by a Porter: It came first to me when I was in Bed, and my Wife brought it up to me.

Mr. *At. Gen.* Pray, Sir, answer my Question. Did Sir *John Freind* afterwards meet you at *Jonathan*'s Coffee-House, according to this Letter?

Capt. *Bl.* Yes, Sir, he did.

Mr. *At. Gen.* And did you there speak about the Business that's contained in that Letter?

Capt. *Bl.* Yes, Sir, and accordingly I had the Order.

Mr. *At. Gen.* What Order?

Capt. *Bl.* An Order for the 20 *l.*

Mr. *Soll. Gen.* Capt. *Blair*, do you remember that you dined with Sir *John Freind*, near the *Exchange*, in *January* last?

Capt. *Bl.* Yes, I think I did, Sir.

Mr. *Soll. Gen.* What Discourse was there between you then? Who was with you besides you Two?

Capt. *Bl.* I must refer that to my Paper.

Mr. *Soll. Gen.* Well then, what Discourse was between you and Sir *John Freind* there?

Capt. *Bl.* It is down in my Paper.

Mr. *Sol. Gen.* Do you know one Captain *Ridley*?

Capt.

Capt. *Bl.* Yes, Sir.

Mr. *Solt. Gen.* Was he at any Time preſent, when you and the Priſoner at the Bar were together?

Freind. My Lord, I cannot hear a Word he ſays.

L. C. J. Here is a great Noiſe indeed, and he it ſeems is not well, and ſpeaks but low; pray, order Silence in the Court. (*Which was done by Proclamation.*)

L. C. J. Look ye, Sir *John Freind*, he ſpeaks of a Letter that you ſent to him that bears Date ſome *Tueſday* Morning, that you would be in Town, and meet him at *Jonathan*'s Coffee-Houſe upon *Thurſday* following, at Twelve a Clock; and that Letter was read, and he ſays he met you accordingly, and there was Order taken for the Payment of the laſt 20 *l.* This is that he ſays; Did you hear it?

Freind. No, my Lord, I did not.

L. C. J. That is what he ſaid. Then go on: You ſay he met you at *Jonathan*'s Coffee-Houſe according to that Letter.

Capt. *Bl.* Yes, my Lord.

L. C. J. What was done there, when you met?

Capt. *Bl.* Nothing but the Order.

L. C. J. Who did he give the Order to?

Capt. *Bl.* He gave the Order to *Harriſon*.

L. C. J. Why, was *Harriſon* there?

Capt. *Bl.* Yes, he came there before I came away.

L. C. J. But you ſay he gave the Order to *Harriſon?*

Capt. *Bl.* Yes, my Lord.

L. C. J. What was the Order for?

Capt. *Bl.* It was to pay me that Money.

L. C. J. What Money was that?

Capt. *Bl.* It was the laſt 20 *l.*

Mr. *Att. Gen.* Was the 20 *l.* paid you afterwards?

Capt. *Bl.* Yes, Sir.

Mr. *At. Gen.* Who paid it?

Capt. *Bl.* Mr. *Piggott*; he paid me the laſt 5 *l.* of it before Sir *John Freind*'s Face.

L. C. J. Was this the firſt 20 *l.* or the laſt, do you ſay?

Capt. *Bl.* It was the laſt.

L. C. J. What was this Money paid for?

Capt. *Bl.* I believe it was to ſupport me to go about the Buſineſs of the Regiment.

L. C. J. You believe; that's not enough: But are you ſure it was ſo?

Capt. *Bl.* Yes, I am ſure it was for that.

L. C. J. Had you ever demanded Money of him before?

Capt. *Bl.* Yes, I had.

L. C. J. For what was that Money that you demanded?

Capt. *Bl.* It was to drink with the Men that were brought in; to cheriſh, and keep them together.

L. C. J. To what Purpoſe were thoſe Men kept together?

Capt. *Bl.* They were for his Regiment.

Mr. *Soll. Gen.* Pray, had Sir *John Freind* any Occaſion to pay you any Money upon any other Account?

Capt. *Bl.* No, Sir, not out of that 100 *l.*

Mr. *Cowper.* You do not underſtand the Queſtion. Had you any Dealings with Sir *John Friend*, but about this Matter concerning the Regiment?

Capt. *Bl.* No, never in all my Life.

Mr. *Att. Gen.* Well, Sir, do you remember your Meeting with Sir *John Friend* when one *Ridley* was there?

Capt. *Bl.* Yes, it was at the Chop-houſe.

Mr. *At. Gen.* Give an Account what paſs'd there.

Capt. *Bl.* Mr. *Ridley* ſaid, A Gentleman was lately gone over to *France*, about Ten Days before; and Mr. *Ridley* ſaid, he was a very ſenſible Gentleman, a Roman Catholick, an ancient Man, about Threeſcore Years of Age; what he was, I can't tell: He ſaid, he believed he ſhould bring the laſt Orders.

Mr. *At. Gen.* What did Sir *John Freind* ſay?

Capt. *Bl.* Sir *John Freind* ſaid, He knew of it; but he named no more.

Mr. *Soll. Gen.* What was the Effect of thoſe Orders, as you underſtood?

Capt. *Bl.* I cannot tell that, Sir, indeed.

Mr. *Soll. Gen.* Did you know Mr. *Charnock?*

Capt. *Bl.* Yes, Sir, I did.

Mr. *Sol. Gen.* What do you know of his going to *France*.

Capt. *Bl.* I met him upon the *Exchange* the laſt Summer, and I told him, I expected not to have ſeen him here at that Time, I thought he had been abroad; he told me he was come from *France*, but who ſent him I cannot tell, I do not know upon my Life.

Mr. *Sol. Gen.* Pray, what has Sir *John Freind* ſaid to you about *Ferguſon?* Whether was not he to have been an Officer in his Regiment?

Capt. *Bl.* No; but Sir *John Freind* ſaid, he would join, and Mr. *Ferguſon* himſelf has told me ſo.

M. *At. Gen.* When did he tell you ſo?

Capt. *Bl.* A good while ago.

Mr. *At. Gen.* How long ago?

Copt. *Bl.* Two Years ago and above.

Mr. *Soll. Gen.* Did Sir *John Freind*, tell you any Thing about *Ferguſon*, that he would bring in any Men?

Capt. *Bl.* Yes, he ſaid he would bring in a great many.

Mr. *At. Gen.* Will the Priſoner ask him any Queſtions?

L. C. J. Sir *John Freind*, will you ask this Witneſs any Queſtions?

Freind. Yes, my Lord, I ſhall by and by, if they have done with him.

L. C. J. Yes, they have done with him.

Then he pauſed, and peruſed his Papers.

Freind. Firſt, as to the Commiſſion you charge me with, that I ſhould receive a Commiſſion from King *James*; I deſire to know, whether it was ſigned, or ſealed, and what Date it was.

Capt. *Bl.* I cannot tell the Date indeed, Sir *John*; for I never thought to come here upon ſuch an Account as this: But I think it was in Paper, ſigned above *James Rex*, and below, By his Majeſty's Command, *Melford*; and a little Seal upon the Margin.

Freind. This is the hardeſt Thing in the World upon a Man; here you have charg'd me with Money to ſubſiſt and encourage Soldiers.

Capt. *Bl.* Yes, Sir.

Freind. I would only ſay this; you were recommended to me for a very honeſt Man, and you have come to me ſeveral Times, and told me, Sir, my Neceſſities are very great, I am ready to ſtarve, I have a great Charge; for God's ſake will you be pleaſed to beſtow ſomething upon me, to relieve my Neceſſities: It's true, I have given you Money ſeveral Times, but I never gave it for any

other

other Uſe but Charity; God knows my Heart. I deſire you, to conſider with your ſelf and anſwer it. There is a God above where you muſt give an Account as well as I, and I hope you will conſider of it. Pray declare the Truth, Whether you have not writ thoſe Lines to me ſeveral Times, that you were ready to ſtarve, and beg'd of me to relieve your Neceſſities?

Capt. *B.* I have ſo, Sir, I acknowledge it.

Freind. Pray take me Right, and was not that Money I gave You, only upon pure Charity?

Capt. *B.* Yes, you did give me Charity, but I had expended ſo much Money in your Buſineſs, that reduced me to that, God knows my Heart. I have laid out many a Pound upon this Affair.

Freind. It is the hardeſt Thing in the World, this is a Roman Catholick too.

Capt. *B.* I am ſure it coſt me many a Pound more than ever I had of you.

Freind. You ſay you Liſted a great many Men, who where the Men? What are their Names? what were they For?

Capt. *B.* I have given a Liſt in of them to the Council.

Freind. Who are they? For God knows I know nothing of them.

L. C. J. If you have a Liſt there, let it be produced.

Capt. *B.* I gave it in to the Council; and Sir *John* I brought in ſeveral Officers to you.

Mr. *At. Gen.* Remember, and name as many as you can.

Capt. *B.* I have named the Officers already.

Mr. *At. Gen.* Name them again.

Capt. *B.* Did not I bring Captain *Fiſher* to you, and did not you promiſe to make him your Eldeſt Captain?

Freind. No, you never did.

L. C. J. Theſe are Queſtions of your own asking, ſo you muſt hear him.

Capt. *B.* I brought Captain *Fiſher* to you, and accordingly we Dined at Captain *Simons*'s, and there was Captain *Ridley*, Mr. *Richardſon*, and Mr. *Fiſher* and you talked together, and yon liſtned to him, and in my own hearing you promiſed he ſhould be eldeſt Captain, upon Condition, that he would bring in a Troop; and this is true ſo help me God.

Freind. Pray, where are your Men? and what are your Men that you Liſted?

Capt. *B.* I never ſpoke of Liſting, I only ſpoke of Encouraging.

Freind. Did not you ſay you had Liſted a great many Men for to be of my Regiment?

Capt. *B.* No, Sir, I did not.

Mr. *At. Gen.* I think you do miſtake, Sir *John* he did not ſay Liſt.

Capt. *B.* I had Money from you upon the Account of Encouraging, and Treating, and Drinking with a great many of the Men: And you ſaid it was impoſſible to keep them together, but that I muſt have Money to Treat them, and Drink with them; but you deſired me to be as good a Husband as I could.

Freind. I never ſaid ſo, theſe are very hard Things upon me.

Capt. *B.* Did not I bring Captain *Cole* and Captain *Neale* to you, and his Brother-in-Law Mr. *Robinſon*, and Mr. *Gellibrand?* and did not we Dine together?

Freind. I know nothing of all this I declare to you.

L. C. J. If you will ask him any more Queſtiſtions, do.

Capt. *B.* I brought thoſe three Gentlemen, and we Dined together.

L. C. J. Where did you Dine then?

Capt. *B.* At *Hackney*, when Sir *John* lived there, at his own Houſe.

Freind. When was it?

Capt. *B.* It is above a Year ago. Pray, Sir *John*, don't think to daſh me out of Countenance, tho' I am very Ill; I ſpeak nothing but the Truth, and therefore I will not be daſht out of Countenance. You know what I ſay to be true; you then drank a Glaſs of Wine to Captain *Cole:* And did not you promiſe him, becauſe he was one of your Mother's Name, that he ſhould have a Place in the Exciſe next one of the Commiſſioners. ſays I, Sir *John*, what will you give me? O, ſays he you ſhall have the Regiment, Man. This was before *Robinſon*, his Mother-in-Law, and Mr. *Gellibrand.*

L. C. J. Who was to have the Place in the Exciſe.

Capt. *B.* Captain *Cole.*

Freind. I know not a Word of all this.

Mr. J. *Rokeby.* Captain *Blair*, be not daſhed, but ſpeak the Truth, and you need fear Nothing.

Capt. *B.* This I ſay, was before Mr. *Robinſon* and Mr. *Gellibrand.*

Freind. I don't know *Gellibrand*, nor none of them.

L. C. J. Was that *Cole* to be any Thing in the Regiment.

Capt. *B.* Yes, he was to have been a Captain, and to bring in a Troop.

Mr. *At. Gen.* Sir *John*, will you ask him any more Queſtions.

Freind. No, I muſt depend upon the Jury, for I cannot remember half what he has ſaid.

Mr. *Sol. Gen.* Do you remember any Diſcourſe between you and him, about ſome briſk Men that were to follow him;

L. C. J. But before you ask him, Mr. Solicitor, we muſt know whether he will ask him any more Queſtions, for he is now his Witneſs. Do you ask him any more Queſtions, Sir *John?*

Freind. I can ask about no more than what I hear.

L. C. J. But ask him what you will.

Freind. My Lord, I have not heard half what he has ſaid, I hope the Jury will take Care in it.

L. C. J. Some Part of it was twice repeated to you.

Friend. As to that my Lord, I would ask him a Queſtion or Two. Was that my Letter?

Capt. *B.* Yes, it was.

Freind. did you ſee me Write it?

Capt. *B.* No, it came to my Hands by a Porter, as I believe, when I was in Bed, my Wife brought it up to me.

Freind. What was that Letter for?

Capt. *B.* In order to pay the laſt 20 *l.* and I did ſee a Return of a Letter that you Writ to King *James.*

Mr. *At. Gen.* Who ſhewed you that Letter to King *James?*

Capt. *B.* He ſhew'd it me himſelf.

L. C. J. How long ago is that?

Capt. *B.* A Year, and a half ago, as near as I can Remember.

L. C. J. Did he ſay any Thing of an Anſwer he had to it.

Capt. *B.* Yes, but I cannot Remember what it was Directly.

Juryman. He was pleaſed to ſay he ſaw a Letter from King *James.*

L. C. J. No, No, Sir, it was a Letter to King *James.*

Juryman. My Lord, I deſire he may be asked, if he knows the Contents of that Letter.

L. C. J. Did you ſee him write the Letter, or did he ſhew you the Letter he had Writ?

Capt. *B.* I did not ſee him write the Letter, I ſee his Hand to the Letter, and he ſhew'd me the Letter, that he ſaid he had written to King *James*; and there is this particular Paſſage to confirm it, it was at Mr. *Piggot's* Mother's Houſe; I dined with him there that Day, and when he ſhew'd me the Letter, I told him I was ſo well pleaſed with the Penning it, that I believed Mr. *Ferguſon* had a Hand in it; and he was very angry, that I ſhould think, he was not able to write, and did not write the Letter himſelf.

Juryman. My Lord, ſince it ſeems, he peruſed the Letter, I deſire he may be asked, whether he can Remember the Contents of that Letter, or any of it?

Capt. *B.* Really, my Lord, I cannot tell that particularly: But I am apt to think it was about the Buſineſs of the King, and about the Regiment.

L. C. J. Can you tell truly any the Contents of it?

Capt. *B.* That it was about the Affairs of the Regiment, I am poſitive.

Mr. *Cowper.* My Lord, before he goes away (that the Jury may not go away with a Miſtake,) I deſire it may be Obſerved, he does not ſay, he ſaw Sir *John Friend*, write the Letter.

L. C. J. No, No, but that he ſhew'd it him himſelf.

Freind. When was that Letter writ that I ſhew'd to you?

Capt. *B.* It was about a Year and a Half ago.

Freind. I declare in the Preſence of God, I never Writ one.

Juryman. He ſayes you ſhew'd him the Letter, therefore it is very fit we ſhould ſee it.

L. C. J. Nay, Sir, you muſt not talk to the Priſoner; if you have any Queſtions to ask, you muſt propoſe them to the Court.

Freind. I declare in the Preſence of God, I never writ any ſuch Letter, as this he now charges me with.

Capt. *B.* And I declare in the Preſence of God you ſhew'd me ſuch a Letter.

Freind. Yes, you may, but I am a Proteſtant, you are a Papiſt, you may do any Thing.

Mr. *At. Gen.* You may ask any Queſtions of him, Sir *John*, but you muſt not rail at the Witneſs.

Freind. But when you charge me with the writing of a Letter to King *James*, I ought to ſpeak to it. It ſeems I am not to ask whether he is a *Papiſt.*

Mr. *At. Gen.* He ſays you ſhew'd him a Letter, that you ſaid you had Written to King *James*, which he Read, and liked the Penning of it ſo well, that he Thought *Ferguſon* had a Hand in it; at which you were offended that he ſhould think you could not write ſuch a Letter your ſelf.

Freind. I declare in the Preſence of God I never writ any ſuch Letter.

Mr. *At. Gen.* I ſuppoſe you'l diſprove him by and by.

Freind. I can have no Witneſſes to this Matter.

Mr. *At. Gen.* And you can't expect your own Denyal ſhould go for Proof. If you will ask him no more Queſtions, let him go down, and eaſe himſelf.

Freind. He muſt not be askt whether he is a *Papiſt*, but I hope you will take Notice, Countrymen, that theſe Witneſſes are *Papiſts*, and they think they merit Heaven by ſwearing againſt Proteſtants, whom they call *Hereticks.*

L. C. J. Indeed, Sir *John*, I don't hear you: Pray ſpeak ſo loud that the Court may hear what you ſay.

Freind. I will my Lord; I ſay he is a Roman Catholick, and I have Witneſſes to ſwear he is ſo, and Deſire I may prove that he is a Roman Catholick, and therefore he is not to be heard againſt a Proteſtant.

Mr. *At. Gen.* Then the next Witneſs we call is Mr. *Bertram*, (who was Sworn.)

Friend. But I have not done with Mr. *Porter.*

L. C. J. Well you ſhall have him by and by, let the King's Council go on in their Method.

Mr. *At. Gen.* Pray, Mr. *Bertram* do you know Captain *Blair* that was here juſt now?

Bertram. Yes.

Mr. *At. Gen.* How long have you Known him.

Bertram. About Eight or Nine Years.

Mr. *At. Gen.* What Diſcourſe have you had with him about any Regiment that was to be raiſed for the late King *James.*

Bertram. Captain *Blair* had told me for two Years laſt paſt that Sir *John Friend* was to have a Regiment of Horſe, that were to be raiſed, and lye poſted about the Town, and Captain *Blair* was to be Lieutenant-Colonel to the Regiment, and I was to be Lieutenant to Captain *Blair* in his Troop.

Mr. *At. Gen.* My Lord, we only call him to Confirm what Captain *Blair* has ſaid that he was to be his Lieutenant, and that this was talked of two Years before. Did he tell you Sir *John Freind* was to have a Regiment of Horſe?

Bertram. Yes Sir, and he obliged me to bring in as many Men, and Horſes as I could into this Regiment, and he told me Captain *Fiſher*, Captain *Varnatti*, and Captain *Cole* were to be Captains in the Regiment.

L. C. J. And what were you to be?

Bertram. A Lieutenant.

L. C. J. To whom?

Bertram. To Captain *Blair*; he has told me ſo ſeveral Times, and talked to me about the Affairs of the Regiment; a great deal that I cannot now Remember, relating to that Purpoſe.

L. C. J. This is no Evidence againſt Sir *John Freind*; he is only called to confirm the Teſtimony of Captain *Blair*; that *Blair* ſpoke of it long before he gave his Evidence, and ſo it is not a new Thing now invented by him.

Mr. *Sol. Gen.* Sir *John Freind* did ask what Men he had Ingaged, and among others he named this Mr. *Bertram* to be his own Lieutenant, and he now tells you *Blair* promiſed him ſo to be two Years ago, and then told him Sir *John Friend* was to have a Regiment.

Friend. Do you know me Sir?

Bertram. No, Sir, I never was in your Company in my Life, I only tell you what I have heard from Captain *Blair*, I do not know that ever I ſaw your Face.

L. C. J. His Evidence Sir *John Freind* hurts you not, as to any particular Thing that he knows againſt you, he is only brought to confirm what

Captain

Captain *Blair* ſaid, that he was to be his Lieutenant in his Troop.

Mr. *At. Gen.* Then, my Lord, we leave it here.

L. C. J. Look ye Sir *John Freind*, the King's Council have done, and now you may ſpeak, and ſay what you have a Mind to ſay in your own Defence.

Mr. *J. Rokeby.* And call what Witneſſes you have a Mind to call.

Freind. My Lord, in the firſt Place, I deſire to know whether Mr. *Courtney* is come.

L C. J. Your Sollicitor can beſt tell that.

Freind. I perceive he is not come.

L. C. J. Well go on: I ſuppoſe he will not be long before he comes, we will ſtay for him.

Freind. My Lord, I muſt wait for my Witneſs: But in the mean Time, as to Mr. *Porter*'s Evidence. I own I was at the Meeting at the *King*'s *Head* in *Leaden-Hall Street*; I declare I was at that Place, and there were ſome Gentlemen there, but how many or whom I cannot ſay; but I declare there was not one Word ſpoken there of any Raiſing of Men, nor any Thing of that Nature, that he ſpeaks of, but only we were drinking a Glaſs of Wine, and eating a Diſh of Meat together, and Sir *John Fenwick* at that Time coming in ſaid to us, I deſire you to come to our End of the Town, and take a Diſh of Meat with us. And there was nothing ſpoke of any Thing relating to the Government. Gentlemen theſe are Papiſts, and I am a Proteſtant, they don't care what they ſay, for they think they merit Heaven by deſtroying Proteſtants; and they are not to be believed, and that is the Reaſon that I was not to ask them the Queſtion, for by Law they are not Witneſſes, and for that I appeal to your Lordſhip.

L. C. J. H. Why are they not Witneſſes?

Freind. Nay I appeal to your Lordſhip.

L. C. J. H. Truly I think they are Witneſſes, I know nothing to the Contrary.

Freind. My Lord, Papiſts are not good Witneſſes againſt Proteſtants for this Reaſon, that I ſhall tell you; I am adviſed, my Lord, that a Papiſt is not a good Witneſs to prove a Proteſtant a Traytor within the *Stat.* of 25. of *Ed.* 3.

L. C. J. H. Who ſays ſo?

Freind. My Lord, I deſire to know whether there is ſuch a Statute?

L. C. J. H. Yes no doubt of it, there is ſuch a Statute as that of the 25 *Ed.* 3. about Treaſons.

Freind. Pray, my Lord, does not that make it ſo?

L. C. J. H. No indeed, I know no ſuch Thing.

Mr *Sol. Gen.* That cannot be, my Lord, that any ſuch thing ſhould be, for all were Papiſts then, there was no ſuch Thing as a Proteſtant in the time of *Ed.* 3.

Freind. My Lord, there is the Statute of the Third of *James* the Firſt, *Cap.* 4*th.* and other Statutes made in the Time of King *Charles* the Second, particularly in the 30*th* Year of his Reign *Cap.* 2*d.* Whereby it is plain they are not to be believed againſt Proteſtants, becauſe they believe them Guilty of Damnable *Hereſie*; and by thoſe Statutes they are reputed Infamous.

L. C. J. Where is your Statute.

Friend. My Lord, I have no Statute-Book, I deſire it may be Inquired into, this Advice was given me by my Lawyer, I am no Lawyer my ſelf, there is the Statute of 3. *James* the Firſt, *Cap.* 4 and the next is 30. *Car.* 2. *Cap.* 2.

L. C. J. Well the Statute-Book ſhall be looked into.

Freind. My Lord, the Perſon is not come, who is to give Evidence againſt Captain *Blair*, the principal Witneſs, he is a Priſoner at the *Gate-houſe*, and your Lordſhip was pleaſed to ſay you would have Patience till he came.

L. C. J. Yes, yes, we will ſtay a while.

Freind. I pray my Lord do, for it will be very material for me.

L. C. J. Treby Have you any Thing to fill up the Time with in the mean Time.

Then *William Courtney* appeared.

L. C. J. Is your Sollicitor returned with this *Habeas Corpus.*

Freind. I believe he is in or about the Court, but I cannot get him to me the Croud is ſo great.

After much adoe *Courtney* came in.

L. C. J. Is this the Witneſs you wou'd have?

Freind. Yes, my Lord, it is.

L. C. J. Then what do you ſay to him?

Freind. My Lord, muſt I ask him the Queſtions?

L. C. J. Yes, you muſt propoſe your Queſtions to the Court, and they will ask them of the Witneſſes. If this be the Perſon you ſpeak of you had beſt examine him.

Freind. Mr. *Courtney* I deſire you would ſpeak what you know of Captain *Blair.*

Courtney. Gentlemen, I have been a Priſoner in the *Gate-houſe* about a Month, and while I was there Captain *Blair* at the ſame Time came in as a Priſoner, as mentioned in the Proclamation; being my old Acquaintance, (I was in Bed being in upon ſome other Accounts,) and when they told me Captain *Blair* was brought in, I deſired him to come into my Chamber. I told him I was ſorry to ſee him there, I told him I hoped he was none of thoſe concerned in this Plot; he ſaid he was in the Proclamation, but that he was innocent, and knew nothing of the Plot, nor of the Aſſaſſination, nor any Thing like it; there were ſeveral other Perſons in that Place at the ſame Time, and he ſaid he was as innocent as the Child unborn.

Freind. Did he mention any Thing of me then?

Courtney. At that Time he ſaid nothing of you.

Freind. Pray Sir, do you believe he is a *Roman Catholick?*

Courtney. I do not know his Religion indeed.

Freind. But don't you know him to be a *Roman Catholick.*

Courtney. He bore the Character of one, but I never ſaw him at any Church.

Mr. J. *Rokeby.* Pray Sir how long have you known Captain *Blair?*

Courtney. By ſight, I have known him 6 or 7 Years.

Mr. J. *Rokeby.* Pray, upon what Account did you call him Captain?

Courtney. It was a common Name among all the Company: He was called ſo.

L. C. J. What all the Time that you knew him?

Courtney. Yes, all the Time that I knew him, I knew no other Name that he had.

Freind. But did not you hear that he was reputed to be a Roman Catholick?

Courtney. I have heard that Character of him, among thoſe that I have known, but I have very little Knowledge of his Religion.

L. C. J. Is this what you can ſay?

Courtney. There are ſeveral others that were Witneſſes of this, as well as I; I never ſaw you Sir *John Freind*, before in my Life, to my Knowledge, nor ever ſpoke to you.

Freind. Sir, a Note was ſent to me, that you could do me ſome Service, and that was the Reaſon I ſent for you. I deſire Mr *Carpenter*, Mr *King*, and Mr *Payne* may be called.

L. C. J. Have you done with this Man then?

Freind, Do you know Captain *Porter*, Sir?

Courtney, Yes, I do, Sir.

Fr. Sir, do you know him to be a Roman Catholick?

Courtney, Sir, I have heard that he has ſuch a Character.

L. C. J. What Character has he?

Courtney, That he is a Roman Catholick.

L. C. J. That's only by Hear-ſay.

Freind, My Lord, I have done with this Man.

L. C. J. If you have done with him, then the Keeper may carry him back again.

Courtney. Sir, I have ſomething elſe to ſay.

Fr. My Lord, he ſays he has ſomething elſe to ſay.

L. C. J. Then ſet him up again: *(which was done.)* Well, Sir, what is it you have more to ſay?

Courtney. Two or three Days after that Time, there was a Priſoner then in the Gate-houſe, who was an Enſign in the Army, was reading the Flying Poſt in my Chamber, and in that Flying Poſt there was News that Capt. *Blair* was making a great Diſcovery, and that he had accus'd Sir *John Freind*, for having receiv'd a Commiſſion for a Regiment in which he was to be Lieutenant Colonel, and ſaid a great deal about that Regiment, how he had received Subſiſtence Money for them from Sir *John Freind*. A little after Captain *Blair* came into the Room, and ask'd me if I had got the News; I told him yes; and Captain *Blair* then ask'd what was the Import of it? I told him it was there, that he was making a great Diſcovery, and particularly, that he was to be Lieutenant Colonel to Sir *John Freind*, and had received Subſiſtence Money from Sir *John Freind* for the Men of the Regiment. Captain *Blair* anſwer'd, that they might put what they would in the News, but he knew nothing of it, nor did not receive any Money; and this was a great Surprize upon me, and upon thoſe others that heard him, when we were told he was to be the main Evidence againſt Sir *John Freind*.

Freind. Well, Sir, do you know any Thing elſe?

Courtney. Captain *Blair* was bemoaning himſelf afterwards, that he went againſt his Conſcience in this Thing, and his Wife told me that he was very much concern'd, becauſe he was going to do this againſt his Conſcience, and ſhe was ſure it would break his Heart.

Fr. Do you know any Thing more?

Courtney. And he told me in his Chamber upon Friday Night laſt, about Nine a Clock I came to ſee him, he lay upon his Bed very ill, and his Wife was with him; I asked him how he did, and he clapt his Hands, and ſaid he was very ill. Pray, ſaid I, what ails you? Sure you have gotten ſome very great Cold. Oh! no, ſays he, Life is ſweet, I don't know what it is I ail, but were it not for Life, I ſhould never do what I do.

L. C. J. Did he tell you, he went againſt his Conſcience?

Courtney. His Wife and he ſpoke at firſt, that he went againſt his Conſcience, and he believed his Conſcience was in a miſerable State, and this I ſpoke innocently among ſome of the Priſoners, and I did not know that it was taken Notice of, but it ſeems ſome Body has acquainted Sir *John Freind*, and ſo I am brought here, I know nothing of being a Witneſs, I aſſure you.

Mr. Juſt. *Rokeby.* Pray, who were preſent when this Diſcourſe was between you and *Blair?* You ſay there were two other Perſons preſent when this Diſcourſe was between you, and Captain *Blair* and his Wife, who were thoſe two Perſons?

Courtney. What Diſcourſe do you ſpeak of, my Lord?

L. C. J. You ſaid there were two Perſons in your Chamber.

Courtney. Does your Lordſhip mean at the Reading of the *Flying Poſt?*

L. C. J. Yes.

Courtney. My Lord, this Gentleman that I was ſpeaking of was lying down upon the Bed, and Captain *Blair* came into my Room juſt after the News was read, and ask'd me if I had got the News, I told him yes, he ask'd what was the Import of it? I told him, they ſaid he was making a great Diſcovery, and particularly againſt Sir *John Freind.*

L. C. J. Well, and who were there then?

Courtney. This Enſign that is now a Priſoner in the Gate-houſe, who I ſuppoſe can ſay the ſame Thing.

Mr *At. Gen.* Pray, my Lord, let Mr *Blair* be call'd while he is here, and let him know what this Witneſs ſays, that the Court and Jury may know what he has to ſay to it.

L. C. J. Yes, pray let Mr. *Blair* be brought in again; *(which was done.)*

L. C. J. *Treby.* Now, let Mr. *Courtney* repeat what he ſaid now before about Capt. *Blair*'s Declarations to him.

Courtney. My Lord, I tell your Lordſhip, there was one *Tooley* a Priſoner in the Gatehouſe; when he heard the *Flying Poſt* cry'd, bought it, or it was order'd to be bought, and it being brought into my Chamber, I deſir'd him to read it, and I was walking about the Room: In the mean Time Capt. *Blair* came in, and ask'd if we had got the News? we ſaid yes; and he ask'd what News there was in it? I reply'd, it is ſaid that you are making a great Diſcovery, that you were to be Lieutenant Colonel to Sir *John Freind*, and had received a great deal of Subſiſtence Money for the Regiment: Says he, They may put what they will in their News, but I know of no Regiment, nor any Subſiſtence, nor of any Commiſſion. The Man that read the Book, will ſay the ſame that I do.

Mr. *At. Gen.* When was this?

Courtney. This was one Day when the Flying Poſt came out, the laſt *Saturday* but one I think.

L. C. J. But you talk'd of ſomething he ſhould ſay to you of going againſt his Conſcience?

Courtney. That was upon *Friday* Night laſt, I came to ſee Capt. *Blair*, and his Wife was with him, and Captain *Blair* was very ill, and clapping his Hands, and groaning, and moving himſelf, and in a very miſerable Condition, truly I thought he was giving up the Ghoſt. I ask'd him upon what Account he was ſo ſad, and told him I thought he had got ſome great Cold; he told me No. Well, ſaid I, Captain *Blair*, I underſtand yon are going to morrow to *Hicks's-Hall*, and I pray God direct you. *(Says he ſeveral Times)* I pray God direct us all; Life is ſweet. Oh! ſays his Wife, dear Sir, he would never do it, but to ſave his Life; but it goes againſt his Conſcience: So ſaid I to him,

you

you have had the Character of an honeſt Gentleman; I hope you will ſhew your ſelf ſuch, and I pray God direct you: I wiſh no Man's Blood may lie at your Door. Says he, I am an unfortunate Man, that is the Thing that troubles me, or ſomething to that Purpoſe; which ſhew'd all the Remorſe of Conſcience which could be in the World. I ſpoke of this innocently among the Priſoners, and it ſeems, it was communicated to Sir *John Freind*, and ſo I am brought here to teſtifie it.

Mr. *At. Gen.* Pray what ſay you to this Captain *Blair?* you hear what he ſays, do you give an Account what you know of it.

L. C. J. You hear what Diſcourſe he ſays he had with you, what ſay you to it?

Capt. *Bl.* My Lord, this Gentleman crouded himſelf in upon me, my Wife was with me, and he told me he had a Cup of Brandy, which would be good for me if I had a Cold. God knows my Heart, I deſired no Company might come to me. Says he, Captain *Blair*, I have heard you have been an honeſt Gentleman all along, and you are going to *Hicks's Hall* to morrow, and a great deal of ſuch Diſcourſe as that, and I pray God Almighty direct you: That's all that I know paſs'd. I was very ill, very ſick, as I am far from being well now; but as for any Thing of Remorſe of Conſcience, as I hope for Mercy and Salvation, I never expreſs'd any ſuch Thing to him.

L. C. J. Did your Wife ſay, that you were troubled, that you were going to do that which went againſt Conſcience, and you would not do it but to ſave your Life?

Capt. *Bl.* No, I am ſure ſhe did not.

L. C. J. Did that Gentleman thruſt himſelf into your Company, or did you deſire him for to come to you?

Capt. *Bl.* No, he thruſt himſelf into the Room.

Courtney. The Sink was hard by, and I heard Captain *Blair* groan, and ſo I went in to ſee him; every Body had Acceſs to him.

Capt. *Bl.* Pray, where is the Keeper?

Keeper. Here I am, Sir.

Capt. *Bl.* Did not I beg of you for God's ſake, that no one ſhould come to me but my Wife?

Mr. At. Gen. If the Keeper of the Gate-houſe be there pray ſwear him.

The Keeper of the Gatehouſe was ſworn.

Mr. Soll. Gen. What do you ſay as to Captain *Blair*'s deſiring that no Body ſhould come to him, but his Wife?

Keeper. No Body was to come to him unleſs they forced themſelves upon him.

Mr. Sol. Gen. Do you know of that Man's coming to him?

Keeper. No, Sir, I know nothing of it.

Capt. *Bl.* I always deſir'd to have the Door lockt with the Key on the Inſide, that no Body might come to me but whom I had a Mind to.

Keeper. He did ſo, becauſe he was ill, and no Body did come to him that I know of.

Capt. *Bl.* My Wife being with me came to me to the Bedſide, while this man was with me, and I was lying upon my Back; and ſaid ſhe, for Chriſt Jeſus's Sake, dear *Blair*, do not ſpeak any Thing.

L. C. J. When was this?

Capt. *Bl.* When this Gentleman was with me, ſhe deſired me not to ſay any Thing before him; becauſe ſaid ſhe, I do not know but he may be a Trepan.

Courtney. Upon the Word of an honeſt Man, and my Reputation is as dear to me, as yours is to you, ſhe ſaid nothing of that. She told me, you were going to do that which was againſt your Conſcience, and you would not do it but to ſave your Life.

Mr. At. Gen. Pray, what is this Man committed for, you Keeper?

Keeper. He is committed for Suſpicion of Treaſon.

Courtney. I have been taken up Five Times upon Suſpicion, and this laſt Time I was committed to the Gatehouſe.

Mr At. Gen. Where do you live, Sir?

Courtney. In *Old Southampton Buildings.*

Mr At. Gen. How long have you lived there?

Courtney. I have lodged there about Four Years and an half; there are ſeveral Perſons can come and give a Teſtimony of me.

Mr Sol. Gen. How come you, Sir, to be brought as a Witneſs here?

Courtney. I was ſurpized at it: for my Part what I did was by Way of Pity, ſeeing him in ſuch a Condition; I pitied your Soul, becauſe you and your Wife both ſhewed ſo much Trouble and Remorſe of Conſcience: As for Sir *John Freind*, I never ſaw him till to Day in all my Life, that I know of.

Mr At. Gen. What Countryman are you, Sir?

Courtney. I am an *Iriſh* Man born.

Mr At. Gen. Have you any Eſtate in *Ireland?*

Courtney. No, Sir, I have not.

Mr Sol. Gen. Pray, how came you to go to Mr *Blair?*

Courtney. I have known him a long Time; I have been often in his Company at the Coffee-houſe; I cannot ſay I am intimately acquainted with Captain *Blair*, but only as I have ſeen him in the Coffee-houſe a great many Times.

Mr. Sol. Gen. But I ask you how you came to go to him; becauſe it ſeems he deſir'd no Body ſhould come to him, but his Wife.

Courtney. He may ſay what he pleaſes; for he lay firſt in one Room, and then in another, and he could never go to the neceſſary Houſe, but he muſt go thorow my Room; but if you pleaſe to ſend for Mr. *Tooley* and Capt. *Courtney*, they will ſay and ſwear that theſe Things paſs'd in their Preſence, or to the ſame Purpoſe, except what paſs'd between him and me in his own Chamber. Enſign *Tooley* did read the Paper of the Flying Poſt; and as for what he ſaid of his knowing nothing of the Plot, it was talk'd of up and down in the Priſon, and ſo it came to me; and I invited him into my Chamber, as my old Acquaintance; though I was not very familiar with him; and as he declared, he knew nothing of the Matter.

L. C. J. You hear what he ſays; Captain *Blair*, did you tell him you knew nothing of the Plot.

Capt. *Bl.* Yes, I believe I might at firſt; as we were talking when I firſt came in, and I told him the Truth: For I was innocent as to the Aſſaſſination, for indeed I was ſo. And as to the Invaſion there was only ſome general Diſcourſe, and I was not willing to explain my ſelf among ſuch People as they were, when they ask'd me any Queſtions about it, I had to do with the King and Council.

L. C. J. Sir *John Freind*, have you any more Witneſſes to examine?

Freind. Yes, my Lord, I deſire Mr. *King* may be called. (*Which was done, and he appeared.*)

L. C. J. There he is, Sir, what would you ask him?

Fr. I desire to know of him, whether he does not know Captain *Blair* and Captain *Porter* to be Roman Catholicks, and whether he does not know me to be a Protestant.

King. I am of Opinion Mr *Porter* is a Papist; he was always taken to be so at *Epsom*, where I used to go, and where he used to go, and he was never look'd upon as a Protestant.

L. C. J. And what do you take Sir *John Freind* to be;

King. I take Sir *John Freind* to be a Protestant; so he is, and so he ever was.

Fr. But when you have been in my Company, and they have been speaking of the Government, what have I said or done?

King. When ever they started any reflecting Words upon the Government, he was used to say, Forbear, I do not admit of any such Discourse.

Mr. At. Gen. How long have you known him?

King. He has been my Acquaintance this Fifteen Years, and married a Relation of my Wife's Husband. *At which there was very great Laughing.*

King. I mean her former Husband.

L. C. J. He has reconcil'd the Matter very well for this Point; for he tells you he meant her first Husband.

Freind. Ay, my Lord, no doubt of it, he will recover it; it was her former Husband. Mr *King*, don't you mean it was her former Husband?

King. Yes, Sir, I have told you it was so; her former Husband's Name was *Thomas Case*.

L. C. J. Mr. *Tanner*, you are to look upon two Statutes, the one is 3 *Jac.* 1. *Cap.* 4. and the 30th *Car.* 2. *Cap.* 2.

King. My Lord, I have heard him say, If I had not taken the Oaths to K. *James*, which Oaths are binding to my Conscience, I could as freely take the Oaths to the present Government, as any Man in *England*; but I will live peaceably and quietly under the Government, but because I do not take the Oaths, I am double taxed, and I will pay it.

Freind. My Lord, I desire Capt. *Kaines* may be call'd. *(Who appeared.)*

L. C. J. What do you ask him, Sir?

Fr. Capt. *Kaines*, I desire to know of you, whether Mr *Porter* and Mr *Blair* are Roman Catholicks; and I desire you to speak as to my self, what I am.

Kaines. They are so reputed to be at *Epsom*; it was always so reported there; and I have been acquainted with Sir *John Freind* several Years, being concern'd together in the Train'd-Bands of the Tower-Hamlets, and I have been in his Company several Times since the King came in, and never heard him give any reflecting Language against the Government in my Life.

L. C. J. Have you done with him, Sir?

Fr. My Lord, I did not hear him; but I suppose he has declar'd, as to Capt. *Porter* and Capt. *Blair*, that they are Catholicks.

L. C. J. He says, *Porter* and *Blair* are reputed Papists; and he has known you a long Time, and been concern'd with you in the Train'd-Bands, and never heard you reflect upon the Government since the King came in.

Fr. My Lord, I desire to know, whether he believes me to be a Protestant?

Kaines. I did always take Sir *John Freind* to be a Protestant?

Fr. Then, next, I desire Mr *Carpenter* may be call'd. *(Who appeared.)*

L. C. J. What do you ask him, Sir?

Fr. I desire, Mr *Carpenter*, that you will acquaint the Court, whether you know Captain *Porter* to be a Roman Catholick, and what you know of me.

Carpenter. I have been at *Epsom* several Summers, and usually am there in Summer-time, and he was so reputed there: But as to Sir *John Friend*, I have known him above these Twenty Years; I keep a Brew-house, as he does, and we have been concern'd together, and have had several Occasions, upon the Account of Trade, to meet him, upon Particulars of Appraisement, when any Partners came in, and I never knew him but very orderly and civil; I never heard him reflect any Thing upon the Government, but was always peaceable and quiet: He was always looked upon as a Protestant, and went to Church. That's all that I can say.

Freind. My Lord, as to the Statute-Book, will your Lordship please that the Statute-Book be sent for?

L. C. J. Yes, yes, we do not forget it. Have you any more Witnesses? Call all your Witnesses, and we will consider of that afterwards.

Fr. I desire Mr *Hawkins* may be called. *(Who appeared.)*

L. C. J. What say you to this Gentleman?

Freind. I desire you, Mr *Hawkins*, to give an Account what I am; whether you know me to be a Roman Catholick or a Protestant.

Hawkins. I have known Sir *John Freind* these Twenty odd Years, and have had Dealings with him many Times before the Change of Government, and since, and I never heard him reflect upon the Government; nor never heard him to speak slightly of it: And as to his being of the Protestant Religion, I do know as much as any Man, as much as another; I always believed him to be a Protestant of the Church of *England*, as good as any Man alive; he always went to Church.

L. C. J. What, since the Revolution?

Hawkins, I have not been so conversant with him since that, because I went out of Town, and liv'd out of Town; but I believe there are those at *Hackney*, that can give an Account of that Matter.

Fr. I desire Major *Mould* may be call'd.

L. C. J. Then, I suppose, you have done with Mr *Hawkins*.

Fr. Yes.

Then Major Mould *stood up.*

L. C. J. Well, what say you, Sir;

Mould. My Lord, I have known Sir *John Freind* many Years, above these Twenty Years, and I always look'd upon him as a sincere Protestant; and I have often been in his Company since the Revolution, and I never heard him speak diminishingly of the Government. I believe him to be as good a *Protestant* as any in *England*.

L. C. J. How! as any in *England*? That's a great Character.

Fr. Then I desire Dr *Hollingsworth* may be called; *(but he did not appear.)*

Fr. Then, my Lord, I desire Mr *Luston* may be call'd.

L. C. J. There is Mr *Luston*, what would you have with him?

Fr. I desire he will give an Account what he knows of me, what Religion I am of.

Luston, My Lord, as to Sir *John Freind*, I have known him this Ten Years; he was pleased to employ me as a Chaplain in his House a considerable Time, both before and after the Revolution; and after

after the Revolution we always uſed the Prayers according to the Church of *England*, and we did always pray for the preſent King, and the late Queen *Mary*, at which Sir *John* was many Times preſent.

Mr Att. Gen. How long is it ſince you left him?

Luſton, About four or Five Years, as I remember: Then Sir *John*'s Family leſſen'd; he was pleaſed to ſay to me, Mr *Luſton*, I am going to *Tunbridge*, and my Family leſſens, (this is about Five or Six Years ago,) and I ſhall have no Occaſion for you at preſent; but if ever I make uſe of a Chaplain again, I will make uſe of you: This he was pleaſed to ſay.

L. C. J. How long is it, do you ſay, that you have left him?

Luſton, About five Years; and as to any Objection of his being a Papiſt, I have often diſcourſed with Sir *John Freind* about the Popiſh Religion, and he has often ſpoken with Deteſtation of the Principles of the Papiſts.

Freind. What have you heard me ſpeak of the *French*; and about any Thing of an Invaſion, how I would venture my Life for the Proteſtant Religion, or any Thing of that.

Luſ. I have often heard you ſay, as to the preſent Government, that though you could not comply with it, yet you would live peaceably under it. When we have been talking of theſe Things, you ſaid you never would be in a Plot; and though you could not comply with the preſent Government; yet you would never concern your ſelf in any Deſign againſt it. For my Part, my Lord, I know nothing by him, but that he is an honeſt and a worthy Gentleman, tho' he be ſo unfortunate to be under this Accuſation.

Fr. I deſire Mr *Hoately* may be called, *(who appear'd.)*

L. C. J. Well, what ſay you, Sir?

Freind. Pray, Mr *Hoately*, will you give an Account to the Court what you know of my being a Proteſtant, and of my Life and Converſation.

Hoately. I believe Sir *John Freind* is a very ſettled Proteſtant of the Church of *England*; and I have Reaſon to believe ſo, becauſe I have frequently diſcourſed with him, becauſe I have had a Couple of Children that were his Nephews, upon whoſe Account I have been forced ſeveral times to wait upon him; and he has often ſaid he never would be in any Plot, and his Words that he uſed to me were really very remarkable. *Catch me in the Corn, and put me in the Pound.*

L. C. J. What were his Words, Sir?

Hoately. He uſed to ſay he would never be in any Plot, for ſays he, *Catch me in the Corn, and put me in the Pound*; and I have heard him expreſs himſelf with a great deal of Deteſtation of King-killing, and thoſe Principles of the Papiſts; the Aſſaſſinating of any Crown'd Head.

Mr. At. Gen. Pray, Sir, how came you to diſcourſe with Sir *John Freind* about King-Killing and Plots? You are a Schoolmaſter it ſeems, how happened this Sort of Diſcourſe between you?

Hoately, There will be Diſcourſes about theſe Things ſometimes.

Mr At. Gen. But, pray, how was the Diſcourſe introduced? What was the Occaſion of the Diſcourſe? Sure there was ſome Occaſion extraordinary for him ſo to expreſs himſelf to you.

Hoately, I cannot remember the particular Occaſion, but ſuch Diſcourſe there was.

Mr *At. Gen.* Pray, how long ago is this Time that this Diſcourſe was?

Hoately. I believe it was five or ſix Times within theſe two Years.

Mr At. Gen. What, have you had the ſame Diſcourſe five or ſix Times one after another?

Hoately. I cannot ſay that; but thoſe uſed to be his Words.

Mr At. Gen. What, in common Diſcourſe?

Hoately, He ſaid he would never be in any Plot.

Freind. My Lord, I can bring a great many more Witneſſes of this Kind, and I believe I could have a Thouſand to prove me a Proteſtant

L. C. J. Call whom you will, Sir *John*, we will hear them.

Freind. My Lord, I am very loth to trouble you.

Mr Juſtice *Rokeby.* No, it will not be reckon'd any Trouble, we will hear all your Evidence.

Freind. There is one Mr *Willis* and one Mr *Hemings*; but I deſire it may not be forgotten as to the Acts of Parliament, for they are very material for me, as I ſhall ſhew by and by,

Mr. Willis *appeared.*

L. C. J. Well, what ſay you to this Gentleman?

Freind. Mr *Willis*, I deſire you'd give an Account to their Lordſhips, what you think of me, as to my being a Proteſtant, and how I have behaved my ſelf in every Reſpect all along.

Willis. My Lord, I have always taken it for granted, that thoſe that come to Church are Proteſtants; and I did always take Sir *John Freind* to be a Proteſtant. The Acquaintance I had with him was ſince he lived in the Pariſh of *Hackney*, and we have had ſome Converſe together, and there have paſt friendly Viſits between us; and I do not remember any Diſcourſe while I was there that tended to the Government one Way or another. I was never very often with him, but his Diſcourſe was always very obliging, diſcreet, and prudent, whenever I was there.

L. C. J. Pray, Sir, when did you ſee him at Church?

Willis. Truly, my Lord, I cannot call to Mind when it was.

L. C. J. Cannot you name any Time?

Willis, He may be at Church ſometimes, and I not ſee him; our Seats are at a diſtance from one another, and there are Pillars between, that one can't ſee every Body; and I cannot call to mind when I did ſee him laſt at Church.

L. C. J. Has he been there within this Year or two?

Willis. He has been gone from *Hackney* a Year and above.

Mr *Mountague.* Pray can you ſay you have ſeen him at Church within theſe Four Years?

Willis. Truly I cannot call to mind whether I have or no.

Freind. I deſire Mr *Hemings* may be called. I could call a great many more, but they are much to the ſame Effect as theſe are.

L. C. J. Call whom you will, Sir *John*, if you think fit to call them, we will hear them.

Fr. Being they are not here, I will not trouble you farther; it is all to the ſame Purpoſe.

L. C. J. Well, take your own Courſe; if you'll call them, the Court will be ſure to hear them.

Fr. But my Lord, here is one Thing that I muſt deſire your Lordſhip's Direction in: If theſe Gentlemen, my Lord, Captain *Porter* and Captain *Blair*, who

who are the two Witneſſes, and none but thoſe two, againſt me, if they are Papiſts, they are not good Witneſſes againſt a Proteſtant, to prove him a Traitor within the Statute of the 25th of *Edward* the Third. For that Statute ſays, He that is indicted muſt be proveably attainted; which cannot be by the Evidence of Papiſts, and thoſe that refuſe to take the Oaths of Obedience, which are requir'd to be taken: And therefore I humbly beſeech you, that you will pleaſe to tender them the Oaths, for there is a Statute in the 3. *Jac.* I. *Cap.* 4. which appoints the Tendering of the Oaths to them.

L. C. J. That is not our Buſineſs at this Time.

Fr. Then I muſt beg your Pardon that they are not ſubſtantial Witneſſes; for this is the Law, as I am inform'd. I humbly ſubmit to your Lordſhip, whether this be not the Law. I only ſpeak it to know whether it be convenient for me to rehearſe it. I ask'd the Queſtion before they were ſworn. I know not whether it be convenient for me to move it now.

L. C. J. Ay, ay, it is very convenient now, now is the proper Time.

Freind. Before ever they were ſwore I would have ask'd them the Queſtion, whether they were Papiſts or not, but it was not allowed, it was over-rul'd: Now, my Lord, there is ſuch a Statute, and I humbly beſeech you to tender them the Oaths, and that would be a Demonſtration, that they were Papiſts, and then they could be no good Witneſſes.

L. C. J. You ſay well, if we could find ſuch a Statute, that no Papiſt ſhould be a Witneſs, but there is no ſuch.

Freind. My Lord, I beg your Pardon, and I hope you will not take it amiſs; I offer what I am adviſ'd to offer.

L. C. J. No, no, by no means, there will be nothing taken amiſs.

Freind. For the Statute of the 25th of *Edward* the Third, and that of the 30th of King *Charles* the Second, and that of the 3d of King *James* the Firſt, *Cap.* 4. here it is plainly demonſtrable, that Papiſts are not to be believ'd againſt any Proteſtant, who is with them eſteem'd a damnable Heretick; and then they believe the Pope and their Prieſts can abſolve them from all Oaths, and they are declar'd to be given to Evaſions, and Equivocations, and mental Reſervations, and can have Diſpenſations for all their Villanies; and therefore they are not be credited: Their Evidence is of no Value, unleſs they will in this Manner upon their Oaths renounce theſe Principles: Therefore I humbly beg they may have the Oaths tender'd them.

L. C. J. That is not our Buſineſs now.

Freind, And, my Lord, your Lordſhip was pleaſed to promiſe me that if any Matter of Law did ariſe, my Council ſhould be heard.

L. C. J. Firſt let us know, whether there be any ſuch Law as this you mention, or to any ſuch Purpoſe.

Freind, My Lord, I deſire my Council may come in, and ſpeak to it: For my Life is in Danger, and ſo is every honeſt Gentleman's Life every Day. I am as clear as the Child unborn, I have no Witneſſes to prove any Thing, and therefore I deſire my Council may be heard.

L. C. J. If the Court did think there were any Colour in this Objection that you make, we would let you have Council, we would do it; nay, we are deſirous to do it if it could.

Freind. What, my Lord?

L. C. J. To allow you Council, if there were any Colour in this Objection in Relation to Papiſts not being Witneſſes. I would be glad to ſee the Council that would own this Objection; but indeed, I ſee no Colour in it: The Statute ſhall be produced that you quote, and then we ſhall ſee, whether there be any Thing like it in that Statute. Pray will you read thoſe Words that you ſay are in that Statute to that Purpoſe.

Freind. I am not ſo expert to know the Words before and after; and therefore I think it is requiſite I ſhould have Council.

L. C. J. It is ſuppoſed you have had Council, and I ſuppoſe your Council that have adviſed you to make this Objection, have inſtructed you whereabouts in the Statute it is.

Fr. My Lord, I deſire my Council may be call'd in and heard to it.

L. C. J. I tell you, that by Law we cannot hear Council to any ſuch Matter that has no Colour of Objection in Law in it; tho' for my Part, I wiſh we could, becauſe I would fain hear what any Council can ſay to make out ſuch an Objection, that Papiſts are not good Witneſſes.

Fr. My Lord, I wiſh you would hear my Council to it.

L. C. J. Look ye, Sir *John Freind*, you have deſir'd that this Statute may be turned to, and you deſire to have them read, and they ſhall be all read from the Beginning to the End.

Fr. I deſire the Statutes of the 25th of *Edward* the Third, the 3d of K. *James* the Firſt, *Chap.* 4. and the 30th of K. *Charles* the Second, may be read.

L. C. J. What Chapter is that of the 30th of K. *Charles* the ſecond?

Fr. Really it is not put down in my Paper.

L. C. J. Then look out the Chapter, while he is reading the other. Look ye, Gentlemen of the Jury, Sir *John Freind* does deſire the Statute of the 25th of *Edward* 3. may be read, which is the Statute about Treaſons, and the Statute upon which he is indicted, and it ſhall be read, therefore pray hearken to it.

Cl. of Ar. (Reads it.) This is made in the 25th Year of King *Edward* the Third. *A Declaration which Offences ſhall be judged Treaſon.* Item, *Whereas divers Opinions have been before this Time, in what Caſes Treaſons ſhall be laid, and what not.*

Fr. My Lord, I beg the Favour I may ſpeak one Word before it go on to be read.

L. C. J. Yes, with all my Heart.

Fr. I ſpeak it my Lord, becauſe it will be to the very Thing now in Queſtion, I am adviſed that Conſultation to levy War is no Treaſon, without Rebellion and Inſurrection; and inviting Men to come from beyond Sea is no Treaſon, unleſs a Foreign Prince be invited to come with his own Subjects; for *Engliſh*, *Scotch*, and *Iriſh* are not Enemies, but Rebels, and to be dealt with otherwiſe; therefore I leave it to your Lordſhips, for I am no Lawyer, only I am adviſed to inſiſt upon theſe Things.

Then the Statute of the 25th of Edward 3. *about Treaſons was read throughout, only about the middle the Priſoner made ſome Interruption.*

Fr. I believe this Statute is not the Statute I go upon, that which I mainly inſiſt upon, is the Statute of the Third of King *James* the Firſt, *Cap.* 4.

Mr

Mr Juſt. *Rokeby.* This is the ſame Statute you are indicted upon, the great Statute for Treaſons; and as to your Objection laſt mentioned, what is Treaſon and what is not, he is not yet come to that Part.

Fr. Well then, let him go on with it.

(*It was read to the End.*)

L. C. J. Now it has been read, is this the Statute you would have?

Freind. There muſt needs be a Miſtake as to the Chapter, it is ſet down the 25th of *Edward* 3*d.* but there is no Chapter.

L. C. J. Yes, this muſt be the Statute, it relates to Treaſons, and it has thoſe Words in it, that what you read out of your Papers relates to. Well, that we may go on in Order of Time, what Statute of King *James* is it that you mention?

Fr. It is the 3d of King *James* 1. *Cap.* 5. it is upon Account of tendering the Oaths appointed to be taken by that Statute, and—— (*reading out of a Paper*) to tell the Court that they ought to have the Oaths tendered them.

L. C. J. That is the Buſineſs of another Time, read the Statute.

Cl. of Ar. An Act for the Diſcovering and Repreſſing Popiſh Recuſants. What Part is it.

Fr. Truly my Lord I can't tell.

L. C. J. It is a long Statute, but if he'll have it read, it muſt be read all.

Fr. My Lord I would not give the Court any Trouble, but it is about having the Oaths tender'd to them.

Cl. of Ar. I believe this is the Paragraph, *And for the better Trial how his Majeſty's Subjects ſtand affected in Point of their Loyalty and due Obedience*, &c.

(*A great Part of the Statute was read, relating to that Matter.*)

L. C. J. What elſe would you have read, Sir *John Freind?*

Fr. I only gather from thence, that no Roman Catholick is capable of Swearing againſt a Proteſtant, becauſe the Pope and the Prieſts can abſolve them from their Oaths.

L. C. J. Well, what have you more to ſay?

Fr. My Lord, I only ſpeak this as to Roman Catholicks, they do not regard an Oath againſt a Proteſtant, becauſe they have their Prieſts that can abſolve them, and therefore how ſuch a Man's Oath can weigh any Thing, I cannot apprehend; therefore if I have omitted any Thing, I hope your Lordſhip will ſupply it, as you are my Council, for you are a Council for me, as well as the King.

L. C. J. Yes, yes, I would help you in any Thing I could.

Fr. My Lord, I thank you, I deſire you to help me, for I am as innocent as the Child unborn, whatſoever theſe Men have ſworn: Theſe are hard Things that are laid upon a Gentleman, and no Man is ſafe at this rate, they being ſworn by two Papiſts, who will ſwear any Thing againſt Proteſtants.

L. C. J. Look ye, Sir *John Freind*, have you any Witneſſes to produce, that theſe two Men have any Diſpleaſure or Malice againſt you, that they ſhould accuſe you falſely?

Fr. My Lord, I am ſorry I have not my Witneſſes; I have been ſo kept up, that I had not Time for People to come to me; I had not my Council come to me before *Saturday.*

L. C. J. How happen'd that?

Fr. My Lord, there was a Miſtake in that, I think it was *Friday*, either *Friday* or *Saturday*; I had them not till *Friday* in the Afternoon: I was kept ſo cloſe that none were permitted to come at me: On *Thurſday* I had an Order, but there was a Miſtake in the Order, and I deſired to get another Order, but I could not get any Body to get another Order for me, to have my Friends to go and enquire into Things, or elſe I ſhould have found out enough Witneſſes.

Mr *Att. Gen.* I am ſure he had an Order for Council, at the ſame Time that Notice was given him of his Trial.

L. C. J. When was that?

Mr. *Att. Gen.* On *Tueſday*, my Lord.

L. C. J. What ſay you to it, Mr. *Baker?*

Mr. *Baker.* My Lord, I did attend Sir *John Freind* on *Tueſday* laſt, to give him Notice of his Tryal as this Day; and I at the ſame Time told him if he would name his Council to me, I would procure an Order for them to come to him. The next Morning he was pleaſed to name to me Sir *Bartholomew Shower*; I took the Liberty to tell him, that he being ſo concern'd at the Houſe of Lords, and at the Committee about Parliamentary Buſineſs, ſome other Perſons that had named him of their Council, notwithſtanding Orders were procured for him to go to them as their Council, yet by that Means they were diſappointed of him, and great Delay was given to the Priſoners; and therefore I deſir'd him to conſider of it, and to ſend to Sir *Bartholomew Shower*, and any other Council that he had a Mind to, and know their Pleaſures, whether they would attend him; and if he would ſend me Word, I would procure an Order for him. But not hearing from him, I went on *Wedneſday* to him again, and he ſaid he had ſent to Mr. *Northey*, but he would not come to him till he had ſpoke with Sir *Bartholomew Shower*, but he would ſend me Word that Night, yet he did not. But the next Day came Mr. *Burleigh* to me to the Duke of *Shrewsbury*'s Office, and brought me the Names of the Perſons that he would have aſſign'd him of Council, and immediately I procured an Order for it, and away he went with it. This was upon the *Thurſday*; Mr. *Welden*, and Mr. *Creſſet*, or one of them were named in the Order, I am not poſitive which, and Mr. *Underhill*, and Mr. *Burleigh* were to be admitted to him. Mr. *Burleigh* had the Order, if he did not carry it to him I can't help that.

L. C. J. When was that Order for the Council?

Mr. *Barker.* It was upon *Thurſday*, my Lord.

Fr. My Lord, may I ſpeak?

L. C. J. Yes, yes, what you will.

Fr. My Lord, the Reaſon why I had not my Witneſſes was this: There was a Gentleman, one Colonel *Caſh*, Lieutenant to my Lord *Lucas*, he undertook to go, and put in his Name, and three more; one *John Neale*, and one *Phillips* to have an Order to go about to look after my Witneſſes; but they did not put in any one of theſe Names, but they took up and ſecured my Kinſman *Caſh*, and put him into the Meſſenger's Hands, and would not ſuffer me to have any of his Aſſiſtance; therefore I ſaw what a Deſign there was upon me.

Mr. *Att. Gen.* As for Mr. *Caſh*, there was very good Reaſon for it, he was ſecured for Suſpicion of Treaſon.

L. C. J. If you had wanted any Witneſſes, and had not been ſo fully prepared as you expected to be, you ſhould have moved before the Tryal came on to put it off.

Mr. Juſt. *Rokeby.* But my Lord put a Queſtion to you before, Can you ſhew any Reaſon why theſe Perſons ſhould have any Malice againſt you?

Freind. My Lord, I was not ſo much a Lawyer, as to know theſe Things; but it's a hard Thing, that a Man that's innocent muſt ſuffer at this rate: I have been diſappointed in every Thing; for theſe Gentlemen have not been permitted to anſwer, whether they are Roman Catholicks or no.

Mr. J. *Rokeby.* Nor have your Witneſſes proved that they are Roman Catholicks, but only that they are reputed ſo.

L. C. J. Well, I can't tell what Avail that would have been of, if they had been proved ſo. Have you any more to ſay, Sir *John Freind?*

Fr. No, my Lord, I leave it to God, and you, and the Jury to conſider of it.

Mr. *Soll. Gen.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am of Council in this Caſe for the King, againſt Sir *John Freind*, the Priſoner at the Bar; and it comes to my Turn to ſum up the Evidence that has been given. Sir *John Freind* the Priſoner at the Bar, cannot but own, that he hath hitherto had a very fair Tryal, and he ſhall have no Reaſon to complain, that I do him any Injury in my part. I am ſure both he, and you, and all of us, very well remember, when Perſons of as good Quality as he is, or better, had not the ſame Uſage or Liberty of Defence, in ſuch Caſes as this Gentleman has had: And though all Things are very well now, yet the Time was, within all our Memories, when Innocency was no Safety for a Man's Life, much leſs for his Liberty; and when thoſe two are taken away, and are invaded, Property ſignifies nothing. The Time was, when the Proteſtant Religion, and the Church of *England* of which the Priſoner boaſts himſelf to be, (and for a very good Reaſon, becauſe it is the beſt of Religions,) I ſay, the Time was, when that was in Danger; and when Popery (for which he now reflects upon the Witneſſes) was like to have over-run both us and it; And if his Majeſty, with the Hazard of his Life, and at a great Expence, had not reſcued us, there is no Body doubts, but that all that we feared at that Time, would have been made good upon us 'ere now. And it is a melancholy Thing to conſider, that there ſhould be a Sort of People amongſt us, ſo in Love with what we then dreaded, as to be continually endeavouring to bring it about again. And it is an ungrateful Thing, when his Majeſty ventured his Life then, and has done it ſeveral Times ſince to defend us, and does all that he can to keep our Enemies at a Diſtance, there ſhould be a Party of Men, that do what they can to invade their Country, to deſtroy his Majeſty's Subjects, and to fall upon himſelf, when he is preſent amongſt us. I will not accuſe the Priſoner at the Bar particularly, tho' it is plain he knew of it.

Fr. Know of it? I declare before God, and the World, I know nothing of it.

Mr. *Soll. Gen.* This, if it were among Equals, were certainly a moſt ungrateful Thing, when another Perſon is fighting in my Defence, that I ſhould deſign againſt his Life, or when he does what he can to protect my Eſtate, I ſhould be invading and ſpoiling his.

Gentlemen, if the Priſoner at the Bar is not Guilty of what he is accuſed of, and what you have heard the Witneſs give Evidence of, then nothing of this does relate to him: But if what has been given in Evidence againſt him is true, then the Priſoner at the Bar is one of thoſe Perſons, that has done all he can to make this Country, which has been the Place of Retreat for all Proteſtants to fly to, from Perſecution in their own Countries; I ſay, to make it as unſafe for them, as that from which they came.

Gentlemen, The Evidence againſt him, is firſt Mr. *Porter*, and he gives it in Evidence, that at the Old *King's Head* in *Leadenhall-ſtreet*, there was a Meeting of the Priſoner, and *Porter*, and ſeveral others, in order to conſider the beſt Means, how to bring back the late King *James*; and they concluded at laſt, that the beſt Means would be to ſend ſome Body into *France*, to adviſe the late King *James* to borrow of the *French* King 10000 Men, 1000 Horſe, 1000 Dragoons, and 8000 Foot, and that he ſhould make what ſpeed he could to land with them here; and to encourage and invite him to do ſo, they promiſed him their Aſſiſtance, and they did not doubt, but to be ready to meet him with 2000 Horſe at his Landing.

Gentlemen, The Perſon that was pitched upon to go upon this Errand, was Mr. *Charnock*, a Perſon lately executed for the Treaſons of which he was attainted. Mr. *Charnock* was diffident whether this were the Effect of ſober Conſideration, and therefore would not undertake to carry this Meſſage, till there had been another Meeting of the ſame Perſons; to ſee whether they continued in the ſame Mind. Another Meeting accordingly was appointed, and agreed upon, and that was at Mrs. *Mountjoy*'s Tavern at St. *James*'s, and there, he ſays, there were almoſt all the Perſons that were in *Leadenhall-ſtreet*; and at that Meeting the Queſtion being ask'd, whether they were of the ſame Opinion, that Mr. *Charnock* ſhould go to *France* to the late King upon that Meſſage, that I told you of before, they did all agree to abide by the old Reſolution; that he ſhould go, and make as ſpeedy a Return as he could, and bring back the late King's Anſwer.

Captain *Porter* tells you, that Mr. *Charnock* did go to *France*, and comes and brings word back, that the *French* King could not at that Time ſpare that Force that was then deſir'd; and ſo it was delay'd at that Time, becauſe the *French* King was not at Leiſure then to employ his Men in this Service; but it was likely to have taken Place, but very lately, if the Providence of God had not prevented it.

Gentlemen, our next Witneſs is Captain *Blair*, and he tells you, That about Two Years ago, Sir *John Freind* the Priſoner at the Bar, ſhow'd him a Commiſſion that he had received from the late King *James*, to raiſe a Regiment of Horſe, of which he was to be Collonel; that this was ſigned *James Rex* at the Top, and counterſigned by my Lord *Melford*, and it was in Paper. And that there was a great many Conſultations between Sir *John Freind*, himſelf, and others about the raiſing of this Regiment, and providing Officers for it. He tells you he was to have been Lieutenant Collonel, and was to procure as many Officers and Troopers as he could; and he tells you he did procure ſeveral Officers; and he names them; one *Fiſher* was to be eldeſt Captain, one *Vernatte*, and one *Hall*, and one *Bertram*, and that *Bertram* was to be Lieutenant to *Blair* in his own Troop.

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Gentlemen, a great deal of the Evidence which Captain *Blair* has given, is indeed out of Sir *John Freind*'s own Mouth, and that is as ſtrong an Evidence as poſſibly can be given; and he does for that purpoſe tell ye, that he ſaid one *Evans* was to be a Captain of Horſe, and one Collonel *Slater* was grown ſo much in Sir *John Freind*'s Favour, that he rivalled Captain *Blair*, in the Opinion of Sir *John Freind*; and Sir *John Friend* for that Reaſon would have two Lieutenant Collonels, whereof *Slater* was to be one. Captain *Blair* ſays, he took that amiſs, that any one beſides himſelf ſhould be in that Poſt, and Reſented it to Sir *John Freind*, and therefore Sir *John Freind* found out another Office for *Slater*; and that was to be a Captain of a Troop of Horſe, that ſhould conſiſt of Non-ſwearing Parſons, and which were to be an Independent Troop.

Gentlemen, He tells you that he did liſt ſeveral Men, but the particular Perſons, tho' he has named the Officers, he did not ſo diſtinctly remember, but they are in the Paper that he delivered to the Council, which he has not about him: He tells you, that Sir *John Freind* told him that one *Richardſon* was another Captain of Horſe, and the like of one Mr. *Cole*, that he was to be a Captain likewiſe.

He alſo acquainted you, Gentlemen, that he did receive from Sir *John Freind* ſeveral Sums of Mony, and he acquaints you in particular with the Manner how; he ſays that Sir *John Freind* had expended 100*l.* towards the 300*l.* that was paid for the eſcape of Coll. *Parker* out of the *Tower*; and that Sir *John Freind* was to be re-imburſed by Monies that were to be tranſmitted from King *James* at *St. Germaine*. He tells you that *Piggot* had received the Mony, but did not deal with Sir *John Freind* ſo fairly as to pay it to him; but when Captain *Blair* was preſſing on Sir *John Freind* for ſome Mony, Sir *John Freind* was contented that he ſhould have 20*l.* provided he got it from *Piggot* out of this 100*l.* Captain *Blair* had not Intereſt enough it ſeems to get it himſelf from *Piggot*, but he applies himſelf to one *Harriſon* or *Johnſon*, (for it ſeems he goes by both thoſe Names) a Prieſt, who had an intereſt in *Piggot*, by which means he got 20*l.* of *Piggot*, and this he ſays was in *June* or *July* laſt.

Then, Gentlemen, he tells you afterwards, he was preſſing upon Sir *John Freind* to have another 20*l.* and Sir *John Freind* was contented he ſhould have it, provided he had it from *Piggot*, and he produces ye a Letter that was from that very Perſon the Priſoner at the Bar, which is to that purpoſe; excuſing himſelf that Captain *Blair* had not heard from him, but that he would meet him at ſuch a time, and at ſuch a Coffee-houſe. The Matter indeed is not directly expreſs'd in Words, but at the Time and Place the Priſoner did meet *Blair*, and there was *Harriſon* and this *Piggot*, and there 5*l.* of the laſt 20*l.* was paid him; and the other 15*l.* was paid him afterwards; and he ſwears theſe two Twenty Pounds were paid to him by Sir *John Friend*, upon Account of the Charge that *Blair* had been at in drinking with and treating thoſe Men who were to be engaged with Sir *John Freind* in his Regiment.

Gentlemen, he tells you likewiſe, that Sir *John Freind* told him he had written a Letter to King *James*, and he ſhewed him this Letter, and this was at that *Piggot*'s Mother's Houſe; and when *Blair* read it, he tells you he thought it was ſo well penned, that he did apprehend *Ferguſon* muſt have a hand in it, and that it was none of Sir *John Freind*'s own; and that upon this Sir *John Freind* was angry, that he ſhould ſuſpect that Sir *John* was not the Writer of this Letter; all this ſhews an Intelligence with King *James*, and makes out all the reſt of the intended Invaſion by King *James*, and a *French* Force here.

Captain *Blair* likewiſe tells you, Gentlemen, that Sir *John Fenwick* had Four Troops of Horſe, as Sir *John Freind* told him, by way of encouragement, which were all ready for the ſervice; and that *Ferguſon* undertook to bring a Number of Men, and was to be one himſelf in that Party; and all this was to be put in practice when the *Thoulon* Fleet came about, and join'd the *Breſt* Fleet. And laſtly he tells you, when he went in the Coach with Sir *John Freind*, Sir *John* told him they muſt act very warily, and be very good Husbands, for in truth it had coſt him ſo much, that if the Fleet did not come ſoon, or the Deſign ſhould miſcarry, he ſhould want Mony to carry on his Trade. All this poſitive Evidence is of the Witneſſes own knowledge, from the Priſoner's own Mouth.

Againſt this Evidence, Gentlemen, he takes Exception; that the Two Witneſſes are *Roman* Catholicks; but this is no Exception to their Evidence at all; for it was never yet allowed, or indeed objected, that I know of, before, that *Roman* Catholicks were not good Witneſſes. A *Roman* Catholick may be an honeſt Man, notwithſtanding his Religion: But, I think, that every Body knows that Men who have been ill in other Things, tho' *Roman* Catholicks, may as to thoſe particular Things be good Witneſſes. Nay, not long ago, but on *Wedneſday* laſt we produced ſome Witneſſes, who were *Roman* Catholicks, and yet allowed for good Evidence, tho' ingaged in that Horrid Conſpiracy againſt the Life of the King; and if any thing would have taken off their Evidence, certainly the Guilt of ſuch a Crime would do it, more than the Pretence of any particular Perſwaſion of Religion. Nay, I muſt crave leave to ſay farther, that this Argument is ſo far from making him no Witneſs, that it makes it the more likely he does ſpeak the Truth, and therefore is a good Witneſs. For tho' *Roman* Ctholicks may be honeſt Men, yet they are more likely to engage in ſuch a Deſign than any other Men. And I think I may very ſafely add, Sir *John Freind* would not have found ſo many that he could ingage in ſuch a Buſineſs as this, that were of any Religion but the *Roman* Catholick, and therefore he applied himſelf to theſe Perſons, as moſt likely to imbark with him on ſuch a Bottom.

Gentlemen, as to what *Courtney*, that was brought from the *Gate-houſe* ſays about his Diſcourſe with Captain *Blair* in the Priſon; Captain *Blair* has upon his Oath declared, that he did not go ſo far as to ſay, he did any Thing againſt his Conſcience, but only *Courtney* bid him take care what he ſwore, and preſt him no further. He pretends he came caſually into *Blair*'s Chamber, but it is plain he intruded into his Room; for it is ſworn by the Jaylor, and *Blair* himſelf, that he had given Directions none ſhould come into his Room but his Wife, ſo that does not diſcountenance the Evidence of *Blair* at all, and if you do believe what our Witneſſes have ſaid, Captain *Porter* and Captain *Blair*, then Sir *John Freind* is guilty of all the Crimes that are charged upon him in this Indictment, and I hope you'll be

be ſo juſt to your Prince, to your Country, and to your Selves, as to find him guilty accordingly.

Mr *Cowper*. If your Lordſhip pleaſes, ſpare me a Word on the ſame Side. My Lord, I do not trouble your Lordſhip out of an Apprehenſion that there is any thing neceſſary to be ſaid to the Court in this matter, or for the Satisfaction of the Jury, but if poſſible, that we might convince the Priſoner at the Bar, that he has had no hard Meaſure in this Proſecution meeted to him, but that he is proved Guilty of the Crime of which he ſtands accuſed, and that really there is no Weight at all, in the Defence which he has made.

The firſt Part of it goes to diſcredit one of our Evidences, Captain *Blair*, from ſome Diſcourſe that he would object to have paſs'd between him and the Perſon here produced, in the Priſon of the *Gatehouſe*. And the firſt Part of that Diſcourſe was, upon *Blair*'s firſt coming into the Priſon; and as to that Time, the Objection amounts to no more than this; that Captain *Blair* would not confeſs, when he was pump'd by a Fellow Priſoner, that he was engaged in ſo horrid a Deſign: What Weight there is in ſuch an Objection, truly I cannot ſee, but will leave it to any Man's Judgment to conſider, That a Man, when he is freſhly taken upon ſuch an Occaſion, does not immediately confeſs his Guilt to every Body that meets hm, nay, to Perſons that would not have lik'd him for making ſuch a Confeſſion, but perhaps would have deſtroy'd him in Priſon for ſo doiug.

The other Diſcourſe was upon *Friday*, the next Day, I think, before Captain *Blair* went to *Hicks*'s *Hall*, to his Examination; and then he intrudes himſelf into *Blair*'s Chamber, when he lay very ill upon the Bed, accoſts him with a Cup of Brandy in his Hand, and with good Advice at the ſame Time, that he ſhould take great Care in what he ſhould ſay at *Hicks*'s *Hall*, and the like: And then Captain *Blair*, it ſeems, did expreſs ſome Reluctancy in the Thiug he was going about, as if it were againſt his Mind and Inclination. If that were true, (though Captain *Blair* denies it poſitively upon his Oath) yet it was no more than, I am willing to obſerve for the Priſoner, Captain *Blair* did expreſs here, when he firſt came into Court; and it is no more than what is natural, ſince the Priſoner had been his Friend and Intimate, and he was going to depoſe that againſt him, which was likely to prove fatal to him.

My Lord, As to another Part of his Defence, it conſiſts chiefly in this: The Evidence brought to prove, that the King's Witneſſes are reputed Roman Catholicks, and that the Priſoner is a reputed Proteſtant of the Church of *England*. If that be true too, all that can be rationally and fairly collected from thence is this, that they (the Witneſſes I mean) when they engaged in ſuch a black and execrable Deſign, might be very good Papiſts; but I am ſure it will be agreed, That the Priſoner in ſo doing was a very bad Proteſtant.

My Lord, he objects to their Evidence this likewiſe, That, if they be Papiſts, they may be abſolv'd by the Pope, or their Prieſts, though they ſhould ſwear falſely. Poſſibly that may be ſo, for ought I know; I confeſs, I am not very well acquainted with the Principles of that Religion: But this I dare ſay, that every one, who has heard what has been ſworn by them, will think it ſo great a Diſſervice to the Popiſh Cauſe and Intereſt, that it will be one of the laſt Things their Prieſts will ever abſolve them of.

My Lord, there's another Matter the Priſoner has thought fit to inſiſt upon; he has brought two or three Clergy-men to depoſe, that when ever he diſcourſed with them (it ſeems at all times) he was talking about being in a Plot, and very readily told his Reſolution not to be in any. It ſeems it ſtill ſwom uppermoſt; his Profeſſions were made very cauſeleſly: For they all ſay nothing introduc'd them; but of his own meer Motion he was always declaring he was not then in a Plot, nor ever would be. I have heard, that one Way, weak Men and Children often diſcover their Knowledge of a Secret intruſted to them, is, by a repeated and unneceſſary declaring, that they know nothing of the Matter.

My Lord, in the next Place for his Defence, he juſt offered a Point of Law; but the Court ſo well ſatisfied him in that, that I think he waved it. He alledged, that a bare Conſpiracy to levy War is not Treaſon; and the Court did him right in declaring (as God forbid but they ſhould) that it is not Treaſon: But I deſire the Gentlemen of the Jury would conſider that the Priſoner at the Bar is not accus'd barely of a Conſpiracy to levy War, but you are told to what End that War was to be levied, to join the late King upon his Deſcent into this Kingdom with a *French* Power, in order to drive his Majeſty out of the Kingdom, and to depoſe him from the Crown; which is a Kil-ling him in the Eye of the Law: and that is High Treaſon by whatever Means they intended to effect it; whether by War or a Stab, or any other Manner, it is indifferent.

In the next Place, my Lord, I would take Notice of another Part of his Defence, which had been better let alone, wherein he admits that he was preſent at the Two Meetings he is accuſed to have been at by *Porter*; but he only differs in one Point, that there was nothing talked then but general and indifferent Diſcourſe. The Witneſſes have ſworn what the Diſcourſe was, and you will weigh the one againſt the other; his Affirmation of a thing unlikely in Defence of himſelf, and what is depoſed upon Oath by the King's Witneſſes to the contrary.

My Lord, there is one Thing more I would take Notice of, and that is the Evidence of Mr. *Bertram*, which we do not produce as a direct Evidence againſt the Priſoner at the Bar, but as a Confirmation of what was ſworn by *Blair*. And it does ſhew that the Matter ſworn by *Blair*, was not of late deviſed out of Malice, or otherwiſe, to deſtroy the Priſoner; for that *Blair* acquainted *Bertram* with, and diſcourſed him about, the principal Matters of Fact, that are now ſworn, at leaſt Two Years ago; and beſides his Evidence and the Evidence of *Blair* concur in this Particular, that he was to be Lieutenant in *Blair*'s Troop.

My Lord, ſuch a Concurrence of Evidence and other Circumſtances in this Matter, greatly increaſe the Weight of the Proof againſt the Priſoner, eſpecially when there is nothing material alledged by him in his Defence, and therefore I ſhall trouble your Lordſhip no further.

L. C. J. Look ye Gentlemen of the Jury, Sir *John Freind*, the Priſoner at the Bar, is Indicted for High Treaſon. The Treaſon that is mentioned in the Indictment is Conſpiring, Compaſſing, and Imagining the Death and Deſtruction of the

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King. To prove the Conſpiracy and Deſign of the King's Death, there are two principal Overt-Acts that are mainly inſiſted upon. The one is the Conſulting and Agreeing with diverſe others to ſend Mr. *Charnock* into *France* to King *James*, to deſire him to perſuade the *French* King to ſend over Forces here to aſſiſt them; who were to furniſh other Forces for the raiſing of a War within this Kingdom, in order to depoſe the King; and accordingly Mr. *Charnock* was ſent upon that Deſign. The other Overt-Act is the Priſoner's having a Commiſſion from the late King, and preparing and directing Men to be levied, and to be ready to be in a Regiment, of which Sir *John Freind* was by that Commiſſion to be Colonel, and this was alſo to aſſiſt in the Reſtitution of King *James*, and in order thereunto in the Depoſing and Expulſion of King *William*.

Theſe, Gentlemen, I tell you are the two Overt Acts that are principally inſiſted upon; and to prove Sir *John Freind* Guilty of theſe there are two Witneſſes that have been produced, the one is Captain *Porter*, who ſpeaks to the firſt, the other is Captain *Blair*, who ſpeaks to the ſecond.

Captain *Porter* tells you, that the latter End of *May*, or the Beginning of *June* laſt, that he and Sir *John Freind*, and others that he mentioned, were at the *Kings-head Tavern* in *Leaden-hall-ſtreet*, and there they entered into a Diſcourſe about the Returning of the late King *James*; and they did conſider among themſelves which was the moſt effectual Way, and what were the moſt probable Means to have him Reſtored: And thereupon it was agreed among them, that they would ſend a Meſſenger into *France* to him, to deſire him that he would ſollicit the *French* King to furniſh him with 10000 Men, to be ſent into *England*, 8000 Foot, 1000 Horſe, and 1000 Dragoons; and they did agree, that when theſe Forces were ſent, conſiſting of this Number of Men, then they would be ready to meet and joyn them with 2000 Horſe, every one of them was to furniſh his Quota; to which Sir *John Freind* did expreſly agree. The Meſſenger that they agreed to ſend was with them in Company, and heard the Conſult, which was Mr. *Charnock*, who was lately Tryed and ſince Executed.

This being at that Time determined, Mr. *Charnock* intended to go upon the Execution of that Deſign, and made ready for his Journey: But before he went, he had a Deſire to meet with the Company again, and have a further Diſcourſe upon this Matter, to ſee whether they did perſevere in the Reſolution they had ſo taken. There was another Meeting about a Week or a Fortnight after, which was at Mr. *Montjoy*'s, a Tavern in St. *James's-ſtreet*, where met Sir *John Freind*, Captain *Porter*, and divers others of the Company that were before at the *Kings-Head*. And there they enter'd into a Debate of the Matter again; the Queſtion there was, whether Mr. *Charnock* ſhould be ſent into *France*, as it was formerly agreed, and there it was again derermined he ſhould go, to which he agreed, and Capt. *Porter* ſays, that he did go about two or three Days after.

Mr. *Porter* tells you farther, that about the Time that Mr. *Charnock* came back, Mr. *Porter* was in Priſon, and he did not ſee him upon his firſt Return, but afterwards he met and ſpoke with him, and ask'd him what was the Effect of his Negotiation, and Mr. *Charnock* told him, that he had done as he was directed; that he had been with King *James*, and he had ſpoke to the *French* King, but the Anſwer returned was this, That the *French* King had Occaſion for his Forces that Year to be otherwiſe imploy'd, and therefore he could not furniſh ſuch a Number of Men that Year; and Mr. *Porter* ask'd him whether he had been with the reſt of the Gentlemen, and acquainted them therewith; and he ſaid he had. This is the Subſtance of Mr. *Porter*'s Evidence; whereby you may perceive what the Meetings were for, what Reſolutions were there taken, and what was the Iſſue and Effect of them.

The next Witneſs is Captain *Blair*, and his Evidence goes to the other Part, that is, to Sir *John Freind*'s having a Commiſſion from the late King *James*, and engaging him and others to be in his Regiment, whereof Sir *John* was to be Colonel, and the providing of Officers. And for that the Evidence ſtands thus.

Captain *Blair* tells ye, that about two or three Years ago, he was with Sir *John Freind* at his Lodgings in *Surrey-ſtreet*, and there he did produce a Commiſſion that he had from King *James* to be Colonel of a Regiment of Horſe; he was to raiſe it himſelf, and was to appoint, and provide what Officers he thought fit. He ſays, he read the Commiſſion, and it was ſigned at the Top *James Rex*, and counterſigned at the Bottom *Melfort*; this he is poſitive in, and farther, that Sir *John Freind* did promiſe that he ſhould be Lieutenant-Colonel of this Regiment, and alſo deſir'd that Captain *Blair* would get as many Men as he could, and that there were other Officers that were appointed in that Regiment, and particularly one *Fiſher* was brought to Sir *John Freind* by Captain *Blair*, to be his firſt Captain, and one Colonel *Slater*, who was much in Favour with Sir *John Freind*, was to have been another Lieutenant Colonel; for ſaid Sir *John Freind*, I have a Mind to him to be my Lieutenant Colonel, and though you are ſo too, yet it is no Matter, if we have two in this Regiment; at which *Blair* took very great Offence, and expreſs'd as much to Sir *John Freind*, whereupon Sir *John Freind* told him, it ſhould not be ſo, but ſaid he would make another Proviſion for Mr. *Slater*; that he ſhould be a Captain of an independant Troop, that ſhall be compoſed of Non-Swearing Parſons, and that ſhall ſatisfy him.

And Sir *John Freind* did intruſt Captain *Blair* with the providing of Men and managing of them. And Captain *Blair* tells you, he was at a great deal of Charge, and laid out diverſe Sums to careſs them, and keep them together, and wanting Money to proceed in that Affair, he came to Sir *John Freind*, and made great Complaints, that he wanted Money to carry on the Deſign, by obliging the Men to keep together, and therefore preſſed to Sir *John Freind* to furniſh him with ſome Money; ſays Sir *John*, there is 100 *l.* due to me, becauſe I laid down 100 *l.* to further the Eſcape of Colonel *Parker*, and *Piggot* has received it, and had Directions to pay it me, but I cannot yet get it. You ſhall have 20 *l.* out of that 100 *l.* if you can get it. Well, but how is that 20 *l.* to be had? It ſeems there was one *Harriſon* or *Johnſon* a Prieſt, who had ſome Intereſt in this *Piggott*, and he was to help him to it; and thereupon the 20 *l.* was actually paid the latter End of *June* or the Beginning of *July* laſt. This 20 *l.* he ſwears he did receive upon that Account, by the Direction of Sir *John Freind*, to be ſo imploy'd as you have been told.

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Then Captain *Blair* had Occaſion for more Money, which was ſometime after *Michaelmas* laſt, which was to be employ'd as the former was: and he was very importunate to obtain it of Sir *John Friend*; at length he did obtain it, as he tells you, and the Manner how. He produces a Letter under Sir *John Freind*'s own Hand, which ſeems to be an Anſwer to a Letter that Captain *Blair* had ſent to him before, he thinks it to be his own Hand, for he is acquainted with his Hand-writing. But that is not all to prove it his Hand, for the Contents of the Letter are remarkable, which are about the Payment of Money to *Blair*: The Letter bears Date of a *Tueſday* Morning, and is directed to Captain *Blair*; and a Porter brought it, as he thinks, to his Houſe; and thereby it was appointed they ſhould meet on *Thurſday* next at *Jonathan*'s Coffee-houſe about the Hour of Twelve. And accordingly Captain *Blair* came to *Jonathan*'s Coffee-houſe, where he accordingly met with Sir *John Freind*, and there was *Harriſon* the Prieſt and *Piggott*, and there he does receive a Sum of Money upon the ſame Account: So that now the Proof of this Letter does not depend barely upon the Knowledge of the Hand, but the Contents of it, and the ſubſequent Meeting at the Time and Place mentioned in the Letter is a great Evidence that it was Sir *John Friend*'s Hand-writing, and more Money is prov'd to be actully paid in the Preſence of Sir *John Friend*, which is the moſt material Part of the Evidence. And you are told further, that as Sir *John Freind* and Captain *Blair* were going together in a Coach, from *Jonathan*'s Coffee-houſe, to St. *Martins le grand*, there was a Diſcourſe between them; and Sir *John Freind* ſaid, for his Part he would not ſtir till ſuch Time as the *Thoulon* Fleet was come about, and joyned with the *Breſt* Fleet. That he did think he was in Danger of being apprehended when it came about, and therefore Captain *Blair* was to ſculk till then, as he himſelf told him he would do, but yet he ſhould get what Men he could. And this is a great Argument of his being concerned in the intended Invaſion, and that his making Preparation for his Regiment, had Relation to the *French* Invaſion which was expected.

It ſeems two Years ago, there being a great Intimacy between *Blair* and Sir *John Freind*, as appears by all the Evidence, *Blair* was acquainted with this Deſign. For you are told of the Letter that was writ by him to King *James*, which he ſhew'd to Captain *Blair*, and it was concerning his Regiment; he ſays, that Sir *John Freind* own'd he writ that Letter himſelf, that *Blair* did read the Letter, and finding it ſo well penn'd, he ſaid, that he thought *Ferguſon* had a Hand in it, at which Sir *John Freind* was angry; but *Blair* ſays, the Letter was concerning the Regiment of which Sir *John Freind* was Colonel.

Then, Gentlemen, you have *Bertram* called to prove, that *Blair* did tell him, that he was to be his Lieutenant Colonel, which was long before there was any Thoughts of any Diſcovery of this intended Invaſion, and before the Diſcovery of the Plot of Aſſaſſination, which Sir *John Freind* did own he had ſome Knowledge of, but he diſliked it, and ſaid it would ruine King *James*'s Affairs. So that, Gentlemen, I think this is the Sum and Subſtance of the Evidence that has been given upon this Occaſion againſt Sir *John Freind*, to induce you to believe him to be guilty of this Crime with which he now ſtands charged.

But now you are to conſider what Sir *John Freind* ſays on behalf of himſelf. In the firſt place, he makes an Objection againſt the Credit of all theſe Witneſſes, that they are not to be believed, becauſe, ſays he, they are known or reputed to be Roman Catholicks and Papiſts, and their Conſciences, and their Oaths are large, eſpecially when they think they can do an Injury to any Proteſtant; and therefore they are not to be allow'd as Witneſſes, at leaſt their Credit is not ſufficient to induce a Jury to believe them. At firſt indeed, he urged there was a Statute and a Law that did diſable them from being Witneſſes; but I muſt tell you there is no ſuch Statute, nor indeed is their being Papiſts any Diminution at all to the Credit of their Teſtimony: For Papiſts are legal Witneſſes, and though there are ſevere Laws to puniſh them for their Non-Conformity to the Church of *England*, and for other their Popiſh Practices; yet I know of no Law that renders them infamous, or incapable of being Witneſſes. For you are to conſider, Papiſts are Chriſtians, and ſwear by the ſame Evangeliſts that Proteſtants do; and as for that Suppoſition, that they look upon Proteſtants as Hereticks, and can have a Diſpenſation for any Oaths that they take againſt them; you are to conſider, as it has been very well obſerved by the King's Council, that they are never like to obtain any Diſpenſation or Pardon, if they ſhould forſwear themſelves to defeat the Deſigns of the Popiſh Party; and therefore it is a very inconſiderable Objection, and in this Caſe hath no Weight.

But then he does inſiſt upon it, that Captain *Blair* is not to be believed; and there are Two Objections he makes againſt him. Firſt, That he did deny that he knew any Thing of the Plot. For *Blair* being upon this Occaſion brought Priſoner to the *Gate-houſe*, and afterwards upon a Diſcourſe of ſome News in the Flying Poſt, wherein it was mentioned, that Captain *Blair* had confeſs'd all, and made a full Diſcovery, that thereupon he ſhould ſay, He was innocent of the Plot, and knew nothing of it. You, Gentlemen, are to conſider the Weight of this Objection. Firſt, Suppoſe he had ſaid ſo, it might be, he was not willing (as he was not oblig'd to own it), and would not confeſs it at that Time, and to thoſe Perſons. It was not his Intereſt and Prudence to be too open; and therefore it does not follow, that becauſe a Man would not truſt others with his Confeſſion, but deny'd his Knowledge of a Plot when there was no Occaſion for him to own it, that now he ſwears it poſitively, therefore he ſhould ſwear falſely.

But Secondly, Captain *Blair*, who was called for the Vindication of himſelf, and his Teſtimony, has upon his Oath declar'd to you, that he did not ſay he knew not any Thing of the Plot, but did deny any Concern in, or Knowlege of the Aſſaſſination. Now this Buſineſs, for which Sir *John Freind* is tried, is not for being a Party in the deſigned Aſſaſſination, but of a Deſign with Force to Depoſe the King, and reſtore King *James*.

Then as to the other Matter that was upon *Friday* Night laſt; *Courtney* the Witneſs ſays, That he came to Captain *Blair*'s Chamber, and took Notice of his being to be a Witneſs at *Hicks*'s Hall the next Day, and ſaid, I pray God direct you; and he ſays his Wife, then preſent, ſaid it was againſt his Conſcience, and he ſeem'd to be

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in very great Trouble about it, and owned as much. But now Captain *Blair* himſelf, being examined upon his Oath does deny poſitively, that either he or ſhe ſaid any ſuch Thing, as that it was againſt his Conſcience: He ſays, that *Courtney* got in to him on Purpoſe to ſurprize him, and he was aware of it, and his Deſign being to keep himſelf free from all Company, he gave Directions to the Keeper (as the Keeper himſelf ſwears) to let no Body come to him but his Wife; and Mr. *Courtney* intruded himſelf upon him.

Beſides, Gentlemen, you are to conſider the Probability of that which Mr. *Courtney* ſaith: When a Man is to be a Witneſs the next Day upon Bill of Indictment before a Grand Jury that he ſhould be ſo indiſcreet, as to tell any Body he was going to ſwear againſt his Conſcience, is ſtrange and very unaccountable. You are therefore to conſider of this whole Matter, what Evidence Captain *Blair* has given, and the Import of it, and the Weight and Credibility of that Evidence which is given againſt him.

Then Sir *John Freind* inſiſts upon another Matter: Says he, I am a Proteſtant, and it is not likely, that I that am a Proteſtant ſhould conſpire with Papiſts againſt Proteſtants; and for that he has called eight Witneſſes, who tell you they have known him, ſome twenty Years, ſome more, others ten, and that they have frequently converſed with him, and never knew that he was ever popiſhly affected, and they have been frequently in his Company ſince the Revolution, and they never knew that at any Time he reflected upon the Government; nay, I think one ſaid, that once he did reprove a Man for talking undecently of the Government; that he uſed conſtantly to go to Church four or five Years ago (though there is no Account of that ſince). And particularly there is one Mr. *Luſton* that was his Chaplain, and he tells you he was in his Houſe; and there he read the Common-Prayer in the Family ſince the Revolution, and pray'd for the King and the late Queen, and Sir *John Freind* was often preſent at the Prayers, and particularly when he pray'd for the preſent King, and the late Queen; but he ſays he himſelf has been gone thence Five Years, and has been little converſant with him ſince.

There is another Witneſs tells you, he has been in Sir *John Freind*'s Company divers Times, whom he believes to be a Proteſtant of the Church of *England*, and hath had Diſcourſe concerning the preſent Government; and that Sir *John Freind* ſaid, that though he could not take the Oaths, and thereby conform to the Government, yet he was reſolved to live quietly under it; and would not engage in any Manner of Plot; for he that catched him in the Corn, ſhould put him in the Pound.

This is the Sum and Subſtance of the Evidence on both Sides; and you, Gentlemen, are to conſider, the Weight of this Part of his Defence too; whether it be a ſufficient Anſwer to the Evidence given againſt him, and has Weight enough to outballance what the Witneſſes for the King have Sworn? For altho' he was a Proteſtant, yet it is plain he had no great Liking to the Government; and therefore would not take the Oaths; and though he was preſent at the Common-Prayer, when the King and Queen were pray'd for, yet whether he join'd in thoſe Prayers is very uncertain. There are a great many, who are not very well affected to the preſent Government, that come to Church, and are preſent at the publick Prayers; but it may be a very great Doubt whether they join in their Prayers for the preſent Government or no; his Conſcience that ſcruples the Taking the Oaths, might ſcruple that too. But whether Sir *John Freind*'s being a Proteſtant, and his Declaring he would never be in a Plot, be a ſufficient Proof, that therefore he never was in one; and that his former Diſcourſe of that Kind ſhould diſcredit theſe Witneſſes, that have ſworn he has been ſo much concern'd in a Plot, you are to conſider; and comparing the Weight and Nature of the Evidence on the one Side, and the other, it muſt be left to your Determination.

Then there is another Thing that he did inſiſt upon, and that is Matter of Law. The Statute of the 25th *Ed.* 3. was read, which is the great Statute about Treaſons; and that does contain divers Species of Treaſon, and declares what ſhall be Treaſon. One Treaſon is the Compaſſing, and Imagining the Death of the King; another is the Levying of War: Now, ſays he, here is no War actually levied; and a bare Conſpiracy or Deſign to levy War, does not come within this Law againſt Treaſon. Now for that, I muſt tell you, if there be only a Conſpiracy to levy War, it is not Treaſon: But if the Deſign and Conſpiracy be either to kill the King, or to depoſe him, or impriſon him, or put any Force or Reſtraint upon him, and the Way and Method of effecting of theſe, is by Levying a War, there the Conſultation, and the Conſpiracy to levy a War for that Purpoſe, is High Treaſon, tho' no War be levied: For ſuch Conſultation and Conſpiracy is an Overt-Act, proving the Compaſſing the Death of the King, which is the firſt Treaſon, mentioned in the Statute of the 25th of *Ed.* 3. For the Words of that Statute are; *That if any Man ſhall compaſs, or imagine the Death of the King.* Now becauſe a Man deſigns the Death, Depoſition, or Deſtruction of the King, and to that Deſign, agrees and conſults to levy War, that this ſhould not be High-Treaſon, if a War be not actually levied, is very ſtrange Doctrine, and the Contrary has always been held to be Law. There may a War be levied without any Deſign upon the King's Perſon, or endangering of it; which, if actually levied, is High-Treaſon; but a bare Deſigning to levy War, without more, will not be Treaſon. As for Example*; If Perſons do aſſemble themſelves, and act with Force in Oppoſition to ſome Law, which they think inconvenient, and hope thereby to get it repealed; this is Levying a War and Treaſon, though Purpoſing and Deſigning it is not ſo: So when they endeavour in great Numbers with Force to make ſome Reformation of their own Heads, without purſuing the Methods of the Law, that is a Levying of War, and Treaſon, but the Purpoſing and Deſigning it is not ſo.

* Riſing with Force to pull down all Incloſures, to expell Strangers, to pull down Bawdy-Houſes, is Levying of War, and Treaſon; but a bare Purpoſing and Deſigning to raiſe ſuch a Force, for ſuch a Purpoſe, is not Treaſon.

But if there be, as I told you, a Purpoſe and Deſign to deſtroy the King, and to depoſe him from his Throne, or to reſtrain him, or have any Power over him, which is propoſed or deſigned to be effected by War that is to be levied, ſuch a Con-

a Conſpiracy and Conſultation to levy War for the bringing this to paſs, is an Overt Act of High Treaſon. So that, Gentlemen, as to that Objection, that he makes in Point of Law, it is of no Force, if there be Evidence ſufficient to convince you, that he did conſpire to levy War for ſuch an End.

Gentlemen, the Evidence you have heard what it is, you may conſider the Weight of it, and the Circumſtances that do attend it; and likewiſe the Anſwers that have been given by the Priſoner to invalidate that Evidence, and to prove the Improbability of what they have teſtified againſt him. You have heard, I ſay, the Evidence on the one Side, and the other; if you are not ſatisfied, that what the Witneſſes have Sworn is true, that Sir *John Freind* did engage in ſuch a Deſign for ſuch a Purpoſe, then you are to acquit him; but on the other Side, if you believe that Sir *John Freind* is guilty of what the Witneſſes have depoſed againſt him, then you are to find him Guilty.

Juryman. My Lord, we deſire we may have that Letter with us that was produced here.

L. C. J. No, no, you cannot have it by Law.

Juryman. May it not be left with the Foreman, my Lord?

L. C. J. No; but you may look upon it in Court before you go away, if you will.

Then the Letter was handed to the Jury, *and one of them handed it to the Priſoner.*

L. C. J. Why do you do ſo? You ſhould not give the Priſoner the Letter.

Juryman. It was done to ſee whether it was his Hand; and we deſire, if there be any Body here that knows his Hand-writing, or that ſaw him write it, may be produced.

L. C. J. Why? Did not he own the Letter to the Witneſs afterwards? It was ſworn to you he did; and that he met according to the Appointment in the Letter, and that Money was paid.

Then the Jury *withdrew to Conſider of their Verdict, and an Officer was ſworn to keep them according to Law, till agreed; and about a Quarter of an Hour afterwards they returned into Court, and the Priſoner was brought to the Bar.*

Cl. of Arr. Gentlemen, Anſwer to your Names. *Thomas Clark*——

Mr. *Clark.* Here.

(*And ſo did all the Reſt of the Twelve.*)

Cl. of Arr. Gentlemen, are you agreed of your Verdict.

Jury. Yes.

Cl. of Ar. Who ſhall ſay for you?

Jury. Our Foreman.

Cl. of Ar. Sir *John Freind*, hold up thy Hand, (*which he did,*) Look upon the Priſoner: How ſay ye, is he guilty of the High-Treaſon whereof he ſtands indicted, or not guilty?

Foreman. Guilty, my Lord.

Cl. of Ar. What Goods or Chattels, Lands or Tenements, had he at the Time of the High-Treaſon committed, or at any Time ſince?

Foreman. None to our Knowledge.

L. C. J. Jaylor, look to him, he is found Guilty of High-Treaſon.

Cl. of Ar. Then hearken to your Verdict as the Court has recorded it. You ſay that Sir *John Freind* is guilty of the High-Treaſon whereof he ſtands indicted, but that he had no Goods, nor Chattels, Lands, nor Tenements, at the Time of the High-Treaſon committed, or at any Time ſince, to your Knowledge.

L. C. J. Diſcharge the Jury.

Cl. of Ar. Gentlemen, the Court diſcharges you, and thanks you for your Service.

L. C. J. Then we had beſt to adjourn the Court till to morrow Morning.

Cl. of Ar. Cryer, make Proclamation.

Cryer. O yes, O yes, O yes: All Manner of Perſons that have any Thing more to do, at this General Seſſions of the Peace, Seſſions of *Oyer* and *Terminer*, holden for the City of *London*; and Goal-Delivery of *Newgate*, holden for the City of *London*, and County of *Middleſex*, may depart hence for this Time, and give their Attendance here again, to morrow Morning at ſeven of the Clock, and *God ſave the King*.

Then the Priſoner was carried back to Newgate, *and was brought the next Day to the Bar to offer what he had to ſay for Stay of Judgment; and afterwards received Sentence of Death, as a Traytor.*

The TRYAL of Sir WILLIAM PARKINS, *Knight,*

Publiſh'd by AUTHORITY.

Die Martis viceſimo quarto Martii, Anno Dom. 1695. *Anno Regni Regis* Gulielmi *Tertii Octavo.*

This Day the Tryal of Sir William Parkins, *Kt. came on at the Seſſions-Houſe in the* Old-Baily, *for High-Treaſon, in Conſpiring the Death of the King, and Promoting a* French *Invaſion for the Reſtoring the late King* James.

Clerk of Arraignments.

CRyer, make Proclamation.

Cryer. Oyez, Oyez, Oyez. All Manner of Perſons that have any Thing more to do at this General Seſſions of the Peace, Seſſions of *Oyer* and *Terminer*, holden for the City of *London*; and Goal-Delivery of *Newgate*, holden for the City of *London*, and County of *Middleſex*, and were adjourned over to this Day, draw near and give your Attendance, for now they will proceed to the Pleas of the Crown for the ſame City, and County; and *God ſave the King.*

Cl. of Ar. Middleſex. Cryer, make Proclamation.

Cryer. Oyez. You good Men of the County of *Middleſex*, ſummoned to appear here this Day, to try between our Sovereign Lord the King, and the Priſoner that ſhall be at the Bar; anſwer to your Names as you ſhall be called, every Man at the firſt Call, upon Pain and Peril ſhall fall thereupon.

Then the Jury *that were returned in the Pannel, were all called over and the Appearances of thoſe who anſwered to the Call, were recorded.*

About Ten of the Clock the Judges (to wit) the Lord Chief Juſtice *Holt*, the Lord Chief Juſtice *Treby*, and Mr. Juſtice *Rokeby*, came into the Court.

Cl. of Arr. Set Sir *William Parkins* to the Bar. (*which was done.*) Sir *William Parkins*, hold up thy Hand.

Parkins. My Lord, if you pleaſe, I humbly beg the Favour of one Word before I am arraigned. My Wife coming to ſee me in my Diſtreſs, ſent up a Trunk of Linnen for our Uſe, and the Sheriffs of *London* have ſeized it, and do detain it. It has Linnen in it, and all her neceſſary Things, and all Things have been torn from me, ſince I was apprehended, but what is there, I have nothing to ſubſiſt upon but what is there; for no Money can I get from any Body, no Body will pay us a Farthing.

Mr Sheriff *Buckingham.* My Lord, we were ſent for to Mr Secretary *Trumball*'s Office, and when we came there, there was a Trunk that had been ſeized, as belonging to Sir *William Parkins*; and when we came thither it was opened, and there was in it ſome houſhold Linnen, and ſome Plate; and Mr Secretary *Trumball* was pleaſed, after having ſearched the Trunk, to ſeal it up, and deliver it to my Brother and me, to be kept; and this is all we know of it.

* *L. C. J.* Where was this Trunk ſeized? * *Lord Chief Juſtice* Holt.

Mr Sh. *Buckingham.* We found it in the Secretary's Office, and it was delivered to us there, and we gave a Receipt for it to bring it down again when called for; we did not ſeize it.

L. C. J. Look ye ſee Sir *William Parkins*, your Trunk was ſeiz'd I ſuppoſe in order to ſearch for Papers.

Parkins. Yes, I believe it was; but I hope it ſhall be delivered back now, they have found nothing in it, and I have nothing elſe to ſubſiſt upon but what is there.

L. C. J. Is there any Plate there? What is there in the Trunk?

Mr Sh. *Buckingham.* There is ſome Diaper and Damask Linnen, a Carpet, and ſome Pieces of Plate, two or three hundred Ounces of Plate, for ought I know. We had it from the Secretary's Office; we did not ſeize it.

Then the Judges conſulted among themſelves.

L. C. J. He ought to have his Plate to ſell, to ſupport him that he may have Bread.

Parkins. Will your Lordſhip pleaſe to direct the Sheriff to deliver it back.

L. C. J. Well, ſome Care or other ſhall be taken in it.

Parkins. My Lord, I have nothing to ſubſiſt upon, unleſs I can make ſomething of what is there; I have a Wife, and four Children, and nothing to ſubſiſt upon.

L. C. J. Let your Wife make Application for it at the Secretary's, it cannot now be done here. Why did you not make Complaint of it before? If you had, Care had been taken in it.

Park. I was told there was a Petition; for, my Lord, I was a cloſe Priſoner, and they told me there was a Petition; but my Wife never mentioned any Thing of it to me while afterwards; and they talk'd of an Order of Council that they had for the Sheriff's ſeizing it; but when I came to enquire into it, there was no Order about it, but only to ſearch and examine it.

L. C. J. Well, ſome Order ſhall be taken about it.

Mr Sh. *Buckingham.* My Lord, we have given a Receipt to the Secretary for it.

L. C. J. But he muſt have wherewithal to ſubſiſt and buy him Bread while he is in Priſon.

Mr Sh. *Buckingham.* My Lord, I ſee Mr *Burleigh* there, who was Sir *John Freind*'s Sollicitor; I would humbly move your Lordſhip, that it may be inquir'd into, how he came by the Pannel of the Jury yeſterday? For it ſeems to reflect upon us, as if we had given the Priſoner a wrong Pannel.

Mr Juſt. *Rokeby.* No, I think there can be no Reflection upon you; but I think it would be very proper to have the Matter examin'd.

L. C. J. Ay, let *Burleigh* come in; *(which he did.)* Pray, how came you by the Pannel which you gave to Sir *John Freind?*

Burleigh. My Lord, I had Three ſeveral Copies ſent me by Sir *John Freind*'s Friends, to the *Horn* Tavern about three or four a Clock, and I deliver'd one of them to Sir *John Freind*; but he had one before I deliver'd mine.

L. C. J. Who ſent them to you, or brought them to you?

Burleigh. I had them brought to me by a Porter.

Mr *Baker.* You know you might have had it from the proper Officer for asking.

Burl. I had them brought me from Sir *John Freind*'s Friends.

L. C. J. Can you tell who had it from the Sheriff?

Burl. My Lord, I know not: I had three Copies ſent me in a Quarter of an Hour's Time; whence they came, I know not; the Sheriff knows me, and every Body elſe.

Mr Sh. *Buck.* I do know you, and would have you be fair in your Practice.

Mr *Baker.* The Inquiry is made, becauſe a falſe Copy is put upon him; you might have had a true Copy, if you had applied your ſelf right.

Burl. I ſent to Mr. *Farringdon* for it.

L. C. J. The Sheriff deliver'd it the Secondary, who is the proper Officer.

Mr J. *Rokeby.* Sir *John Freind* ſaid he had it from him yeſterday.

Burl. But he had one before; how he came by it, I can't tell; nor whence thoſe came that were brought to me.

Mr J. *Rokeby.* If you will not take care to go to the right Place, it is no Body's Fault but your own, if you ſuffer by it.

Burleigh. I was with my Lady, and delivered a Petition for this Trunk.

L. C. J. But it ſeems it was under the Conuzance of the Secretary, and Direction was given to go thither; ſome Care or other muſt be taken in it, and ſhall; but go on now to Arraign the Priſoner.

Cl. of Arr. Hold up thy Hand, (which he did;) thou ſtandeſt Indicted in *Middleſex*, by the Name of Sir *William Parkyns*, late of the Pariſh of St. *Paul Covent-Garden*, in the County of *Middleſex*, Kt. For that, Whereas an open, and notoriouſly publick, and moſt ſharp, and cruel War, for a long Time hath been, and yet is, by Sea and by Land had, carried on, and proſecuted by *Lewis* the *French* King, againſt the moſt Serene, moſt Illuſtrious, and moſt Excellent Prince, our Sovereign Lord *William* the Third, by the Grace of God, of *England*, *Scotland*, *France*, and *Ireland*, King, Defender of the Faith, *&c.* During all which Time, the ſaid *Lewis* the *French* King, and his Subjects were, and yet are Enemies of our ſaid Lord the King that now is, and his Subjects, You the ſaid Sir *William Parkyns*, a Subject of our ſaid Sovereign Lord the King, that now is, of this Kingdom of *England*, well knowing the Premiſſes, not having the Fear of God in your Heart, nor weighing the Duty of your Allegiance, but being moved and ſeduced by the Inſtigation of the Devil, as a falſe Traytor againſt the ſaid moſt Serene, moſt Clement, and moſt Excellent Prince, our ſaid Sovereign Lord *William* the Third, now King of *England*, *&c.* your Supreme, True, Natural, Rightful, Lawful, and Undoubted Sovereign Lord; the cordial Love, and true and due Obedience, Fidelity and Allegiance, which every Subject of our ſaid Lord the King that now is, towards him our ſaid Lord the King, ſhould bear, and of Right ought to bear, withdrawing, and utterly to extinguiſh intending, and contriving, and with all your Strength purpoſing, deſigning, and endeavouring the Government of this Kingdom of *England*, under him our ſaid Lord the King that now is, of Right, duly, happily, and very well Eſtabliſhed, altogether to Subvert, Change, and Alter; as alſo the ſame our Sovereign Lord the King to Death and final Deſtruction to put and bring; and his faithful Subjects, and the Freemen of this Kingdom of *England*, into intolerable and moſt miſerable Slavery, to the aforeſaid *French* King, to Subdue and bring; the firſt Day of *July*, in the ſeventh Year of the Reign of our ſaid Sovereign Lord the King that now is, and divers other Days and Times, as well before as after, at the Pariſh of St, *Paul Covent-Garden*, aforeſaid, in the County aforeſaid, falſely, maliciouſly, diviliſhly, and traiterouſly, did compaſs, imagine, contrive, purpoſe, deſign and intend, our ſaid Sovereign Lord the King that now is, then your Supreme, true, natural, rightful, and lawful Sovereign Lord, of and from the Regal State, Title, Honour, Power, Crown, Command, and Government of this Kingdom of *England*, to Depoſe caſt Down, and utterly to Deprive; and the ſame our Sovereign Lord the King to Kill, Slay, and Murther; and the aforeſaid *Lewis* the *French* King, by his Armies, Soldiers, Legions, and Subjects, this Kingdom of *England* to Invade, Fight with, Conquer, and Subdue, to move, ſtir up, procure, and Aid; and a miſerable Slaughter among the faithful Subjects of our ſaid Lord the King throughout all this whole Kingdom of *England*, to make and cauſe; and that you the ſaid Sir *William Parkyns*, to the aforeſaid Enemies of our ſaid Lord the King that now is, then and there, during the War aforeſaid, Traiterouſly were adhering and aiding; and the ſame moſt abominable, wicked and deviliſh Treaſons, and traiterous Compaſſings, Contrivances, Intentions, and Purpoſes of yours aforeſaid, to fulfil, perfect and bring to effect; and in proſecution, performance, and Execution of the traiterous Adheſion aforeſaid, you the ſaid Sir *William Parkyns*, as ſuch a falſe Traytor, during the War aforeſaid, to wit, the ſame firſt Day of *June*, in the Year aboveſaid, at the Pariſh aforeſaid, in the County aforeſaid, and divers other Days and Times, as well before as after, there and elſewhere in the ſame County, falſely, maliciouſly, adviſedly, ſecretly, and

and traiterously, and with Force and Arms, with one *Robert Charnock* (late of High-Treason, in contriving, and conspiring the Death of our said Sovereign Lord the King, that now is, duly convicted and attainted) and with divers other false Traytors, to the Jurors unknown, did meet, propose, treat, consult, consent, and agree, to procure from the aforesaid *Lewis* the *French* King, of his Subjects, Forces, and Soldiers, then and yet Enemies of our said Lord the King that now is, great Numbers of Soldiers and armed Men, this Kingdom of *England* to Invade and Fight with, and to levy, procure, and prepare great Numbers of Armed Men, and Troops, and Legions against our said Sovereign Lord the King that now is, to rise up and be formed; and with those Enemies at and upon such their Invasion and Entrance into this Kingdom of *England*, to join and unite; Rebellion and War against him our said Sovereign Lord the King, within this Kingdom of *England*, to make, levy, and wage; and the same our Sovereign Lord the King so as aforesaid to Depose, and him to Kill and Murder. And further, with the said false Traytors, the same first Day of *July*, in the Year abovesaid, at the Parish aforesaid, in the County aforesaid, Traiterously you did consult, consent, and agree to send the aforesaid *Robert Charnock* as a Messenger from you the said Sir *William Parkyns*, and the same other Traytors unknown, as far as, and into the Kingdom of *France*, in Parts beyond the Seas, to *James* the Second, late King of *England*, to propose to him, and desire of him to obtain of the aforesaid *French* King, the Soldiers and Armed Men aforesaid, for the Invasion aforesaid to be made; and Intelligence and Notice of such their Traiterous Intentions, and Adhesions, and all the Premisses, to the said late King *James*, and the said other Enemies and their Adherents, to give and exhibit; and them to inform of other Things, Particulars, and Circumstances thereunto relating; as also Intelligence from them of the said intended Invasion, and other Things and Circumstances concerning the Premisses, to receive, and them to you the said Sir *William Parkyns*, and the said other Traytors in this Kingdom of *England*, to signify, report, and declare, in Assistance, Animation, and Aid of the said Enemies of our said Sovereign Lord the King that now is, in the War aforesaid, and to stir up and procure those Enemies the more readily and boldly this Kingdom of *England* to Invade, the Treasons and Traytorous Contrivances, Compassings, Imaginations, and Purposes of you the said Sir *William Parkyns* aforesaid, to perfect and fulfil, and all the Premisses the sooner to execute, manage and perform, and the Invasion aforesaid to render and make the more easie, you the said Sir *William Parkyns*, afterwards, to wit, the 10th Day of *February*, in the Year abovesaid, at the Parish aforesaid, in the County aforesaid, and divers other Days and Times, as well before as after, there and elsewhere in the same County, Falsely, Maliciously, Advisedly, Secretly, Traiterously, and with Force and Arms, with the aforesaid *Robert Charnock*, and very many other false Traytors, to the Jurors unknown, did Meet, Propose, Treat, Consult, Consent, and Agree, him our said Sovereign Lord the King that now is, by lying in wait, and Deceit, to Assassinate, Kill and Murder; and that execrable, abominable, and detestable Assassination, and Killing the sooner to execute, and perpetrate, afterwards, to wit, the same Day and Year, there Traiterously you did Treat, Propose, and Consult with those Traytors, of the Ways, Methods, and Means, and the Time and Place where, when, which Way, and how our said Sovereign Lord the King, so by lying in wait, the sooner might be Killed, and Slain, and did Consent, Agree, and Assent with the same Traytors, that Forty Horsemen or thereabouts, of those Traytors, and others by them and you the said Sir *William Parkyns*, to be Hired, Procured, and Paid, with Guns, Carbines, and Pistols, with Gun-Powder and Leaden-Bullets Charged, and with Swords, Rapiers, and other Weapons Armed, should lie in wait, and be in Ambush, our said Lord the King in his Coach being, when he should go abroad, to Attack, and that a certain, and competent Number of those Men so Armed, should set upon the Guards of our said Lord the King then, and there attending him, and being with him, and should Over-power and Fight with them, whilst others of the same Men so Armed, him our said Lord the King should Kill, Slay, and Murder; and that you the said Sir *William Parkyns*, then and there, did take upon you to provide Five Horses for those Men which should so Kill and Murder our said Sovereign Lord the King; and also that you the said Sir *William Parkyns*, your Treasons, and all your traiterous Intentions, Designs and Contrivances aforesaid, to execute, perpetrate, fulfil, and bring to effect afterwards, to wit, the Day and Year last abovesaid, at the Parish aforesaid in the County aforesaid, Divers Horses, and very many Arms, Guns, Carbines, Rapiers and Swords, and other Weapons, Ammunition and Warlike Things, and Military Instruments falsely, maliciously, secretly, and Traytorously did obtain, buy, gather, and procure, and to be bought, obtained, gathered, and procured did Cause, and in your Custody had and detained, with that Intention them in, and about the detestable, abominable, and execrable Assassination, Killing, and Murder of our said Lord the King, and the Invasion aforesaid, as aforesaid, to use, employ, and bestow; and also your Treasons, and all your Traiterous Intentions, Purposes, and Contrivances aforesaid, to execute, perpetrate, fulfill, and fully bring to Effect; you the said Sir *William Parkyns* afterwards, to wit, the Day and Year last abovesaid, at the Parish aforesaid, in the County aforesaid, Falsely, Maliciously, Advisedly, Secretly, and Traiterously, divers Soldiers, and Men Armed, and ready to be Armed, after the said detestable, abominable, and execrable Assassination, Killing, and Murder of our said Sovereign Lord the King, so as aforesaid should be done, perpetrated, and committed, to Rise, and Muster, and War, and Rebellion within this Kingdom of *England* to make, and wage, and with the Enemies of our said Lord the King, Foreigners and Strangers, Subjects and Soldiers of the said *Lewis* the *French* King, being about to Invade this Kingdom of *England*, at and upon their Invasion and Enterance into this Kingdom then expected to be shortly made, themselves, together with you the said Sir *William Parkyns*, to Joyn and Unite, and into Troops and Legions to form, you did Levy, List, and Retain, and did procure to be Levied, Listed and Retained, and those Soldiers and Men for the Treasons, Intentions, and Purposes aforesaid, then and there, and afterwards in Readiness you had; against the Duty of your Allegiance, and against the Peace of our said Sovereign Lord the King that now is, His Crown and Dignity; as also

againſt the Form of the Statute in this Caſe made and provided.

How ſay'ſt thou, Sir *William Parkyns*, Art thou Guilty of this High-Treaſon whereof thou ſtandeſt Indicted, or Not Guilty?

Parkyns. Not Guilty.

Cl. of Arr. Culpritt. How wilt thou be Tryed?

Parkyns. By God and my Country.

Cl. of Arr. God ſend thee good Deliverance.

Parkyns. My Lord, If your Lordſhip pleaſes to favour me with a Word or two.

L. C. J. Aye, What ſay you Sir?

Parkyns. My Lord, I have been kept in hard Priſon ever ſince I was committed, no Body has been ſuffer'd to come to me till *Friday* laſt, then my Council came to me; and being charg'd with many Facts as I ſee in this Indictment, it will be neceſſary to have divers Witneſſes to clear my ſelf of theſe Particulars; they are diſpers'd up and down, and I have had no Time to look after them, and therefore I beg your Lordſhip to put off my Tryal till another Day.

L. C. J. When had you firſt Notice of your Tryal?

Parkyns. The firſt Notice of my Tryal was on *Wedneſday* laſt, in the Afternoon.

L. C. J. That is a ſufficient Time of Notice, ſure you might have provided your Witneſſes, and prepar'd for it by this Time.

Parkyns. But, *my Lord*, being kept ſo cloſe Priſoner, I had no Opportunity for it; for it was not poſſible for me to get any Body to come to me, till *Friday* Noon, not ſo much as my Council, and then there was but Two Days, *Saturday* and *Monday*, (for *Sunday* is no Day for any Buſineſs) and it is impoſſible for me to be ready in the Manner that I ought to be. It is a perfect Diſtreſs, and Hardſhip upon me, to be put ſo ſoon upon my Tryal, without my Witneſſes, and what ſhould enable me to make my Defence; therefore I humbly intreat your Lordſhip to put it off till another Day.

L. C. J. What Witneſs do you want, Sir *William?*

Parkyns. I have divers Witneſſes, *my Lord*, that can give an Account where I was from Time to Time, but they are many of them out of Town, and I have ſent about every way, but cannot get them together in ſo ſhort a Time.

L. C. J. When had he Notice of his Tryal?

Mr *Baker.* On *Wedneſday* I told him, that he muſt expect to be try'd this Day, and withal, that if he would name me any Council, that he would have come to him, he ſhould have an Order next Morning for them.

L. C. J. You were told, it ſeems, on *Wedneſday* that you might have what Council you would.

Mr *Baker.* And he had an Order upon *Thurſday* Morning for his Council.

Parkyns. I could not have it without Application to the Court at *White-Hall*, and could have no Body come to me till *Thurſday*, and it was *Friday* before I could get my Council to me.

L. C. J. You might have ſent for your Witneſſes on *Thurſday*, and imploy'd ſome body about that Matter then.

Parkyns. The Sollicitor that I employ'd, was imployed otherways, and I could not employ any Body elſe.

L. C. J. Yes, you might have employed any other about that Buſineſs.

Parkyns. I had no Body to ſend, I was kept cloſe, and no Body permitted to come to me.

L. C. J. Your Sollicitor you deſir'd had Leave to come to you.

Mr *Baker.* You know that thoſe you ſent for, you had an Order for.

Parkyns. I cou'd not get him till *Thurſday* to me, I had no Meſſengers to ſend till then.

Mr *Baker.* I gave the Keeper Direction, to let him have Perſons come to him to ſend on any Errand.

L. C. J. The Keeper had Orders, it ſeems, to let any Meſſenger come to you, and he would have help'd you to ſome Body to ſend of this Errand to be ſure.

Keeper. I always did it, as ſoon as I know they have Notice of their Tryal.

Parkyns. But the Keeper is not always in the Way, and beſides, when I had Notice given me of my Tryal, it was Execution Day, and he was not at home that Day.

L. C. J. He names no Witneſſes, only he ſays he has divers Witneſſes, neither is there any Oath made of any Witneſſes: Pray how long is it ſince you were committed?

Parkyns. I was committed this Day Fortnight.

L. C. J. Your Commitment charg'd you with High Treaſon, and therefore you knew what you ſtood accus'd of, were you not committed for High-Treaſon.

Parkyns. Yes, *my Lord*, I believe I was.

Mr *Sol. Gen. My Lord*, he had a very fair Time to prepare for his Defence, for he ſaw his Name in the Proclamation a good while before he was taken, and there it is declar'd, what he ſtands charg'd with.

L. C. J. You might have had a Copy of your Commitment, you had a Right to have it, and thereby you might have ſeen what you were accuſed of.

Keeper. We never do deny it, if it be demanded.

L. C. J. You cannot deny it, you know what Penalty you are under if you do.

Parkyns. No Body was permitted to come to me.

L. C. J. You might have ask'd for a Copy, or any Body elſe, for you had Notice of your Tryal ſo long ago as *Wedneſday* laſt.

Mr *Baker.* I gave him Notice of his Tryal on *Wedneſday*, and then told him he muſt prepare for it againſt this Day; he ſaid he would endeavour to petition for a longer Time, I told him it would be in Vain, for he muſt prepare for his Tryal to Day, and could have no longer Time.

L. C. J. Sir *William*, truly we do not ſee any Reaſon to put off the Tryal upon theſe Suggeſtions.

Parkyns. My Lord, it is very hard; then I humbly beg I may have the Favour, that I may have Council allow'd me, I have no Skill in Indictments.

L. C. J. We cannot allow Council.

Parkyns. My Lord, if I have no Council, I do not underſtand theſe Matters, nor what Advantage may be proper for me to take in theſe Caſes.

L. C. J. You are not ignorant, Sir *William*, that Council has been always refuſed when deſired in ſuch Caſes.

Parkyns. My Lord, there is a new Act of Parliament that is lately made, which allows Council.

L. C. J. But that does not commence yet, Sir *William.*

Parkyns. My Lord, it wants but one Day.

L. C. J. That is as much as if it were a much longer Time: for we are to proceed according to what the Law is, and not what it will be.

Parkyns.

Parkyns. But it is declarative of the Common Law, becauſe it ſays it was always juſt and reaſonable.

L. C. J. We cannot alter the Law till Law-makers do it.

Parkyns. Will your Lordſhip be pleaſed to let it be read?

L. C. J. Ay, if you have a Mind to it, it ſhall be read.

Parkyns. Yes, if your Lordſhip pleaſes.

L. C. J. Read it.

Cl. of Ar. Reads. An Act for Regulating of Tryals in Caſes of Treaſon, and Miſpriſon of Treaſon.——

All the firſt Paragraph of the New Act was read.

L. C. J. Look ye, Sir *William Parkyns*, this Law has not taken any Effect as yet; but the Law ſtands as it did before the making of this Act.

Parkyns. But, My Lord, the Law ſays it's juſt and reaſonable that it ſhould be ſo.

L. C. J. We go according to the Law as we find it is.

Parkyns. And, My Lord, what is juſt and reaſonable to Morrow, ſure is juſt and reaſonable to Day, and your Lordſhip may indulge me in this Caſe, eſpecially when you ſee how ſtreight Notice I have had, and what a little Time has been allowed me, that I am not able to make my Defence.

L. C. J. We cannot make a Law, we muſt go according to the Law, that muſt be our Rule and Direction.

Parkyns. Yes, my Lord, but what is juſt and reaſonable, ſure is Law: the Law is grounded upon Reaſon.

L. C. J. The Parliament has thought fit to make ſuch a Law, which is to commence from the 25th of this Month: It is not a Law till the Time comes, that the Parliament hath appointed for its being a Law.

Parkyns. But, my Lord, if my Notice had been a convenient Notice, I had been within the Time limited by the Act of Parliament; and no one can want the Advantage of that Act from henceforward, nor ſuffer for ſuch Want but my ſelf, which is a particular Hardſhip upon me.

L. C. J. We cannot alter the Law, we are bound by our Oaths to proceed according to the Law, as it is at preſent.

Parkyns. Pray, my Lord, let the Tryal be put off till another Day then.

L. C. J. You ſhew no Reaſon for it; you name no Witneſſes that you want, nor have we any Oath as we ought to have in ſuch a Caſe.

Parkyns. I will do both if your Lordſhip will oblige me to it.

L. C. J. There ought to be an Oath certainly, but we think you have had fair and convenient Notice: For you have had as much Notice as Sir *John Freind* had, who was tryed Yeſterday.

Parkyns. As I am informed he was charged with ſingle Facts about the Town, but I am charged with many particular Things more than he was.

L. C. J. The Act of Parliament ſays nothing of Notice of Tryal; that ſtill continues as it was before; and you have had very convenient Notice: Go on Mr *Hardeſty* to ſwear the Jury.

Cl. of Ar. Sir *William Parkins*, you the Priſoner at the Bar, Thoſe Men that you ſhall hear called and perſonally appear, are to paſs between our Sovereign Lord the King and you upon Tryal of your Life and Death; if therefore you will challenge them or any of them, you are to ſpeak unto them as they come to the Book to be ſworn, and before they be ſworn.

Parkins. I hope your Lordſhip will be of Council for me then.

L. C. J. So we will; we will do you all the Right we can. Look ye, you know you may challenge 35 without Cauſe, and as many as you will with Cauſe, but no more than 35 without Cauſe.

Cl. of Ar. Sir *Goddard Nelthorp.*

Parkins. I except againſt him.

Cl. of Ar. Leonard Hancock, Eſq;

Parkins. I except againſt him, he is the King's Servant.

Cl. of Ar. William Withers, Eſq;

Park. I challenge him.

Cl. of Ar. Samuel Powell, Eſq;

Park. I challenge him.

Cl. of Ar. William Northey, Eſq;

Park. Well, I don't except againſt him.

Cl. of Ar. Hold Mr *Northey* a Book, *(which was done.)* Look upon the Priſoner. You ſhall well and truly try, and true Deliverance make between our Sovereign Lord the King, and the Priſoner at the Bar, whom you ſhall have in Charge, according to your Evidence; So help you God.

Cl. of Ar. Thomas Tench.

Par. I challenge him.

Cl. of Ar. John Wolf.

Par. I challenge him.

Cl. of Ar. James Bodington.

Par. I challenge him.

Cl. of Ar. John Smith.

Par. I challenge him.

Cl. of Ar. Edward Gould.

Par. I have no Exception againſt him. *(He was ſworn.)*

Cl. of Ar. John Raymond.

Par. I challenge him.

Cl. of Ar. Daniel Thomas.

Par. I have no Exceptions againſt him. *(He was ſworn.)*

Cl. of Ar. Iſaac Honeywood.

Par. I challenge him.

Cl. of Ar. William Underwood.

Par. I challenge him.

Cl. of Ar. Arthur Bayley.

Par. I challenge him.

Cl. of Ar. Nehemiah Erming.

Par. I challenge him.

Cl. of Ar. John Webber.

Par. I challenge him.

Cl. of Ar. John Cane.

Par. I have no Exception to him.

Mr At. Gen. We challenge him for the King.

Cl. of Ar. Thomas Glover.

Par. I challenge him.

Cl. of Ar. Henry Whitchcott.

Par. I have no Objection againſt him. *(He was ſworn.)*

Cl. of Ar. Timothy Thornbury.

Par. I challenge him.

Cl. of Ar. Dormer Sheppard.

Par. I challenge him.

Cl. of Ar. John Temple.

Par. I challenge him.

Cl. of Ar. Nathaniel Gold.

Par. I have no Exception againſt him.

Mr *Gold.* My Lord, I am no Freeholder in this County.

Mr *Baker*. Nor have you no Copyhold, Sir?

Mr *Gold*, Yes, Sir, I have.

Mr At. Gen. However let him be ſet by.

Cl. of Ar. Robert Breedon.

Par. I challenge him.

Cl. of Ar. Thomas Taylor.

Park. I challenge him, he is the King's Servant.

Cl. of Ar. Joſeph Bliſſett.

Par. I challenge him.

Cl. of Ar. John Billier.

Par. I challenge him.

Cl. of Ar. Francis Chapman.

Par. I challenge him.

Cl. of Ar. John Cleeve.

Par. I challenge him.

Cl. of Ar. Robert Bampton.

Par. I have no Exception to him. (*He was ſworn.*)

Cl. of Ar. William Atlee.

Par. I challenge him.

Cl. of Ar. Thomas Sutton.

Par. I have no Exception to him. (*He was ſworn.*)

Cl. of Ar. Thomas Edling.

Par. I have no Exception againſt him. (*He was ſworn.*)

Cl. of Ar. Robert Sanderſon.

Par. I have no Exception againſt him. (*He was ſworn.*)

Cl. of Ar. Ralph Marſh.

Par. I have no Exception againſt him. (*He was ſworn.*)

Cl. of Ar. Richard Bealing.

Par. Pray, Mr *Hardeſty*, how many have I challeng'd?

Mr *Hardeſty*. I will tell you preſently, Sir.—— You have challenged 25.

Par. But there are two that I gave Reaſon for: Do you put them in among them? that is, Mr *Hancock* and Mr *Taylor*, as the King's Servants.

Cl. of Ar. You may ſpeak to my Lord about it; but if that be allow'd, then there are but twenty three.

Par. Well Sir, Go on then.

Cl. of Ar. Richard Bealeing.

Par. I challenge him.

Cl. of Ar. William Partridge.

Par. I challenge him.

Cl. of Ar. Nicholas Roberts.

Par. I challenge him.

Cl. of Ar. Peter Lavigne.

Par. I challenge him.

Cl. of Ar. Joſeph Whiſton.

Park. I have no Objection to him. (*He was ſworn.*)

Cl. of Ar. Andrew Cook.

Par. I challenge him.

Cl. of Ar. Samuel Hooper.

Par. I challenge him.

Cl. of Ar. Thomas Heames.

Parkins. I have no Exception to him. (*He was ſworn.*)

L. C. J. Sir *William Parkins*, you have challenged two, and have aſſign'd the Cauſe of your Challenge, that is, *Hancock* and another, and the Reaſon of your Challenge is, becauſe they are the King's Servants. I am to acquaint you, that is no Cauſe of Challenge; but however the King's Council do not intend to inſiſt upon it, if there are enough beſides. They are willing to go on with the Pannel; and I ſpeak this, becauſe I would not have it go for a Precedent, nor have it underſtood that the Cauſe you aſſign is a good Cauſe: But however they will not ſtand with you, if there be enough to ſerve.

Par. My Lord, I ſubmit to it; the Jury is full I think.

Cl. of Arr. No, there are but Eleven ſworn yet.

Par. But how far have I gone in my Challenges?

Cl. of Ar. There are four, which you may challenge more.

Par. There are two allow'd me, tho' it be not a Precedent: Are there four ſtill?

Cl. of Ar. Yes, you may challenge four more, and no more. *Edward Townſend.*

Par. I challenge him.

Cl. of Ar. Nicholas Rufford.

Par. I have no Exception of him. (*He was ſworn.*)

Cl. of Ar. Cryer, countez. *William Northey.*

Cryer. One, &c. (*and ſo the Reſt till the Twelve.*)

Cl. of Ar. Nicholas Rufford.

Cryer. Twelve good Men and true, ſtand together, and hear your Evidence.

Cl. of Ar. Cryer, make Proclamation.

Cryer. Oyez, If any one can inform my Lords the King's Juſtices, the King's Serjeant, the King's Attorney General, or this Inqueſt now to be taken, of the High Treaſon whereof the Priſoner at the Bar ſtands indicted, let them come forth, and they ſhall be heard; for now the Priſoner ſtands at the Bar upon his Deliverance, and all others that are bound by Recognizance to give Evidence againſt the Priſoner at the Bar, let them come forth, and give their Evidence, or elſe they forfeit their Recognizance. And all Jury Men of *Middleſex* that have appear'd, and are not ſworn, may depart the Court.

The Names of the Twelve Sworn were theſe.

William Northey, Eſq;		*Thomas Edling*, Gent.
Edward Gold, Eſq;		*Robert Sanderſon*, Gent.
Daniel Thomas, Eſq;		*Ralph Marſh*, Gent.
Henry Whitchcot, Eſq;	} Jur.	*John Whiſton*, Gent.
Robert Bampton, Gent.		*Thomas Heams*, Gt. and
Thomas Sutton, Gent.		*Nicholas Rufford*, Gent.

Cl. of Ar. Sir *William Parkins*, hold up thy Hand. (*which he did.*) You that are ſworn look upon the Priſoner, and hearken to his Cauſe: He ſtands indicted by the Name of Sir *William Parkins*, late of the Pariſh of St *Paul Covent Garden*, in the County of *Middleſex*, Knight, that whereas (*prout* in the Indictment, *mutatis mutandis*,) and againſt the Form of the Statute made and provided. Upon this Indictment he hath been arraigned, and thereunto hath pleaded not guilty, and for his Trial hath put himſelf upon God and his Country, which Country you are; your Charge is to inquire, whether he be guilty of the High Treaſon whereof he ſtands indicted, or not guilty; if you find that he is Guilty, you are to inquire what Goods, and Chattels, Lands, Tenements, he had at the Time of the High-Treaſon committed, or at any Time ſince: If you find him not guilty, ye are to inquire whether he fled for it; if you find that he fled for it, you are to inquire of his Goods and Chattels,

tels, as if you had found him guilty; if you find him not guilty, nor that he did fly for it, you are to ſay ſo and no more; and hear your Evidence.

Mr *Montague*. May it pleaſe your Lordſhip, and you Gentlemen of the Jury——

Parkins. My Lord, your Lordſhip was pleaſed to ſay, you would be my Council. I am ignorant in Matters of Indictments, I beg if there be any Fault in it, you will let me know it.

L. C. J. Truly, I have obſerv'd no Fault in it; I do not know of any.

Mr *Montague*. Gentlemen, this Indictment does contain as heavy an Accuſation, as can be laid upon any Man, for it not only charges the Priſoner with a traiterous Deſign of ſubverting the Government, and raiſing War and Rebellion within this Kingdom; which was to be done by adhering to the King's Enemies, and promoting a Foreign Invaſion, but likewiſe with a Conſpiracy againſt the Life of the King, which was to have been taken away by a bloody Aſſaſſination.

Gentlemen, the Indictment ſets forth, That Sir *William Parkins*, the Priſoner at the Bar, did meet ſeveral Times with *Charnock*, and other falſe Traytors; and there it was conſulted, and agreed how they ſhould procure *French* Forces to land within this Kingdom, and then they were to raiſe Rebellion amongſt his Majeſty's Subjects, to join with the Invaders. Mr *Charnock* was ſent from the Priſoner at the Bar, and the Reſt, as a Meſſenger into *France*, unto the late King *James* to acquaint him with this bloody Deſign; and to deſire him to borrow of the *French* King as many Troops as he could ſpare to make a Deſcent upon this Kingdom, and they at the ſame Time were to facilitate the Deſcent, by getting as many Men as they could to make the Aſſaſſination; and the Number of Forty was pitched upon, who were to be provided for that Purpoſe, of which the Priſoner at the Bar was to find Five, who were to lie in wait with the Reſt, and ſet upon the King as he came along in his Coach, upon his Return from Hunting. Some were to aſſault and attack the Guards, while others were barbarouſly to aſſaſſinate and murder the King in his Coach: and particulary it charges the Priſoner with undertaking to procure and provide Five Horſes, and Arms that were to be imploy'd in this bloody Aſſaſſination; and alſo with gathering together great Quantities of Arms and Ammunition that were to be uſed in the Inſurrection. To this Indictment the Priſoner has pleaded not guilty; if he be not guilty, God forbid he ſhould be convicted: But if he be guilty, and we prove the Fact, the Nation expects that you will do Juſtice to the King and Kingdom, and find him ſo.

Mr. *At. Gen.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, the Priſoner at the Bar, Sir *William Parkins*, ſtands indicted of High-Treaſon, for Compaſſing the Death of his Majeſty, and Adhering to his Majeſty's Enemies; and the Overt Acts laid in the Indictment to prove this Treaſon are, That he with others had ſeveral Meetings and Conſultations about this Deſign, and ſent a Meſſenger over to *France* to the late King *James*, to procure *French* Forces to invade the Kingdom, to depoſe the King, and ſubject the Kingdom to a *French* Power: And likewiſe that he did enter into a Conſpiracy with ſeveral Perſons for the Aſſaſſination of his Majeſty's Royal Perſon. Theſe are the Overt Acts mentioned in the Indictment, to prove this Charge of Treaſon againſt the Priſoner.

Gentlemen, the Evidence to prove theſe Overt Acts, and which we ſhall produce, will be in this Manner. It will appear that the Priſoner at the Bar, Sir *William Parkins*, has had a Commiſſion from King *James* to raiſe a Regiment of Horſe, and about *May* laſt, he with ſeveral others had a Meeting at the *Old King's Head* in *Leadenhall-ſtreet*, where were preſent my Lord of *Ailesbury*, my Lord *Montgomery*, Sir *William Parkins*, Sir *John Freind*, Sir *John Fenwick*, Mr *Charnock*, Mr *Porter*, and one Mr *Cook*; and *Goodman* came in to them after Dinner. And at that Meeting it was conſulted and concerted among them, how they ſhould bring back the late King *James*, and depoſe his preſent Majeſty; and in Order to that they did reſolve to ſend Mr *Charnock* as a Meſſenger to the late King *James*, to deſire him to obtain from the *French* King 10000 Men to invade this Kingdom; 8000 Foot, 1000 Horſe, and 1000 Dragoons: and to encourage the late King to this, they did aſſure him by the ſame Meſſenger, that they would meet him with 2000 Horſe upon his Landing; and they did all undertake and agree that they would do it; and Mr *Charnock* undertook to go of this Meſſage.

Gentlemen, about a Week after this Meeting, Mr *Charnock* not being willing to go upon this Errand without a good Aſſurance, that they intended to perform what they had reſolved upon, they therefore had another Meeting of moſt of the ſame Perſons that were at the former, and particularly the Priſoner at the Bar was one; and that was at Mrs *Mountjoy*'s a Tavern in St. *James's-ſtreet*. And at that Meeting they did all agree, as formerly, and continued in their former Reſolution, to ſend Mr *Charnock* to aſſure the late King, that they would meet him, according as they had promiſed, if he would give them Notice where he was to land, and he ſhould not fail of their Aſſiſtance. And at theſe Meetings they did take Notice, that then was the moſt proper Time for ſuch an Invaſion: For the King was gone to *Flanders*, moſt of the Forces were drawn thither, and the People were diſſatisfy'd, and ſo it would be the fitteſt Opportunity to accompliſh their Deſign. And they deſired Mr *Charnock* to make Haſte to carry this Meſſage, and to intreat King *James* that he would be ſpeedy and expeditious in his Coming, that they might not loſe this Seaſon.

Gentlemen, after theſe Meetings, Mr *Charnock* did within a few Days go over into *France*, and did deliver his Meſſage to the late King *James*, who took it very kindly, but ſaid that the *French* King could not ſpare ſo many Forces that Year, having other Work to imploy them about: Upon which, within a Month's Time, or leſs, he came back again, and brought an Account of his Meſſage to thoſe Gentlemen that ſent him. This was in *May* or *June* laſt, and ſo the further Proſecution of the Deſign ceaſed at that Time.

But Gentlemen, the laſt Winter it was revived again, and attempted, and carried on very near to the obtaining a fatal Succeſs. And you will hear that the Priſoner at the Bar, Sir *William Parkins*, has had too great a Hand, and been a very great Inſtrument in both the Parts of this wicked Conſpiracy and Treaſon; not only in the Invaſion, which he with others ſent the Meſſenger over to procure; but alſo in the other Part, the

blackeſt

blackeſt Part, even the Aſſaſſination of the King's Perſon.

About *January* laſt Sir *George Barclay*, a Lieutenant of the Guards to King *James* in *France*, was ſent over into *England* to engage Perſons to join in the Conſpiracy and Aſſaſſination; and for his Aſſiſtance there were ſent over with him, and before and after him, ſome 20 Troopers of the late King's, that were his Guards in *France*. And Sir *George Barclay*, to encourage the Perſons that were to join, and whom he had brought over with him, pretended an Authority to juſtify it, that is, a Commiſſion from the late King *James*, and he communicates this Deſign to Mr *Charnock*, Mr *Porter*, and ſeveral others, and amongſt the Reſt to the Priſoner at the Bar, Sir *William Parkins*, having a great Confidence in him, and did acquaint him he had ſuch a Commiſſion, and he ſhewed it him, and that Commiſſion was to levy War againſt the King's Perſon; which they took to be a ſufficient Authority for them to aſſaſſinate the King's Perſon.

Gentlemen, in order to the accompliſhing this horrid Conſpiracy, there were ſeveral Meetings, and Conſultations had, at which the Priſoner at the Bar was preſent, and very active. Sometimes they met at Captain *Porter*'s Lodgings, at another Time at the *Nagg's Head* in *Covent-Garden*, at another Time at the *Sun* in the *Strand*, and another Time at the *Globe* in *Hatton-Garden*, in order to accompliſh this Deſign: And at theſe Meetings, you will hear, they did propoſe ſeveral Ways and Methods for the Execution of it; and ſeveral Perſons, particularly one of them that have ſuffered the Puniſhment of the Law for this, were appointed to go and view the Ground, where the King's Perſon might moſt conveniently be aſſaulted. Mr *King*, that was executed for it, was one, Captain *Porter* was another, and one *Knightley* was the Third; and theſe did go to ſee the Ground. And the Day before they went there was a Meeting, at which was preſent the Priſoner at the Bar, and others, wherein 'twas concluded upon, that they ſhould go; and they went accordingly to ſee the moſt convenient Place for it. They went to *Brentford*, and afterwards to the other Side of the Water to *Richmond*, and ſurvey'd all the Ground, and the Place they pitched upon as the moſt proper for their Purpoſe was, when his Majeſty ſhould return from Hunting, to do it in the Lane betwixt *Brentford* and *Turnham-Green*. And accordingly, when they return'd in the Evening, they came by Appointment to the Place where the Reſt of the Accomplices were to meet, at the *Nagg's Head* Tavern in St. *James*'s, and gave an Account of their Proceedings; and at that Meeting likewiſe was Sir *William Parkins* the Priſoner at the Bar, Mr *Charnock*, and ſeveral others, and upon the Report of Capt. *Porter* and Mr *King*'s Expedition, they did reſolve the Thing ſhould be done in that Place, and that it ſhould be done in this Manner.

Sir *George Barclay* with about Eight or Ten in his Party, who were to be choſen out of all the other Parties, were to aſſault the King's Coach, and endeavour to kill the King, and all the Reſt that were in the Coach with him, whilſt the others in two Parties, were to attack the Guards; and the Number in all was to be about 40. This was fully agreed upon.

And, Gentlemen, the firſt Time that they reſolved to put this traiterous Deſign in Execution, was the Fifteenth of *February*, which was a *Saturday*, the uſual Day that the King was wont to go a Hunting on; but it happened by great Providence that the King did not go abroad that Day.

They had contrived further to make the Thing ſure, that there ſhould be two Perſons, whom they called orderly Men, who ſhould be placed at *Kenſington*, to give Notice when the King went abroad; and *Chambers* was one, and *Durance* that was a *Fleming*, was another; and *Durance* was likewiſe employed to view the Inns about *Turnham-Green* and *Brentford*, for the Lodging of their Men, who were to be placed Two or Three in an Inn, that they might not be obſerved.

Gentlemen, the firſt Day appointed for the accompliſhing this Deſign, which was the 15th of *February*, being over, and they diſappointed; yet they did afterwards reſolve to go on and execute it. And the next *Saturday*, which was the 22d of *February*, was pitched upon for the Time of Execution; and accordingly on *Friday* the 21ſt of *February*, the Day before, there was a Meeting at the *Nagg's-head* in *Covent-Garden*; and there was preſent Sir *George Barclay*, Capt. *Porter*, and ſeveral others, and amongſt the Reſt the Priſoner at the Bar was there: They had at firſt ſome Diſcourſe among them that they were in doubt, becauſe of the firſt Diſappointment, whether there had not been ſome Diſcovery, but that Doubt was ſoon over; for it was ſaid, it could not be ſo, for then they ſhould not have been there together. That ſeemed probable, and the Diſappointment was imputed to ſome Accident, and that gave them new Aſſurance to go on, and they were reſolved to do it in the ſame Manner, as they had formerly reſolv'd, on the next Day, which was *Saturday*.

Gentlemen, at that Meeting Mr *Porter* acquainted them that he had the Misfortune to have ſome of his Horſes fallen ſick or lame, and he acquainted the Priſoner with it; and Sir *William Parkins* was careful to ſupply him with other Horſes, and told him, he could get a Note from one *Lewis*, who I think is Major of the Horſe to my Lord *Feverſham*, to get three Horſes, and accordingly he did ſend a Note for three Horſes to Mr *Lewis*.

Upon the 22d of *February* in the Morning, which was the Time for the Execution of this bloody Conſpiracy, they had met together, and reſolved to go on with it, and put it in Execution; and that they had Notice from *Chambers*, that the King did go a Hunting that Day, and there was great Joy among them all, thinking themſelves ſure; and ſo they order'd all Things to be got ready. But afterwards, about One a Clock, there came other News, that the King did not go abroad, but the Guards were all come back in great Haſte, their Horſes being all of a Foam, and the King's Coaches were ſent back to the *Mews*; then they began to be in a great Conſternation, and they thought the Thing had taken Air, and was diſcovered. This, Gentlemen, is a ſhort Account, how it will appear upon the Evidence, as to the Conſpiracy of Aſſaſſinating the King, and the ſeveral Meetings and Conſultations about it; at which the Priſoner at the Bar, Sir *William Parkins*, was preſent.

But

But, Gentlemen, there will be a little more Evidence, if it be neceſſary, to confirm this former Evidence, and to ſhew the Part that the Priſoner at the Bar had in this treaſonable, this barbarous Conſpiracy: For it will appear, that, as the Priſoner had a Commiſſion from the late King *James* to raiſe a Regiment of Horſe, and had ſent a Meſſenger into *France*, to invite the late King over, with 10000 *French*; ſo he had made great Preparation of Arms to be ready for that purpoſe. About *Michaelmas* laſt the Priſoner at the Bar ſent a Parcel of Goods, as he called them, which were put into Caſes, I think they were about Eight ſmall Boxes, put into very large Caſes, and ſent down by his Order into the Country, unto one *Haywood*. It ſeems this *Haywood* had married Mr. *Charnock*'s Siſter, and *Charnock* writ a Letter to him, and deſired that he would give Sir *William Parkyns* Leave to lodge ſome Goods there, which were of great Value, and he durſt not truſt them at his own Houſe in *Warwickſhire*, becauſe his Servants were not there to look after them, and accordingly upon that Letter Mr. *Haywood* did give Leave that the Goods ſhould be carried thither, and they were ſo, and there they were lock'd up privately, and kept till this barbarous Conſpiracy was diſcovered; then you will find the Priſoner at the Bar ſent his own Servant down, the *Tueſday* after the Diſcovery, and gave him Orders immediately (his Name is *Eubank*, and he is the Groom, and looks after his Horſes) to go down to *Warwickſhire* to one *Evans*, who carried the Goods, to deſire him with all ſpeed to remove thoſe Goods, and to take Care to remove them privately, and to ſecure them, and to hide them. And accordingly on *Wedneſday* he came there, which was *Aſh-Wedneſday*; and acquainted *Evans* with what Sir *William* had ordered him, and they went that very Night with a Cart to Mr. *Haywood*'s; and though it was late, and they were deſired to ſtay till the next Morning, they would not; they ſaid they could ſtay no longer, but would remove the Goods immediately; and accordingly they were carried from thence that Night, to Sir *William Parkyns* own Houſe in *Warwickſhire*; and there they were buried in the Garden. Theſe Goods that were of this great Value were put into the Ground to preſerve them. But after this Diſcovery, Sir *William Parkyns* being accuſed, and his Name put in the Proclamation, and a Search being ordered to be made at his Houſe, theſe Goods that lay hid at *Haywood*'s, and upon the Removal thence were thus buried in the Ground, came to be diſcovered, and the Caſes were broken open, and then they did appear to be Goods of an extraordinary Nature indeed, for you will find they were Horſe Arms for Troopers; there were two and thirty Carbines, five and twenty Caſes of Piſtols, and about forty odd Swords without Hilts upon them, but the Hilts lay looſe by them; ſo that this will make it apparent, without Diſpute, how far the Priſoner at the Bar has engaged in this Conſpiracy, and what Preparations he had made for the Execution of it.

Gentlemen it will appear further againſt the Priſoner at the Bar, that he hath had a conſiderable Number of Horſes, that have frequently been brought up from his Houſe in *Hartfordſhire*, to the *George-Inn* in *Holbourn*.

But before we come to that, I would acquaint you with another particular Part of our Evidence, that is precedent in Point of Time. About *Chriſtmas* laſt, the Priſoner did acquaint one *Sweet*, who is an Officer in the Exciſe, (and I am very ſorry that we ſhould have any ſuch Officers, that ſhould be thought fit to be intruſted with Secrets of this Nature) Sir *William Parkyns* acquainted this *Sweet*, and gave him an Account that he had long had an Aſſurance that King *James* would Land, but now he had it under his own Hand, that he would Land very ſpeedily, and that he had made Preperations for that purpoſe to meet him. That great Things were expected from him; that his own Troop was ready, and it conſiſted chiefly of old Soldiers; and that ſeveral Perſons who had been Officers would be Volunteers under him. He ſaid he intended to go into *Leiceſterſhiere*, and there he was to meet ſeveral Gentlemen from the North, and from the Weſt, to conſider, and ſettle a Correſpondence how to meet the late King upon his Landing; and accordingly Sir *William Parkyns* did go and you will have an Account that he came to *Leiceſter* on *Friday* night, one *Scudamore* went along with him, there he ſtaid all *Saturday*, and a good Part of *Sunday*. There came ſeveral Perſons to him while he was at *Leiceſter*, particularly one Captain *Yarborough*, the Son of Sir *Thomas Yarborough*, and a Parſon, who, ſaid they came as far as from *York* to meet Sir *William Parkyns* at *Leiceſter*; and their was great Reſort thither at that Time, as you will hear from the Witneſſes. Sir *William Parkyns* came back again from *Leiceſter* to *Brick-hill*, that Night, and returned to his own Houſe on *Monday* Night; and after his return, he acquainted this *Sweet*, that he had been his Journey to *Leiceſter*; that he met with ſeveral Gentlemen there from the North, and other Places, and had ſettled a Correſpondency, and had found them all fully Ingaged, and well Inclined, all went well, and there was no Danger of any Miſcarriage at all; and this was about *January* laſt, that this Expedition was made by the Priſoner.

And now, Gentlemen, as to that Particular about the Horſes, which were ſo frequently brought up this laſt Winter from his Houſe in *Hartfordſhiere*, to the *George-Inn* in *Holbourn*, there is one very unfortunate Circumſtance that attends this Matter; that is, that theſe Horſes were brought to Town juſt the ſeveral Nights before the King was to be aſſaſſinated; for upon *Thurſday* the 13th of *February*, he being in Town, ſent Directions to his Groom, to bring up three of his Horſes on *Friday*, which was the 14th in the Afternoon, and all theſe Horſes were furniſhed with Piſtols and Furniture for Troopers; according to thoſe Directions his Servant brought up the three Horſes, and he came and acquainted his Maſter that they were brought up according to his Order; Sir *William Parkyns* was then at his Lodgings, which were in the ſame Houſe where Mr. *Charnock* did lodge; when his Man had told him the Horſes were come, he pretended at firſt that he had had ſome Thoughts of going out of Town that Evening, but that he had changed his Mind, and would go in the Morning; and he would have the Horſes ready againſt the next Morning, which was *Saturday* the 15th, the firſt Day upon which the Aſſaſſination was intended to be put in Execution.

The next Morning when his Man came to him again, he had changed his Mind, and he would not go out of Town in the Morning, but he would go in the Afternoon; and it will appear that he did not go out of Town that Day, nor

the next Day, nor till *Monday*; and then the Design had miscarried by the King's not going abroad a *Saturday*, and the Horses were carried back; and when he went out of Town upon *Monday*, one *Holmes* went along with him, and he went with him to his House in *Hartfordshire*; and there he staid until *Friday* after, which was the Day before the next time that was appointed for the Execution of the Assassination. And upon the *Friday* they came up again, and then there were more Horses, four or five, that were brought up that Day; and all of them with Pistols, and Jack-Boots, and other Furniture and Accoutrements for Troopers; and these came to the *George Inn*, where Sir *William Parkins* gave his Man *Eubank* particular Orders, to be very early the next Morning at *Kensington*; that was the 22d; and he was to go, as he told him, to one *Brown*, that he said was concern'd in the King's Kitchin, and liv'd two Doors off the Gate that turns up to the King's House, and he was to tell him he was Sir *William Parknys*'s Servant, but that he came from a Man that lodg'd at a Confectioner's House overagainst *Gray's Inn*; in which Place by the Description of the Person, you will find Sir *George Barclay* lodged.

The Man went accordingly at Eight a Clock in the Morning to *Kensington*, and inquired out this *Brown*, and met with him, and told him he was Sir *William Parkyns*'s Servant, but came from the Gentleman that lodg'd at the Confectioner's in *Holbourn*. *Brown* said he had nothing to say to him, but bid him give him his Almanack, and he writ in it, that he would be in Town in two Hours himself, and wait upon him: And bid him carry that to the Man that lodg'd at the Confectioner's, and this *Brown* by the Circumstances of the whole, must probably be one of the Orderly Men who lodg'd at *Kensington*, to give Notice when the King, and the Guards went out.

Sir *William Parkins*'s Servant came back to the Confectioner's House, and there he met with a Man that went by the Name of *Rogers*; he'll tell you he was a *Scotch* Man, for he spoke broad *Scotch*, and he'll give you a particular Description of the Man, by which I believe it will appear that it was Sir *George Barclay*. Sir *Wsliam Parkins*'s Servant after he had deliver'd his Message to this *Rogers*, came back to his Master, and told him he had done his Errand according as he was order'd, and Sir *William Parkins* ask'd him what *Rogers* said, and he told him that he bid him tell his Master, if he wou'd come to him he wou'd be ready at home for him. This was upon *Saturday* Morning the 22d of *February*.

About Eleven a Clock that Day Sir *William Parkyns*, and this *Lewis* that we spoke of before, came to the *George Inn*, and there Sir *William Parkins* ask'd his Servant whether he had receiv'd any more than two Saddles, for there were two Saddles sent in thither, according to an Order that had been given, to furnish two other Horses that stood there at the *George Inn*, and which Sir *William Parkins* told his Groom belonged to two Friends of his, and bid him be sure to take care of them, and to see them well fed, and order'd two Saddles to be bought for them. *Lewis* said he did think they had more than two, but you will see by the Evidence that this same *Lewis* had provided thirty Saddles for Sir *William Parkins*; but there seem'd to be a Controversy between them at that time how many had really been sent in, and *Lewis* affirm'd there was twenty four, but Sir *William Parkins* said, I have had but twenty two of the thirty yet, for I have but two brought in here, and I had twenty before. This you will hear fully proved, and I think it is impossible for any Body to believe, but that all this Preparation of Saddles, Pistols, Boots, and other Things, must convince any Body of the Prisoner's being so far Ingaged in this Design, that he can never answer it without giving you a very good Account, what this Preparation was for.

Gentlemen, a great Part of this will be prov'd to you by one that Acted in it, as a Servant to Sir *William Parkins*, that is, as to the coming up of the Horses, Jack-boots, Pistols, and other Arms at that time; and that when on the last *Saturday* it was disappointed, all the Horses, not only those Sir *William Parkins* brought, but the other two went away in a great Hurry, and Confusion, and nothing was ever heard of them more; and that will be prov'd by the Servants in the very *Inn*.

Gentlemen, I have now open'd to you the Nature and State of the Evidence, we will call our Witnesses, and make it out very undeniably, and substantially, and therefore I will not give you any further Trouble.

Mr. *Sol. Gen.* Call Mr. *Porter* (who was sworn.) Mr. *Porter*, pray will you give the Court and the Jury an Account of the Meeting at the *King's Head* in *Leaden-hall-street*, and who was there, and what Resolutions, and Agreements they came to.

Capt. *Porter*. About the latter End of *May* last, or the Beginning of *June*, there were two Meetings had, the one was at the *King's Head* in *Leaden-hall-street*, the other was at Mr. *Mountjoye*'s near Sir *John Fenwick*'s. At the first Meeting there was my Lord of *Aylesbury*, my Lord *Montgomery*, Sir *John Freind*, Sir *William Parykns* the prisoner at the Bar, Sir *John Fenwick*, Capt. *Charnock*, Mr. *Cook*, and my self. Mr. *Goodman* came in after Dinner, and there we consulted which was the best Way for King *James*'s coming in, and we all resolv'd to send a Messenger to him, to invite him over, and to desire him to interpose with the *French* King for the getting 10000 Men, to come over with him, 8000 Foot, 1000 Horse, and 1000 Dragoons. It was then consider'd who should be sent, and all the Company agreed Mr. *Charnock* was the propereſt Person. Says Mr. *Charnock*, if you send me, pray tell me what Errant I shall go upon: We did likewise then agree, that he should assure the King, if he would come over, at such a time, we would meet Him with a Body of 2000 Horse.

Mr. *Att. Gen.* Did *Charnock* undertake to go upon that Message?

Capt. *Port.* Yes, he did, and to propose this Matter to him, that he might propose it to the *French* King for the getting of the Men.

Mr. *Sol. Gen.* Before you go away, I desire to ask of you one Thing, did Sir *William Parkins*, the Prisoner at the Bar agree to the Message?

Capt. *Porter*. Yes, he did.

Mr. *Sol. Gen.* Had you any other Meeting about this Business, and when was it, and who was there?

Capt. *Porter*. My Lord, Capt. *Charnock* said at first he would not go of a foolish Message, and thereupon we all agreed to be at the Head of 2000 Men to meet King *James* at His landing, and every one should bring his *Quota*.

Mr. *Att. Gen.* When was the second Meeting, and where was it, and who were there, and what was agreed upon?

Capt.

Capt. *P.* The ſecond Meeting was at Mrs *Mountjoy*'s, where Captain *Charnock* deſired us once more to meet, before he went away, to know whether we kept to our Firſt Reſolution, and we did agree to what was reſolved upon at Firſt, and he ſaid he would go in two or three Days Time.

Mr. *Att. Gen.* Did the Company agree to it then?

Capt. *P.* Yes, they did, Sir, all that met at that Time.

Mr. *Sol. Gen.* Pray name them over again, who they were.

Capt. *P.* Sir *William Parkins* was actually there, and my Lord of *Ailesbury*, and Sir *John Freind*, and Capt. *Charnock*, Mr. *Cook*, and my ſelf; I cannot tell whether my Lord *Montgomery* was there, or Mr. *Goodman*.

Mr. *At. Gen.* Pray when did you ſee Capt. *Charnock*, or ſpeak with him after that?

Capt. *P.* It was when I was in Priſon about the Riot, and he told me he had been there; but there would be nothing done in that Matter at preſent, for King *James* ſaid, the *French* King could not then ſpare ſo many Men, though he thanked us for our kind Offer: And he ſaid he had been with my Lord of *Ailesbury*, Sir *William Parkins*, and the ſeveral other People of Quality, which he did not name, and had carried them the particular Meſſages that he had in command from the King to carry to them.

Mr. At. Gen. Now, Pray tell us, what you know about the Deſign of Aſſaſſinating the King, and what Hand the Priſoner at the Bar was to have in it.

Capt. *P.* About ſome Weeks before I heard of the Aſſaſſination, I came to lodge in the Houſe in *Norfolk-ſtreet*, where Captain *Charnock* lodged; and where Sir *William Parkins* lodged when he came to Town. Moſt commonly we uſed to go in the Evening to the Tavern, or drink a Bottle of Wine at our own Lodgings; and one Morning I ask'd Mr. *Charnock*, if I ſhould ſee him at Night, he ſaid he was engaged in private Company for that Night, and he could not go with me to the Tavern. For, ſays he, there are ſome Gentlemen that are lately come from *France*, and there is ſomething to be done for the King's Service. If there be ſo, ſays I, pray let me be concern'd: Says he, they are but newly come, and they will ſee no Body elſe but me at preſent. A little after I fell ſick of a Fit of the Gout, and Mr. *Charnock* came to viſit me, and we fell into Diſcourſe, and I ask'd him about thoſe Gentlemen that were come from *France*, what they came about? he told me it was Sir *G. Barclay* that came from *France*, and ſeveral other Officers with him, and that he had a Commiſſion from the late King *James* to levy War againſt the Perſon of King *William*, or the Prince of *Orange*, as I think it was named in the Commiſſion.

L. C. J. Who told you this?

Capt. *P.* It was Capt. *Charnock:* He deſir'd to know how many Men I could bring. I deſir'd a little Time to conſider, but I ſaid there would be a great many would join if the King landed, whom I did not think fit to truſt with a Thing of this Nature before-hand. Some few Days after, Captain *Charnock* came into my Chamber, and brought Sir *George Barclay* and Major *Holmes* that ſaid he was come from *France*; and there we had little more but a general Diſcourſe: But a little after that I got well of the Gout, and we had ſeveral Meetings at ſeveral Places; at the *Globe* Tavern in *Hatton-Garden*, at the *Nagg's-head* in *Covent-Garden*, and at the *Sun* in the *Strand*, where Sir *William Parkins* was always preſent. And there we did conſult of the beſt Ways to aſſaſſinate the King, as he came from *Richmond* after Hunting. Sir *George Barclay* ſaid, he had received 800 *l.* from King *James*'s Secretary towards the Buying of Horſes, and furniſhing both Horſes and Men for the Expedition; and it was conſider'd of how many Men it would be neceſſary to bring. The Number agreed upon was about Forty, of which Sir *George Barclay* was to provide Twenty, I promiſed to bring Seven or Eight, Sir *William Parkins* engaged to bring Five, whereof Three ſhould ba mounted with his own Men, and the other Two my Men were to mount upon.

Mr *Att. Gen.* Do you know the Names of thoſe People that he was to mount?

Capt. *P.* I never had the Names my ſelf.

Mr At. Gen. Well, what was done after theſe Conſultations?

Capt. *P.* I ask'd Captain *Charnock* one Time, if I might not ſee the Commiſſion that King *James* had given; he ſaid he had never ſeen it himſelf, but Sir *William Parkins* had. I ask'd Sir *William Parkins*, one Evening as we were ſmoaking a Pipe by the Fire ſide, whether he had ſeen the Commiſſion: He ſaid, he had; and that becauſe King *James* would not truſt any of his Miniſters, it was written and ſign'd with the King's own Hand.

Mr At. Gen. Pray did he tell you what it was for?

Capt. *P.* He ſaid it was for Raiſing, and Levying War upon the Perſon of the King, but I do not know whether he called him King *William*, or the Prince of *Orange*; but I ſuppoſe it was the Prince of *Orange*.

Mr. At. Gen. Pray then give us an Account of your going to view the Ground, where it was moſt convenient to do the Buſineſs.

Capt. *P.* There were ſeveral Propoſitions about the Place where it was to be done, one was to be on the other ſide of the Water by Ambuſcade in *Richmond* Park, the other was to be on this ſide of the Water after the King was landed. Sir *G. Barclay* was for that that was upon the other Side of the Water; I thought, that it would take up too much time to go over thither, that it was better to be done on this Side; but becauſe there was Difference of Opinions, it was reſolved upon that ſome Body ſhould be appointed to view the Ground; and I was appointed for one, Mr. *Knightly* for another, and Mr. *King* would needs go with us for a Third, and we three did go. We lay all Night at *Knightsbridge*, and the next Day went, and view'd the Grounds on both Sides the River; and came back that Evening to the *Nagg's-head* according to Appointment, where was Sir *William Parkyns* the Priſoner, and Sir *George Barclay*, and Mr. *Charnock*, and we gave an Account that we had view'd both Places: And upon our Report it was reſolved, that it ſhould be done on this Side the Water, in the Lane between *Brentford* and *Turnham-Green*.

Mr. *At. Gen.* Are you ſure Sir *William Parkins*, the Priſoner at the Bar, was there, at that Meeting at the *Nagg's-head?*

Capt. *P.* Yes, he was.

Mr. *At. Gen.* Did he agree to that Reſolution?

Capt. *P.* It was in general agreed to by all that were there.

Mr. *At. Gen.* Pray Capt. *Porter*, then give us an Account of the Days that were fix'd for the Execution of this Deſign.

Capt. *P.* There was *Saturday*, the 15th, and *Saturday* the 22d, becauſe *Saturday* was the Day the King uſed to go a Hunting, and Shooting.

Mr. *Att. Gen.* Were there any Men at *Kenſington*, to give you Notice when the King went abroad?

Capt. *P.* There were two Men that had a Lodging at *Kenſington*, the one was one *Chambers*, who belonged to Captain *Charnock*, and the other was a *Fleming*, one *Durance*, who came over with Sir *G. Barclay*, and he went every Day, and thruſt himſelf among the Guards to bring Intelligence.

Mr Sol. Gen. What was the Reaſon the Deſign was not executed?

Capt. *P.* The firſt Day *Durance* brought Notice in the Morning, that the Guards were gone abroad; and afterwards there came Notice, that the King would not go abroad that Day, for which Reaſon we adjourn'd it to the next *Saturday*.

Mr. *Att. Gen.* What was the Method you was to take in the Execution?

Capt. *P.* The Method agreed upon was this: There was one *Rookwood* that came from *France* upon this Expedition, he was to command one Party, and Captain *Charnock* and my ſelf were to command another Party, to attack the Guards, and Sir *George Barclay* was to have Four Men out of each Party to attack the Coach, while we attack'd the Guards.

Mr. *At. Gen.* Well, you ſay the firſt Day you was diſappointed by the King's not going, when was the next Meeting?

Capt. *P.* The next Meeting was upon *Friday* the Day before the 22d. I was ſick all the Week, and I do not know whether I lay a-Bed all the Week, or no; but upon *Friday* they met, and it was at the *Sun* Tavern in the *Strand*: There was none but Sir *George Barclay*, Captain *Charnock*, Sir *William Parkins*, and my ſelf.

Mr. *At. Gen.* What Diſcourſe was there then?

Capt. *P.* Sir *George Barclay* came in, and ſaid, he was afraid the Thing was diſcovered; I told him I fancied not, for if it had, we ſhould not have been in that Houſe at that Time. Then ſays he, let us go on, and try another Day. Sir *William Parkins* was ask'd if his Horſes were come to Town: He ſaid they were come to Town that Night. Said I, I have had a Misfortune with my Horſes, two of them are fallen lame, and won't be fit for Service. Says he, If I had known that, I could have brought more Horſes out of the Country: But, ſays he, I will ſend to Mr. *Lewis*, who was Gentleman of the Horſe to my Lord *Feverſham*, and I believe he can help us to more Horſes; he will be with me to morrow Morning, and I'll get a Note from him for two more. In the Morning I ſent to him, and he ſent me a Note for two Horſes to mount my Men, and he ſent me Word Mr. *Lewis* could help me to two or three others, that they were all three ſaddled, and one was accoutred with Holſters and Piſtols, but the other two had only Saddles. I did not ſee Sir *William Parkins* on *Saturday* the 22d, but I met ſome of my Friends, who were to go along with me upon this Enterpriſe, and we had firſt Notice that the Guards were gone abroad, and that the King would go, at which all were very glad: But when we had Notice that the King did not go, we were afraid the Thing was diſcover'd, and I went out of Town, and I did not ſee any of them afterwards, till they were taken.

Mr *At. Gen.* Pray Captain *Porter*, have you heard any Thing from Sir *William Parkins* of his having a Commiſſion from King *James*?

Capt. *P.* I had heard Captain *Charnock* ask Sir *William Parkins*, why he did not go along with us in this Expedition? he ſaid he did not go, becauſe he could not go.

Mr. *At. Gen.* Was he not to be one in the Number that was to act in the Aſſaſſination?

Capt. *P.* No, he ſaid he had other Buſineſs to do, he had a Regiment to look after.

L. C. J. How many Horſes had you from *Lewis*?

Capt. *P.* I had never a one, only Sir *William Parkins* ſent me Word, if I wanted I might have three, for I had told him I would not ſend for them, till I heard whether the King went abroad, and then I had Notice that the King did not go.

Mr. *At. Gen.* Had you a Note for them?

Capt. *P.* Not for thoſe three Horſes, but *Cranbourn* ſaid he had a Note for two Horſes.

Parkins. Did he ſay, he had a Note from me?

Capt. *P.* No, I don't ſay ſo, Sir *William*; *Cranbourn* told me, he had a Note whither to go for them.

L. C. J. Will you ask him any Queſtions, Sir *William*?

Par. No, my Lord.

Juryman. My Lord, I deſire he may be asked, Whether at any of thoſe Meetings there was any Diſcourſe of the Aſſaſſination before Sir *William Parkins*?

L. C. J. What ſay you to that, Captain *Porter*?

Capt. *P.* Yes, he was at all the Meetings and Conſultations.

Juryman. Pray my Lord, I deſire to know, whether Sir *William Parkins* diſcourſed of it himſelf, and what he did ſay about it?

Capt. *P.* I cannot ſay exactly, what he did ſay in particular, only he agreed to it, and was to furniſh Five Horſes for it, and ſaid it was neceſſary to be done; for it would bring the King in more eaſily, though he could not perſonally engage in it himſelf, becauſe he had other Buſineſs, he was to look after his Regiment.

Mr. Sol. Gen. If Sir *William Parkins* will ask Capt. *Porter* no Queſtions, we will go on to our next Witneſs, which is one *Abraham Sweet* whom Mr. Attorney mentioned.

He was brought in and ſworn.

Mr. Sol. Gen. Mr. *Sweet*, will you give the Court and Jury an Account, what Sir *William Parkins* ſaid to you about King *James*'s Landing?

Mr. *Att. Gen.* Pray, will you give an Account what Diſcourſe you had with Sir *William Parkins*, the Priſoner at the Bar, about King *James*'s Returning, and Landing with *French* Forces.

Sweet. Sir *William Parkins* did tell me, that he did expect King *James*'s Landing, and he ſaid his own Troop was compoſed of old Soldiers.

Mr. *Att. Gen.* How long have you known Sir *William Parkins*?

Sweet. This three Years.

Mr.

Mr. *At. Gen.* Pray tell the Time when this Diſcourſe was, about what Time was it?

Sweet. This was ſince *Chriſtmas*, about *Chriſtmas* laſt.

Mr. *Att. Gen.* Where was it that you had this Diſcourſe?

Sweet. It was about his own Houſe.

L. C. J. What Diſcourſe?

Sweet. We were talking about King *James*'s coming.

L. C. J. Who told you, that Knig *James* was coming?

Sweet. Sir *William Parkins.*

Mr. *Att. Gen.* What did he ſay?

Sweet. He ſaid he had bought a great many Saddles, thirty Saddles; and that his own Troop was compoſed of all old Soldiers.

Mr. *Att. Gen.* Did he tell you of any Aſſurance that he had of King *James*'s Landing?

Sweet. Yes, he ſaid he had the King's Word for it.

Mr. *Att. Gen.* Was there any Diſcourſe between you about any Journey that Sir *William* was to take?

Sweet. Yes, he did tell me he was to go into *Leiceſterſhire*, and was to meet ſeveral Gentlemen in *Leiceſterſhire*; and he did go, and after he came back again, he ſaid he had met his Friends and all was well, and that the Weſt was as much inclined to King *James*'s Intereſt as the North, and that a Lord's Brother was concerned.

Mr. *Att. Gen.* What other Diſcourſe had you about this Matter?

Sweet. Nothing elſe, as to Particulars, that I can remember.

Mr. *Att. Gen.* What Orders had you to come up to Town in *February*, and when, and from whom?

Sweet. Sir *William Parkins* ſent for me, and he ſent me a Letter about the 11th of *February*, that I ſhould come to him the next Day, and I did come the next Day.

Mr. *At. Gen.* Whither did you come? Where did you find him?

Sweet. At his Lodgings in *Norfolk-ſtreet*, at the Houſe where Mr. *Charnock* lodged; and after I had ſpoken with Sir *William Parkins* about the Letter which he had ſent me to come up, he told me, that the Buſineſs that he had deſigned for me, he did not think fit I ſhould do, becauſe of my Family.

Mr. *At. Gen.* Pray, what Directions had you from him, what you were to do when you went into the Country?

Sweet. When I went into the Country, he order'd me to go to his Houſe, and ſend up three of the ſtrongeſt Horſes.

Mr. *At. Gen.* When was this, do you ſay?

Sweet. It was in *February.*

Mr. *At. Gen.* What Time in *February?*

Sweet. The Eleventh or Twelfth, which was *Wedneſday*; and at my going away, he told me if I had not a Letter from him, the *Friday* following I ſhould come to Town again. I did come to Town again, and then he asked me, if I had made Proviſion for my Family, I told him, no; then he asked me, why I came up to Town? he told me I might go into the Country again on the morrow Morning.

L. C. J. What did he tell you?

Sweet. He ſaid I might go back again into the Country. I came upon the *Saturday* Morning to him.

Mr. *At. Gen.* Pray, what Day was that *Saturday?*

Sweet. I believe it was the 13th or 14th of *February.*

Mr. *Att. Gen.* You ſay. *Wedneſday* was the 12th.

Sweet. Yes, I believe *Wedneſday* was the 12th, and I came to Town the *Friday* after that 12th, that was the 14th, and on the *Saturday* I went home again.

Mr *At. Gen.* You ſay you came to him on the *Saturday* Morning, what paſſed between you then?

Sweet. I went the next Morning to Sir *William Parkins*'s Lodgings, but he was gone out, and had left Word, that I muſt come again about Eleven of the Clock: I did go about that Time, and he was not come in, and there I met one Mr *Chambers*, and one Mr *Lee*, whom I had ſeen there the Night before.

Mr *At. Gen.* And what Diſcourſe had you then with them?

Sweet. We had little Diſcourſe, for I had only ſeen them the Night before; but I think *Chambers* told me he had been at *Kenſington*, and I deſired to know what News there; and he told me *William* kept as cloſe as a Fox; and he ſhew'd me his Wounds, and ſaid thoſe Wounds wanted Revenge.

Mr *At. Gen.* Where did he ſay he received thoſe Wounds?

Sweet. At the *Boyne.*

Mr Sol. Gen. Pray, Mr *Sweet*, did he tell you for what Uſe his Troop was?

Sweet. He did not tell me poſitively; but I underſtood it to be to join King *James* when he landed.

Mr Soll. Gen. Pray, Sir, where did you dine that *Saturday?*

Sweet. With Sir *William Parkins*, and Mr *Charnock*, and *Chambers*, and one or two more that I did not know.

Mr *At. Gen.* Will you ask him any Queſtions, Sir *William?*

Parkins. Did I tell you, Mr *Sweet*, that I had a Troop of Horſe?

Sweet. I will tell you your own Words, and no other: You ſaid, Your own Troop was compos'd of old Soldiers.

L. C. J. Pray let me ask you one Queſtion: How many Horſes were you to bid the Man to bring up to Town?

Sweet. Three, my Lord.

Mr *At. Gen.* And were they not his ſtrongeſt Horſes?

Sweet. Yes, my Lord, they were.

Mr *At. Gen.* Did he ſay any Thing to you about Voluntiers?

Sweet. Yes, he ſaid there were ſome Gentlemen that were Captains and old Officers, that would be Voluntiers under him.

Parkins. Pray, where were thoſe Words ſpoken?

Sweet. Either in your Houſe or in the Garden, I can't tell directly which, but ſome where about your Houſe it was.

Par. Where is that Houſe?

Sweet. In *Herefordſhire.*

Parkins. Then I am in your Lordſhip's Judgment, whether Words ſpoken in *Herefordſhire* can be an Evidence of a Treaſon acted here in *Middleſex?*

L. C.

L. C. J. Sir *William Parkyns*, if there be a Deſign to kill the King, and there are ſeveral Overt Acts to prove that Deſign, and one is in one County, and another is in another County, the Party may be indicted in either of the Counties, and Evidence may be given of both thoſe Overt Acts, though in ſeveral Counties. It is true, you being indicted in *Middleſex*, makes it neceſſary that ſome Evidence ſhould be given of ſome Things done in *Middleſex*, as there is; as your Meeting at Mrs *Mountjoy*'s, and at the *Nag's Head* in *Covent-Garden*, and the *Sun* in the *Strand*, where were ſeveral Conſults, which are Overt Acts of the ſame Treaſon; and if Treaſon be committed in ſeveral Counties, the Party may be indicted in any one, and the Evidence may be given of Facts done in all.

Par. Then, Mr *Sweet*, you do not ſay that I had raiſed a Troop, or would raiſe a Troop.

Sweet, I told you your own Words, That your Troop was made up of old Soldiers.

L. C. J. But yet I muſt tell you further, Sir *William Parkyns*, if I remember right there is Evidence given of a Diſcourſe you had in *Norfolk-ſtreet*, where you lodg'd, and that is in *Middleſex*.

Par. My Lord, I did not obſerve that he ſaid any Thing of me about *Norfolk-ſtreet*.

Mr *At. Gen.* Yes, this is what he ſays. You told him you had thought of a Buſineſs for him, but you would not engage him in it, becauſe of his Family.

Par. Pray, Mr *Sweet*, did I tell you any Thing what you were to do?

Sweet. No, Sir, you did not.

Parkins. I hope the Jury will take Notice of that: I did not tell him any Thing that he was to do.

L. C. J. Well, that was no great Matter. Will you ask him any more Queſtions, Sir?

Par. No, my Lord.

Mr *Sol. Gen.* Then our next Witneſs is *James Eubank.* (*who was ſworn.*)

Mr *Att. Gen.* Do you know Sir *William Parkyns?*

Eubank, Yes, he is my Maſter.

Mr *At. Gen.* What Servant was you to him?

Eubank, I was Groom to him.

Mr *Att. Gen.* How long have you been his Groom?

Eub. Not a Twelvemonth yet.

Mr *At. Gen.* Pray, firſt give an Account what Journey you took with him.

Eub. I went into *Leiceſterſhire* with him.

Mr *At. Gen.* Pray tell us what you know of that Matter.

Eub. Yes, my Lord. We went from our own Houſe to *Stony-Stratford*, and there we lay all Night.

Mr *At. Gen.* What Time was this?

Eub. I cannot tell the Day of the Month, it was in *January*.

Mr *At. Gen.* What Day of the Week was it?

Eub. It was on a *Thurſday*.

Mr *At. Gen.* And where did you go from *Stony-Stratford?*

Eub. We came the next Day to *Leiceſter*.

Mr *At. Gen.* Who went with him?

Eub. One Captain *Scudamore*.

Mr *At. Gen.* How long did you tarry at *Leiceſter?*

Eub. When we came the next Day to *Leiceſter*, we ſtaid there till *Sunday* Morning.

Mr *At. Gen.* What Company came to your Maſter when he was at *Leiceſter?*

Eub. Sir, I am a Stranger, I know none of them, I was never there before.

Mr *At. Gen.* Can you remember whether there was one *Yarborough* there?

Eub. There was one that ſaid his Name was *Yarborough*.

Mr *At. Gen.* Whence did he come?

Eub. He ſaid he came out of *Yorkſhire*.

Mr *At. Gen.* Who came with him?

Eub. There was a Gentleman in black Cloaths, that ſaid he was a Miniſter.

Mr *At. Gen.* Did you obſerve any others that came thither to your Maſter?

Eub. It was Market Day, and I had my Horſes to look after; there were a great many People went up and down Stairs, but whether they went to him, or no, I can't tell.

Mr *At. Gen.* When did you come back again?

Eub. We ſtaid there till *Sunday* Morning, and then we came away.

Mr *At. Gen.* To what Place did you go that Night?

Eub. To a Town call'd *Brickhill*, and the Night following we came home.

Mr *At. Gen.* Who came back with him?

Eub. None but Captain *Scudamore*, who went with him.

Mr *At. Gen.* Wither did you go the next Day?

Eub. We came to *Buſhy* about 8 a Clock a *Monday* Night.

Mr *At. Gen.* Well, after this, did you bring up any Horſes to the *George* Inn to your Maſter, and when?

Eub. Yes, three Horſes.

Mr *At. Gen.* Ay, when?

Eub. I cannot tell the Day.

Mr *At. Gen.* What Day of the Week was it?

Eub. Upon a *Friday*.

Mr *At. Gen.* What Month was it in?

Eub. Indeed, I can't ſay that.

Mr *At. Gen.* Do you remember *Valentine*'s Day?

Eub. Yes, it was upon that Day.

Mr *At. Gen.* That is the 14th of *February*, a remarkable Day, and was then of a *Friday*, the Day before the Aſſaſſination was to have been executed. Whither did you bring them?

Eub. To the *George* Inn.

Mr *At. Gen.* How were they furniſh'd? Were there Piſtols upon them?

Eub. No, the Piſtols were in Town, and the Horſes were ſent after my Maſter.

Mr *At. Gen.* Where were the Piſtols left?

Eub. Indeed, I don't know.

Mr *At. Gen.* Pray, when you came to Town, did you go to your Maſter, and acquaint him with it?

Eub. Yes, Sir, I did.

Mr *At. Gen.* Pray, what did he then ſay to you?

Eub. He ſaid he thought he ſhould go home that Night.

Mr *At. Gen.* Did he change his Mind?

Eub. Yes, for he did not go till *Monday*.

Mr *At. Gen.* Did he tell you he ſhould go a *Saturday?*

Eub. Yes, he ſaid he thought he ſhould.

Mr *At. Gen.* Did you come to him to know his Mind, and what did he ſay?

Eub. He ſaid in the Morning, he would go in the Afternoon, but he did not.

Mr *At. Gen.* Afterwards wheu did he go?

Mr

Eub. Upon *Monday*.

Mr *Att. Gen.* Who went with him that *Monday?*

Eub. One *Holmes*, a fat, thick Man.

Mr *At. Gen.* Well, pray when did you come to Town again?

Eub. Upon the *Friday* following.

Mr *At. Gen.* How many Horſes did you bring up then?

Eub. On the *Friday* following we brought up Four; my Maſter himſelf came up with them.

Mr *At. Gen.* Who came with him?

Eub. Mr *Holmes*, and I, and another Servant.

Mr *At. Gen.* How were the Horſes furniſh'd?

Eub. Every Horſe had Piſtols.

Mr *At. Gen.* What did you bring beſide? were there any Boots?

Eub. None but what we rid in.

Mr *At. Gen.* Where did you leave thoſe Horſes?

Eub. At the *George* Inn in *Holbourn*.

Mr *At. Gen.* What Directions did your Maſter give you that Night for going the next Morning upon an Errand, and whither?

Eub. I had no Meſſage from him, but there was a Note that I was to carry to *Kenſington* to one *Brown*, and I was ordered to go to the Gentleman that lives within a Door or two next the Going into the King's Gate, I forget his Name, but this Man where *Brown* lodged belonged to the Court, ſome Officer in the Kitchin to the King; either a Confectioner, or Cook, or ſomething, and this Man lay there.

Mr *At. Gen.* What was your Meſſage to him?

Eub. I was to tell him, that I came to ſpeak with one *Brown*, and that I came from a Gentleman that lay at the Confectioner's in *Holbourn* over-againſt *Grays*-Inn. I know the Gentleman by Face again if I ſee him.

Mr *Att. Gen.* Well, what did he ſay to you?

Eub. He bid me ſet up my Horſe at the *Red Lion*, and he would come to me preſently; and ſo he did. Says he, I have no Buſineſs that I need to ſend; but I'll write in your Almanack, and you may carry it back aud ſhew it him, that I will come to Town betwixt nine and ten a Clock. I did go back and tell that Gentleman at the *Confectioner*'s.

Mr *Att. Gen.* What Kind of Gentleman was it?

Eub. A luſty Man, with a great Noſe, and a black Wig, he ſpeaks broad *Scotch*, and he was a ſwarthy coloured Man, and he had a wide Mouth.

Mr *At. Gen.* What Age was he of?

Eub. A middle-aged Man.

Mr *At. Gen.* Pray what did he ſay to you?

Eubank. He ask'd me if I had ſeen the Gentleman. I told him, Yes. He ask'd me what the Gentleman return'd for Anſwer. I told him he had writ in my Almanack, which I had ſhewn him, that he would be in Town between nine and ten a Clock. He ask'd me then where I was going. I ſaid, to my Maſter. Says he, tell your Maſter that I will be in my Chamber ready for him.

Mr *Att. Gen.* Did you go to your Maſter, and tell him ſo?

Eub. Yes, I did.

Mr *Att. Gen.* And what did he ſay to you?

Eub. He ſaid he deſigned to go home in the Afternoon, and therefore bid me go to the Inn, and make ready the Horſes, and know what was to pay for them, and he would come by and by thither.

Mr *Att. Gen.* Did he afterwards come to the Inn?

Eub. Yes, Sir, about 3 or 4 a Clock in the Afternoon.

Mr Soll. Gen. Pray, who came with Sir *William Parkyns?*

Eub. One *Lewis*.

Mr *Att. Gen.* Do you know him?

Eub. I have ſeen him before with my Maſter.

Mr *Att. Gen.* What is he?

Eub. They ſay he is my Lord *Feverſham*'s Gentleman.

Mr *At. Gen.* What did he ſay to you about any Saddles?

Eubank. They ask'd me what Saddles, and how many had been ſent in there; and I ſaid but two.

Mr *At. Gen.* What ſaid Mr *Lewis?*

Eub. Mr *Lewis* ſaid there muſt be a Miſtake, becauſe my Maſter ſaid he had but Twenty two, for he reckoned he had more, there ſhould be Twenty four in all.

Mr *Att. Gen.* Did he ſay ſo, or Sir *William Parknys?*

Eub. It was Mr *Lewis* that ſaid there were twenty four, to the beſt of my Remembrance.

Mr *Att. Gen.* Where were they ſent?

Eub. Indeed I know not, I never ſaw any of them but thoſe two.

Mr *At. Gen.* Who delivered thoſe two to you?

Eub. My Maſter, Sir *William Parkyns*.

Mr *At. Gen.* Who were thoſe Saddles for?

Eub. They were for two Gentlemens Horſes that were there.

Mr *At. Gen.* Whoſe Horſes were they?

Eub. They were not my Maſter's, but they ſtood at that Place.

Mr *At. Gen.* Did your Maſter ever ſpeak to you about them to look after them?

Eub. He ſaid, if at any time I was there, I ſhould ſee that the Oſtler gave them their Corn.

Mr *At. Gen.* Were they your Maſter's Horſes, or not?

Eub. Not that I know of.

Mr *Att. Gen.* What Time did you go out of Town?

Eub. I went out of Town with them about four a Clock in the Afternoon.

Mr *At. Gen.* When did you hear from your Maſter after that?

Eubank. Upon *Monday* I had a Letter from him.

Mr *Att. Gen.* What was that Letter for?

Eub. It was to go to my Maſter's Houſe in *Warwickſhire*, to one *Richard Evans* that was his Servant, to whom he ſent a Letter.

Mr *At. Gen.* What were the Contents of that Letter?

Eubank. I did not ſee what they were, it was ſealed.

Mr *At. Gen.* Did you carry that Letter to *Evans?*

Eub. Yes, I did.

Mr *Att. Gen.* What Time did you come thither?

Eub. I came there a *Tueſday* at four a Clock.

Mr *At. Gen.* What did *Evans* and you do after you had read the Letter?

Eub.

Eub. We went to fetch ſome Boxes that my Maſter had order'd *Evans* to fetch home. It was about two Miles or more from home, at a Tradeſman's.

Mr *At. Gen.* What was his Name, was it *Haywood?*

Eub. Yes, I think it was ſomething like that Name.

Mr *At. Gen.* Did you go with *Evans* to fetch the Boxes from thence?

Eub. They had a Man that drove the Team to fetch them.

Mr *Att. Gen.* Were they carried in a Team then?

Eub. Yes, they were.

Mr *At. Gen.* Were you there when the Goods were brought back?

Eub. Yes, I was at my Maſter's Houſe.

Mr *At. Gen.* What did they do with them?

Eub. They buried them in the Garden, Sir.

Mr *Att. Gen.* What in the Boxes?

Eub. Yes, Sir.

Mr *At. Gen.* How many Boxes was there?

Eub. Five or ſix I think, I know not what was in them.

Mr *Att. Gen.* You help'd to bury them, did you not?

Eubank. No; but I was there, I ſaw them buried.

Mr *Att. Gen.* Did *Evans* tell you what they were?

Eub. Evans told me they were choice Goods.

Mr *At. Gen. Evans* told you ſo, did he?

Eub. Yes.

L. C. J. What Time of the Day or Night were they fetch'd home?

Eub. They went away about four a Clock in the Afternoon.

L. C. J. How far is it from Sir *William Parkyns*'s Houſe to *Haywood*'s.

Eub. I think about three or four Miles, I can't tell how far exactly.

L. C. J. What Time did they return?

Eub. About ten or eleven a Clock at Night.

Juryman. My Lord, I underſtand he ſays they buried them immediately, was he there, and did he help to bury them.

Eub. No, I did not help to bury them; but I ſaw Earth put upon them.

Mr *At. Gen.* Pray, *Eubank*, let me ask you one Queſtion: The Perſon that lay at the *Confectioner*'s, did you obſerve whether he had a lame Arm or no?

Eub. No, I did not take Notice of any ſuch Thing.

Mr *Sol. Gen.* Will Sir *William Parkyns* ask him any Queſtions?

L. C. J. What ſay you, Sir *William*, will you ask him any Queſtions?

Parkyns. You ſay one *Holmes* went out of Town with me, pray give an Account what *Holmes* that is?

Eubank. It is Fat Mr *Holmes*, if it pleaſe your Honour, he lives at the *Golden Key* in *Holbourn.*

Parkyns. My Lord, I obſerve this to diſtinguiſh it that it was not, as Mr Attorney opened it, Major *Holmes* that is in the Proclamation; it was one that us'd to be at my Houſe frequently; he was at my Houſe all the Summer.

Mr *At. Gen.* You did well to ask him that Queſtion to explain it.

L. C. J. Will you ask him any more Queſtions?

Par. No, my Lord.

Mr *Soll. Gen.* Then our next Witneſs is one *Thomas Hipwell*; *(who was ſworn)*

Mr *At. Gen.* Where do you live?

Hipwell. At in *Warwickſhire.*

Mr *At. Gen.* With whom do you live?

Hipw. I live of my ſelf, Sir.

Mr *Att. Gen.* Do you know of any Goods that were carried from Mr *Haywood*'s Houſe to Sir *William Parkyns*'s Houſe?

Hip. I came from *Litchfield* Fair upon *Aſh-Wedneſday*, where I had been to carry Goods for my Maſter ——

Mr *At. Gen.* Did not you ſay you lived of your ſelf? I ask'd you before who you liv'd with; Who is your Maſter?

Hip. Mr *Haywood.*

Mr *At. Gen.* You ſaid before you had no Maſter.

Hip. That is, when he pleaſes to employ me, I work for him.

Mr *At. Gen.* Pray tell what you carry'd from *Haywood*'s Houſe, and who came for them.

Hip. There were, to the beſt of my Remembrance, either 7 or 8 Boxes.

Mr *At. Gen.* Who came for them?

Hipwell. There was one of Sir *William Parkyns*'s Men, one *Richard Evans*, that was his Servant, and one *Wetſtone*, that was Tenant to Sir *William.*

Mr *At. Gen.* Well, how did they come, and what did they do?

Hipwell. They brought a Waggon and Two Mares.

Mr *At. Gen.* About what Time was it?

Hip. It was about nine or ten a Clock at Night, when they went away.

Mr *At. Gen.* What Orders had you from your Maſter?

Hip. It was near upon ſeven a Clock, when the Waggon came, and my Maſter wiſh'd me to go to borrow a Mare of at I did ſo, and I brought the Mare I had borrowed with me home.

Mr *At. Gen.* What was that Mare borrowed for?

Hipw. I know not.

Mr *At. Gen.* What Uſe was ſhe put to afterwards? What did you ſee more?

Hip. Why, before the Team came (about a quarter of an Hour before) to fetch theſe Goods, my Maſter told me, that Sir *William Parkyns*'s Men were to come to fetch ſome Bedding and other Goods, what they were he knew not, and he order'd me, when they knock'd at the Gate, to let them in; and I did ſo.

Mr *At. Gen.* Well Friend, did they carry away any Goods, and what were they?

Hip. They were in Boxes, at firſt in Three Boxes; and then Sir *William Parkyns*'s Servant did knock of the outſide Lining, which was a Deal Board, and he drew the Nails, and took out of two Boxes three Boxes apiece, and two out of another, to the beſt of my Remembrance I think there were eight, but I am not ſure whether there were ſeven or eight.

Mr *At. Gen.* Did they carry them away that Night?

Hip. Yes, Sir *William Parkyns*'s Man *Richard* and the Tenant carry'd them to the Waggon, and I lighted

lighted them down with a Lanthorn, according to my Maſter's Order.

Mr *At. Gen.* When, what Day was this?

Hip. It was *Aſh-wedneſday* at Night.

Mr *At. Gen.* Then ſet up Mr *Haywood.* (*who was ſworn before.*) Pray give my Lord an Account, when Sir *William Parkyns*'s Goods were brought to your Houſe, who brought them, and what Directions were given about the careful Keeping of them.

Haywood. My Lord, about *Michaelmas* laſt, Sir *William Parkyns*'s Man came to me with a Letter from one Mr *Charnock*, and the Effect of the Letter, was to deſire the Favour of me to lodge ſome Goods of Sir *William Parkyns* at my Houſe; for he was taking his Servants from his Houſe, and he was loth to leave his Goods in an empty Houſe, and he deſired me to let them lye at my Houſe, which I did.

Mr *At. Gen.* How were they put up?

Haywood. I think in three Cheſts pretty big Cheſts, nailed up and tack'd; and there was a Bed, and Bedding, and a Piece of Tapeſtry or two.

Mr *At. Gen.* Pray did that Letter come from Mr *Charnock?*

Haywood. Yes, *Evans*, Sir *William Parkins*'s Man brought it me.

Mr *At. Gen.* Pray, Sir, how are you related to that Mr *Charnock?* What a Kin is he to you?

Haywood. I married his Siſter.

L. C. J. You took the Goods into your Cuſtody upon that Letter from *Charnock?*

Hayw. Yes, my Lord, I did.

Mr *At. Gen.* Pray, will you give an Account, whether you were in Town before this Diſcovery, and had any Diſcourſe with Mr *Charnock* or Sir *William Parkyns* about theſe Goods? When did you ſee Mr *Charnock* afterwards?

Haywood, I came up to *London* the 16th Day, and I was in *London* the 17th, 18th, and 19th; I think thoſe three Days; and I went to ſee Mr *Charnock* at his Lodgings, but I was hardly with him a Quarter of an Hour: I told him Sir *William Parkyns*, had ſent ſome Goods to my Houſe, and I deſired to know when he would fetch them away. Says he, I can't ſay when I ſhall ſee him again. Said I, I ſhall have ſome Buſineſs at the *Temple*, and I will meet you at the *Temple* Coffee-Houſe. Says he, I will meet; and bring Sir *William Parkyns* with you if you can, ſaid I: He came about eight or nine a Clock on *Tueſday* Morning; ſays he, Sir *William Parkyns* is at my Lodgings, juſt a going out of Town, and would deſire to ſee you. So I went up, and Sir *William Parkyns* was ready to go out of Town: I told him I had ſome Goods of his at my Houſe, and I deſired to know how he would diſpoſe of them; what he would do with them: He would take them away, he ſaid, the firſt Opportunity, or to that Effect.

L. C. J. When was this, what Month?

Hayw. It was in *February* laſt.

L. C. J. What Day?

Hayw. I think it might be about the eighteenth Day.

L. C. J. It was you that deſired to have them taken away, it ſeems, was it not?

Hayw. I asked him when he would take them away, or what he would do with them.

L. C. J. And what Anſwer did he make?

Hayw. He ſaid he would take them away the firſt Opportunity, as ſoon as he could diſpoſe of them, or to that Effect.

Mr *At. Gen.* Now when you came home, tell us who came for thoſe Goods, and when?

Haywood, I think it was upon a *Shrove-Tueſday* that I came home, and my Wife ſaid Sir *William Parkyns* had ſent for his Goods, and deſired to have them away, but that ſhe had made anſwer, I was not at home, but ſhould be at home ſoon, and then he might have them away. The next Day I came home from *Litchfield* Fair, about five or ſix a Clock at Night: It was *Aſh-wedneſday* at Night when I came home, and the Man came to me between ſix and ſeven, and told me his Maſter deſired to have the Goods away. I told him he might have them when he would; he ſaid he would have them away that Night. I told him it was an unſeaſonable Time: But ſays he, the Waggon is a coming, and I deſire you would give me leave to take them away, which I did: Then he ſaid he had but two Horſes, and he deſired me to lend him a Horſe, which I did, and he took the Goods, and went away with them; but for what he did afterwards with 'em, I know nothing at all of it.

Mr *Soll. Gen.* Then ſwear Mr *Whetſtone.* (*which was done.*)

Mr At. Gen. Pray Sir, do you give an Account when you went with *Evans* to *Haywood*'s Houſe, and what happened.

Whetſtone. His Man came to me——

Mr *Att. Gen.* Whoſe Man?

Whetſtone. Sir *William Parkyns* his Man, to deſire me to go to Mr *Haywood's* to fetch ſome Goods of Sir *William Parkyns*, ſome Bedding, and ſome odd Things, which I did; and ſaid he, I will go the next Way to the Houſe, and I will meet you before you can get thither; and he did meet me half a Mile off the Houſe, and told me I muſt ſtay and not come to the Houſe till it was Night, till it was later.

L. C. J. Who told you ſo?

Whetſtone. Sir *William Parkyns*'s Man told me ſo; ſo he went forwards to the Gate, and then came back, and called me to come in; then we went to the Houſe; and loaded the Waggon with Boxes and Bedding that was there.

Mr *At. Gen.* How many Boxes were there?

Whetſtone. I cannot tell whether there were ſeven or eight.

Mr *At. Gen.* Whither did you carry them?

Whetſtone. We carried them to Sir *William Parkyns*'s Houſe.

Mr *At. Gen.* What was done with them?

Whetſtone. There they were put into the Ground by the Wall-ſide where they were found.

Mr At. Gen. Why; was you preſent when they were found?

Whetſtone. Yes, I ſaw them dug up.

Mr At. Gen. Then you can give us an Account of them, What were they?

Whetſtone. They were Arms.

Mr *Att. Gen.* How many were there? what quantity?

Whetſtone. Truly I cannot tell.

Mr *Baker.* Where is the Conſtable *Thomas Watts*?

Watts. Here am I. (*he was ſworn.*)

Mr *Att. Gen.* Are you the Conſtable?

Watts. Yes Sir, I am the Conſtable, and ſearch'd Sir *William Parkyns*'s Houſe, and upon ſearching in the Garden I found ſome Arms there.

Mr *Att. Gen.* Pray what Quantity of Arms did you find there?

Watts. Four Dozen of Swords, Thirty two Carbines, Twenty five Brace of Piſtols.

Mr *Att. Gen.* What kind of Swords were they?

Watts. They were broad Swords, two-edged Swords.

Mr. *Att. Gen.* Were there any Hilts to the Swords?

Watts. No, but there was a Box of Hilts that I ſuppoſe was prepared for them.

Mr. *Att. Gen.* Where did you find them?

Watts. In a Border under the Wall by the Wall-ſide.

Juryman. Did you ſee the Boxes broke open Sir?

Watts. Yes Sir, I took them and broke them open my own ſelf.

Juryman. Was *Whetſtone* by pray Sir when they were broke open?

Watts. He was not there by at the firſt, when we dug them up; but I brought them to my own Houſe, and there I broke them open and there we ſaw them.

Mr *Att. Gen.* Will you ask him any Queſtions Sir *William?*

Parkyns. No Sir.

Mr. *Sol. Gen.* Then call *Turton, Freeman, Fielding.* (*who were all ſworn*)

Mr. *Att. Gen.* Pray ſet up Mr *Freeman.* (*which was done*)

Mr *Att. Gen.* Where do you live?

Freeman. At the *George Inn* in *Holbourn.*

Mr *Att. Gen.* What are you?

Freeman. I am Hoſtler there.

Mr *At. Gen.* Pray do you give an Account what Horſes were kept there of Sir *William Parkyns*, and how many?

Freeman. He was a Gueſt to the Houſe all this laſt Summer, ſometimes more ſometimes leſs.

Mr *Att. Gen.* How was it laſt Winter about *February* laſt, how many Horſes had he then?

Freeman. He had ſometimes Three came in, ſometimes Four, the moſt that ever he had was Five.

Mr *Att. Gen.* What time was that that he had Five pray?

Freeman. To my beſt Memory it was juſt the Week before the Diſturbance, before the Plot broke out.

Mr. *Att. Gen.* Before the Proclamation you mean?

Freeman. Yes, before the Proclamation.

Mr *Att. Gen.* When was it, what Day of the Week was it?

Freeman. They came in on *Friday* Night.

L. C. J. Holt. What; did five come in then?

Freeman. Yes I think ſo.

L. C. J. H. Who was with him?

Freeman. I only ſaw his Groom and another Servant.

Mr *Att. Gen.* How were they accoutred?

Freeman. Four with Holſters and ſmall Piſtols, one was a led Mare with a Portmanteau; and in a Horſe-cloth wrap'd up there was one or two Pair of Jack Boots, and I think a Coller in one, I cannot tell whether there was one Bridle or two.

Mr. *Att. Gen.* When did they go away?

Freeman. On *Saturday* in the Afternoon.

Mr *Att. Gen.* Did you obſerve any Perſons to come there on *Saturday* Morning?

Freeman. There were two Men that were there that rid out between two and three Hours; they rid out between Nine and Ten, and they came in again between Twelve and One; where they had been I cannot tell, but they had rid pretty hard for the time they were out, for the Horſes came in in a Sweat.

Mr *Att. Gen.* Before this time that you now ſpeak of, what Horſes came up can you remember, how many Horſes came up the Week before?

Freeman. The Week before there were ſome, but how many I cannot remember; they very rarely ſtaid above a Night.

Mr *Att. Gen.* What do you know of any other Horſes that were left there?

Freeman. There were three Horſes that were at our Houſe a Week, that were very good Horſes, but I do not know whoſe Horſes they were, nor the Names of the Gentlemen that owned them. The Gentlemen that brought them in paid for the Horſes, only the Groom told me his Maſter Sir *William Parkyns* had ordered him to ſee the Horſes fed. I never received a Farthing of Sir *William Parkyns* but always of the Groom.

Mr *Att. Gen.* Pray did you obſerve any Particular Horſe that was brought in there, a *Roan* Horſe?

Freeman. Yes there was one Horſe brought in.

Mr *Att. Gen.* From whence did that Horſe come?

Freeman. As was told me from *Montague* Houſe.

Mr *Att. Gen.* I believe you miſtake the Place, recollect your ſelf a little.

Freeman. Somerſet Houſe, I mean, a Porter brought it.

Mr *Att. Gen.* Are you ſure it was *Somerſet* Houſe?

Freeman. Yes it was.

Mr *Att. Gen.* Do you know one *Lewis*?

Freeman. I do not know him, perhaps the Tapſter does.

L. C. J. Holt. How many Horſes came from *Somerſet* Houſe?

Freeman. Only the *Roan* Gelding, and a very fat Man mounted him and rid out with Sir *William Parkyns.*

Parkyns. Pray Sir what Sort of Horſe was that Bay Gelding that you ſay the fat Man rid upon?

Freeman. I ſay he rid upon a little *Roan* Gelding about 14 Hands high.

Park. But the Bay Gelding how high was that?

Freeman. About 14 Hands high.

Parkins. There's your mighty Horſe for Service.

Freeman. They were no great ſized Horſes none of them.

Parkyns. And have not you known theſe Horſes to have been mine a great while?

Freeman. Yes I have known them to be yours a good while.

L. C. J. H. What; was the *Roan* Gelding Sir *William Parkyns*'s?

Freeman. No, not the *Roan* but the others; they were no ſtrange Horſes, they were frequently there all laſt Summer; there was no new ſtrange Horſe but the *Roan.*

L. C. J. H. Will you ask him any more Queſtions?

Parkins. No my Lord.

Mr *Soll. Gen.* Then ſet up Mr *Turton.* (*which was done*)

Mr *Att. Gen.* Pray will you give an Account what you know of Horſes that were ſtanding at the *George Inn* in *Holbourn.*

Turton. I have known Sir *William Parkyns* to have uſed the Inn this four or five Years, ever ſince the Inn was built; and in laſt *February* he came to Town with three Horſes the firſt time.

Mr

Mr *Att. Gen.* What Day of the Month was that?

Turton. I cannot ſay what Day of the Month, but it was about the Week before his laſt coming there, which was juſt before the Diſcovery of the Plot.

Mr *Att. Gen.* Do you know what Day of the Week it was?

Turton. No, truly I do not, for I keep no Account of Horſes going in or out. The laſt time of his coming was with about four or five Horſes to the beſt of my knowledge, and that was upon the *Friday* before the Plot broke out; and then upon that *Friday*, Sir *William Parkins* gave order to his Groom to get the Horſes ready againſt *Saturday* Morning.

Mr *Att. Gen.* Did he go out with his Horſes on *Saturday* Morning?

Turton. He did not go out with all the Horſes according as he had given order; but two Gentlemen rid out with two of the Horſes, and ſtaid out about two or three Hours and came in again, as if they had rid pretty hard, the Horſes being in a Sweat; and in the Afternoon they all went fairly out of Town, and gave out that they expected to be in Town on *Sunday* or *Monday* following, but they did not return; but then came down one Mr. *Lewis*, I know not that that is his Name, only when I formerly belonged to my Lord of *Oxford*, I knew him to be Gentleman of the Horſe to my Lord *Feverſham*, but I did not know his Name.

Mr *Att, Gen.* Had you not ſeen him there before, what time did he come?

Turton. I do not know that I ever ſaw him there before; he was on *Saturday* in our Yard.

L. C. J. H. You are ask'd when *Lewis* came?

Turton. The firſt time I ſee him was on *Saturday*, in the Yard asking for Sir *William Parkyns.*

L. C. J. H. What time on *Saturday* was that?

Turton. It might be Three of the Clock in the Afternoon, about an Hour or thereabouts before Sir *William Parkyns*'s Horſes went away; and asking for Sir *William Parkyns*, and he not being there, he returned back again; and after they were gone he came again, and I told him they were gone, but the Groom had acquainted me, and given me an Account, that he would be there again on *Sunday* or *Monday*. On *Sunday* in the Afternoon about five or ſix, Mr. *Lewis* came to enquire if Sir *William Parkyns*'s Horſes were come to Town; I told him no; and ſo he came again upon *Monday* Morning betwixt Eight and Nine of the Clock, and ask'd me if I heard nothing of his coming to Town; I told him no, I did not hear of his coming again.

Mr *Att. Gen.* The Horſes that came up on *Friday* Night, how were they accoutred?

Turton. Two or three of them had Holſters; I cannot ſay but for Piſtols they had four or five Caſe.

Mr. *At. Gen.* Had they no Carbines?

Turton. No, but only Horſe-Piſtols.

Mr. *At. Gen.* Did you not obſerve any other Arms, or other Furniture?

Turton. I did ſee a Pair or two of Jack-Boots that they rid in, but I did not ſee any more.

Mr. *At. Gen.* Were there any that were wrapt up in a Horſe-Cloth?

Turton. No, I did not ſee any, they were not brought into the Houſe.

Mr. *Cooper*, Do you know what Time the Horſes were ſaddled that Day?

Turton. No, I did not.

Parkyns. You obſerv'd, and ſaid there were two or three Caſes of Piſtols, did not I always ride with Piſtols?

Turton. Yes, you ſeldom came without two or three Pair when you came with Servants.

Parkyns. And as to the Jack-Boots you ſaid we rid in them?

Turton. I ſuppoſe ſo.

Parkyns. We alighted at Mr. *John*'s Houſe, and ſo our Boots were ſent thither: And theſe were ſmall Horſes all of them; pray will you tell the Court what ſiz'd Horſes they were, was there ever a great Horſe among them?

Turton. Never a one, I believe that exceeded above fourteen Hands and a half, ſome under Fourteen.

Mr. *Sol. Gen.* Did you ſee the Roan Gelding what Size was that?

Turton. A ſmall Padd that might be about Thirteen and a half.

Mr. *At. Gen.* Did you ever ſee him come with ſo many Horſes before?

Turton. I have ſeen more at the Sword and Buckler, when I lived there; and he uſed to inn there.

Mr. *At. Gen.* How many have you ſeen at the Sword and Buckler?

Turton. I have ſeen four or five at a Time, but this is many Years ago, Seven or Eight years ago, when he uſed to keep his Coach and four Horſes, and come up with ſeveral ſaddle Horſes with him.

Mr. *At. Gen.* How long have you lived at the *George* Inn?

Turton. About two Years.

Mr. *At. Gen.* Did you obſerve any other Horſes that ſtood there?

Turton. There were two that were pretty ſizeable Horſes, larger than any of Sir *William*'s own.

Mr. *At. Gen.* Whoſe were they?

Turton. I cannot tell.

Mr. *At. Gen.* Did any Body own them?

Turton. I don't know who owned them, there was one that paid for their Meat, and took them away.

Mr. *At. Gen.* Who is that?

Turton. Truly, Sir, I cannot tell, I do not know who he was; I never ſaw him in my Life.

Mr. *Sol. Gen.* Has Sir *William Parkyns*, any more Queſtions to ask him?

Parkyns. No, Sir.

Mr. *At. Gen.* Then, my Lord, we ſhall call no more Witneſſes, unleſs he gives further Occaſion, we leave it here till we hear what he ſays to it.

L. C. J. Sir *William Parkyns*, Mr. *Attorney General*, and the King's Council have done; now is your Time to make your Defence.

Parkyns. My Lord, I rely upon your Lordſhip for my Defence? for I am ignorant of theſe Proceedings; I rely wholly upon your Lordſhip, to give a true Account of them to the Jury: I hope your Lordſhip is ſo juſt, that you will repeat the Evidence to the Jury as it is, and no otherwiſe. But I do not obſerve, that as to the Aſſaſſination there is more than one Witneſs, and that is Captain *Porter*: There is not a Tittle more! and as to that, I ſuppoſe your Lordſhip will declare to the Jury, that I was not concerned in it; and Captain *Porter* declares, I was to have no Hand in it, onely I was to furniſh five Horſes, and accidentally I was at ſome Meetings, but he does not declare that I was to do any Thing in particular.

L. C. J. Yes, yes, you agreed upon the Debates to the ſeveral Reſolutions, of Aſſaſſinating the King, and ſaid, that it was neceſſary and fit to take him off.

Parkyns. Still, that is but one Witneſs, I deny it utterly, and the Law ſays poſitively there ſhall be two Witneſſes.

L. C. J. Not to every Overt-Act, there is no Law ſays ſo.

Parkyns. As to the Aſſaſſination there is but one, no other but he; and ſo as to the Regiment he did not ſay that I was to raiſe a Regiment; but that he was told by a Gentleman that I had been deſired to be in the Matter, but I would not, becauſe I had engaged in another Buſineſs, about a Regiment, but this was all but hear-ſay.

L. C. J. Yes, he ſaid you own'd you had a Regiment. Beſides, it is ſaid, you own'd you had your Saddles, and your Troop conſiſted of old Soldiers.

Parkyns. No, Captain *Porter* never ſaid ſo.

Mr. *At. Gen.* That was *Sweet.*

L. C. J. You told *Porter*, you had a Regiment to look after.

Parkyns. Captain *Porter* is here, I deſire he would explain himſelf.

L. C. J. Yes, and you told *Sweet*, that your Troop conſiſted of Old Soldiers, and that you had bought thirty Saddles.

Parkyns. My Troop, aye! But ſtill there was nothing of a Regiment; nor did they ſay I had raiſed a Regiment, or a Troop, or was to raiſe a Regiment.

Sweet. You told me your Troop conſiſted of old Soldiers. I did not ſay that you ſaid you had raiſed or wou'd raiſe, but it did conſiſt of Old Soldiers.

L. C. J. He ſays that which makes it plain, that you were to have a Troop, or had a Troop, conſiſting of Old Soldiers, beſides Voluntiers that had been Officers: and that you had bought a great many Saddles, thirty Saddles; and you were to go into *Leiceſterſhire*, and accordingly you did go, and upon your Return, you did give an Account that all was well, and the *Weſt* was as well inclined to King *James*'s Intereſt as the *North.*

Parkyns. That I went into *Leiceſterſhire*, and met ſeveral Gentlemen, and that they were all well inclined; I hope that is no Evidence of Treaſon againſt me: Every Body ought to be well inclined.

L. C. J. Aye! But they were all well diſpoſed or inclined to King *James*'s Intereſt.

Parkyns. He did not ſay ſo, if your Lordſhip pleaſes to call him again.

L. C. J. Call him again.

Sweet *was ſet up again.*

Mr. *Sol. Gen.* What did Sir *William Parkyns* tell you of his Journey into *Leiceſterſhire?*

Sweet. he ſaid he had been there and had met his Friends, and all was well.

L. C. J. What did he ſay? Did he Name King *James?*

Sweet. He did not Name King *James* to me at that Time.

L. C. J. What was the Diſcourſe about, that they were all well inclined to?

Sweet. He always named it the King's Intereſt, and did not name King *James*, but I underſtood it, and always took it to be King *James* he meant.

Mr. *Mountague*, What did he ſay of the *North* and *Weſt?*

Sweet. He ſaid that the *Weſt* was as well inclined to the King's Intereſt as the *North.*

Mr. *At. Gen.* What did he ſay before he went?

Sweet. He told me he was to go into *Leiceſterſhire*, to meet ſome of the King's Friends.

Parkyns. Pray, Recollect your ſelf, and conſider what you ſay.

Sweet. He ſaid ſome Gentlemen rid as far to him, as he did to meet them.

Mr. *At. Gen.* Was that the Time he talk'd about the Troop?

Sweet. No, that was before this Time. I cannot remember the particular Time; it was at his own Houſe, and Captain *Scudamore* was with him.

Mr. *At. Gen.* When was the Diſcourſe about King *James*'s Landing?

Sweet. He told me that he believed now that King *James* wou'd land, he ſaid he had his own Word for it, it was about *Chriſtmas.*

Mr. *At. Gen.* What did he ſay about Preparation for it?

Sweet. He ſaid his own Troop was to conſiſt of all Old Soldiers.

L. C. J. Did he tell you he had a Troop?

Sweet. I ſpeak his own Words, he ſaid, my Troop conſiſts of all Old Soldiers.

L. C. J. Was it conſiſts, or will conſiſt, though I think there may be no great Matter of Difference in this Caſe?

Parkyns. Yes, my Lord, but there is a great deal ſure, for will conſiſt ſhews nothing yet done, and all is but Words.

L. C. J. Sweet, Anſwer to Sir *William Parkyns*'s Queſtion.

Sweet. I tell your Lordſhip, I repeat his own Words, my Troop conſiſts or is compoſed of all Old Soldiers.

Mr. *Cowper.* What did he ſay of Voluntiers?

Sweet. He ſaid, there were ſome Gentlemen that would go along with him as Voluntiers, that had been Old Officers.

Mr. *Cowper.* Pray, let me ask another Queſtion; when he diſcourſed of the preſent King, by what Name did he uſe to ſpeak of him?

Sweet. He called him by the Name of the Prince of *Orange.*

Parkyns. Pray, recollect your ſelf, Mr. *Sweet*, and think of what you ſay, ſince he was declared King, did I ever call him Prince of *Orange?* I am upon my Life, and pray ſpeak nothing but the Truth.

L. C. J. Conſider and Anſwer the Queſtion, what did he uſe to call him?

Sweet. Truly, my Lord, I am not poſitive as to that, I underſtood it ſo. I never knew that he allowed him to be King of *England.*

Parkyns. Did you ever hear me call him Prince of *Orange* ſince he was King?

L. C. J. Look ye, Sir, how long have you been acquainted with him?

Sweet. About three Years, my Lord.

L. C. J. Well that is long ſince his Majeſty was declared King, have you ever heard Sir *William Parkyns* call this King Prince of *Orange?*

Sweet. I am not poſitive in that, but I underſtood he did not allow him to be King.

Mr. *Sol. Gen.* You frequently diſcourſed with him about the Government it ſeems; pray what, did he uſe to call him.

Sweet. I have heard him call him King *William* and the little Gentleman.

Parkyns

Parkyns. When ever did you hear me call him the little Gentleman? Mr. *Sweet*, pray, when you are upon your Oath conſider well, and recollect your ſelf, and don't anſwer raſhly and ſuddenly, but think of what you ſay. I always expreſs'd my ſelf, when I had occaſion to ſpeak of him, and called him King *William*, as other People uſe to do, I never uſed the Words, little Gentleman, nor Prince of *Orange* neither.

L. C. J. Did you ever hear him call him otherwiſe than King *William*?

He pauſed a while.

L. C. J. Pray ſpeak the Truth and no more.

Sweet. I have heard him call him Prince of *Orange*.

L. C. J. But you have heard him call him King *William* too?

Mr. *Sweet.* Yes.

Mr. *Cowper.* But pray, when he Spoke of the King, what King did you underſtand by it?

Sweet. I uſed to underſtand King *James*?

Parkyns. What is that to me what he underſtood?

L. C. J. But I would obſerve to you one Thing, when you came from *Leiceſterſhire*, you talk'd how well diſpoſed they were to the King's Intereſt, he ſays, he underſtood that King to be King *James*, and you ſaid the *Weſt* was as well diſpoſed as the *North*; pray now, were you imployed by King *William* to ſee how the Gentlemen ſtood affected to him?

Parkyns. No, nor by King *James* neither.

L. C. J. Why then ſhould you concern your ſelf for the King's Friends, in the *Weſt* and the *North*?

Parkyns I never was in the *Weſt* in my Life, and therefore I can't tell why I ſhould tell him any Thing about the *Weſt*.

Mr. *At. Gen.* Pray, Sir, when was it that Sir *William Parkyns* ſpoke about the King's Landing?

Sweet. It was about *Chriſtmas*, he ſaid he believed he would land.

Parkyns. Did I tell you poſitively it would be ſo then.

Mr. *At. Gen.* He tells you he ſaid you did believe it, for you had it from his own Mouth.

Parkyns. That ſhews it is not probable I ſhould tell him ſo, that I ſhould have it from his own Mouth, carries ſuch an Improbability with it that the Evidence is *Felo de ſe*, it deſtroys it ſelf.

Mr. *Sol. Gen.* He does not ſay you had it from his own Mouth, but that you had his Word for it, and this being about *Chriſtmas*, long after our King was return'd, it could mean no other King but King *James*.

L. C. J. Look you, Sir *William Parkyns*, there is another Thing I would obſerve, why did you ſend your Man to *Kenſington* to one *Brown*? who is that *Brown*, and what was the Man that lodged at the Confectioner's in *Holbourn*?

Parkyns. I cannot tell who it was, I know neither *Brown* nor the other Man, but I ſent my Man at the Requeſt of Mr. *Charnock*, who lodged in the ſame Houſe with me; he deſired he might go upon an Errand for him to *Kenſington*, and I directed him to go upon ſuch an Errand, for he was formerly Mr. *Charnock*'s Servant, and I deſired him to go of the Errand if he requeſted it. Who theſe Men were I know not, neither of them, nor any of their Buſineſs.

L. C. J. But he was bid by the Man that lodged at the Confectioner's to tell his Maſter that he would ſtay within for him.

Parkyns That might be Mr. *Charnock*, for he was his Servant once.

L. C. J. But he ſays he carry'd the Meſſage to you, and you receiv'd it. Well have you any more to ſay?

Parkyns. My Lord, I think there is but one poſitive Evidence of any one Overt-act.

L. C. J. Yes, what do you Think of the Deſign of bringing in King *James*, and conſulting about it, and aſſiſting in the Invaſion, and preparing a Troop, and providing Arms and Horſes, are not theſe Overt-Acts. Do you think your having a Troop of old Soldiers is no Overt-act.

Parkyns. There is no poſitive Proof of any Troop, or any Arms.

L. C. J. It is proved there were Arms ſent by you at *Michaelmas* laſt to Mr. *Haywoods*, *Charnock*'s Brother-in-Law, and theſe lay there till *Aſh-wedneſday* laſt, after your Name was in the Proclamation, and then they were removed in the Night, and buried at your Houſe, and were taken up there, and here is an Account given what Arms they were, four Dozen of Swords, twenty five Pair of Piſtols, thirty two Carabines.

Parkyns. Firſt it does not appear when theſe Arms were bought, nor for what Intent they were brought from *Haywoods*.

L. C. J. But what Uſe had you, a private Man, for ſo many Arms, and then your going into *Leiceſterſhire* to meet ſome Gentlemen, and your giving an Account how they ſtood affected to the King's Intereſt, whether that be underſtood for the Intereſt of King *James*, I muſt leave to the Jury, ſince you give no Account that you were imployed by King *William*.

Parkyns. My Lord, I went upon my private Occaſions, and then talk'd of News as other People do.

L. C. J. But when you returned back again, you declared all was well, and gave an Account how Perſons were diſpos'd in the *Weſt* and *North*.

Parkyns. Is there any Perſons named, or Particulars? Can it be an Overt-act of Treaſon for me to diſcover my Acquaintance?

L. C. J. But your going with that Deſign to engage in an Intereſt againſt the King and for the late King.

Parkyns. He does not ſay diſcovered my Deſign. I went to meet with ſome Friends of my own.

L. C. J. Did he not tell you he was to go into *Leiceſterſhire*?

Sweet. Yes, he did ſo.

L. C. J. Did he tell you to what purpoſe?

Sweet. He ſaid he was to go to meet ſome of the King's Friends.

Parkyns. Did I tell you who?

Sweet. No.

L. C. J. But there was a Lord's Brother, what did he tell you of that?

Sweet. he ſaid all Things were well, and the *Weſt* was as well inclined as the *North*.

L. C. J. To what?

Sweet. To the King's Intereſt.

L. C. J. *Treby.* You ſpoke of a Lord's Brother that was concerned?

Sweet. He ſaid ſeveral Perſons of Quality in the *Weſt* were concerned, and a Lord's Brother was among them.

Juryman. My Lord, I deſire he may be ask'd when he ſaid the King would land, what King he mean't, whether he named the late King, or King *James*.

L. C. J.

L. C. J. Well, Anſwer that? when he diſcourſed to you of the King's Landing, did he name the late King *James?* or did he ſay the late King *James?*

Juryman. Was he mentioned in the Diſcourſe?

Sweet. He never uſed to mention King *James* to me, but only the King, which I underſtood always of King *James.*

Mr. *At. Gen.* Pray what Time was it that he ſpoke of the King's Landing?

Sweet. It was about *Chriſtmas.*

Mr. *Att. Gen.* Therefore no other King could be meant but King *James*, for there was no other King to land at that Time; and he ſaid he had the King's Word for it. I ſuppoſe he can't pretend he had King *William*'s Word for it.

Parkyns. I hope, to talk of the King's landing is no Treaſon; it is but Words: If I tell an idle Story of what I think may come to paſs, ſhall that be reckoned Treaſon? Then for him to ſay, I had it from the King's own Mouth, it is impoſſible to be true, and is no Overt-Act, being only Words, and cannot be reputed Treaſon. And then as to the other two Parts of the Charge, the Conſultations with my Lord of *Ailesbury*, and thoſe other Perſons, there is but one Witneſs; no Body but *Porter*; neither is there any more but he for the Aſſaſſination; his Evidence is but a ſingle Proof, and there ought to be two poſitive Witneſſes, by the Law, to each Overt-Act.

L. C. J. Holt. No: There ought to be two Witneſſes to each Species of Treaſon, that's all.

Parkyns. There ought to be two Witneſſes to both theſe Parts of the Treaſon.

L. C. J. Holt. I muſt tell you, Sir *William Parkyns*, if any Perſon does deſign and contrive that the Realm ſhould be invaded, or the King depoſed, and another ſet upon the Throne, That conſpiring to invade the Realm, or depoſe the King, are Overt-Acts of High Treaſon, within the Statute of 25 *Ed.* 3. and the ſame Species of Treaſon as deſigning to aſſaſſinate him is. It is compaſſing, deſigning, imagining his Death and Deſtruction. Now the Queſtion is, Whether there is not another Witneſs, beſides Capt. *Porter*, to prove another Overt-act of this Deſign.

Parkyns. I don't find there is; for all the Reſt is only Diſcourſe.

L. C. J. Holt. Yes: For what, do you think providing Arms for that Purpoſe, is only Diſcourſe?

Parkyns. The Witneſſes don't ſay, for what Purpoſe the Arms were bought.

L. C. J. H. Nor do you tell us of any other Purpoſe.

Parkyns. My Lord, it does not appear when they were bought.

L. C. J. Holt. Ay, but what Occaſion had you for ſuch a Quantity of Arms?

Parkyns. My Lord, I did not buy them after all. I found them. If I had had liberty to have ſent down for Witneſſes, I could have proved that theſe Arms were in Boxes all ruſty in my Houſe, when I firſt came to it.

L. C. J. Holt. Ay: But why were they buried, juſt at the Time when the Plot was broke out, and the whole Deſign diſcovered?

Parkyns. I can't tell, my Lord, how to help it, if they will make an ill Interpretation.

L. C. J. Holt. What Interpretation would you have us make?

Parkyns. My Lord, it is very eaſy to imagine, People don't care to be found with Arms at ſuch a Time; but, however, the Having of Arms is no Treaſon. They are as much a Commodity as any Thing elſe.

Mr. *Att. Gen.* And then the Horſes coming to Town juſt at ſuch a Time, and the Saddles.

Parkyns. I have not bought a Horſe this two Years, and I travelled in no other Manner than I uſed to do. So the Groom tells ye, I uſed to come to Town with three or four Horſes always. I never kept leſs than ſix or ſeven Horſes this twenty Years; ſometimes a great many more; and they were very little Horſes, Padds, no way fit for the Service they are preſumed to be for.

L. C. J. Holt. Have you any Thing more to ſay, Sir?

Parkyns. I hope, my Lord, as to the Aſſaſſination I am clear: Perhaps the World may imagine, I have had ſome Inclinations to King *James*'s Service, and perhaps they may not think amiſs; but I never did any Thing, nor had an Opportunity to do.

L. C. J. Holt. God be thanked you had no Opportunity.

Parkyns. And I hope my Life ſhall not be taken away without Proof; I hope it will be rather thought, that every one ſhould be taken to be innocent; and it would better pleaſe the King, that I ſhould be acquitted, than to let me be found guilty upon ſlight Grounds, and Imaginations, of which little or nothing can be made.

L. C. J. Holt. No queſtion of it: It will pleaſe the King, and every Body elſe, that you ſhould be found Innocent.

Parkyns. Then, I hope, my Lord, you will not ſtrain the Law to take away my Life; according to the Rule, That it is better five guilty Men ſhould eſcape, than one innocent Man ſuffer: For the Blood of a Man may lie upon every Body, if it be cauſeleſly ſhed; and it is very ſevere to ſtrain the Law to take away any Man's Life.

L. C. J. Holt. Look ye, Sir *William Parkyns*, I muſt tell you, you may be under a very great Miſtake: You may think it neceſſary to have two Witneſſes to every Overt-act, but that is not ſo; for if there be one Witneſs to one Overt-Act, and another Witneſs to another Overt-Act of the ſame Species of Treaſon, that is all that the Law requires.

Parkyns. Here are two Species of Treaſon, levying War is one Species, and Aſſaſſination is another.

L. C. J. Holt. Your Deſign was, originally, the Reſtoring of King *James*, and in order to that the Dethroning of King *William.*

Parkyns. That appears but by one Witneſs, which is not according to Law, which requires two.

L. C. J. Holt. One Way of effecting your Deſign was by Aſſaſſination, the other by Invaſion, or by Force.

Parkyns. Still, my Lord, here is the ſame Witneſs, and that is but one.

L. C. J. Holt. Yes, there are two.

Parkyns. None but Capt. *Porter.*

L. C. J. Holt. What, not as to the Reſtoring of King *James*, which tends to the Dethroning King *William?*

Parkyns. In what Particulars, my Lord?

L. C. J. Holt. Your providing Arms, and going to *Leiceſterſhire*, and ſending *Charnock* on that Errand into *France.* As to the Aſſaſſination, indeed,

deed, there is but one poſitive Witneſs, beſides other Circumſtances, which have their Weight; but as to the other, you ſaid the King would come——

Parkyns. It was my Opinion, that's all.

L. C. J. But you ſaid you had his Word for it.

Parkyns. Does not that anſwer it ſelf, my Lord? Is it poſſible it ſhould be true, that I who was in *England*, ſhould have the Word of one that is at ſuch a Diſtance beyond Sea?

L. C. J. And then your Buying of Saddles, for what Purpoſe were they?

Parkyns. My Lord, does he ſay it was in order to it? I am ſure he does not, and I hope I ſhall not be preſumed out of my Life.

L. C. J. When you talkt of the King's Landing, and ſaid, you had his Word for it; you likewiſe ſaid, your Troop was made up of old Soldiers, beſides Voluntiers that had been Officers.

Park. Still there is nothing done; he does not ſay there was one Man raiſed.

L. C. J. And your going into *Leiceſterſhire* upon ſuch an Errand, as you told him you went upon.

Parkyns. Well, my Lord, I muſt leave it to your Lordſhip. I hope you will conſider well of it.

L. C. J. We muſt do that which is right between the King and his Subjects.

Par. And, I hope, my Lord, the Converſion of Subjects is more acceptable than the Deſtruction of them; and the Government is more concern'd to ſave the Innocent, than to ſtretch the Law to puniſh the Guilty.

L. C. J. It will be more acceptable, and indeed the King and Kingdom are very much concerned in this Matter, and at this Time, Sir *William*; and the Government ought to take Care to preſerve it ſelf. Have you any more to ſay, Sir, if you have pray ſpeak it?

Parkyns. I have no more. I ſubmit it to your Lordſhip: I think there is but one Witneſs, and all the other is but Conjecture and Nonſenſe; and one Witneſs is not ſufficient, by the Law of *England*, for by the Statute there muſt be two.

L. C. J. I have told you my Opinion.

Par. Beſides, your Lordſhip has known me this many Years, and you know that my Education was not to War, and Fighting, but the Gown; and your Lordſhip knows how peaceably I have lived.

L. C. J. I have known you heretofore, Sir *William*, while you kept your Profeſſion and your Gown.

Parkyns. And now in my old Age, my Lord, I am grown lame, and have loſt the Uſe of my Hands with the Gout, and ſcarce able almoſt to go on my Feet. Therefore it cannot in Reaſon be thought probable, that I ſhould engage in ſuch a Buſineſs as this; and therefore I hope you will interpret all Things in a milder Senſe, in Favour of Life, rather than for the Deſtruction of it, and the Ruine of a Man's Fortune and Family.

L. C. J. I tell you, You have had my Opinion concerning the Number of Witneſſes. I ſuppoſe my Lord and Brother will declare theirs.

L. C. J. Treby. My Lord Chief Juſtice, it ſeems, does pleaſe to have us deliver our Opinions; I think we ought to be very tender in a Caſe of Blood: I think the Life of Sir *William Parkyns* is at Stake, and we ought to be careful that he have no Wrong done him. But I think in the Caſes of Treaſon, eſpecially of this Nature, the Life of the King, and the Lives of all the innocent People of the Kingdom are alſo at Stake; and we muſt be indifferent in this Caſe, and by the Grace of God we will be ſo. The Queſtion that Sir *William Parkyns* propoſes, is, Whether there are two Witneſſes upon this Evidence, to this Matter of which he is indicted, which is, the Compaſſing and Imagining the King's Death. One Witneſs, at leaſt, does poſitively prove, That you Sir *William Parkyns* did agree to the Deſign of Aſſaſſinating the King's Perſon, and promiſe to provide and contribute Horſes and Arms to that Purpoſe. Now ſuppoſe this is prov'd but by one Witneſs, and the Evidence had gone no farther, then your Objection would have had a very good Ground, that this could not be a legal Proof of Treaſon; but I muſt tell you, That this Treaſon of Compaſſing and Imagining the King's Death may be made evident by other Overt Acts, beſides that of Aſſaſſination: To conſpire with a Foreign Prince, to invade the Realm, to provide Arms, to join with Invaders, and to make an Inſurrection againſt the King, theſe are Overt Acts of imagining the King's Death. For it cannot be ſuppoſed, but that he that would have an Invaſion and an Inſurrection againſt the King's Perſon, does intend the Deſtruction of the King; he that would take away all his Defence, which he might have by the Aſſiſtance of his Subjects, and leave him expoſed to his mortal Enemies, cannot but be preſumed to deſign the King's Ruine and Murder. Therefore, Sir *William*, ſuch Things being in their Nature a Compaſſing and Imagining the King's Death; your Providing Arms and a Troop are Evidences and Overt Acts of this Treaſon; and ſo will your Going up and down and Meeting People in order to riſe, if that were your Buſineſs in *Leiceſterſhire*, &c. as it ſeems by the Evidence it was.

Parkins. But that is not ſaid, my Lord, I humbly beg your Pardon for interrupting you; it is not ſaid, That I met them to riſe, by no Evidence whatſoever; and therefore, pray my Lord, do not inforce it beyond what the Evidence has proved; he ſaid, I went to meet my Friends: Was there any Thing ſaid, it was in Order to a Riſing?

L. C. J. *Treby.* I think you miſtake your own Words, as you ſpoke them to the Witneſs, if I did take them, as I think I did, right, for they were ſeveral Times repeated. I will do you no wrong, Sir *William*, I aſſure you. You went into *Leiceſterſhire*, and you ſay, It was to meet your Friends, the Witneſs ſays, It was to meet the King's Friends; by the King, it is very plain, you meant not King *William*, but King *James*; for you ſpoke before of the King's Landing, which was at *Chriſtmas* laſt, when every Body knows King *William* was in *England*. Theſe coupled together——

Parkins. I beg your Pardon, my Lord; thoſe two Things are not both to be join'd together, the Diſcourſe of the King's Landing was at *Chriſtmas*, as he ſays, the other Thing, my Journey into *Leiceſterſhire* was a Month afterwards, and therefore they cannot be coupled together.

L. C. J. *Treby.* The Coupling of them, that I meant, was only to ſhew who was underſtood to be ſpoken of by you, when you named the King; ſo the Queſtion is, Whether you did not mean the ſame Perſon in *January* that you meant in

December

December, by the Word King, especially since as a Discovery you had made, you said farther, that the *West* was as well inclined to the King's Interest as the *North*, and a Lord's Brother was concerned in it. If by the King, you had meant King *William*; how impertinent and insensible had been all this Discourse, that the *West* was as well inclined as the *North*, and that a Lord's Brother was concerned in it; concerned in what? In being inclined to King *William*; to what Purpose could that be said?

Parkyns. It may as well be interpreted that Way as the other.

L. C. J. *Treby.* I must leave that to the Jury. And I confess, if there was not somewhat more in the Case, you might the better argue upon this, as to the Interpretation. But laying aside the Consideration of your Riding into *Leicestershire*, *&c.* here is this providing of Arms, proved by Four or Five Witnesses, and the serving of them in that Manner; and there is no Account given by you, that they were provided for the Service of the Government, or that you were employed so to do. Certainly it is not lawful to provide Arms, especially for a whole Troop, as for ought I perceive here was, though indeed I am not skilful enough in those Businesses, to know how many make up a Troop; but it's plain here was an Insurrection intended, when the Invasion was made; and that is an Evidence, that these Arms were to be employ'd upon that Account, for no other Use was to be made of them, nor is pretended. If you had found those Arms in your House (as you say) it had been your Duty to have deliver'd them up, or disposed of them to the Use and Service of the Government, which Service too, could only be when you had a Commission from the Government, and not of your own Head. And then, besides all this, you acknowledg'd that you had a Troop of old Soldiers.

Parkins. It is but slidingly that, for he only tells you, that a Troop would be composed of old Soldiers.

L. C. J. *Treby.* How can that be? when he says, he repeats your own Words, My Troop consists of old Soldiers; can any Body say, that his Troop consists of old Soldiers, without having a Troop.

Parkyns. Pray, Mr *Sweet* speak, my Life is at stake, Did I say to you, it did consist, or it was to consist? recollect your self, and consider well before you speak.

L. C. J. What was it that he did say? it did consist, or it would consist.

Sweet, He said, his Troop was composed all of old Soldiers.

Parkyns, But does it appear by any Evidence, that I had a Troop; if I had, who were they? none of these Men do appear. Does this Troop consist of Men in the Air? that I should list Men that are all *in Nubibus*, and not one of them to be known. Suppose I should tell him a Lie or make some Brags, is this Treason? here is no Person proved to be listed or named.

L. C. J. But Arms were found in your House for a Troop.

Parkyns, But where they were bought, and when they were bought, and made ready, it does not appear; and I affirm to your Lordship, if you would give me but one Day's Time, I would prove, that they were at my House in *Warwickshire*, when I first came down thither, which is two Years ago. And I'll fully make it out to your Satisfaction, or I'll be crucify'd, or any Thing in the World. I can prove it by a great many Witnesses, by my Friends, and all the Servants that belonged to me, they were there long before this Discourse was had or thought of.

Mr Justice *Rokeby*, If your Lordship expects that I should deliver my Opinion, I am ready to do it. As to this Matter of Law that Sir *William Parkyns* has proposed, he says, There are not two Witnesses to the same Overt Act, and therefore no Evidence of Treason; truly, I take it, and always did, that the Law is, there need not be two Witnesses to the same Overt Act; but if there be two Witnesses, one whereof speaks to one Overt Act, and another to another Overt Act of the same Species of Treason, these are two Witnesses within the Law. Now I think, there are two Overt Acts in the Indictment of this Treason. The Treason is Compassing the Death of the King; the Overt Acts are first, the particular Design of the Assassination upon his Person, and the other is, the Bringing in of a foreign Force, and preparing Horses and Arms to meet that foreign Force here: All this to the same Intent and Purpose, the Compassing and Imagining the King's Death. Now besides that of the Assassination, there are a great many Witnesses that prove there were Arms prepared; for there were found a great Quantity, when they opened the Boxes, which Boxes, it is plain, he himself sent down to *Haywood*'s House: For though *Charnock* writ a Letter, yet it was by his Direction, as he own'd to *Haywood*, when he was here in Town. And then his Servant fetched them away from this Place, and this I take to be another Overt Act, and proved by several Witnesses. Sir *William Parkyns* speaks of his being a Gown-Man, but I do not know what a Gown-Man has to do with such a Quantity of Arms.

Parkyns, If you will give me Leave to send for some People, I will demonstrate it to you as clear as the Sun, that they were in the House two Years ago, when I came first thither.

Mr Justice *Rokeby*, There were Preparations two Years ago, it appears, for the Destruction of the King and Kingdom, however the Men that were accused of it, had the Luck to escape and be acquitted.

Parkyns, My Lord, I hope I shall not be interpreted out of my Life, I desire the Statute may be read.

Mr Just. *Rokeby*, What Statute do you mean.

Park. The 25 of *Edw.* 3. and the new Statute too, let them both be read to the Jury, that they may consider of it.

The Statute of the 25 *of* Edward 3. *was read.*

Parkyns, There is nothing of two Witnesses there.

L. C. J. No, but there is another Statute of the 5th *Edw.* 6. *Cap.* 11. that may be more for your Advantage, Will you have that read?

Park. Yes, if you please, I know there is another Statute that does direct it, and I expected to have found it in this Statute.

Cl. of Ar. This is an Act made in the 5th and 6th Years of King *Edw.* 6th.

The Statute was read to these Words, Unless without Trial he shall confess the same.

Park. There's enough.

L. C. J. You have heard the Statute read, would you infer any Thing from it?

Parkyns,

Parkyns. I infer that there ought to be two Witneſſes, and here is but one.

L. C. J. There are two Witneſſes.

Park. Not direct to the ſame Thing.

L. C. J. I ſhall leave it to the Jury, whether this Evidence does not prove an Overt Act, to demonſtrate a Deſign againſt the King; if the Deſign be to depoſe him, and that 's manifeſted by two Overt-Acts, undoubtedly that is Treaſon within the Statute of 25 of *Edw.* 3.

Park. That I agree, but yet there muſt be two Witneſſes of it.

L. C. J. Suppoſe Dethroning the King be the main Deſign that ſtrikes at his Life, and you reſolve it ſhall be done one Way or other. One Way by Aſſaſſination, the other by Inſurrection; or by Invaſion and Joining with a foreign Army.

Par. My Lord, I conceive there ought to be two Witneſſes for each.

L. C. J. No, no; for that very laſt Act that is to take Effect in a few Days, declares it is ſufficient, if there be one to one Overt Act, and another to another; but ſtill it muſt be of the ſame Head or Species of Treaſon; and Depoſing the King and Aſſaſſinating of him, and Preparing to raiſe an Army againſt him, or to excite an Invaſion, are but one ſort of Treaſon.

Par. It may be ſo, if they were Overt Acts of one ſort of Treaſon; but Riſing in Arms, and Aſſaſſination are as different Things as can be in the World, and therefore there ought to be two Witneſſes to each of them.

Mr J. *Rokeby.* That which I deliver'd as my Opinion was, that one Witneſs proving one Overt Act, and another Witneſs proving another Overt Act of the ſame ſort of Treaſon are two good Witneſſes, according as the Law requires. And I am the more fully confirm'd in it, by the Clauſe that is in this new Act of Parliament, made for Tryals in Caſes of Treaſon, That a Man ſhall not be convicted of Treaſon, but by and upon the Oaths and Teſtimony of two lawful Witneſſes, either both of them to the ſame Overt Act, or one of them to one, and the other of them to another Overt Act of the ſame Treaſon.

Park. Of the ſame Treaſon, aye.

Mr Juſt. *Rokeby.* And here it is the Imagining the Death of the King, that is the Treaſon.

Par. Then you may ſay every Thing elſe is ſo; but if you pleaſe to let the whole Statute be read.

L. C. J. You ſhall have it read if you will; but this is all that is in it concerning this Matter. Now a Deſign to depoſe the King, which is manifeſted by ſome Overt Act, is an Overt Act to prove the Deſign of the Death of the King.

Par. Then it muſt he manifeſt, and not by Interpretation; and all theſe Things are by Interpretation, except it be what *Porter* ſwears.

L. C. J. If by Overt Act it be proved, that you deſigned his Depoſition, that is an Overt Act to prove your Deſign of his Death.

Par. They are very different Things, Death and Depoſitions. We have ſeen a King depoſed, and yet he is alive.

L. C. J. *Treby.* I am ſure we have ſeen a King agreed to be aſſaſſinated, and yet, God be thanked, he is ſtill alive.

L. C. J. It is not the Succeeding in the Deſign, but the Deſign it ſelf that is the Treaſon. God forbid that it ſhould have Succeſs to make it Treaſon.

L. C. J. *Treby.* But whenever People will agree together to bring in foreign Forces, or to prepare Men and Arms againſt the King that is in Poſſeſſion, this is reckoned an Overt Act of a Deſign againſt his Life, and has always been reckoned ſo by my Lord Chief Juſtice *Hales*, my Lord Chief Juſtice *Coke*, and by all thoſe Men that have been reputed the moſt tender in Caſes of this Nature. For any Act that expreſſes an Intent of Dethroning the King, by means of an Invaſion by a foreign Force, and an Inſurrection againſt the King, is a proper Proof of a Deſign of his Deſtruction; and if not, then Agreeing to ſhoot him is not an Overt Act. Men may ſay alſo, that there need be actual Shooting to make out the Overt Act in that Caſe.

Park. If your Lordſhip pleaſes to have the Act read, I ſhall ſubmit to your Lordſhip's Judgment.

L. C. J. Let it be read.

Parkyns. If you pleaſe to read the Act, the Preamble of it.

Cl. of Ar. This is an Act made in the 7th Year of our Sovereign Lord the King: Is that the Act? It is an Act for Regulating of Tryals in Caſes of High Treaſon, and Miſpriſion of Treaſon. Is that the Act?

Par. Yes, yes. (*The Act was read.*)

Mr J. *Rokeby.* I believe if you look into the great Caſe in Parliament, the Caſe of my Lord *Stafford*, you'll find it was declared for Law, that one Witneſs to one Overt Act, and another Witneſs to another Overt Act of the ſame Treaſon, they were two Witneſſes within the Law, and this was a ſolemn Reſolution in Parliament in the Houſe of Lords.

Park. I believe it has been done; but here is a beneficial Law made, which if my Tryal had been put off a few Days, I ſhould have had the Benefit of it.

L. C. J. It would have been the ſame Thing as to this Matter, for this Act declares the very ſame Thing, as to the two Witneſſes.

Par. And then, my Lord, I could have had Witneſſes to have taken off a great Part of this Evidence, and the Law comes to take Effect within one Day, and it turns here upon this Matter of *Sweet*, who is not a good Evidence; for it is manifeſt he has contradicted himſelf, and it is manifeſt he has ſworn what cannot be true.

L. C. J. Wherein?

Par. That I ſhould ſay the King would land here, for I had his Word for it.

Mr Juſt. *Rokeby.* You might have his Word, and not delivered by his own Mouth; there are other Ways to convey a Man's Word beſides Speaking.

Park. But then we don't call it his Word, that's Hearſay.

Mr Juſt. *Rokeby.* If a Man write his Note that he will do ſuch a Thing, we may very well ſay, we have his Word for it.

L. C. J. It is not impoſſible but that you might ſpeak with him.

Par. It is impoſſible I ſhould ſpeak from hence to *France*.

L. C. J. You might have been over with him, I believe a great many others have, and it's proved Mr *Charnock* went over.

Mr J. *Rokeby.* If any Man ſhould have ſaid at the latter End of the laſt Month, I believe that there was an Aſſaſſination intended againſt the King, becauſe I have his Word for it, merely from reading his Speech to the Parliament, wherein he affirms that he had ſeveral Proofs of it, that had been a proper Expreſſion, though he did not hear the King ſpeak it.

Par. Yes, if he had the Speech to produce.

Mr J. *Rokeby.* Then if it come by Letter or Meſſage or common Fame, he might ſend you Word by a particular Meſſenger.

Par. Yes, if there was any ſuch Authority as that it were true. But he has manifeſtly contradicted

himſelf, and Capt. *Porter* ſwears for his own Life, and I muſt leave it to you, whether they are to be believed.

Mr J. *Rokeby*. Capt. *Porter*'s Teſtimony has been ſufficiently confirm'd by the Acknowledgment of dying Perſons.

L. C. J. Well, have you any more to ſay, Sir *William Parkyns*?

Parkyns. No, my Lord, I ſubmit it to your Lordſhip's Direction.

L. C. J. Then what ſay you to it, Mr Attorney or Mr Sollicitor?

Mr *Sol. Gen.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am of Council for the King in this Matter, and it is my Turn to ſum up the Evidence againſt the Priſoner at the Bar: He ſtands indicted for Compaſſing the Death of the King, for Deſigning to depoſe the King, for Promoting a foreign Invaſion, for Intending an Inſurrection here at home, and for Aiding and Abetting the King's Enemies, and for Doing what he could to procure the Subjection of his own Country to Foreigners and Strangers.

Gentlemen, ſome of theſe Crimes run into one another; Deſigning the Death of the King by Aſſaſſination, and Deſigning to depoſe the King, amount to one and the ſame Thing, with Compaſſing and Imagining the Death of the King.

My Lords, the Judges have given you their Opinion in that Point of Law, and I think it is agreeable to all the Reſolutions that have been ſince the Making of the Statute of 25 of *Edw.* 3d. I think that it has been explained ſo in the Time of *Richard* the Second; but this I am ſure of, that it was ſo reſolv'd in the Time of *Harry* the Fourth, when there was a Deſign to ſet up *Richard* the Second again, and it was adjudged to be High Treaſon in Compaſſing and Imagining the Death of the King. For Depoſing the King, is Deſtroying him in his politick Capacity, as much as Aſſaſſination and Murdering of him is Deſtroying him in his natural Capacity, and the Conſpirators in ſuch Caſes know what the great End is they aim at, to ſubvert the Government as it is eſtabliſhed by Law, whereby every Man enjoys his own Property, and the Freedom of his Perſon, and thoſe that will be quiet may have their Liberty and Property preſerved entire to them; but ſome People are ſo very impatient of ſubmitting to the Law, that they cannot be content to be in Servitude themſelves, but they muſt needs do all they can, to bring it upon their Fellow-Subjects. And it were very well if that thoſe who are in Love with Slavery, would but go to ſome other Places, where they may have enough of it, and not bring it upon thoſe who are ſo little deſirous of ſuch a Thing, as we are, and I hope always ſhall be.

Gentlemen, to prove Sir *William Parkyns* guilty of this Treaſon, whereof he ſtands indicted, we have produced ſeveral Witneſſes; and firſt there is Mr *Porter*, and he tells you Sir *William Parkyns* told him he had ſeen a Commiſſion from K. *James*, written with his own Hand, for making War againſt the Perſon of K. *William*.

Parkyns. Sir, I beg your Pardon for interrupting you, but there was not one Word of that ſaid, here is Mr *Porter*, pray ask him, if ever I ſaw a Commiſſion from King *James*.

L. C. J. *Porter* did ſay ſo, if I remember any Thing *Porter* ſaid, you told him you had read the Commiſſion, and it was written with his own Hand.

Par. All that I heard of it was, that when I was deſired to make one in the Aſſaſſination, I refuſed it becauſe I ſaid I was buſy about the Matter of my Regiment.

Mr *Att. Gen.* Pray call *Porter* again. (*Capt.* Porter *came in.*)

Mr *Soll. Gen.* Pray Capt. *Porter*, will you give the Court and the Jury an Account what you heard Sir *William Parkyns* ſay about the Commiſſion that came from King *James*?

Capt. *Porter*. I ask'd Mr *Charnock* why I might not ſee the Commiſſion, and he told me he had never ſeen it himſelf, but Sir *William Parkyns* had. I did ask Sir *William Parkyns*, whether he had ſeen it, and he told me he did ſee it, and read it, and it was to raiſe War againſt the Perſon of the Prince of *Orange*.

Mr *At. Gen.* Whoſe Hand was in it, did he ſay?

Capt. *P.* It was written with K. *James*'s own Hand.

Par. This was my Miſtake, I thought he had ſaid I told him I had a Commiſſion for a Regiment.

Mr *Mountague*. Did he give any Reaſon, why it was written with King *James*'s own Hand.

Capt. *Porter*. We uſed to ſay amongſt our ſelves it was, becauſe he would not truſt any of his Miniſters with it.

Mr. *Sol. Gen.* I would not do Sir *William Parkyns* any wrong, but only ſum up what is material in the Evidence given againſt him. I remember very well Mr. *Porter* ſaid, Mr. *Charnock* told him Sir *William Parkyns* had ſeen the Commiſſion, but I would not offer that as Evidence againſt the Priſoner what another told him, but he ſays beſides that Sir *William Parkyns* told him himſelf, that he had ſeen it, and that it was written with King *James*'s own Hand. He ſays that they had ſeveral Meetings together, Sir *William Parkyns*, and a great many others; and he names the Places, the *Naggs-Head* in *Covent-Garden*, the *Sun* Tavern in the *Strand*, and the *Globe* Tavern in *Hatton-Garden*; he tells you particularly, that it was agreed that *King* (who was executed) and *Knightley*, and himſelf ſhould go and view a Place that ſhould be proper for the Aſſaſſination, and to give a Report to the Priſoner, and the Reſt of the Conſpirators, what they thought the moſt proper Place; and that accordingly they did view the Place, and came home at Night, and met the Company, whereof Sir *William Parkyns* was one; and they gave an Account how the Place was viewed, and which was thought moſt proper, and then all the Company agreed to it. He ſays indeed, that Sir *William Parkyns* was not one that was to execute it in his own Perſon, but one *Scudamore* was to be the Man imployed by him, and he did ſay it was a Thing that was very neceſſary to be done, and would facilitate the Introduction of King *James*, and the bringing him back again: And there is likewiſe this concurring Evidence of Mr. *Porter*'s with what I ſhall obſerve by and by, that Sir *William Parkyns* was to procure five Horſes, three whereof he was to mount himſelf, and two he was to ſend Captain *Porter* to mount, and if there were further Occaſion he could procure more from Mr. *Lewis*, Gentleman of the Horſe to my Lord *Feverſham*, and accordingly we have produced to you two Witneſſes, *Freeman* and *Turton*, the one a Tapſter, the other an Hoſtler that lived at the *George* Inn in *Holbourn*, who give you an Account that upon *Friday* before the firſt Day that was deſigned for the Aſſaſſination, there did come three Horſes to Town, for Sir *William Parkyns*, but it being put off upon the Diſappointment, they were ſent out of Town again. Upon the *Friday* afterwards, the Day before the Diſcovery, then there were four Horſes brought to Town, and a 5th was of Mr. *Lewis* which was a Roan Gelding.

Parkyns.

Parkyns. Pray, Sir, will you pleaſe to obſerve what Sort of Horſes they were; and particularly the Heighth of them, that it may be known how fit they were for this Buſineſs.

Mr. *Sol. Gen.* I will do you no wrong Sir *William* if I can help it. The Jury have heard the Evidence; and by and by they will hear my Lords Directions: But they do ſay there were 4 brought to Town, and a 5th was ſent, a Roan Gelding; firſt the Witneſs ſaid the Horſe came from *Mountague* Houſe, but then preſently he recollected himſelf, and acknowledged the Miſtake; and afterwards ſaid it was from *Somerſet* Houſe. So there were the 5 Horſes, 3 whereof Sir *William Parkyns* was to mount, and 2 Captain *Porter*, as he himſelf ſays; and theſe Facts I inſtance in as making a concurring Evidence, and very near to two Witneſſes to prove this Part of the Conſpiracy.

Then, Gentlemen, Captain *Porter* goes further, and ſays, that he had heard (but Sir *William Parkyns* did not tell him ſo himſelf) that Sir *William Parkyns* had a Commiſſion to raiſe a Regiment of Horſe, and was preparing ſo to do, againſt the Time of the Invaſion, to joyn with the Forces that were to come from abroad. To confirm which we have called Mr. *Sweet* to give you an Account that he had been acquainted with Sir *William Parkyns* for three Years, and that he had often talkt with him about the King, that is his preſent Majeſty, whom he called the Prince of *Orange*, and the little Gentleman; and about King *James*, whom he uſed to call always King; and he ſaid the King was to land very ſpeedily, and that he had a Troop which conſiſted of old Soldiers, and that there were ſeveral Volunteers that were Officers; he ſaid he was to take a Journey into *Leiceſterſhire*, and accordingly he went; and when he returned back again he ſaid, the Weſt and the North were very well inclined to the King's Intereſt, or to that Purpoſe. And to ſtrengthen his Evidence we prove, that he did go accordingly into *Leiceſterſhire*, and we prove it by his Servant that went with him, where he met with ſeveral Perſons, particulary one *Yarborough*, and a Parſon; what they did tranſact the Servant cannot prove, but he is a concurring Witneſs to prove, that he went into *Leiceſterſhire*; and we have all the Reaſon in the World to believe that he went on that Errand that he ſpoke of before, that is to meet the King's Friends, as he called King *James*. And then there is a further concurring Evidence of his having a Regiment, or a Troop, it is not material, whether it be one or the other; and that is the Matter of the Arms, 4 Dozen of Swords, 32 Carbines, 35 Caſes of Piſtols, that were hid in the Garden of his Houſe: And theſe Arms we have traced further, he ſent them from his Houſe to *Haywood*'s Houſe, there he thought they would not lie ſafe, and therefore Sir *William Parkyns* ſends for them privately; they were to come away at Night, and be brought back to his Houſe, and they were accordingly brought back in the Night to his Houſe, and there they were buried; and the ſame Perſon ſaw them taken up afterwards, which brought them to Sir *William Parkyns*'s Houſe, and proves they were the ſame Boxes that were buried, and which upon Opening proved to be theſe Arms, that were firſt ſent to *Haywood*'s, and afterwards brought back to his own Houſe.

So that this, Gentlemen, is a concurring Evidence both to what *Sweet* ſays, and to what *Porter* ſays, and thoſe are the Two Witneſſes to this Part of the Treaſon, that there was a Proviſion of Arms and Men for this Purpoſe, which he ſaid he had a Commiſſion for.

Now, Gentlemen, againſt all this he makes but a very ſmall Objection. As to the Matter of two Witneſſes to every Overt Act, that has been overruled by the Court; and as to the Arms, he ſays he found them at his Houſe when he firſt came to it; and then they were old ruſty Arms, but of this he gives you no Manner of Evidence. But if they were there when he came to the Houſe, how came he at this Time of Day to hide them, and ſecret them? Why might they not be as publick now as they were before he came, which he has had Time enough to prepare to prove ſince the Finding of them? And he does not give you ſo much as any colourable Reaſon why he ſo ſecreted them. And therefore 'tis a moſt juſt and violent Suſpicion, that they were for the Purpoſes that the Witneſſes have given you an Account of; and you have Reaſon to believe they were provided for to arm that Number of Men, which he was to raiſe to aſſiſt the *French* when they came to land here. So that if you believe what the Witneſſes have ſworn, you cannot ſay but that he is guilty of the Treaſon charged upon him; and we doubt not you'll find him ſo.

Mr *Cowper*. May it pleaſe your Lordſhip, and you Gentlemen of the Jury; I am of the ſame Side of Council for the King. Sir *William Parkyns* has given us a good Caution, which I ſhall take care to obſerve: and that is, not to ſtrain either Fact, or Law, to his Prejudice. But, my Lord, When ſuch a Matter as this, a Crime of this Nature, is ſo far proved againſt the Priſoner at the Bar, that no Body can in his private Judgment reaſonably acquit him; then I think it a good Piece of Service to the Publick to make the Matter ſo plain, that it may be put beyond all Manner of Doubt, both for the Eaſe of the Jurors, and for the Satisfaction of all others that hear this Tryal.

My Lord, Sir *William Parkyns* has truly divided his Indictment into two Parts, the one that accuſes him of being concerned in the Aſſaſſination, and the other that accuſes him of being concerned in Inviting the *French* into the Kingdom, and Ingaging to meet them with an armed Force.

My Lord, As to the firſt Part, I muſt do Sir *William Parkyns* that Right, that there is but one poſitive Evidence as to the Aſſaſſination; but that Evidence tells ye he agreed to it at ſeveral Meetings, nay, that he was one who ſaid it was neceſſary to be done, in order to the other Deſign he was ingaged in, the facilitating the Landing of the *French*, and King *James* his Deſcent and Reſtauration. There is, I ſay indeed, but one Witneſs of that Matter, but the Evidence of that one Witneſs is confirmed by many concurring Circumſtances; by his ſending for Horſes to Town the Day before the firſt *Saturday*, when this execrable Treaſon was to have been executed; by ſending them out of Town again that Day upon the Diſappointment; by ſending for them again the *Friday* before the ſecond *Saturday* that the King was to have been aſſaſſinated; by his having more Horſes than were uſual with him that Day; by his taking care then of three Horſes that were none of his own, and one of them brought very ſuſpiciouſly from *Somerſet-Houſe*; and that all theſe eight Horſes ſhould be immediately hurried and carried away upon the Diſappointment the

ſecond *Saturday*, and nothing ever heard of them afterwards. I ſay one of them was brought very ſuſpiciouſly; for, my Lord, you obſerve it came from *Somerſet-Houſe*, and ſent by *Lewis* according to the Priſoner's Promiſe to Capt. *Porter*, which *Lewis*, it is apparent by all the Witneſſes of this Matter, was privy to this Deſign.

My Lord, There is another Circumſtance beſides this, which, I think, has not been obſerved; and that is, his ſending for *Sweet* up to Town before the ſecond time that the King was to have been Aſſaſſinated; he came up indeed before both the times: The firſt time he was told by the Priſoner, he had once deſigned to have uſed him in a Buſineſs; but upon ſecond Thoughts he had Compaſſion for his Family. And when he came the ſecond time, he was firſt ask'd what Condition he had left his Family in, whether he had provided them Money. He ſaid, No; and thereupon he was chid: And the Priſoner ſaid, he might then as well have ſtaid at home. All theſe Circumſtances, beſides the one poſitive Evidence, ſavour ſtrongly of his having a great Hand in the Deſign of Aſſaſſinating the King.

But then, my Lord, As to the other Part; his Inviting the *French*, and preparing to meet them, that is poſitively proved by two Witneſſes. Capt. *Porter* tells you, That the Priſoner was at the two Meetings in *Leaden-hall-ſtreet*, and St. *James's-ſtreet*, where it was expreſly reſolved by all that were preſent, and the Priſoner among the reſt, to ſend *Charnock* over to invite the *French* to invade this Kingdom, and to promiſe to meet King *James* at his Landing with two Thouſand Horſe. He ſwears, That Sir *William Parkyns* did particularly agree to what was ſo reſolved upon at both the Conſults. And *Sweet* tells you that he had prepared for the ſame Deſign; for that Sir *William Parkins* told him, the King would land, he had his Word for it; and he himſelf had a Troop of old Soldiers. *My Troop does conſiſt* (he ſpoke it in the preſent Tenſe; for it being a Doubt Sir *William Parkyns* did himſelf that Right as to examine the Witneſs again, and he repeated it as his Words, *My Troop conſiſts) of old Soldiers, or is compoſed of old Soldiers.* And he was to have ſeveral Volunteers that had been Officers.

My Lord, Theſe two poſitive Witneſſes are Evidence that goes to the ſame Species of Treaſon, nay to the ſame Deſign, the raiſing a Rebellion, and the Depoſing the King, which is Killing him in his politick Capacity; I ſay, theſe Two go home to the ſame Deſign.

And, my Lord, This Evidence upon this Branch of the Indictment, is corroborated too by very ſtrong Circumſtances. There is a Journey to *Leiceſter*, which *Sweet* ſpeaks of, that Sir *William Parkins* told him he would undertake: This Journey it is proved by his Servant that he did undertake; that he met there with ſeveral Perſons, and came back and made his Report to *Sweet* of the Succeſs of his Journey, and how well diſpoſed the King's Friends were, by which Name he always meant King *James*; for when he ſpoke of our preſent King he called him the *Little Gentleman*, or ſometimes King *William*, and ſometimes, as the Witneſs at laſt ſaid poſitively, the Prince of *Orange*: But when he ſpoke of the King, without any thing elſe, he always meant King *James*; and beſides, he ſpoke of a King that was beyond Sea at *Chriſtmas* laſt, which could not be King *William*, who was then, and had been in *England* ſo long before.

My Lord, the Priſoner in his Defence ſays, That this Servant of his that went with him into *Leiceſterſhire*, had been formerly *Charnock*'s Servant, and was ſent by *Charnock* with the Meſſage to *Kenſington*, and not by him. Yet I muſt obſerve, that the Evidence ſwore poſitively he was ſent by Sir *William Parkyns*, his Maſter, and brought the Note in the Almanack back to the Perſon to whom he was directed to carry it, who lodged at the Confectioner's Houſe; and when he had ſo done, that the Perſon that lodged at the Confectioner's did not remit him to *Charnock*, but to his Maſter Sir *Will. Parkyns*, with a Meſſage that he would be at Home, and ſtay there ready, whenever he ſhould have Occaſion for him; and this was upon the very *Saturday* the King was to have been aſſaſſinated.

My Lord, Sir *William Parkyns* has complained, that if he could have had his Evidence here, he could have proved the Arms had been two Years in his Houſe, and that he found them there when he came thither firſt. If we ſhould admit that Matter, we might confeſs, and avoid it; for it is apparent, that theſe Arms were on this Occaſion put up in a ſuſpicious Manner in Boxes, and ſent to *Haywood*'s, (who is a ſuſpicious Perſon by Reaſon of his Relation to *Charnock*, upon whoſe Letter and Recommendation they were received) and concealed till the Plot was diſappointed; and then they were carried away from that Place, and buried in Sir *William Parkyns*'s own Garden. This was juſt after the Breaking out of the Plot; and they were buried for the better ſecuring them as choice Goods. And whereas the Priſoner ſays they were old and ruſty when he found them, it now appears they were clean and new-furbiſhed Arms, and the Hilts were off the Swords, and packed together.

My Lord, he has Recourſe to another Argument in the laſt Place, the moſt moving, I muſt confeſs of all, and that is the Argument of Pity: He has ſpoke of his Education in the Profeſſion of the Gown, of his Infirmities, his Age, and his Family. Arguments of Pity I am very unfit to give an Anſwer to, and ſhould be very unwilling to extinguiſh any Motions of it; but this I muſt obſerve even by Way of Anſwer to that Argument, That the Time was when he ſhould have pitied himſelf, and not engaged in ſuch an abominable and mercileſs a Deſign; That he ſhould have had Pity upon his Countrey, which he plotted to bring under the greateſt Confuſion and Deſolation; That he ſhould have had Pity upon the beſt of Kings, and the beſt of Men; but then there was no Pity, when they thought they had laid their Deſigns ſo that they had him in their Power, but they reſolved barbarouſly to murder him, and perſiſted in the Reſolution of Aſſaſſinating him after they were once diſappointed; That, it ſeems, did not diſcourage them, but they undertook it a ſecond Time, and it does not appear that they ever had any Remorſe at laſt for it; but the Plot broke out and ſo their whole Deſign was fruſtrated.

My Lord, This is the Sum, I think, of his Defence; I have as well as I was able given an Anſwer to the Objections made to it, and I muſt now leave it with you, Gentlemen of the Jury: And tho' theſe Conſiderations that I have mentioned may not quite remove all Compaſſion, yet they may ſerve to confirm you in a Reſolution of doing the King, and Kingdom, and your ſelves Juſtice; and that is all we ask of you.

L. C. J. Gentlemen of the Jury, Sir *William Parkyns* is indicted of High-Treason, for Designing, Imagining, and Compassing the Death of the present King. There have been several Witnesses produced that have given Evidence upon this Indictment; the first of them is Mr *Porter*, who has been a Witness heretofore against several upon the like Occasion; and he gives you this Account, That about the latter End of *May*, or the Beginning of *June* last, there was a Meeting of divers Persons at the *Old King's Head* Tavern in *Leaden-hall-street* in the City, where they dined together, and there was Sir *William Parkyns*, Captain *Porter* himself, Sir *John Fenwick*, Sir *John Freind*, and divers others that he has mentioned to you. At that Meeting they did consult together, which Way the late King *James* might be restored, and it was thought very necessary that there should be a *French* Force sent over hither to join with others for his Restoration. And they did among themselves agree, and determine what Number of Forces might be convenient for that Purpose, they did propose 10000, 8000 Foot, 1000 Horse, and 1000 Dragoons: And that a Message should be sent over to King *James*, to persuade him to sollicit the *French* King, to furnish him with such a Number of Men to be sent over into *England*. Mr *Charnock*, that was then in the Company, was the Person agreed upon among them to be the Messenger to be sent upon this Errand, which Employment he did undertake, upon their Promise, that they would raise among themselves 2000 Horse for to meet the late King at his Landing.

This being at that Time determined, and Mr *Charnock* having accepted this Employment, he did make Preparation to go upon this Errand. In some Time after, (a Week or a Fortnight, or thereabouts) there was another Meeting at which were several of the same Persons, that were present at the former, and among them Sir *William Parkyns* was one: And this Meeting was at one Mrs *Mountjoy*'s, that keeps a Tavern in St. *James's-street*, where they did discourse of what they had formerly agreed upon, and did again consider whether they should proceed to send Mr *Charnock* with that Message; to which they all agreed, that Mr *Charnock* should go, and he accordingly went; and Captain *Porter* met him about five or six Weeks after the Meeting at Mrs *Mountjoy*'s, and *Charnock* told him he had been in *France*, and that since his Return he had been with the several Persons who had sent him, and had acquainted them with the Answer of K. *James*, which was, That at that Juncture of Time the *French* King had such Occasion for his Forces, that he could not spare them, or furnish him with so many to come over here. This is the first Matter that *Porter* gives you an Account of.

But then Captain *Porter* tells you farther, how the Design of Assassinating the King was set on Foot about the latter End of *January*, or the Beginning of *February* last. About which Time Sir *George Barclay* was sent over with a Commission from the late King *James*; which seems to have given great Encouragement to that Party of Men: For Sir *George Barclay*, Captain *Porter*, and Sir *William Parkyns*, with divers others, had several Meetings at the *Globe* Tavern in *Hatton Garden*, the *Nagg's-head* Tavern in *Covent Garden*, the *Sun* Tavern in the *Strand*, and other Places. And at these Meetings they entred into Consideration, what was the best Way to restore the late King *James* to the Throne; and it was agreed among them, that the best Means for the Effecting that Restoration, would be to kill King *William*, which they resolved to undertake; and at these Debates and Resolutions, Sir *William Parkyns*, the Prisoner at the Bar was present. Captain *Porter* being ask'd whether Sir *William Parkyns*, at these Consults, did consent to the King's Murther, he said they did all agree to the Assassination of the King, and Sir *William Parkyns* said, he thought it was very necessary to be done, to facilitate the Restoration of the late King.

Gentlemen, This Design of the Assassinating the King being thus resolved upon; the next Thing considered among them was, how it might be effected; there were several ways proposed: One was by an Ambuscade; for the King having a House in the Country by *Richmond*, his Majesty used to go once a Week a Hunting thereabout, and to return at Night; and therefore an Ambuscade on that side of the Water, near the House, was proposed: Then another Proposal was made to fall upon the Guards on this side the Water, and at the same Time that the King's Coach was to be set upon. And these two Places being proposed, there was some Difference of Opinion among them, whereupon it was agreed that some Persons should be sent to view the Ground on both sides the Water, which Persons were Captain *Porter*, *King* that was Executed, and one *Knightley*; and so some Days before the 15th of *February* they did go on both sides the Water; and viewed the Ground, and returned in the Evening to the *Nag's-Head* Tavern, according to Agreement, where were met together Sir *George Barclay*, Mr. *Charnock*, and the Prisoner at the Bar, Sir *William Parkyns*. And there they made their Report done of their View of the Ground, and upon which both the Proposals were debated, and at last they did all agree that the Attack should be made upon the King on this side of the Water, in a Lane that was between *Brentford* and *Turnham Green*; and the Attack upon the Guards was likewise to be made thereabouts.

Sir *William Parkyns* was to furnish five Horses, whereof three of them were to be mounted by Men of his own providing, the other two were to be mounted by Men of Captain *Porter*'s providing; Mr. *Porter*, Mr. *Charnock*, and one *Rookwood*, were to be principally ingaged in Attacking the Guards. The Number of Men agreed upon for the whole, were about forty or few more, and Sir *George Barclay* was to have a Party out of them all, of about eight, and as those others went to fall upon, and charge the Guards, Sir *George Barclay*, with his Party of Men, was to attack the King in his Coach, and by shooting into the Coach to kill the King and all that were with him.

The Time agreed upon for putting this Design in Execution was on *Saturday* the 15th of *February*. That Day it was expected the King would go a Hunting. And two Men were planted at *Kensington* to give Notice when the King went, and upon such Notice, these Men were to march out in small Parties, and to lodge in the Inns, and publick Houses about *Brentford*, and *Turnham Green*, upon Notice of the King's Return from the other side of the Water, and Sir *George Barclay* was to be in Readiness to set upon the Coach in the Lane; and the other Party to attack the Guards.

But this horrid Design was very happily discovered, which prevented the King's going Abroad on that Day; and though they were disappointed

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for that Time, yet the Deſign was not at an End: But their Reſolutions continue to make the like Attempt when they could have an other Opportunity. And for that Purpoſe there was another Meeting, as Captain *Porter* tells you, upon the *Friday* following at the *Sun* Tavern in the *Strand*, at which Sir *William Parkyns*, Sir *George Barclay*, *Rookwood*, and *Charnock*, and Captain *Porter*, were preſent, and they did agree to attack the King and the Guards, the next Day in the ſame Place, and Manner that they had formerly agreed upon. But by good Providence the King had Notice of it, ſo that he did forbear to go Abroad that Day, whereby theſe Conſpirators were totally diſappointed of their barbarous and villainous Deſign which they had reſolved upon, and had made ſuch Preparations to compaſs.

It is true, Captain *Porter* does tell you, Sir *William Parkyns* was not to be one that ſhould be actually preſent at the Aſſaſſination; but he was to furniſh five Horſes, three of them to be mounted by Men of his own Providing, and two by Men that Captain *Porter* was to provide. And you are told poſitively that Captain *Porter*, at this laſt Meeting, did complain that two of his Horſes were fallen lame, and acquainted Sir *William Parkyns* with it, and he promiſed to help him to two more by the means of one *Lewis* that was Gentleman of the Horſe to my Lord *Feverſham*.

Then you are told, that Sir *William Parkyns* ſent to *Sweet* to come to Town the 11th of *February*, and *Sweet* comes to Town accordingly, on *Wedneſday* the 12th of *February*, and then he had Diſcourſe with Sir *William Parkyns* at his Lodgings, where Sir *William* told him, that becauſe of his Family, he would not imploy him in the Buſineſs he intended for him, and therefore bid him go home again; and with all, directed him to return to Town the *Friday* following; and order his Groom to bring his Horſes to Town; he mentioned three Horſes which ſhould be the ſtrongeſt he had; the Groom brought up the three Horſes, and *Sweet* came to Town with him, and ſtaid till *Saturday*. Sir *William Parkyns* ſaid he thought to go out of Town in the Afternoon, but did not, but ſtay'd till *Monday*, when he went out of Town.

But upon the *Friday* following, the Horſes of Sir *William Parkyns*, were brought to Town again, which now were Four, and were ſet up at the *George* Inn in *Holbourn*; and it appears that Mr *Lewis* furniſhed one Horſe, for there were five Horſes upon the Account of Sir *William Parkyns*, of which a Roan Horſe was one which came from *Somerſet-Houſe*. This is proved by the Hoſtler; and that *Lewis* himſelf came in on *Saturday* in the Afternoon to inquire for Sir *William Parkyns*, but he was gone and the Horſes were taken away, and he once came with Sir *William Parkyns* to the Inn. Theſe are Circumſtances that do concur with, and confirm Captain *Porter*'s Evidence concerning the providing Horſes for this Deſign.

Then there is another Particular of Captain *Porter*'s Evidence concerning the Commiſſion from King *James*, which is remarkable: It was told you, that he askt *Charnock* whether he had ſeen the Commiſſion: He ſaid, No, but Sir *William Parkyns* had: And Sir *William Parkyns* was askt by *Porter*, as they were ſitting by the Fire-ſide, whether he had ſeen the Commiſſion; and Sir *William Parkyns* anſwered, that he had ſeen it, and had read it, and it was written with King *James*'s own Hand; and that the Subſtance of it was to make War upon the Perſon of the Preſent King, who was called in the Commiſſion as you may ſuppoſe the Prince of *Orange*. So that, Gentlemen, as to the Deſign of the Aſſaſſinating the King, and of this Commiſſion which was underſtood by them to be for that Purpoſe; this is the Sum and Subſtance of *Porter*'s Evidence ſo attended with, and confirmed by theſe Circumſtances, as you have heard.

Beſides the other Witneſs, *Sweet*, who was a great Acquaintance of Sir *William Parkyns*, tells you, That about *Chriſtmas* laſt, he was informed by Sir *William Parkyns*, that the King would come, which he underſtood to be meant of King *James*. He ask'd Sir *William Parkyns* how he knew it? and he ſaid, He had his Word for it; and that his Troop conſiſted of Old Soldiers, and he had thirty Saddles; and beſides, there would be ſome Volunteers, which were Old Officers. Then he ſaid, He was to go into *Leiceſterſhire*, and he did go with one *Scudamore*; and this was in *January*, about the latter End, as I remember. They lay that Night at *Stony-Stratford*, and the next Night at *Leiceſter*, and *Scudamore* went with him; and afterwards one *Yarborough*, and a Parſon, came to him out of *Yorkſhire*: And when he came back he ſaid, He found all there to be very well; and the Weſt was as well inclined to the King's Intereſt, as the North; and a Lord's Brother was concerned.

Then in the next Place you are told, That at *Michaelmas* laſt, Mr. *Charnock* did write a Letter to one *Haywood*, who had married his Siſter, and lived near Sir *William Parkyns* in *Warwickſhire*, to deſire him to receive ſome Goods into his Houſe that were to come from Sir *William Parkyns*'s, and lay them up very carefully; for they were choice Goods, which Sir *William* durſt not leave in his own Houſe, becauſe he had left it. And accordingly there were theſe Boxes and Cheſts ſent to *Haywood*'s, and received by him into his Houſe, where they continued till the latter End of *February*. *Haywood* about this Time, when the Deſign of the *Aſſaſſination* was on foot, met with Sir *William Parkyns* in Town, and ask'd him how he would diſpoſe of thoſe Goods? Thereupon Sir *William Parkyns* ſent his Servant into the Country; and Notice was given on *Aſh Wedneſday*, the *Wedneſday* after the firſt Proclamation that iſſued upon the Diſcovery of this Conſpiracy, that theſe Goods ſhould be removed: And a Man, in the Evening, went to *Haywood*'s Houſe with a Cart and Horſes, and removed theſe Cheſts; they were three in Number; and thoſe being opened, there were eight leſſer ones taken out, and carried away about Nine or Ten a Clock at Night, to Sir *William Parkyns*'s Houſe in *Warwickſhire*, where they were buried in the Garden, and afterward were dug up, which was at the Searching Sir *William*'s Houſe upon the Breaking out of the Plot; and when they were open'd, it did appear what Sort of Goods they were: They were Arms, a conſiderable Quantity of them; Four Dozen of Swords without Hilts, Twenty five Pair of Piſtols, and a great Number of Carbines, Thirty two as I remember, and a Parcel of Hilts pack'd up in a Box by themſelves. This, Gentlemen, is ſworn to you by the Perſons that were preſent at the Digging them up, and Opening the Boxes.

Then, Gentlemen, you are told, That though Sir *William Parkyns* pretends they were Arms that he found in the Houſe when he came thither, yet they were not old ruſty Arms, as he pretends, but they were very bright, and fit for Uſe and Service.

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There is one Circumſtance more that ſeems to affect Sir *William Parkyns*, about the Buſineſs of the Aſſaſſination; and that is proved by *Eubank*, Sir *Willliam*'s own Servant. There was a Note ſent upon *Saturday*, the 22d of *February* in the Morning, to one *Brown*, at *Kenſington*, by Sir *William Parkyns*'s Man; and this *Brown* writ in the Servant's Almanack, that he would be in Town himſelf in a little Time, and bid him carry it to a Man that lodged at a Confectioner's over-againſt *Grays-Inn* Gate in *Holbourn:* Sir *William Parkyns*'s Man accordingly goes to this Confectioner's, and ſpeaks with the Perſon there that he was directed to go to; and he ſays he was a *Scotch* Man, and talk'd broad like a *Scotch* Man, and he bid him go and tell his Maſter, That he would ſtay within for him till he came; and he did accordingly.

Gentlemen, This is the Sum and Subſtance of the Evidence that is given againſt Sir *William Parkyns*. Now you are to conſider what Sir *William* ſays for himſelf: He does admit, and agree, That what *Porter* ſays is very poſitive and full; but that is but the Evidence of one Witneſs: For, ſays he, by the Law no Perſon ought to be convicted of High-Treaſon, upon the Teſtimony of one Witneſs. As to the Matter of Law he is in the right; No Man ought to be convicted of Treaſon upon the Teſtimony of a ſingle Witneſs. Now firſt ſuppoſe the Deſign to aſſaſſinate the King had not been proved; conſider then whether there be not Two Witneſſes beſides. *Porter* proves, That *Charnock* was ſent into *France* by Sir *William Parkyns*, and others, upon that Errand; to which, if you add the Teſtimony of *Sweet*, that ſwears, That Sir *William Parkyns* told him the King wou'd come, and he had a Troop, and had bought Saddles; and what is ſaid concerning his going into *Leiceſterſhire*, and his having a Quantity of Arms: If all which be underſtood in Purſuance of the Deſign againſt his preſent Majeſty, then there are at leaſt Two Witneſſes of ſeveral Overt-Acts of the ſame Treaſon.

For, Gentlemen, I muſt tell you, tho' there had been no Evidence of a Deſign to Aſſaſſinate the King, but the Deſign and Purpoſe had been to Depoſe him, and ſet the late King upon the Throne, or join with a Force to invade the Realm, that is High-Treaſon within the Statute of 25 *Edw.* the Third, as being a Deſigning the Death and Deſtruction of the King. There hath been a full Proof by Two Witneſſes, if what *Sweet*, and the other Witneſſes beſides *Porter* ſay, do prove Sir *William Parkyns* to be concerned in that Deſign, which ſhall be conſidered further of by and by.

But in the next Place, ſuppoſe that the Meetings at the *King's-Head* in *Leaden-Hall Street*, and at *Mountjoy*'s, had not been proved; but the Deſign to Aſſaſſinate the King is proved by one Witneſs, and the Providing Men and Arms to fight againſt him is proved by one other Witneſs: This is a Proof of the ſame Treaſon; for though the Overt-acts be ſeveral, yet they both tend to the ſame End, the Deſtruction of the King, though in a different manner; and tho' the Law requires two Witneſſes to the ſame Sort of Treaſon, yet it does not require two Witneſſes to any one Overt-act. For if one Witneſs prove one Overt-act at one Time, and another Witneſs prove another Overt-act at another Time, theſe are two Witneſſes within the Meaning of the Law; and ſo it has been always practiſed, and never denied to be Law that I know of.

Beſides it is obſervable upon this Point, which my Brother has mentioned, That this new Act of Parliament, which does not yet take Effect, provides, that there ſhall be either two Witneſſes to one Overt Act, or one Witneſs to one, and another to another of the ſame Species of Treaſon; and you have had the Opinion of all us now that are here, that theſe are Overt Acts of one and the ſame Species of Treaſon.

But then Sir *William Parkyns* objects, That *Sweet* does not prove any Overt Act. Now for that, you are to conſider the Force of *Sweet*'s Evidence, who tells you the Diſcourſe of Sir *William Parkyns*, about *Chriſtmas* laſt, of the King's Coming, of his Saddles, and of his Troop's Conſiſting of old Soldiers, and Volunteers that were old Officers: But ſays Sir *W. Parkyns*, this is only Words, and Words are not Treaſon. But then conſider, that they are Words that relate to Acts and Things. You hear he had a great Quantity of Arms, beyond what he, as a private Man, could have Occaſion for, or would uſe. He does not give you any Account what he was to do with thoſe Arms, or to what Purpoſe he ſhould keep them, nor why he cauſed them to be removed in the Night, after they had lain privately in *Haywood*'s Houſe, and cauſed them to be carried back to his own Houſe, and buried them in the Ground, and at ſuch a Time when there was a Plot, and after the Plot was diſcovered, and a Proclamation out for his own Apprehenſion.

Sir *William Parkyns*'s Diſcourſe with *Sweet*, of King *James*'s Coming, and his Troop Conſiſting of ſuch Men, plainly ſhews what thoſe Arms were for. For, Gentlemen, Men's Diſcourſes and their Words explain their Actions; and an indifferent Action in it ſelf may be ſo explained by Words, that it will be unlawful. It is lawful for a Man to buy a Piſtol; but if it can be plainly proved from his Words or his Speeches, that the Deſign of Buying it was to uſe it againſt the Perſon or Life of the King, that will be an Overt Act. Now when Sir *William Parkyns* ſaid, The late King would come, and that he had a Troop which conſiſted of ſuch Soldiers; then theſe Arms being found in that Manner, I muſt leave to your Conſideration whether it is not a Proof, for what Purpoſe he did provide them, and to what Uſe he intended to put them; eſpecially ſince he gives you no Account, what Uſe or Occaſion he had for them. He ſays, indeed, he found them in the Houſe two Years ago, how probable that is, you may conſider.

Then there is another Thing, his Going into *Leiceſterſhire* with *Scudamore*, and his Meeting there with *Yarborough*, and other People in that private and haſty Manner. He went out on the *Thurſday*, and came Home again upon *Monday* Night; and then he meets with *Sweet*, and tells him that all was well; and the Weſt was as well inclined to the King's Intereſt as the North. What King muſt he mean? he had no Commiſſion from King *William* to go into *Leiceſterſhire* to diſcourſe with People, to ſee how they ſtood affected to his Intereſt. *Sweet* comes and tells you, that when Sir *William Parkyns* ſpoke of the King, he underſtood he meant King *James*. I muſt leave it to your Conſideration, how you will interpret theſe Words.

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It is true, Gentlemen, it is not fit there ſhould be any ſtrained or forced Conſtruction put upon a Man's Words or Actions, when he is tryed for his Life. You ought to have a full and ſatisfactory Evidence to convince you, that he is Guilty, before you pronounce him ſo; but however you are to conſider the Nature of Things, and the Circumſtances that attend them. If you can ſuppoſe that he went into *Leiceſterſhire*, to King *William*'s Friends, and that he was of Opinion, the Weſt was as well Affected to King *William*, as the North; then you make a different Conſtruction from *Sweet*, who tells you, that always when he ſpake of the King, he underſtood it of King *James*; and at *Chriſtmas*, when he ſpoke of the King's Coming, it muſt be meant King *James*; for King *William* was here before, and he pretends not he had any Authority to raiſe a Troop for King *William*.

So that, Gentlemen, I muſt leave it to you upon the whole Matter; if you are ſatisfied, that Sir *William Parkyns* is guilty of the Matters of which he ſtands charged, you will find him guilty; you have heard the Evidence, and will conſider of it; and if upon the Whole, you are not ſatisfied, that he is guilty of the Matters charged in this Indictment, then you are to acquit him.

Then an Officer being ſworn to keep the Jury *according to the Cuſtom, they withdrew to conſider of their Verdict, and in leſs than Half an Hour, returned into Court.*

Cl. of Arr. Gentlemen of the Jury, Anſwer to your Names. *William Northey*,——

Mr *Northey*. Here.

(And ſo of the Reſt.)

Cl. of Ar. Gentlemen, are you all agreed on your Verdict?

Jury. Yes.

Cl. of Ar. Who ſhall ſay for you?

Jury. Our Foreman.

Cl. of Ar. Sir *William Parkyns*, hold up thy Hand, *(which he did.)* Look upon the Priſoner; how ſay ye, is he guilty of the High-Treaſon whereof he ſtands indicted, or not guilty?

Foreman. Guilty, my Lord.

Cl. of Ar. What Goods or Chattels, Lands or Tenements, had he at the Time of the High-Treaſon committed, or at any Time ſince?

Foreman. None to our Knowledge.

L. C. J. Jaylor, look to him, he is found Guilty of High-Treaſon.

Cl. of Ar. Then hearken to your Verdict as the Court has recorded it. You ſay that Sir *William Parkyns* is guilty of the High-Treaſon whereof he ſtands indicted, but that he had no Goods, or Chattels, Lands, or Tenements, at the Time of the High-Treaſon committed, or at any Time ſince, to your Knowledge, and ſo you ſay all.

Jury. Yes.

Cl. of Ar. Gentlemen, the Court diſcharges you, and thanks you for your Service.

While the Jury was withdrawn to conſider of the Verdict, Sir John Friend *was brought from* Newgate *to the Bar, in order to his being called to Judgment, and after the Verdict, he addreſs'd himſelf to the Court thus,*

Freind. My Lord, I humbly beſeech your Lordſhip to give leave to read this Paper.

(To which the Court gave no Anſwer.)

Friend. My Lord, will your Lordſhip give me Leave to read it.

L. C. J. Ay, if you will.

(Reads.)

Friend. My Lord, I humbly move in Arreſt of Judgment, that I am not convicted of Treaſon by Two Witneſſes, as I ought to have been within the Statute of the 25th of *Edward* the Third: For Mr *Porter* ſwears, That I with others, in *May* or *June* laſt, ſent to the *French* King to invade *England*; he is the only Witneſs to that Matter. Mr *Blair* ſwears, That I ſhewed him a Commiſſion in *Surrey-ſtreet*, about two Years ſince, ſign'd by King *James*, and couuterſign'd *Melford*, to be a Colonel of Horſe, and that I gave him ſome Moneys for the Cheriſhing of the Men. My Lord, here is no Levying of War, ſworn by Mr *Blair*; and Conſpiring to levy War not being Treaſon, I am convicted by one Witneſs, and therefore I pray Council may be aſſigned me, to plead this Matter.

L. C. J. Sir *John Freind*, that which you move now, is not in Arreſt of Judgment, it is Matter that does ariſe upon the Evidence, and what you now ſay, arraigns the Verdict, and the Proceedings upon your Tryal. There were Two Witneſſes againſt you, that is plain. You were not indicted for Levying of War, but for Compaſſing and Imagining the Death of the King; and we told you the Deſign of the Invaſion, and Conſpiring to depoſe the preſent King, and reſtore the late King, was an Overt Act of that High-Treaſon. The Commiſſion was not ſo much ſtood upon, but the Advancing Moneys upon this Account, to *Blair* your Lieutenant Colonel, to give to the Men, that was a plain Overt Act, and ſo there were certainly two Witneſſes againſt you.

Friend. My Lord, I hope, I can clear my ſelf: I thank God, I am as Innocent as the Child unborn, of the Aſſaſſination of the King. I would not have the People think, that I am ſuch a Man.

L. C. J. But you remember, it was ſworn you knew of it, and we have told you, that the Deſign of Reſtoring the late King by Force, and Depoſing the King, are Overt Acts of imagining his Death, if ſuch an Intention be proved, as it was in your Caſe, and the Jury have found it ſo.

Friend. My Lord, I humbly beſeech you, becauſe I do not underſtand Matter of Law, and am adviſ'd to move this in Arreſt of Judgment; I deſire my Council may be heard to it.

L. C. J. We cannot hear Council, but upon a Matter that ariſes upon the Record it ſelf, that is, the Indictment. We cannot enter into any Examination of this Matter, that you now ſpeak of, you had a long Tryal yeſterday.

Friend. My Lord, I am ſorry to give your Lordſhip any Occaſion of Trouble; but I humbly beſeech you, if it may be, that I may be heard by my Council, for the Satisfaction of the World; pray, my Lord, hear what they can ſay.

L. C. J. They cannot ſay any Thing; no Council in the World that underſtand themſelves, can argue any Thing againſt what has been ſo often ſettled and always practiſed.

Freind. My Lord, if it be to be granted, I beſeech your Lordſhip to grant it.

L. C. J.

L. C. J. It cannot be granted; beſides the Matter you now move upon, is improper; it was all conſidered upon your Tryal. It was told you, we did all agree, that a Conſpiracy to levy War to depoſe the King is Treaſon, or to invade the Realm is Treaſon. All this was conſider'd at your Tryal, and that is now over.

Parkyns. My Lord, if your Lordſhip pleaſes, I deſire I may have the Liberty of ſome Friends and Relations, and a Miniſter to come to me.

L. C. J. Yes, yes, by all Means.

Parkyns. If your Lordſhip pleaſes, that they may come and be private with me, and pray let me have a Rule of Court for it, otherwiſe I ſhall not have any Benefit of it.

L. C. J. Yes, yes, it is very fit you ſhould have it; there ſhall be an Order of Court for it: See that the Keeper take Care it be done with Safety.

Freind. My Lord, I deſire the ſame Liberty of a Miniſter, and my Relations and Friends to come to me; that for what Time I have to live, I may make the beſt Uſe I can of it for my Soul, which I hope God will enable me to do.

Then the Court was adjourned until Five a Clock in the Afternoon, and about Six, the Juſtices returned, and the Court was reſumed.

Cl. of Arr. Set Sir *John Freind* to the Bar: *(Which was done.)* Sir *John Freind*, hold up thy Hand; *(which he did.)* Thou ſtandeſt convicted of High Treaſon, for traiterouſly Compaſſing and Imagining the Death of our Sovereign Lord King *William* the Third. What canſt thou ſay for thy ſelf why the Court ſhould not give the Judgment according to the Law?

(Then being made to kneel, he afterwards ſtood up.)

Freind. I have ſaid already, what I have to ſay in Arreſt of Judgment.

Mr *Com. Serjeant.* Sir, you have heard the Judgment of the Court, as to what you have ſaid, if you have nothing elſe to offer, the Court muſt proceed to Judgment.

Cl. of Arr. for *Middleſex.* Sir *William Parkyns*, hold up thy Hand; *(which he did.)* Thou ſtandeſt convicted of High Treaſon in Compaſſing and Imagining the Death of the King, and adhering to the King's Enemies. What canſt thou ſay for thy ſelf, why the Court ſhould not give thee Judgment to die, according to the Law?

(He was made to kneel, and riſe up again.)

Parkyns. I have nothing more to offer.

Cl. of Arr. Then Cryer, make Proclamation.

Cryer. O yes; all Manner of Perſons are commanded to keep Silence, while Judgment is in giving, upon Pain of Impriſonment.

Which Proclamation was made on both Sides the Court; and then Mr. Common Serjeant ſitting with the Reſt of the Court upon the Bench, pronounced the Sentence.

Mr *Com. Serj.* You the Priſoners at the Bar, Sir *John Freind*, and Sir *William Parkyns*, you have been indicted for High Treaſon, in Compaſſing the Death and Deſtruction of the King: For your Tryal, you have put your ſelves upon the Country, which Country has found you Guilty. The Offence is the greateſt in the Judgment of the Law, that a Man can commit; and it is juſtly and reaſonably ſo. For Robbery and Murder are Injuries to private Perſons, but Compaſſing the Death of the King, is Compaſſing the Deſtruction of the Father of your Country, and letting in Rapine, Death, and Deſolation upon Thouſands of People. And even this, the hainouſeſt of Offences, is capable of Aggravation; for there have been always Excuſes, and ſometimes Juſtifications for Rebellion: And as to Murder and private Revenge, there may be ſomewhat ſaid in Mitigation from the Violence of Men's Paſſions. But to ſit, and conſpire, and conſult, and debate the Deſtruction of a Prince; no Man yet ever had the Confidence to make an Excuſe for it. I would not add to your Affliction; I am ſenſible of the ſevere Judgment that is to follow, and which you have brought upon your ſelves, and cannot but pity you for the great Burden of Guilt, that you have laid your ſelves under. I only ſay this to offer it to your ſerious Conſideration, in the few Moments you have to prepare for another World, and another Judgment. All that remains for me, is to pronounce the Judgment of the Law in theſe Caſes, and the Court does Award it.

That you, and each of you, go back to the Place from whence you came, and from thence be drawn on a Hurdle, to the Place of Execution, where you ſhall be ſeverally Hanged up by the Neck, and cut down alive; your Bodies ſhall be ript open, your Privy-Members cut off, your Bowels taken out, and Burnt before your Faces; your Heads ſhall be ſevered from your Bodies, your Bodies reſpectively to be divided into Four Quarters, and your Heads and Quarters are to be at the Diſpoſal of the King: And the Lord have Mercy upon your Souls.

Then the Priſoners were carried back to *Newgate.*

The TRYAL of AMBROSE ROOKWOOD.

Publiſh'd by AUTHORITY.

Die Martis decimo quarto Aprilis, *Anno Regni Regis* Gulielmi *Tertii Octavo, Annoque Dom.* 1696.

THE Court being ſat, at which were preſent the Lord Chief Juſtice *Holt*, the Lord Chief Juſtice *Treby*, Mr Juſtice *Nevil*, Mr Juſtice *Powell*, and Mr Juſtice *Eyres*; the Court proceeded in this Manner.

Cl. of Ar. Cryer, make Proclamation.

Cryer. Oyez, Oyez, Oyez: All Manner of Perſons that have any Thing more to do, at this Seſſions of *Oyer* and *Terminer*, holden for the County of *Middleſex*, draw near and give your Attendance. *God ſave the King.*

Then the Grand Jury were called over, and the Appearances marked, and Witneſſes being ſworn in Court, to give Evidence to them upon a Bill of Indictment againſt Alexander Knightley, *they in a little Time after withdrew to hear the Evidence.*

Then the Keeper of Newgate *was ordered to bring his Priſoners to the Bar; (which he did.) to wit,* Robert Lowick, Ambroſe Rookwood, *and* Charles Cranburne; *who were thus arraigned.*

Cl. of Arr. Robert Lowick, hold up thy Hand. *(which he did.)*

Ambroſe Rookwood, hold up thy Hand. *(which he did.)*

Charles Cranburne, hold up thy Hand. *(which he did.)*

You ſtand indicted in the County of *Middleſex*, by the Names of *Robert Lowick* of the Pariſh of St *Paul Covent Garden*, in the County of *Middleſex*, Gentleman; *Ambroſe Rookwood* of the ſame Pariſh, Gentleman, and *Charles Cranburne* of the ſame Pariſh and County, Yeoman; for that you, together with one *Chriſtopher Knightley*, of the ſame Pariſh and County, Gentleman, not yet taken; not having the Fear of GOD in your Hearts, nor weighing the Duty of your Allegiance, but being moved and ſeduced by the Inſtigation of the Devil, as falſe Traytors againſt the moſt ſerene, moſt illuſtrious, moſt clement, and moſt excellent Prince, our Sovereign Lord *William* the Third, by the Grace of God, King of *England*, *Scotland*, *France*, and *Ireland*, Defender of the Faith, *&c.* your ſupreme, true, rightful, lawful, and undoubted Lord, the cordial Love, and true and due Obedience, Fidelity and Allegiance, which every Subject of our ſaid Lord the King that now is, towards him our ſaid Lord the King ſhould bear, and of right ought to bear, withdrawing, and utterly to extinguiſh intending and contriving, and with all your Strength reſolving, deſigning, and conſpiring the Government of this Kingdom of *England*, under him our ſaid Sovereign Lord the King that now is, of Right, duly, happily, and well eſtabliſh'd, altogether to ſubvert, change, and alter, as alſo our ſaid Lord the King to Death and final Deſtruction to put and bring, and his faithful Subjects, and the Freemen of this Kingdom of *England*, into intolerable and moſt miſerable Servitude to *Lewis* the *French* King to ſubjugate and inthral, the 10th Day of *February*, in the ſeventh Year of the Reign of our ſaid ſovereign Lord the King that now is, and divers other Days and Times as well before as after, at the Pariſh of St *Paul Covent Garden*, aforeſaid, in the County aforeſaid, falſely, maliciouſly, deviliſhly, and traiterouſly, did compaſs, imagine, and contrive, reſolve, deſign, and intend, our ſaid Lord the King that now is, to kill, ſlay, and murther, and a miſerable Slaughter among the faithful Subjects of our ſaid Lord the King, throughout this whole Kingdom of *England*, to make and cauſe, and the ſame your moſt impious, wicked, and deviliſh Treaſons, and traiterous Compaſſings, Contrivances, and Purpoſes aforeſaid, to fulfil, perfect, and bring to effect, you the ſaid *Robert Lowick*, *Ambroſe Rookwood*, and *Charles Cranburne*, together with the ſaid *Chriſtopher Knightley*, and very many other falſe Traytors, to the Jurors unknown, afterwards, to wit, the ſame 10th Day of *February*, in the Year aboveſaid, at the Pariſh aforeſaid, in the County aforeſaid, and divers other Days and Times, as well before as after, there and elſewhere in the ſame County, Falſely, Maliciouſly, Adviſedly, Secretly, Traiterouſly, and with Force and Arms, did Meet, Propoſe, Treat, Conſult, Conſent, and Agree, him our ſaid Lord the King that now is, by lying in wait, and Guile, to Aſſaſſinate, Kill and Murder; and that execrable, horrid, and deteſtable Aſſaſſination, and Killing the ſooner to execute, and perpetrate, afterwards (to wit) the ſame Day and Year, and divers other Days and Times, at the Pariſh aforeſaid, in the County aforeſaid, Traiterouſly did Treat, Propoſe, and Conſult, of the Ways, Manner, and Means, and the Time and Place, where, when, how, and in what Manner, our ſaid Lord the King, ſo by lying in wait, the more eaſily you might kill; and did conſent, agree, and aſſent, that forty Horſemen, or thereabouts, whereof the ſaid *Chriſtopher Knightley*, you the ſaid *Robert Lowick*, *Ambroſe Rookwood*, and *Charles Cranburne*, ſhould be four; and every one of you traiterouſly took upon himſelf to be one, with Guns,

Guns, Muskets, and Piſtols, charged with Gunpowder and leaden Bullets, and with Swords, Rapiers, and other Weapons, being Armed, ſhould lie in wait, and lie in Ambuſh, our ſaid Lord the King in his Coach being, when he ſhould go abroad, to invade, and that a certain and competent Number of thoſe, Men ſo armed, ſhould ſet upon the Guards of our ſaid Lord the King then attending him, and being with him, and ſhould fight with them, and overcome them, whilſt others of the ſame Men ſo armed, our ſaid Lord the King ſhould aſſaſſinate, ſlay, kill, and murther; and you the ſaid *Robert Lowick*, *Ambroſe Rookwood*, and *Charles Cranburne*, together with the ſaid *Chriſtopher Knightley*, the Treaſon, and all the traiterous Intentions, Deſigns, and Contrivances aforeſaid, to execute, perform, fulfil, and bring to Effect, afterwards (to wit) the aforeſaid Tenth Day of *February*, in the ſeventh Year aboveſaid, at the Pariſh aforeſaid, in the County aforeſaid, divers Horſes, and very many Arms, Guns, Piſtols, Swords, Rapiers, and other Weapons, Ammunition, and warlike Things, and military Inſtruments, falſely, maliciouſly, ſecretly, and traiterouſly did obtain, buy, gather together, and procure, and cauſe to be bought, obtained, gathered together, and procured with that Intention, then in and about the deteſtable, horrid, and execrable Aſſaſſination, Killing, and Murder of our ſaid Lord the King that now is, as aforeſaid to be uſed, employed, and beſtow'd; and the ſame Premiſſes the more ſafely and certainly to execute, do, and perform, the aforeſaid *Chriſtopher Knightley*, with one *Edward King*, late of High Treaſon, in contriving and conſpiring the Death of our ſaid Lord the King that now is, duly convicted and attainted, by the Conſent and Agreement of divers of the Traytors and Conſpirators aforeſaid, the ſaid 10th Day of *February*, in the ſeventh Year aboveſaid, went and came to the Place propoſed, where ſuch intended Aſſaſſination, Killing, and Murder of our ſaid Lord the King by lying in wait, ſhould be done, performed, and committed, to ſee, view, and obſerve the Convenience and Fitneſs of the ſame Place for ſuch lying in wait, Aſſaſſination, and Killing, there to be done, performed, and committed: And that Place being ſo viewed and obſerved, afterwards, (to wit) the ſame Day and Year, their Obſervations thereof to ſeveral of the ſaid Traytors and Conſpirators did relate and impart, (to wit) at the Pariſh aforeſaid, in the County aforeſaid: And you the aforeſaid *Charles Cranburne*, the ſame Day and Year there, in order the ſaid execrable, horrid, and deteſtable Aſſaſſination, and Killing of our ſaid Lord the King, by the Traytors and Conſpirators aforeſaid, the more readily and boldly to execute, perform, and commit, adviſedly, knowingly, and traiterouſly did bring and carry between divers of thoſe Traytors and Conſpirators, forward and backward, from ſome to others of them, a Liſt of the Names of divers Men of thoſe who were deſigned and appointed our ſaid Lord the King ſo as aforeſaid by lying in wait to kill and murder; againſt the Duty of the Allegiance of the ſaid *Chriſtopher Knightley*, you the ſaid *Robert Lowick*, *Ambroſe Rookwood*, and *Charles Cranburne*, and againſt the Peace of our ſaid Lord the King that now is, his Crown and Dignity, and againſt the Form of the Statute in ſuch Caſe made and provided.

How ſay'ſt thou, *Robert Lowick*, Art thou Guilty of the High-Treaſon whereof thou ſtandeſt Indicted, or Not Guilty?

Lowick. Not Guilty.

Cl. of Arr. Culprit, How wilt thou be Try'd?

Lowick. By God and my Country.

Cl. of Arr. God ſend thee good Deliverance. How ſay'ſt thou, *Ambroſe Rookwood*, Art thou Guilty of the High-Treaſon whereof thou ſtandeſt Indicted, or Not Guilty?

Rookwood. Not Guilty.

Cl. of Arr. Culprit, How wilt thou be Try'd?

Rookwood, By God and my Countrey.

Cl. of Arr. God ſend thee good Deliverance. *Charles Cranburn*, How ſay'ſt thou? Art thou Guilty of the High-Treaſon whereof thou ſtandeſt Indicted, or Not Guilty?

Cranburne. Not Guilty.

Cl. of Arr. Culprit, How wilt thou be Try'd?

Cranburne. By God and my Countrey.

Cl. of Arr. God ſend thee good Deliverance.

Cranburne. My Lord, I deſire your Lordſhip would grant me the Favour for my Wife to come to me in private, and that I may have Pen, Ink, and Paper.

L. C. J. Pen, Ink, and Paper, you *Sir* John must have; but as to the other, we Holt. muſt conſider of it. Keeper of *Newgate*, What has been uſual in thoſe Caſes?

Keeper. My Lord, we let no Body come to them in private, but their Council.

L. C. J. That's provided for by the Act that allows them Council: But has it been uſual heretofore to permit any Body elſe to be with them in private; the Wife, or any other Relations?

Keeper. It has not.

L. C. J. It is very dangerous if it ſhould; therefore let him have his Wife come to him in the preſence of the Keeper.

Cranburne. And Pen, Ink, and Paper, I hope, my Lord?

L. C. J. Yes, yes, that you ſhall have.

Cranburne. You don't deny me, my Lord, that I may have my Wife come to me?

L. C. J. No, we don't, but ſhe muſt not be in private with you, for fear of an Eſcape.

Rookwood. I beg the ſame Favour, my Lord, to have my Brother come to me, and Pen, Ink, and Paper.

L. C. J. You ſhall have the ſame Rule; but you, Keeper, muſt have eſpecial Care who you do permit to come to them, and be private with them; for it is ſtill at your Peril if any ill Accident happens by your Indulgence to them: And yet it is fit they ſhould have all that is reaſonable for preparing for their Defence at their Tryals.

Lowick. And I deſire, my Lord, I may have my Siſter come to me, and the Liberty of her being in private with me.

L. C. J. Your Friends may come to you at ſeaſonable Times, in the preſence of the Keeper; you ſhall have any thing that is reaſonable, but the Safety of the Government muſt be look'd after. Therefore, Keeper of *Newgate*, take back your Priſoners, and bring them here this Day ſevennight at ſeven a Clock in the Morning, without any other Order.

They ſtaid at the Bar about half an Hour, the Judges conſulting among themſelves about the Precept for the Petty Jury upon a late Act of Parliament which has appointed ſix Days for the Jury to be ſummon'd before they ap-

pear to try any Cauſe, and upon the laſt Act in Regulating Tryals in Caſes of High-Treaſon; which requires that the Priſoner ſhall have a Copy of the Pannel of the Jury duly return'd, at leaſt two Days before his Tryal.

Then the Priſoners were carried away; and the Grand Jury withdrew to conſider of the Evidence againſt Knightley, *and in a Quarter of an Hour came back, and being called over, delivered in a Bill to the Court.*

Cl. of Arr. Gentlemen, you are content the Court ſhall amend Matter of Form, or falſe *Latin* in this Indictment, without altering any Matter of Subſtance without your Privity.

Jury. Yes.

Cl. of Arr. Then, Gentlemen, you may go for this Time; and you are to take Notice if there be Occaſion at any Time to call you together, you ſhall have ſufficient Warning given you beforehand. This is *Billa Vera* againſt *Alexander Knightley* for High-Treaſon.

Then the Judges reſumed the Debate among themſelves, and at laſt reſolved that there ſhould go three ſeveral Venires *for the Petty Jury, returnable this Day ſevennight; one to try between the King and* Robert Lowick, *the ſecond to try between the King and* Ambroſe Rookwood, *and a third between the King and* Charles Cranburne; *becauſe, though the Indictment be againſt them jointly, yet it was a ſeveral Offence in every one of them, and they might ſever in their Challenges, and that would be troubleſome, and therefore it was thought beſt to ſever them in their Tryals; and therefore the Court adjourned for an Hour or ſomething more, while the Precepts for the Jury were preparing, and according to the Adjournment met, and ſigned and ſealed the Precepts, and then adjourned the Seſſions of* Oyer *and* Terminer *until this Day ſevennight, at ſeven in the Morning.*

Die Martis *Viceſimo primo* Aprilis, *Anno Regni Regis* Willielmi *Tertii Octavo, Annoq; Dom.* 1696.

THE Court ſat about Eight a Clock, at which were preſent a great Number of Noblemen, and Perſons of Quality who were in the Commiſſion, and Seven of the Judges; to wit, the Lord Chief Juſtice *Holt*, the Lord Chief Juſtice *Treby*, the Lord Chief Baron *Ward*, Mr. Juſtice *Nevile*, Mr. Juſtice *Powel*, Mr. Juſtice *Eyres*, and Mr. Baron *Powis*.

Cl. of Ar. Cryer, Make Proclamation.

Cryer. O yes, O yes, O yes. All manner of Perſons that have any thing more to do at this Seſſions of *Oyer* and *Terminer*, adjourned over to this Day, draw near and give your Attendance. And God ſave the King.

Cl. of Ar. Cryer, Make Proclamation.

Cryer. O yes, Sheriffs for the County of *Middleſex* return the Precepts to you directed, upon Pain and Peril will fall thereon.

The Under Sheriff returned the Precepts.

Cl. of Ar. Mr. *Baker*, pray, Who do you intend to begin with?

Mr. *Baker.* With *Ambroſe Rookwood.*

Cl. of Ar. Cryer, Make Proclamation.

Cryer. O yes, You good Men of the County of *Middleſex* ſummoned to appear here this Day, to try between our Sovereign Lord the King, and the Priſoners that are, and ſhall be at the Bar, anſwer to your Names as you ſhall be called, every one at the firſt Call, and ſave your Iſſues.

The whole Pannel was called over, and the Appearances of thoſe that anſwered Recorded; and the Defaulters were again called over.

Cl. of Ar. Keeper of *Newgate*, Set *Ambroſe Rookwood* to the Bar. (Which was done.) You the Priſoner at the Bar, *Ambroſe Rookwood*, thoſe Men that you ſhall hear called, and perſonally appear, are to paſs between our Sovereign Lord the King and you, upon Tryal of your Life and Death; if therefore you will challenge them, or any of them, your Time is to ſpeak unto them as they come to the Book to be ſworn, before they be ſworn.

Sir B. Shower. If your Lordſhip pleaſes, We have a Doubt or two to propoſe to your Lordſhip, in reſpect of the Tryal this Day: But before I offer it, we beg your Favour for a Word in behalf of our ſelves.

My Lord, We are aſſigned of Council, in purſuance of an Act of Parliament, and we hope that nothing which we ſhall ſay in Defence of our Clients, ſhall be imputed to our ſelves. I thought it would have been a Reflection upon the Government and your Lordſhip's Juſtice, if being aſſigned we ſhould have refuſed to appear; 'twould have been a Publication to the World, That we diſtruſted your Candour towards us in our future Practice upon other Occaſions. But, my Lord, there can be no Reaſon for ſuch a Fear, I am ſure I have none; for we muſt acknowledge, we who have been Practiſers at this Bar eſpecially, that there was never a Reign or Government within the Memory of Man, wherein ſuch Indulgence, ſuch Eaſineſs of Temper hath been ſhewn from the Court to the Council, as there always hath been. Never was there ſuch Freedom and Liberty of Debate and Argument allowed to the Bar, and we thank your Lordſhip for the ſame.

My Lord, We come not here to countenance the Practices for which the Priſoner ſtands accuſed, nor the Principles upon which ſuch Practices may be preſumed to be founded; for we know of none, either Religious or Civil, that can warrant or excuſe them. But the Act of Parliament having warranted the appearing of Council for Perſons accuſed to make Defence for them, we hope your Lordſhip will give us leave to make what Objections we can on their behalf.

L. C. J. *Holt.* Look ye, Sir *B. Shower*, go on with your Objections; let us hear what you have to ſay.

Sir *B. Shower.* My Lord, It appears to be a Doubt to us, upon this Act of Parliament, whether this Cauſe can be tryed this Day: And if it be a Doubt, we hope, though it ſhould not have that Weight with the Court, that we apprehend it has; yet your Lordſhip will excuſe us, and ſettle it according to your Judgment. The Act requires, That all that ſhall be Accuſed and Indicted for High-

High-Treaſon, whereby any Corruption of Blood may, or ſhall be made to any ſuch Offender or Offenders, or to any the Heir or Heirs of any ſuch Offender or Offenders, or for Miſpriſion of ſuch Treaſon, ſhall have a true Copy of the whole Indictment; and afterwards ſhall have Copies of the Pannel of the Jurors who are to try them, duly returned by the Sheriff and delivered unto them. And every of them ſo Accuſed and Indicted reſpectively two Days at the leaſt before he or they ſhall be Tryed for the ſame. Now if your Lordſhip will pleaſe to caſt your Eye upon this *Venire Facias*, and it will appear to be returned but this Day, and that is not according to the Intent of this Law. And it is impoſſible then, if it be as we apprehend it, and put it, that this Tryal ſhould go on at this Time; and that this Conſtruction ſhould be ſo as we ſay; not only the Words, but as we take it, the Intent and Meaning of the Act of Parliament too are for us, that there ought to have been a Copy of the Pannel after the Return two Days before the Tryal. For in the firſt Place, My Lord, the Words are plain: It muſt be a Copy of the Pannel duly returned by the Sheriff. Now though it be a Copy of the Array of the Pannel which we have delivered to us, yet it is not a Copy of the Pannel of the Jurors returned; for it is no Return till it come into Court. And the King's Council muſt admit, that in the Caſe of all Writs returnable, it cannot be ſaid that there is a Return, where there is a Writing upon the back, or a Label annexed, till it be actually returned into Court. As in the Caſe of a *Fieri Facias*, or a *Mandamus*, an Action for a falſe Return cannot lye, till the Writ be actually returned. For ſuch Action muſt be brought into the County of *Middleſex*, where the Court reſides, before whom the Return is made, and not in the County where the Sheriff lived that made the Return; for it is not a Return till filed in Court. Now here the Words of the Act are; *He ſhall have a Copy of the Pannel of the Jurors who are to try him, duly Returned by the Sheriff two Days before the Tryal.* Now we humbly inſiſt that the Words duly Returned muſt be antecedent to the having the Copy, or elſe he cannot be ſaid to have a Copy of the Pannel duly Returned. The Act of Parliament does not ſay which ſhall be duly Returned; and therefore there does ariſe a Doubt, whether your Lordſhip will not direct us to have a Copy after the Return made, which is but this Day.

Mr. *Phipps*. If your Lordſhip pleaſes to ſpare me a Word of the ſame ſide: We take it, that by this Act of Parliament the Jury muſt be duly returned before the Pannel is delivered to us. Now the Return is the Anſwer that is Indorſed upon the Writ with the Pannel annexed, and delivered into Court; for the Return is to the Court, and till it be delivered into Court, it cannot properly be ſaid to be a Return. We acknowledge the Copy of this Pannel has been delivered unto us two or three Days ago. But the *Venire* being not returned till to Day, we think we have not a Copy of the Pannel within the Intent of, and according to the Act of Parliament. And I deſire to put your Lordſhip this Caſe: This Act of Parliament does likewiſe provide, that the Priſoner ſhould have a Copy of his Indictment five Days before his Tryal, to enable him to conſult with his Council how to plead and defend himſelf; ſuppoſe then a Copy of a Bill that is intended to be preſented to the Grand Jury, be delivered to the Perſon accuſed five Days before the Grand Jury are to meet, and they afterwards meet, and find it, and the Party is brought immediately, and arraign'd upon it: This is a true Copy of the Indictment, yet certainly the Intent of the Act of Parliament is not anſwered, for it was not a true Copy of the Indictment at the Time it was deliver'd. And I take this Caſe to be under the ſame Reaſon. This is not a Pannel duly returned, till now; and therefore by Conſequence we have not that Advantage that this Act of Parliament intended to give us; for which Reaſon we humbly apprehend we ought not to be tryed to Day; which we ſubmit to your Lordſhip.

L. C. J. What ſay you to it, Mr. Attorney.

Mr. Attorney General. My Lord, with Submiſſion, this Objection will receive a very plain Anſwer. If I underſtand it aright, they ſay that they ought to have a Copy of the Pannel after it is returned, and that it cannot be ſaid to be duly delivered, according to the Proviſion in this Act of Parliament, till after the *Venire facias* be duly returned into the Court, and then they are to have it two Days before they are tryed. They ſay the *Venire facias* is returned but to Day, and ſo the Copy delivered to them, is not purſuant to the Act of Parliament; and ſo they cannot be tryed to Day: This I take to be the Objection. But with Submiſſion, *My Lord*, it will be plain both by the Words of the Act, and the Reaſon and Intention of it, that there is no Occaſion at all, nor no Neceſſity of having the Writ returned before the Copy of the Pannel be delivered. The Words of the Act of Parliament are theſe; *That every Perſon and Perſons who ſhall be accuſed, indicted, and tryed for Treaſon, or Miſpriſion of Treaſon, after the 25th of* March, *96, ſhall have Copies of the Pannel of the Jurors who are to try them, duly returned by the Sheriff, and delivered to them two Days before they be tryed.* Now, firſt, *My Lord*, I think it is apparent what the Meaning and Deſign of the Act of Parliament was, that the Priſoner ſhould know two Days before the Tryal, who were the Jury that were to paſs upon him, that he might have an Opportunity to conſider how he ſhould make his Challenges as he thought fit, and Time to enquire into the Qualifications of them, that if there were any particular Ground of Challenge, he might not loſe that Benefit; ſo that if he has a Copy of the Pannel array'd by the Sheriff, which is afterward returned by the Sheriff into Court, and there is no Variation of that Pannel afterwards; then certainly the End and Intent of the Act is entirely purſued; for by that Means the Priſoner has the Names of all the Jury returned, and are afterwards called, and has a full Opportunity of making ſuch Challenges as he thinks fit. And as the Reaſon and Intent of the Act is anſwered by this Conſtruction, ſo the very Words of the Act are anſwered: For it is not ſaid in the Act, that he ſhall have a Copy of the Pannel after it is return'd, but it is ſaid a Copy of the Pannel duly returned by the Sheriff; that is, when the Sheriff has arrayed a Pannel, then he is to have a Copy of that Pannel; and if afterwards the Sheriff return the ſame Pannel into Court, is not this a Copy of the Pannel duly return'd? With Submiſſion it is, and ſufficient to anſwer both the Words and Intention of the Act of Parliament. It is true, *My Lord*, if the Act of Parliament had ſaid he ſhou'd have a Copy of the Pannel after it was return'd, then

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we cou'd not have ſaid but that the Objection wou'd hold. But when the Words are general, and it is moſt reaſonable to be interpreted that the Copy is to be delivered when the Array is made, becauſe that anſwers the Intent and End of the Act of Parliament, which was to enable the Priſoner to make his Challenges, we take that to be ſufficient; and if another Interpretation ſhou'd be made, it wou'd render the Tryal in ſuch Caſes liable to all the Miſchiefs in the World, and make it impracticable that any Perſon ſhou'd be try'd; at leaſt it wou'd introduce a new Method of Proceedings that never was practiſed, nor ought to be introduced, unleſs this Act of Parliament by expreſs Words, had appointed and conſtituted ſuch a new Method; and we ſuppoſe your Lordſhip will never make any ſuch Conſtruction, that the Act intended a new Method, unleſs expreſsly declared; for if it were, as they would have it, that the Copy of the Pannel was not to be delivered till after the Return of the Writ, then the Priſoner cannot be tryed upon the Return of the Writ; for upon the return of the Writ, the Jury muſt be brought to the Bar, the Priſoner muſt be brought to the Bar, and adjourned over to a further Time, that in the mean Time a Copy may be delivered to them. I believe that they can never ſhow any Preſident that there was ſuch an Adjournment of a Jury of Life and Death, over to another Day, for a Perſon to have a Copy of the Pannel, to enable him to his Challenges; and either that muſt be the Conſequence, or elſe the Jury muſt not come upon the Return of the *Venire facias*, but there muſt go a *Habeas Corpora*, and the Priſoner tryed upon that *Habeas Corpora*: For firſt there muſt be the Return of the Writ, then the Copy of the Pannel delivered, then the *Habeas Corpora* returnable another Day; and upon that the Tryal muſt be had: But I believe there can be no Inſtance given of a Tryal for Treaſon upon a *Habeas Corpora*. Now if the Parliament had intended that they wou'd not have the Copy of the Pannel deliver'd till after the Return of the *Venire facias*, they would certainly have expreſs'd and provided how the Method of Tryal ſhould have been; that is, that either the Jury ſhould have been adjourn'd over till another Day, or elſe brought to the Bar upon a *Habeas Corpora*; which is the only way that can be thought of. Indeed, *My Lord*, I do agree, that if the Sheriff ſhould give a Copy of the Pannel, and afterwards ſhould vary that Pannel, tho' but in one Name, that would not anſwer the End of the Act of Parliament, becauſe the Priſoner is deprived of the Opportunity of knowing the Name of the Perſon that he ſo altered, in Order to his making his Challenges againſt him: But if the Sheriff do return the ſame Perſons that are in that Copy delivered to the Priſoner, then we do, to all Intents and Purpoſes, anſwer the End of the Act of Parliament, and avoid the abſurd Conſtruction that they would make of this Act for the Changing the Method of Tryals, and no Body can well tell what Method ſhou'd be purſued: But certainly if the Act of Parliament intended a new Method ſhou'd be purſued, they wou'd have deſcribed and ſettled what it ſhou'd be.

Mr *Sollicitor General*. If your Lordſhip pleaſes to ſpare me a Word of the ſame ſide; my Lord, this is an Objection that has been foreſeen, and I think has been prevented; for, with Submiſſion, I take it the Act has been ſufficiently anſwered both as to the Words, and as to the Intent of it in the Priſoners having the Copy of the Pannel before the Jury be returned; there muſt be ſuch a Thing as a Pannel array'd before the Jury be ſummon'd, and therefore it is ſufficient that the Priſoner have a Copy of that Pannel ſo many Days before his Tryal; which was only intended for that particular Reaſon, that he might be provided ſufficiently to make his legal Challenges. Certainly within the Intent of the Act of Parliament it is well enough if he had but a Copy of the Pannel two Days before the Return of the Writ, provided the Jury was not alter'd that was array'd, nor any other Names put in but thoſe that he had a Copy of before: Now, my Lord, I think this Act of Parliament muſt be taken according to the Intent and Meaning of it, or elſe it will bear hard upon the Priſoner, and harder ſure than it was deſigned it ſhould: This Act ſays, he ſhall have a Copy of his Indictment ſo many Days before his Tryal; now I would fain know whether they would have it conſtrued, that the Copy does not need to be delivered till after Iſſue joyn'd, which muſt be if their Doctrine hold true, that the Act is to be conſtrued according to the ſtrict Letter of it, for Tryal is the Tryal of the Iſſue; what if the Indictment be delivered five Days before the Tryal, tho' after Iſſue joyn'd, it is well enough according to ſuch an Expoſition, for the arraigning of the Priſoner is no Part of the Tryal, and yet it was the Intent of the Parliament that he ſhould have a Copy of the Indictment five Days before he was arraigned, and that for this Reaſon, becauſe he might have ſeveral Pleas to plead and Objections to make before he pleaded the General Iſſue; he might have Pleas in Abatement, which after Plea pleaded of Not guilty he could not have the Advantage of, nor could he afterwards move to quaſh the Indictment, which he might otherwiſe have good Reaſon for, if he had the Copy before he was put to plead; ſo that I take it the Act is to be interpreted every where according to the Intention of it, and the Priſoner at the Bar according to the Intention of the Act, has had a Copy of this Indictment five or ſix Days before his Arraignment, and therefore we have acted according to the Purpoſe and Meaning of the Parliament, and likewiſe he has had a Copy of the Pannel of the Jurors that are to try him, which is duly returned by the Sheriff, which is likewiſe according to the Act of Parliament: As for what they ſay that even a Copy of the Indictment before it be found would not be good according to this Act; that's true, but the Caſe is not the ſame, nor the Reaſon of the Caſe alike between that and the Pannel of a Jury, becauſe it is ſufficient in Law to make it a good Pannel if it be array'd by the Sheriff before the Jury be ſummoned, for the Sheriff muſt array and compleat his Pannel to let his Bailiff know who muſt be ſummoned, but in the Caſe of an Indictment, tho' a Bill be firſt form'd by the Clerk, yet it is not look'd upon as a formal Indictment in point of Law till it be found by the Jury as their Verdict, and preferred to the Court, and it is not neceſſary that ths Indictment ſhould be formed for the Jury before they find it, for they are properly to make their own Preſentments themſelves; and the ancient Practice was, that they only preſented the Fact, and the Matter was put into Form afterwards by the Court, and in many Caſes it is ſo at this Day, as we have had ſome Inſtances lately; but as to the arraying of a Pannel it always

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was ſo, and always muſt be ſo array'd by the Sheriff before the Jury ſummoned, and there's the Difference between the giving a Copy of an Indictment and the Copy of a Pannel, the one is taken Notice of in Point of Law to be neceſſary, the other is not. This giving a Copy of the Pannel, my Lord, we ſay is within the Intent of the Act, which was only to enable Perſons accuſed to make their juſt Challenges and that they may as well do when a Copy is delivered after it is array'd by the Sheriff, as, when it is return'd by the Sheriff, and being ſo done, with Submiſſion, it is well done within the Words, and within the Intent of this Act of Parliament.

Mr *Conyers*. My Lord, the Words of this Act of Parliament are, that they ſhall have a Copy of the Pannel of the Jurors who are to try them duly returned by the Sheriff and delivered to them, and this two Days before the Tryal: My Lord, that this is the Pannel of the Sheriff of the Jurors that are to try them aſſoon as it is array'd has been obſerv'd already; now it would be a forc'd Conſtruction to conſtrue theſe Words that follow, duly returned by the Sheriff, to be meant, that a Copy ſhould be delivered after the Jury is returned, becauſe that would be a Delay of Juſtice, and keeping off the Tryal longer than was intended by this Act of Parliament, and more than will anſwer the End of this Law, for the End of it was to give the Priſoner all Benefit and Advantage of Exceptions againſt any of thoſe that were to try him, and if he has this Pannel two Days before his Tryal, he has that Benefit the Law intended him. Now, my Lord, as to what has been ſaid of an Indictment, which by this Law he is to have a Copy of too, that is plainly quite another Caſe; for it is not an Indictment till it be found, and ſo anſwers not the Words nor Intention of the Act till found by the Grand Jury, till then it is not a Copy of his Charge, and therefore by no Conſtruction can it be called a Copy of the Indictment. I think I need not trouble your Lordſhip any further in this Matter, becauſe this Objection was foreſeen, and has been already conſidered of by the Court upon the Priſoners Arraignment.

Sir *B. Shower*. My Lord, in Anſwer to what Mr. Sollicitor has ſaid, that there is as much Reaſon to expect that the Copy of the Indictment ſhould not be delivered till after Plea pleaded, as that the Pannel ſhould not be delivered till after the Jury return'd, becauſe in the Caſe of the Indictment it is ſaid ſo many Days before the Tryal, and the Tryal cannot be till Iſſue joyn'd, there can be no Weight in that Objection at all; for the Words of the Act are quite differently penned in the Caſe of the Indictment, from what they are in the Caſe of the Pannel, for tho' it be ſaid it ſhould be done five Days before the Tryal, yet it is added, in Order to the adviſing with Council how to plead, which muſt be before Plea pleaded, and therefore it muſt be abſolutely neceſſary to be done before the Arraignment. My Lord, I have propoſed my Doubt, it may have Conſequences on the one Side and the other, we ſubmit intirely unto your Lordſhip's Judgment, it is a new Law, and never has received any Opinion; the Words of it are, *duly return'd by the Sheriff*, and the Queſtion is, Whether a Copy of the Pannel upon the Array before it be return'd be a Copy of the Pannel duly return'd, tho' the ſame Pannel be afterwards duly returned.

Mr. *Phipps*. My Lord, Mr. Attorney General owns, that the Pannel after it is arrayed may be amended and altered by the Sheriff, and it was never intended by this Act of Parliament, that any Copy of the Pannel ſhould be delivered to the Priſoner but of thoſe Men that were really returned, ſo that we take it we ought to have it two Days after the Return and before the Tryal, for certainly it muſt be a Copy of the Men returned, which if the Sheriff may alter at any Time before the Return, the Intent of the Act of Parliament can never be anſwered by any Copy but what is a true Copy of the Return. Mr. *Conyers* would anſwer the Objection that I made about a Copy of the Indictment by this, that it is not an Indictment till it be found by the Jury, but I think it is no Anſwer to our Objection at all, tho' it be but a Copy of the Bill intended to be preſented to the Grand Jury, yet if the Grand Jury afterwards find it is as true a Copy of the Indictment, as this is a Copy of the Jury intended to be returned, and afterwards returned. As to what they ſay, that this will introduce a new Method of Tryal, contrary to all Form or Proceedings, that can be no Objection neither; for if it be ſo, we can't tell how to help it, the Parliament have thought fit to have it ſo, and we muſt ſubmit to take it as the Law has made it: If there be a Neceſſity for a *Habeas Corpora* upon the Proviſion made in this Act, ſo it muſt be, for we muſt take the Law as it is. We ſubmit our Objection to your Lordſhip; we think we have not had the Benefit of this Law.

Mr *Comper*. Surely, my Lord, what Mr *Phipps* has now ſaid has no Weight in it; that becauſe the Sheriff had it in his Power to alter the Pannel before it was returned, that therefore this is not now a true Copy of the Pannel of the Jurors who are to try the Priſoner, duly returned by the Sheriff; which are the Words in the Act. It is true, if the Sheriff had in fact altered the Pannel from what it was, and return'd it ſo altered into Court, no doubt of it the Priſoner would be very well intitled to make this Objection, that he had not a Copy of the Pannel, or the Names of the Jurors that were ſummoned to try him; but now we can aver, that we have purſued this Act of Parliament literally; for in Anſwer to their Objection, we may ask this Queſtion of them upon the Words of the Act, Have you not had a true Copy of the Names of thoſe that are to try you, and are duly returned by the Sheriff for that Purpoſe; and was not that Copy delivered unto you above two Days ago? They cannot ſay they have not had it ſo, and if they cannot ſay ſo, then both the Words and Meaning of the Act of Parliament are in every reſpect anſwered; if when the Jury come to be called the Priſoner finds the Pannel to be altered, he has Reaſon to object, and will have the Benefit of the Objection, that he has not that Advantage which the Law intended him, but till that prove to be the Fact, we think here is a full Compliance with this Law.

Mr *Soll. Gen.* Sir *Barth. Shower* miſtakes my Objections about the Copy of the Indictment, for we ſay, if the Intent of the Act of Parliament be complied with, it is ſufficient, eſpecially where the Words are any way doubtful; according to the Words of this Act of Parliament, a Copy of the Indictment need to be delivered but five Days before the Tryal; but it appearing that the Intention of theſe Law-makers was, that he

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ſhould have a Copy of the Indictment to enable him to plead to it if he had Cauſe, therefore tho' the Words be before the Tryal, we have taken it that he ſhould have a Copy five Days before his Arraignment, and ſo we have complied with the Meaning of the Law in that point, as we have alſo in this, which was, we take it, only to enable the Priſoner to make his Challenges, and if that be done two Days before his Tryal, with Submiſſion, it fully anſwers this Law.

L. C. J. Have you done, Gentlemen?

Counc. Yes, my Lord.

L. C. J. Then look you, Sir *B. Shower*, as to this Point that you now inſiſt upon, we have had it under Conſideration heretofore; we were here this Day ſeven-night, and then we did conſider in what Method we ſhould proceed, ſo that the Priſoner might have the Benefit intended him by this Act of Parliament: The Act of Parliament does deſign in the firſt place, that every Priſoner that is to be tryed for High Treaſon ſhould have a Copy of his Indictment, at leaſt five Days before the Tryal, that I think was all that the Makers of this Act of Parliament intended at the firſt; but then there being ſubſequent Words, which ſhew the Reaſon why they gave him the Copy ſo long before the Tryal; which is, that he might adviſe with his Council what to plead; theſe Words we conceive have given the Priſoner a further Time than what was originally intended, therefore we have thought it neceſſary that the Priſoner ſhould have a Copy of his Indictment five Days before he be arraigned, which is five Days before he was put to plead; and your Client, the Priſoner at the Bar, has had the Benefit of this Act in that reſpect before we arraigned him; then after he has pleaded, the Queſtion was, when he was to have a Copy of the Pannel: Now the Deſign of this Act of Parliament was, That the Priſoner ſhould have a Copy of the Pannel two Days before his Tryal, in Order that he might conſider of the Perſons that were to try him; that he might inform himſelf of their Qualities, Tempers, and Diſpoſitions; that ſo he might make uſe of the Benefit the Law gives him of Challenging Five and Thirty, without ſhewing any Canſe, if he did not like the Men, and as many more as he ſhould think he had good cauſe to challenge: Now in this Caſe, the whole Deſign of this Act of Parliament is anſwered, for he has had a Copy of the Pannel, as you your ſelves acknowledge, two Days before the Day of his Tryal, ſo that he has the full Benefit that the Act of Parliament intended; he is by this Copy as well enabled to make his Challenges as the Law deſign'd he ſhould be, and has had the ſame Time allowed him that the Act of Parliament meant he ſhould have; then ſuppoſing the Deſign of this Act of Parliament be fully anſwered and complied with in the Caſe. The next Queſtion is, whether the Words of the Act are ſatisfied, for we would be very loth, in a Caſe of this Nature, where an Act of Parliament intends a Favour to a Priſoner that ſtands at the Bar for his Life, to abridge him of any Part of that Favour which the very Words of the Act would allow him, tho' the Intent of the Act of Parliament were anſwered otherwiſe: Now in the firſt place it is obſervable, that the Act of Parliament does not ſay, that the Priſoner ſhall have a Copy of the Return, nor does it ſay, he ſhall have a Copy from the Court, but he ſhall have a Copy of the Pannel of the Jurors duely returned that are to try him; now if the Sheriff array his Pannel ſeveral Days before the Tryal upon the *Venire facias*, and does give him a Copy of that very Pannel, which Pannel is afterwards returned in Court. Has not he then a Copy of the Pannel duely returned? Does not this anſwer all the Words of the Act? For you your ſelves ſay that it is not ſaid in the Words of the Act, that the Copy ſhall be delivered after the Pannel returned, nor does there need a Copy of the very Return. Surely we muſt not carry it farther than the Words, if the Meaning be complied with, and we think this anſwers both Words and Meaning: It is a Copy of the Pannel, and a Copy of that Pannel that's duely returned. Now to make another Conſtruction would indeed not only alter the uſual Courſe of Tryals, but be contradictory to the very Proceſs it ſelf. We are by the Courſe of Law to award Proceſs to ſummon a Jury to appear at a certain Time, to try the Iſſue joined between the King and the Priſoner; and yet when we have done this, and the Jury thereupon are ſummoned and do appear, they may go as they came; for the Iſſue cannot be try'd, becauſe after the Return, the Priſoner muſt have a Copy of the Pannel two Days before he can be tried. I do think the Deſign of the Act of Parliament, and the very Words of the Act are fully ſatisfied in giving a Copy of the Pannel two Days before the Return. We had this Matter under our Conſideration before, and upon Debate among our ſelves, we did think fit to award the Precept returnable this Day, and reſolved to try the Priſoner this Day, unleſs better Reaſons were offered us to alter our Opinion, and we are not ſatisfied, that any ſuch better Reaſon has been given, but that this Tryal ought to go on, the Priſoner having the full Benefit that was deſigned him by this Act of Parliament. And the Giving a Copy of the Pannel that is return'd, tho' before the Return, ſufficiently ſatisfies the Words of the Act, no other Conſtruction can be made without great Abſurdities: This is my Opinion.

Sir *B. Shower*. My Lord, I hope we ſhall be excuſed for our Client, we have another Doubt to propoſe to the Court.

L. C. J. You have had my Opinion upon this Point, if my Lords and Brothers are of another Opinion, they will tell you.

Judges. No, my Lord, we are all of the ſame Opinion.

L. C. J. My Lord Chief Juſtice of the Common Pleas, and my Brothers are all of the ſame Opinion.

Sir *B. Shower*. My Lord, we ſay we have another Doubt to propoſe upon this Act of Parliament: It is a new one, and never put in Practice till now, and therefore we hope your Lordſhip will pleaſe to excuſe us, if we offer our Objections, becauſe there has yet never been a Determination about it, and we are aſſigned of Council by your Lordſhip.

L. C. J. Never make Apologies, Sir *Bartholomew*, for it is as lawful for you to be of Council in this Caſe, as it is in any other Caſe where the Law allows Council. It is expected you ſhould do your beſt for thoſe you are aſſigned for, as it is expected in any other Caſe that you do your Duty for your Client.

Sir *B. Shower*. My Lord, our Exception is this, we ſay that this Tryal cannot go on at this Time, upon this Act of Parliament, becauſe we have no

true

true Copy of the whole Indictment, it does not appear, in the Copy we have delivered to us, before whom it was taken, or whether it was taken at all, or in what Place it was taken; it ſays only *Middleſex* in the Margent, and then *Juratores pro Domino Rege preſentant:* That might be before the Juſtices of the Peace at the Quarter-Seſſions, or it might be at the Monthly Seſſions at *Hicks's Hall*, or it might be at the Seſſions at the *Old Baily*; or it might be before Commiſſion of *Oyer* and *Terminer*, as perhaps it really was; but *non conſtat* where it was taken, nor how it comes hither: It might be before your Lordſhip here, as we believe it was, but this Copy not letting us know where and how it was taken, we think we have not the Benefit of this Law; for the Party accuſed is by this Act of Parliament to have a Copy to adviſe with Council, that he may be enabled to plead. And that is the Reaſon why the Words of this Act are ſo penned, that he ſhall have a Copy of the whole Indictment, which we cannot plead to, unleſs we know where it was taken, if we ſhould have Occaſion to plead any ſpecial Matter. And beſides, my Lord, there is another Reaſon why we ſhould have the whole Indictment to enable us to plead, becauſe if we had the *Caption*, it might perhaps appear, that the Indictment was taken before the Time of the Fact alledged in the Indictment, and then that would make it vicious; it might be before the 9th of *February*, when this Treaſon is ſaid to be committed, and then we ought not to be brought to Tryal. Now the Deſign of this Act of Parliament, in giving the Priſoner a Copy of the Indictment ſo long before the Tryal, was not only to enable him to make his Defence upon the Tryal, but alſo to adviſe with Council to plead; for ſo the Words are, the better to enable him to plead. Now we ſay to anſwer this End, it is neceſſary we ſhould have a Copy of the whole Indictment, as it ſtands before your Lordſhip in Court. And another Reaſon is this, it is no Indictment, unleſs it be preſented by the Jury, as their Inquiſition upon Oath, unto ſome Court that has Juriſdiction of the Matter: What we have delivered to us is only a Copy of a Bill, as to be delivered to a Grand Jury, to be found; *non conſtat*, that it is found. Now the Intent of the Act of Parliament being to give the Priſoner this Advantage to enable him to plead, he may have ſeveral Pleas, of which he might take a legal Advantage if he had a Copy of the whole, which he knows not how to come at now; and in truth it is very neceſſary, becauſe if he be tried upon an Indictment found in another County, then theſe Commiſſioners have not a legal Authority to try him; and if the Tryal ſhould go on, and he be acquitted, he is ſubject to be indicted and tried again, and never can relieve himſelf by the Acquittal upon ſuch an Indictment before Perſons that had no Authority to try him. I doubt he can never plead the Acquittal, becauſe he cannot make out that he was duely try'd and acquitted: And for theſe Reaſons we humbly ſubmit it to your Lordſhip, whether we have had the Benefit of this Law, in having a Copy of the whole Indictment to enable us to plead; and if we have not, till we have that Benefit, we humbly conceive this Tryal ought not to go on.

Mr *Phipps*. My Lord, the Queſtion is whether the Style of the Court, the Perſons before whom it was taken, and to whom the Preſentment is made, the Time when it was taken, and the Place where, ought not to appear in the Indictment. This Law requiring that the Priſoner ſhould have a Copy of the whole Indictment to enable him to plead; for if it ſhould happen, that the Indictment was taken before Perſons that had no Juriſdiction, then I believe it will not be denied but that the Priſoner might plead to the Juriſdiction, and there might be ſeveral other Pleas that he might take Advantage of. I would deſire to know of the King's Council, whether ever they ſaw a Copy of an Indictment given in Evidence, or pleaded without the *Caption*. It is not a true Copy without it; there ought to be the Time, the Place, and the Style of the Court before whom it is taken.

Mr *At. Gen.* Truly, my Lord, I think I need ſay no more to this Objection, than that it does not come at a proper Time; for with Submiſſion, if the Priſoner will upon this Act ſay he has not had a Copy of his Indictment to enable him to plead, he ought to have taken the Advantage of it before he does plead, that is the proper Time for him to object this Matter to the Court, for if after he has had ſuch a Copy as this Priſoner has had, he does ſubmit to plead, with Submiſſion it is too late to come at his Tryal and make this Objection, he cannot be received to make it after.

L. C. J. That is a full Anſwer, Mr Attorney.

Mr *At. Gen.* I think it is, my Lord, with Submiſſion, not that we would wave giving other Anſwers to it, if it were in a proper Time; but the Method of proceeding muſt be, and we think we have no Occaſion at this Time to ſay any Thing more to this Objection.

L. C. J. No, no, that is a full Anſwer in this Point, for look ye, you that are of Council for the Priſoner, when once you have pleaded, you admit you have had a Copy; for the Copy was given you to enable you to plead, and when you have pleaded, you have paſs'd by all Advantage that you could have from the Copy, as to any Plea that you can make: For it's taken for granted ye had a Copy to enable you to plead, and to adviſe with your Council about it; ſince you did plead, and do not inſiſt upon it at the Time of your Arraignment that you had not ſuch Copy.

Sir *B. Shower*. My Lord, we have propoſed one Doubt, and we humbly ſubmit it to the Court.

Mr *Sol. Gen.* It was their own Fault that this Objection was not made in Time.

L. C. J. That Doubt of yours may ſerve at another Time, but now certainly it is quite out of Time.

Mr *Sol. Gen.* Nay, my Lord, even upon the Arraignment that would not ſerve their Turn neither.

L. C. J. We will not enter upon that now, pray go on to ſwear the Jury.

Cl. of Ar. You the Priſoner, look to your Challenges, as I told you before. Cryer, call Sir *Jeremy Sambrook*.

Cryer. *Vouz, avoz.*

Sir *B. Shower*. Mr *Rookwood*, you are to make your own Challenges.

Rookwood. I do not challenge him.

Cl. of Ar. Then hold Sir *Jeremy* the Book.

Sir *Jer. Sambrook*. My Lord, I am uncapable of ſerving upon this Jury, for I have been deaf this

ſeveral Years, this Dozen Years; I cannot hear what is ſaid in Court, though I am now ſo near the Court, I could not hear what your Lordſhip ſaid; nor what was ſaid at the Bar. I have a Certificate here, if your Lordſhip pleaſe to have it read; and moſt of the Perſons of Quality here about the Court know it to be true.

Mr *At. Gen.* My Lord, I am afraid it is ſo.

L. C. J. Nay, if it be ſo, it is not fitting that he ſhould be upon the Jury, when he can't hear what's ſaid: You muſt excuſe Sir *Jeremy Sambrook*. Go on to the next.

Cl. of Ar. George Ford.

Cryer. *Vous avoz.*

Cl. of Ar. Look upon the Priſoner.

Rookwood. I challenge him.

L. C. J. Mr *Ford*, you muſt not go away, for you are upon another Pannel, wherein you may be employed, tho' you are now challenged.

Cl. of Ar. William Underhill.

Rookw. I challenge him.

Cl. of Ar. William Withers.

Rookw. I challenge him.

Cl. of Ar. Samuel Powell.

Rookw. I do not except againſt him.

Cl. of Ar. Then ſwear Mr *Powell*.

Cryer. Look upon the Priſoner. You ſhall well and truly try, and true Deliverance make between our Sovereign Lord the King, and the Priſoner at the Bar, whom you ſhall have in Charge, and a true Verdict give according to your Evidence. So help you God.

Cl. of Ar. Thomas Trench.

Rookw. I challenge him.

Cl. of Ar. John Wolſe.

Rookw. I challenge him.

Cl. of Ar. James Bodington.

Rookw. I challenge him.

Cl. of Ar. John Raymond.

Rookw. I challenge him.

Cl. of Ar. Richard Marſh. (He did not appear.)

George Haws.

Rookw. I challenge him.

Cl. of Ar. Francis Barry.

Rookw. I challenge him.

Cl. of Ar. Arthur Baily.

Rookwood. I except not againſt him. (*He was ſworn.*)

Cl. of Ar. John Webber.

Rookw. I do not except againſt him. (*He was ſworn*)

Cl. of Ar. Thomas Glover.

Rookw. I challenge him.

Cl. of Ar. Dormer Sheppard.

Rookw. I challenge him.

Cl. of Ar. George Tredway.

Rookw. I do not except againſt him. (*He was ſworn.*)

Cl. of Ar. Matthew Bateman.

Rookw. I challenge him.

Cl. of Ar. Timothy Thornbury.

Rookw. I challenge him.

Cl. of Ar. James Partherich.

Rookw. I challenge him.

Cl. of Ar. Thomas Freeman.

Rookw. I challenge him.

Cl. of Ar. Joſeph Blithit.

Rookw. I challenge him.

Cl. of Ar. Timothy Lennoy.

Rookw. I have nothing to ſay againſt him. (*He was ſworn.*)

Cl. of Ar. John Harris.

Rookw. I do not except againſt him. (*He was ſworn.*)

Cl. of Ar. John Billers.

Rookw. I challenge him.

Cl. of Ar. Richard Bourne.

Rookw. I challenge him.

Cl. of Ar. George Carter.

Rookw. I do not except againſt him. (*He was ſworn.*)

Cl. of Ar. Francis Chapman.

Rookw. I challenge him.

Cl. of Ar. Alexander Forth.

Rookw. I challenge him.

Cl. of Ar. Thomas Playſted.

Rookw. I challenge him.

Cl. of Ar. William Etley.

Rookw. I do not except againſt him. (*He was ſworn.*)

Cl. of Ar. John Marſh.

Rookw. I have nothing to ſay againſt him. (*He was ſworn.*)

Cl. of Ar. Samuel Hooper. (He did not anſwer.)

L. C. J. Did Mr *Hooper* appear?

Cl. of Ar. Yes, my Lord, he is mark'd as appearing.

L. C. J. Then you ought to call him again, and ſet a Fine upon his Head.

Cl. of Ar. Cryer, call *Samuel Hooper*.

Cryer. *Samuel Hooper*, come into Court and give your Attendance upon Pain of ten Pound, for the Court has recorded your Appearance.

Cl. of Arr. John Hall.

Rookw. I challenge him.

Cl. of Arr. Nicholas Roberts.

Rookw. I challenge him.

Cl. of Ar. William Partridge.

Bookw. I challenge him.

Sir *B. Shower.* How many has he challenged Mr *Hardeſty?*

Cl. of Ar. I will tell you Sir *Bartholomew*, —— he has challenged 24.

Sir *B. Shower.* Well then, go on, Sir.

Cl. of Ar. Peter Laveane.

Rookw. I challenge him.

Cl. of Ar. Thomas Moody.

Rookw. I challenge him.

Cl. of Ar. Richard Bealing.

Rookw. I challenge him.

Cl. of Ar. Thomas Evans.

Rookw. I challenge him.

Cl. of Ar. Thomas Rammage.

Rookw. I challenge him.

Cl. of Ar. Edward Townſend.

Rokw. I challenge him.

Cl. of Ar. William Gunſton.

Rookw. I challenge him.

Cl. of Ar. Samuel Freebody.

Rookw. I do not except againſt him. (*He was ſworn.*)

Cl. of Ar. Philip Wightman.

Rookw. I challenge him.

Cl. of Ar. There are now Thirty two challenged. *John Wyberd.*

Rookw. I challenge him.

Cl. of Ar. William Strowd.

Rook. I challenge him.

Cl. of Ar. Daniel Byfeild.

Rook. I do not except againſt him. (*He was ſworn.*)

Cl. of Ar. Benjamin Noble.

Rook.

Rook. I have nothing to ſay againſt him. *(He was ſworn.)*

Cl. of Arr. Cryer, count them. *Samuel Powell,*——

Cryer. One, *&c.*

Cl. of Ar. Benjamin Noble.

Cryer. Twelve good Men and true, ſtand together, and hear your Evidence.

The Names of the Twelve ſworn were theſe.

Samuel Powell,
Arthur Bailey,
John Webber,
George Tredway,
Timothy Lennoy,
John Harris,
George Carter,
William Atley,
John Marſh,
Samuel Freebody,
Daniel Byfeild, and
Benjamin Noble.

L. C. J. Look ye, Mr *Phipps*, your Objection upon the Indictment ſlipt me, and therefore I would ſpeak to it now: You ſaid it might be as well a Copy of the Indictment before it be found, as well as this a Copy of the Pannel before it be returned. Now that can't be, for an Indictment is not an Indictment till it be found, it is only a Writing prepared for the Eaſe of the Jury, and for Expedition; it is nothing till it is found, for the Jury make it an Indictment by finding it, they may alter what they pleaſe, or refuſe it abſolutely. And if the Jury, upon examining the Witneſſes, would only preſent a Matter of Fact, with Time and Place, the Court might cauſe it to be drawn up into Form, without carrying it to the Jury: Again, There needs no *Billa vera*; for that is only the Jury's Owning that which the Court has prepared and drawn up for them: But a Pannel is a Pannel when it is arrayed, before it be returned, and a Copy of the Pannel given before it be returned, is a Copy of the Pannel returned, if it be afterwards returned, as it muſt.

Sir *Barth. Shower.* But, my Lord, that Notion ſtrengthens our Objection that we laſt made, that makes it neceſſary that we ſhould have a Copy of the *Caption*, as well as the other Part, to make it a true Copy of the whole Indictment.

L. C. J. That's another Thing, we will talk of that another Time; but I ſpeak of this only as to his Objection which ſlipt my Memory, becauſe I would have nothing remain unanſwered.

Mr *Phipps.* My Lord, when the Bill is found, the Copy that we delivered before is as much a true Copy of the Indictment as our Copy of the Pannel is a Copy of the Jury returned.

L. C. J. A Pannel is a Pannel when it is arrayed, but a Bill is not an Indictment till it be found; one cannot ſay a Man *indictatus exiſtit*, till it be found; all that we ſay of it before it be found, is that there was *quædam Billa* preferred to the Grand Jury, and if the Jury bring it in *Ignoramus*, whereby they diſown the Preſentment, it is cancelled, and there is no Record of it, nor nothing, only a *Memorandum* in the Clerk's Book perhaps, that ſuch a Thing was. Well, go on.

Cl. of Ar. Cryer make Proclamation.

Cryer. O yes, If any one can inform my Lords the King's Juſtices of *Oyer* and *Terminer*, the King's Serjeant, the King's Attorney General, before this Inqueſt be taken, of the High Treaſon whereof *Ambroſe Rookwood*, the Priſoner at the Bar ſtands indicted, let them come forth, and they ſhall be heard; for now the Priſoner ſtands at the Bar upon his Deliverance, and all others that are bound by Recognizance to give Evidence againſt the Priſoner at the Bar, let them come forth, and give their Evidence, or elſe they forfeit their Recognizance.

Cl. of Ar. Ambroſe Rookwood, hold up thy Hand. *(Which he did.)* You that are ſworn look upon the Priſoner, and hearken to his Cauſe. He ſtands indicted by the Name of *Ambroſe Rookwood*, of the Pariſh of St. *Paul Covent Garden*, in the County of *Middleſex*, Gent. for that he, together with *Chriſtopher Knightley*, not yet taken, *Robert Lowick*, and *Charles Cranburne*, and divers others, falſe Traytors, *&c.*——*prout* in the Indictment, *mutatis mutandis*—— and againſt the Form of the Statute in that Caſe made and provided. Upon this Indictment he hath been arraign'd, and upon his Arraignment hath pleaded not guilty, and for his Trial hath put himſelf upon God and his Country, which Country you are; your Charge is to inquire, whether he be guilty of the High Treaſon whereof he ſtands indicted, or not guilty; if you find him Guilty, you are to inquire what Goods ot Chattels, Lands or Tenements, he had at the Time of the High-Treaſon committed, or at any Time ſince: If you find him not guilty, ye are to inquire whether he fled for it; if you find that he fled for it, you are to inquire of his Goods and Chattels, as if you had found him guilty; if you find him not guilty, nor that he did fly for it, you are to ſay ſo and no more: And hear your Evidence.

Mr *Mountague.* May it pleaſe your Lordſhip, and you Gentlemen of this Jury, this Indictment that has been read to yon, does charge the Priſoner with High Treaſon for Compaſſing and Imagining the Death of the King, for endeavouring to ſubvert the Government, and to ſubject the People of *England* to the Slavery of *Lewis* the *French* King, and for this End the Indictment ſets forth, that the Priſoner at the Bar did privately meet with ſeveral falſe Traytors, to conſult how they might compaſs the Death of the King, and commit thoſe other Treaſons; and that the 10th of *February*, at *Covent Garden*, in this County, it was agreed among them, that they ſhould get together Forty Horſemen whereof the Priſoner at the Bar was to be one, and they were to lie in Ambuſh, and ſet upon the King in his Coach upon his Return from going abroad; ſome were to attack the Coach, others to attack the Guards, and there were to kill the King in the Coach: And the Indictment does likewiſe charge the Priſoner with gathering together Horſes, and providing Arms for this Purpoſe. To this Indictment, Gentlemen, he hath pleaded not guilty; we ſhall call our Witneſſes, and prove the Fact, and when we have ſo done, we do not at all doubt but you'll do your Duty.

Sir *B. Shower.* My Lord, before the Witneſſes are called we have a Doubt to propoſe to your Lordſhip upon this Act of Parliament, and that is, whether we are to take our Exceptions to this Indictment before the Evidence be opened or given?

L. C. J. It ſhould properly be before the Jury is ſworn.

Sir *B. Shower.* The Words of the Act, my Lord, is before the Evidence given.

L. C. J. That Act provides, That if you do not take the Advantage of it, before the Evidence given,

given, you ſhall not move that in Arreſt of Judgment.

Sir *B. Shower.* It only ſays before Evidence given, and no Evidence has yet been given.

L. C. J. But you are certainly very irregular in point of Practice, no Body ever took Exceptions to an Indictment after the Jury was ſworn.

Sir *B. Shower.* If your Lordſhips pleaſes to let the Words be read of the Act of Parliament, they are theſe, That no Indictment ſhall be quaſh'd, unleſs Exception be taken in the Court where the Tryal ſhall be, before any Evidence given in Court upon that Indictment. Which, we ſay, ſtrongly implies that the Law-makers thought it might be done at any Time before the Evidence was given in open Court, beſides that the Law takes Notice that after Conviction it ſhould be of no Avail, it would have been a very improper Expreſſion before Evidence given in open Court, if it had meant before the Jury were ſworn and charged; for the Word Evidence ſuppoſes the Tryal commenced: If they had intended it otherwiſe, that is, that it ſhould be before the Jury is ſworn, they would have expreſs'd it to be done at the Arraignment; but mentioning it to be done in the Court where the Tryal is to be, before Evidence given, that ſuppoſes the Indictment to be at Iſſue before the Party needs to make his Exceptions. Therefore, my Lord, we hope we are regular in offering our Exceptions now.

L. C. J. Pray, what ſay you to it, Mr Attorney?

Mr *Att. Gen.* Truly, my Lord, I think they are no Way regular; for, with Submiſſion, I take it, that though this Act of Parliament has indulged them in ſeveral Things which were not allowable by Law before, yet as to this Part they are not allowed to take Exceptions to the Indictment, otherwiſe than they could before this Act was paſs'd: Nay, ſo far from that, that if your Lordſhip looks into the Act, you find they are reſtrain'd in this Point from an Advantage that they had before, that is they ſhall not move any ſuch Things as are there mention'd, after Verdict, in Arreſt of Judgment: So that this Part is reſtrictive to the Priſoner, and takes away ſome Advantage that he had before; which was, moving in Arreſt of Judgment after Verdict; but it leaves the making Exceptions as to any Time before the Verdict, as it was before, which was before Plea pleaded, but not after the Jury ſworn: For it cannot be denied that in point of Practice, ſuch a Thing as this that is now offered could not have been done before the Act. I would be glad to know whether they can ſhew any Precedent of any ſuch Thing as they now contend for. They ſay, the Words of the Act are, Exception muſt be taken before Evidence given; but that muſt be taken at ſuch a Time as they might by the Courſe of Law do it before: For when the Jury is ſworn, they muſt give a Verdict, and I do not know how they can be diſcharged without giving a Verdict; therefore unleſs the Act had given Directions for a particular Manner of Proceeding in this Matter, which it has not done, your Lordſhip will not, I preſume, do it in any other Manner than as it was before the Act made; and if there be no Precedent to be ſhown of any ſuch Thing as this, of taking Exception to an Indictment after the Jury ſworn and charged with the Priſoner; then there is no Power in this Act of Parliament, given to them to take Exceptions to this Indictment at this Time, we take it the Motion is very irregular upon all Accounts.

Mr *Sol. Gen.* My Lord, we firſt ſay, that it is not proper for them to make any ſuch Motion as this upon this Act of Parliament, till they tell us what their Exception is, that we may ſee whether it be within the Words and Meaning of this Act of Parliament. The only Thing now that is proper for us to conſider, is the Iſſue joined, and the Inquiry whether the Priſoner at the Bar is guilty of the High-Treaſon of which he is indicted, to which Indictment he has pleaded not guilty: That's the Thing that is now before your Lordſhip to be tried, they have Room for Exceptions to the Indictment afterwards, for ſome Exceptions I mean, (I do not know what their Exceptions are) but if they be ſuch as may be taken after the Verdict, then I am ſure they are irregular now in their Motion, and they can ſhew no Precedent, when it was done after Plea pleaded and Iſſue joined, as it is in this Caſe.

Mr *Conyers.* The Advantage that the Act gives the Priſoner, of having a Copy of his Indictment ſo long before Tryal, is to enable him to plead, or to take Exceptions to quaſh it; but I never heard a Motion to quaſh an Indictment after a Jury is charged to hear the Evidence, Certainly they ought to do it before Plea pleaded, and not now to come to make a Motion to quaſh the Indictment, after they have pleaded, and the Jury ſworn: Therefore we ſubmit it, upon the conſtant Practice in like Caſes, to the Judgment of the Court.

Sir *B. Shower.* In Anſwer to that which Mr Attorney has ſaid, That it is an improper Time; I thought truly I had moved it for the Advantage and Eaſe of the King's Council, that they might not proceed upon this Tryal, when perhaps after all their Trouble, the Foundation, which is the Indictment, may fail. I have a great many Exceptions to the Indictment; they ſay we ſhould name what our Exceptions are: I will acquaint them with them, as faſt as I can, if your Lordſhip pleaſe, the Indictment is very looſe and uncertain.

L. C. J. Certainly the Motion is irregular in point of Practice.

Sir *B. Shower.* My Lord, we were afraid we ſhould be excluded from taking theſe Exceptions after the Evidence given.

L. C. J. So you are by the expreſs Words of the Act.

Sir *B. Shower.* Then certainly we may do it before the Evidence given.

L. C. J. But the Act does not ſay, Ye ſhall do it at any Time before the Evidence given, eſpecially in ſuch an irregular Manner, after Iſſue joined, and the Jury ſworn. Suppoſe Mr Attorney had given ſome Evidence.

Sir *B. Shower.* Then, my Lord, I agree we had been without the Words; therefore I now move it before the Evidence, becauſe the Act of Parliament has given me a Liberty to do it before the Evidence given: For the Law having given this Liberty to the Priſoner, to make ſuch Exceptions within ſuch a Time, your Lordſhip will not reſtrain us from making Uſe of that Liberty further than the Law has reſtrained, but we may make Uſe of our Exceptions before the Evidence given, either

either to induce your Lordſhip to quaſh the Indictment, or the Jury to find us not Guilty, as we hope your Lordſhip will direct them to do: For what is more common upon Indictments after the Jury are ſworn, than if Facts appear upon the Record not to be ſufficiently alledged, the Court will direct the Jury to find the Party not guilty. We think this Act does give us this Liberty, otherwiſe I know not to what Purpoſe it was made, the very Meaning ſeems to be, that the Exceptions of the Counſel for the Priſoner might be of Prejudice to the King; and therefore it ſays, After the King's Evidence given, and the Fact diſcovered, no ſuch Exception ſhall be made: Therefore we muſt make it before the Evidence given, otherwiſe this Act of Parliament that was deſigned in Favour of the Priſoner, will prove a very great Hardſhip upon him, eſpecially in Caſe of an imperfect Indictment, as we apprehend this is, and he will be in a worſe Condition than ever he was; he muſt take his Exceptions now or not at all. The Act ſays, He is not to take it after Evidence given; and by Conſtruction the King's Council would have it, That he ſhould not give it before: And conſequently he has no Time at all to give it.

L. C. J. Have not you had Time to do it before now Sir *Bartholomew Shower*, certainly you had? You had Time this Day Sevennight, when you were arraign'd; you have had your Opportunity if you would have taken it; the Jury are now charg'd, the Indictment is opened, they have been told what they are to enquire of, and now you would break in and take Exceptions to the Indictment.

Sir *B. Shower*. My Lord, This is a new Act of Parliament, it ſays we ſhall take our Exceptions before the Evidence given; which we take it, is any Time before the Evidence given; and if your Lordſhip will not allow us to do it now, it may be we may loſe the Benefit of it abſolutely.

L. C. J. It is one Queſtion whether we ſhall allow it or no, and another Queſtion whether you can claim it or no: Certainly it is an irregular Motion, and the like of it was never offered in any Caſe before, be it Criminal or Civil: For if it be a Criminal Caſe that is not Felony or Treaſon, when the Iſſue comes to Tryal upon an Indictment, Did you ever know any Exception taken to the Indictment after the Jury were charged? Certainly it is contrary to all Practice; and it is not fair, the Court is not well dealt with, you have had an Opportunity before, and will you now put the Court and the Jury to ſo great deal of Trouble, to ſtay till the Jury be called over, the Priſoner called to his Challenges, he has challenged Thirty four, the Jury is ſworn, the Indictment is read to them, the Charge given them, the Council have opened the Indictment, and now when the Buſineſs is only to try the Iſſue with which the Jury are charg'd, you come to turn us quite round, by taking Exceptions to the Indictment.

Mr *Phipps*. My Lord, We take it the Act gives us this Time to do it in.

L. C. J. You know you had another Time more proper to do it in.

Mr *Phipps*. My Lord, If we have not time now, then this Clauſe, with humble Submiſſion, ſignifies nothing at all.

L. C. J. The Clauſe was made in this Reſpect, to your Diſadvantage, becauſe you ſhould have a Copy of the Indictment, whereby you might have an Opportunity to adviſe with Council, that they might inſtruct you how to plead, and to take any manner of Exception before Plea pleaded, it ought to be before the Tryal, and now becauſe of this Advantage, it provides that you ſhall take your Exceptions before the Tryal, and not move them in Arreſt of Judgment; that is the Meaning of the Act.

Mr *Phipps*. Then, my Lord, there needed no Time at all to be mentioned in the Act, but have left it as it was at Common-Law.

L. C. J. Yes, Yes, there did need a Time to be limited, for this Clauſe was made I ſay in your Diſadvantage, in depriving the Priſoner of the Benefit of ſuch kind of Exceptions in Arreſt of Judgment, becauſe of the Advantage that was given in the former Part of the Act, where you had Time given you to make your Exceptions, for which End you are to have a Copy of the Indictment five Days before you are called to plead.

Sir *B. Shower*. We could not come before, my Lord, as we apprehend, becauſe the Words of the Act are before Evidence given.

L. C. J. But I tell you, this Clauſe was not for your Benefit, but for your Diſadvantage.

Sir *B. Shower*. My Lord, What we preſs, ariſes from the very Words of the Act of Parliament, if the Meaning of the Law-makers was as the King's Council now contend to have it; they would never have uſed thoſe Words before Evidence given in open Court, but have ſaid they ſhould have had no Advantage of the Exception, unleſs it were before Plea pleaded; it does not ſay it ſhall be after the Verdict, or before the Verdict, but before the Evidence given: Now if they had meant what theſe Gentlemen ſay, they would have appointed it to be before the Verdict, which would have included the Tryal; becauſe then it had been like the Penning of other Acts of Parliament, the Statutes of *Jeotailes* and the like, which ſay, That after a Verdict, ſuch and ſuch Exceptions ſhall not Arreſt a Judgment: But if they can ſhew me any Statute that is penn'd like this, they give me an Anſwer: All thoſe Statutes are, That no Judgment ſhall be arreſted or delay'd upon ſuch or ſuch Exceptions after a Verdict: But here it ſays, They ſhall not arreſt Judgment, unleſs the Exception be taken before Evidence given in open Court. My Lord, We ſubmit it to you, we think the Law-makers did intend ſomewhat by that particular Way of Expreſſion, different from all other Acts of Parliament; and truly if it be not as we offer to your Lordſhip, we think it can have no Meaning at all.

Mr *Att. Gen.* Truly, my Lord, we think it is very plain what the Parliament meant by this Clauſe in this Act, the Deſign was, to reſtrain the Priſoner from moving in Arreſt of Judgment, for Miſ-ſpelling, or falſe Latin, or little Matters of Form, if he did not move it in a proper Time, having ſuch a Liberty allow'd him, as to have a Copy of the Indictment ſo many Days before he was compelled to plead: They inſiſt upon it, that the Words are, Before Evidence given; It is ſo: But what can be the Meaning of that? It muſt be at ſuch Time as the Law allows; it is not making a new Method of Tryal; you ſhall take Exception before the Evidence, that is, before the Tryal, for it can never be intended, that they meant to alter the Courſe, and let the Coun-

cil

cil break in between the Time of the Jury's being ſworn, and the Evidence given, that by no Law could ever have been done before.

Sir *B. Shower.* Pray, Mr. Attorney, when would you have us do it?

Mr *Att. Gen.* Regularly before Plea pleaded, at leaſt-wiſe before the Jury be ſworn.

L. C. J. Undoubtedly this is not regular, it is contrary to all the Courſe of Practice, it is not fair Dealing with the Court. But then there is another Conſideration in the Caſe, that I would have you think upon: If ſo be this had been at a Tryal by *Niſi Prius*, then the Judge of *Niſi Prius* is only to try the Iſſue; but now here the very Record is before us, and we are Judges of the Record, as well as we are to aſſiſt the Jury in Trying the Iſſue. Now take it in any other Caſe of the like Nature, Suppoſe a Tryal at the Bar in any Civil Cauſe, though this be contrary to Practice, and the Court not fairly dealt with, yet when we have the Record before us, and find an Error in the Record, cannot we quaſh the Indictment and diſcharge the Jury. That is the Queſtion, Mr. Attorney, though I muſt confeſs, I do not know that it has been practicable.

Mr *Att. Gen.* No, my Lord, in a Caſe of Treaſon, where the Jury are once charg'd, they are to give a Verdict, they muſt either acquit or convict.

Sir *B. Shower.* It was done in *Whitebread*'s Caſe.

Mr *Att. Gen.* But I know what has been uſually thought in that Caſe, and I believe they cannot ſhew me another.

L. C. J. Nay, that this is a very irregular Motion, is very plain.

Mr *Sol. Gen.* Certainly, my Lord, you muſt take it as the Law was before this Act, for this Clauſe does nothing for the Priſoner, but is againſt him.

L. C. J. I know it is not for the Advantage of the Priſoner, therefore I put it as a Caſe in an Action, or an Indictment, as the Law was before, whether this being a Tryal in the ſame Court where the Indictment was found, and we find an Inſufficiency in the Record before us, whether we cannot quaſh the Indictment.

Mr *Soll. Gen.* Your Lordſhip mentions Civil Actions, with Submiſſion, nothing of that kind could be done after once the Cauſe came to Tryal, but in Criminal Cauſes according to the Courſe of Practice, which will always be the Law till particularly altered, I believe no Body can pretend, that after Iſſue joyn'd, and a Jury charg'd, any one can move to quaſh the Indictment. I think I have heard it often ſaid in this Court, that in Capital Caſes, as High Treaſon, you may put in a Plea in Abatement of, but not a Motion to quaſh an Indictment; I am ſure it was diſallowed where I moved to quaſh an Indictment of Murder, let them but ſhow any Preſident of this Nature.

Sir *B. Shower.* We will ſhow you, tho' this is the firſt Caſe upon this Act of Parliament, therefore to ſhow any practice upon it would be very hard to require of us.

L. C. J. But can you ſhow it before this Clauſe in this Act of Parliament, which, as I told you, is not for your Advantage, it does not give that Liberty that you deſire.

Sir *B. Shower.* All the Clauſes in this Act of Parliament ſhow'd their Intention was this, that the Senſe of the Law-makers was, that we ſhould have this Liberty at any Time before Evidence given, for if there be ſuch Words as ſhow'd they thought it might be quaſh'd at any Time, tho' they were miſtaken in the Practice, yet we ſhall have the Liberty that they intended us, and the Wording of this Act ſhows, that the Parliament thought it might be done after the Tryal begun before Evidence given, becauſe they reſtrain us from taking thoſe Exceptions after the Evidence given, and it is no Prejudice to the King at all really, it is rather for the Advantage of the Proſecution, becauſe there is none of the Evidence diſcloſed, and therefore if the Indictment ſhould be found faulty, ſtill the Evidence remains undiſcovered upon another Indictment; and I have often heard it ſaid at this Bar in Caſes of Indictments for Felony or Treaſon, as Murder, or the like; if any one did come as *amicus curiæ*, and acquainted the Court, that they were going to proceed upon an erroneous Record, or give an erroneous Judgment, or do any other erroneous Act, he ought to be received with Kindneſs, becauſe he would prevent a Wrong doing.

L. C. J. That is in the proper Time not to interrupt the Tryal when the Jury is once ſworn.

Sir *B. Shower.* We are ready to offer our Exceptions, and we hope it is no Prejudice at all to the King before the Evidence of the Fact is given.

Mr *Phipps.* My Lord, I perceive that this Clauſe, as they would have it, is intended to prevent us from moving that in Arreſt of Judgment, which we could have moved before, and ties us up to do it before Evidence given; now I would fain know, if we could not before this Act move in Arreſt of Judgment, for miſ-ſpelling, or falſe Latin, or improper Latin.

Mr *Att. Gen.* You might, no Doubt of it.

Mr *Phipps.* They ſay we might; why then, if we could have a Time to move it after the Verdict, and that Time is abridg'd by the Act of Parliament, which directs that it ſhall be before Evidence given in open Court, ſure we may take any Time before the Evidence given, and ſhall not be reſtrain'd further than the Letter of the Law has reſtrain'd us, for this Act was intended for the Benefit of the Subject, and ought to be conſtrued as much in their Favour as the Letter of it will permit.

Mr *Att. Gen.* No doubt of it, it is to be done before Evidence given; but the Queſtion is, at what Time it muſt be before the Evidence given, whether it muſt not be at ſuch Time as by the Courſe of Practice and Uſage of the Law it ſhould have been done before; if you will ſatisfie my Lord and the Court that ever ſuch an Exception was taken, or an Indictment quaſh'd between the Swearing of the Jury and the giving the Evidence, ye ſay ſomething; but I believe not one Inſtance of that Nature can be given, and therefore it is very irregular for them to do it.

L. C. J. They don't pretend to it, for ought I hear, for I would put them upon it, to ſhow me whether they could do it before.

Sir *B. Shower.* I don't queſtion, my Lord, but it might be, with Submiſſion.

Mr *Conyers.* Did you ever know it before that any one undertook to inform the Court as *amicus curiæ*, but it was to prevent a wrong Judgment, and for that you have your proper Time either before

before Plea pleaded by Motion to quaſh the Indictment, or after Verdict to arreſt a Judgment; this Act of Parliament has reſtrain'd you in particular Inſtances that are mention'd from doing it after Verdict in Arreſt of Judgment, but having given you a Copy of the Indictment before you pleaded, you have had a proper Time to make theſe Exceptions, and if you have laps'd your Time you come too late to do it now, for ſure no Body ever made a Motion to quaſh an Indictment after Iſſue joyn'd and the Jury ſworn.

Mr *Soll. Gen.* My Lord, I would only mention one Caſe, and that was of Sir *Richard Manſell*, upon an Indictment of Murder for Killing the Apothecary in *Holbourn*; I did my ſelf move to quaſh the Indictment, becauſe it was not expreſs'd in what Year of the King the Fact was done; but the Court was of Opinion we could not move to quaſh an Indictment for that or any ſuch notorious Crime, till after the Fact determined.

L. C. J. No, we were always of that Opinion, never to allow Motions to quaſh Indictments for Perjury, Murder, or any great Offence, but it muſt be moved in Arreſt of Judgment afterwards.

Mr *Cowper*. My Lord, theſe Gentlemen ſeem to beg the Queſtion upon this Act of Parliament, as if it had appointed this to be the Time of making Exceptions to the Indictment, the Act of Parliament does not ſay you ſhall make your Exception immediately before the Evidence given in open Court, as if it had pointed out and directed to them that particular Time, that then they ſhould take their Exception and no other Time: The Act has only ſet a Bound, that they ſhall not do it afterwards, but as to the particular Time, it is left as it was before, to the regular Courſe and Method of Proceedings, which is before Plea pleaded.

Mr *Phipps*. My Lord, they do not anſwer my Objection, it is, it ſeems, a Reſtriction of a Liberty that we had before of moving in Arreſt of Judgment; if ſo, we ought not to be reſtrained further than we are by the Words of the Act of Parliament, which ſay, before Evidence given, that is at any Time before Evidence given, as well after as before Plea pleaded.

Sir *B. Shower*. I would ask theſe Gentlemen, whether the Law-makers intended that we ſhould have no Advantage of excepting againſt falſe Spelling and improper Latin.

Mr *Conyers*. Yes, they did, but that you ſhould do in your proper Time.

Sir *B. Shower*. Then the Time for doing it muſt be that which the Words of the Law ſay, before the Evidence given in open Court, and that's now.

Mr *Conyers*. No, you might have come at the Day of Arraignment, and have taken the Advantage of it then before you had pleaded.

L. C. J. Ye have had my Opinion what I think of it, my Lords and Brothers, I ſuppoſe will tell you theirs.

L. C. J. *Treby*. My Lord Chief Juſtice has delivered his Opinion in this Matter, and he thinks fit that we ſhould deliver ours. I think this Motion of the Priſoner's Council to quaſh this Indictment after the Jury ſworn, is irregular and quite out of Seaſon; the Intent of this Clauſe in this Act of Parliament, certainly was not in Favour of the Priſoner, it abridgeth him of a Liberty he had before, but gives him nothing: For the Law-makers did think they had given the Priſoner an extraordinary Favour in the foregoing Part of the Act, in giving him a Copy of the Indictment five Days before he ſhould plead, and a Copy of the Pannel two Days before he ſhould be tryed, and allowing him Council, and all theſe Advantages were to enable him to quaſh the Indictment, or the Proceſs returned, for the Clauſe extends to both; the Words are, *That no Indictment nor Proceſs or Return thereupon, ſhall be quaſh'd on the Motion of the Priſoner or his Council for Miſ-writing, Miſ-ſpelling, falſe or improper Latin, unleſs Exception concerning the ſame be taken and made in the reſpective Court where ſuch Tryal ſhall be by the Priſoner or his Council aſſign'd before any Evidence given in open Court upon ſuch Indictment, nor ſhall any ſuch Miſ-writing*, &c. *after Conviction be any Cauſe to ſtay Judgment:* Therefore they made this extraordinary Proviſion to reſtrain the Priſoner, in Part, by this Clauſe; as much as to ſay you have an Advantage of the Copy of the Indictment, and you may make uſe of that to quaſh it by Motion, if you think fit, as you may alſo the Proceſs, but it ſhall be *before Evidence given.* 'Tis true, thoſe are the Words, but the uſing that Term, *viz. quaſhing* ſuch Indictment or Proceſs, ſhows it muſt be done in ſuch a Way and Time as is proper for quaſhing; and the very Words are, that it ſhall be *upon Motion.* Now we are to expound thoſe Words. And I ſay, a *Motion* to *quaſh* an Indictment, muſt be underſtood a Motion in the proper Seaſon, which I think is before Plea pleaded; but at leaſt before the Jury is ſworn. There were three Times when the Priſoner might have had the Advantage of a Fault in the Indictment before this Act: 1. By Motion to quaſh it before Plea pleaded. 2. Then afterwards in Arreſt of Judgment: And 3. After that by Writ of Error. Now this Clauſe of this Act takes away the Privilege of moving in Arreſt of Judgment for Miſ writing, &c. but ſaves the Advantage upon a Writ of Error, and upon a Motion to quaſh the Indictment. We are to conſider what is a proper Time for a Motion to quaſh an Indictment, the Motion is to be made to the Court, and to them alone. It is not to be made to the Court and the Jury. When the Jury is ſworn, all Application is to be made to the Court, as having a Jury preſent which they are to aſſiſt in the Tryal and Determination of the *Fact* only. What Uſe then is there of the Jury, when you make this Motion, which conſiſts only in Points of *Law?* They muſt ſtand by and be out of Office all the while this Motion is making: And it is not reaſonable, nor certainly ever was intended that after a Jury is ſworn to try a Matter of Fact, they ſhould ſtand idle, while you move a Thing which you ſhould have moved before they came to the Bar, ſuppoſe you ſhould now move ſome Exception to the *Venire*, and the Return thereupon, ſhould we, when we and you alſo have admitted the Jury to be ſworn, quaſh the Proceſs whereby they are return'd? And yet we may as well do that as this. For, the Act provides in the very ſame Words concerning Quaſhing *Proceſs* and *Indictments*. But, when the Jury is ſworn, and ready to receive their Evidence, ſure, then it is out of all Seaſon to make ſuch a Motion, therefore I do not think the Parliament intended by this Clauſe (which was a kind of Exception to the Favour the Priſoner receiv'd

ceiv'd by having the Copy of the Indictment) to inſtitute a new Method of Proceedings for Motions to quaſh Indictments, even when a Jury is at the Bar and ſworn to try the Iſſue, and there is nothing proper to be proceeded upon but only to hear the Evidence produc'd for the Proof of that Iſſue, till the Jury is diſcharged. But ſtill this I would ſay; this is a new Caſe, and upon a new Statute. I am truly of Opinion, that the Motion is altogether unſeaſonable and irregular, and it ſhould have been made before, and you had a full Opportunity to make it this Day Seven-night before Plea pleaded, and you might likewiſe to Day before the Jury was ſworn; therefore when the Jury are now at the Bar actually enter'd into, and imploy'd upon the Service, the Court ought not to be interrupted by ſuch a Motion. Yet nevertheleſs I would propound this, that, ſeeing it is a new Caſe and upon a new Statute, the Court would forgive the Irregularity (for I think it does need Forgiveneſs) and if the King's Council will conſent to it (to prevent any Error or any Pretence of Hardſhip upon a new Law) that we ſhould hear their Exceptions.

L. C. Baron. This Act of Parliament, as it has given a Benefit to the Priſoner that he had not before, in allowing him a Copy of his Indictment, in Order to his making Exceptions; ſo it has reſtrained him as to the Time of making thoſe Exceptions: That he ſhou'd have Time, there is no Doubt; the Time limited for it, as this Act ſays, muſt be before Evidence given, becauſe they thought it unreaſonable that there ſhou'd be any Quaſhing of the Indictment after ſuch Time as the King had given any Evidence whatſoever in the Caſe, for that wou'd be a Diſcovery of the King's Evidence, and great Inconveniencies wou'd enſue thereupon; but the Queſtion is at what Time this is to be done; Whether it may be at any Time before Evidence given, or no; it did intend ſurely that the Motion to quaſh the Indictment and the Exceptions to it might have their proper Effect, and that muſt be before the Tryal; for it was not the Intent of the Act to alter the Method of Proceedings, and it is to no Purpoſe after the Jury is ſworn, for then their proper Office is to determine the Fact; now if before this Act of Parliament it never was allow'd to take any ſuch Exception as this after the Jury ſworn, it will be conſiſtent with the Words of the Act of Parliament, which are, *That it ſhall be done before Evidence given:* If then it be in the regular Time for Motions, which is before Plea pleaded or Jury ſworn, that is, before Evidence given; for it is not ſaid, as Mr. *Comper* obſerved, that it ſhou'd be immediately before the Evidence given, I think ſure ſuch an Expoſition as was formerly made ought to be made in this Caſe, the Time not being preciſely fix'd by this Act, if there were a certain Time determin'd when Men ſhould take their Exceptions, as we know it has been in Practice before Iſſue joyn'd, then after the Jury is ſworn it is an improper Time then, I think, to make ſuch Exceptions: I do not ſuppoſe this Act, as to the Method of Proceedings—, than it was before, but this Exception ought to be taken before Plea pleaded: Truly it is a new Act of Parliament, and this is ſo far within the Words of the Act that it is before Evidence given, as the Council for the Priſoner ſay. If this can be govern'd and ruled by Proceedings and Practice in former Times in Caſes not of Felony or Treaſon but only in Criminal Caſes. If no Body ſhould ſuffer by any Interpretation, I ſhould think it ought to bear a conformable Conſtruction to what the Practice was before, I take it you have loſt the regular Time for making your Exception, and you invert the whole Method of Proceedings upon Tryals; for to what Purpoſe is it to take Exceptions to quaſh the Indictment when the Jury are once charged with it: If it be an Indictment that ought to be quaſh'd, the Jury ought not to be charged, you have had two Times, and they are both of them elaps'd for this Matter, that is, at the Arraignment, and before the Jury ſworn; yet I would propoſe it to the King's Council as my Lord Chief Juſtice of the Common Pleas has done, it being a new Caſe, that it ſhould be better conſider'd of and agreed upon, that in theſe Caſes we may go on upon a certain Rule that it may be eſtabliſh'd for all Time to come.

Mr *J. Nevile.* I wou'd begin with the Propoſal, becauſe, I believe, I may not be ſo clear in my Opinion, otherwiſe I muſt deliver my Thoughts according to my Judgment, but I wou'd have the King's Council conſider of the Propoſal.

Mr *Att. Gen.* My Lord, for us to conſent to that in ſuch a Caſe as this, where the Court thinks it not regular, would be pretty hard to deſire of us, if any Thing of Advantage ſhould happen on the other Side, I verily think the Council for the Priſoner will not be ſo ready to conſent to wave any ſuch Advantage, nor am I for asking them to do it; this Clauſe goes only to ſome Faults in the Indictment; Miſ-ſpelling, Miſ-writing, falſe and improper Latin, that is all that they are reſtrain'd from moving in Arreſt of Judgment; any Thing elſe, any Uncertainty or other Matter that is not comprehended under theſe Particulars they may take Advantage of to move in Stay of Judgment after a Verdict, this Clauſe does only abridge them from moving in Arreſt of Judgment for Miſ-writing, Miſ-ſpelling, falſe or improper Latin, therefore if your Lordſhip ſhould think it reaſonable we ſhould conſent to let them in to make any Exception now, it muſt be confin'd to thoſe particular Objections of falſe and improper Latin, there can be no Colour to make the Liberty larger, becauſe for any Thing elſe they are not reſtrain'd from moving it in Arreſt of Judgment, for there can be no Hardſhip in that Caſe, as I think, they have no Reaſon to complain that there has been in any other Part of the Caſe, but for thoſe Particulars that there may be no Complaint of Hardſhip, if your Lordſhip thinks it reaſonable we ſhould conſent, it may be we may be prevail'd upon to do it, though whatever Hardſhip does happen it is their own Fault, and the Priſoner may thank his own Council for that Hardſhip: If we aſſiſt them now to let them in, it ought to be taken as a great Kindneſs; and truly, my Lord, I am unwilling to do any Thing that your Lordſhip and the Court ſhould think hard upon the Priſoner. Certainly it is the Fault of their own Council now the Law has allow'd the Priſoner Council, not to take the proper Time, and purſue the uſual Methods; and it is a Strain beyond what is uſual, that we muſt help their Faults by our Conſent; however, if the Court think it reaſonable, I ſhall

not

not be againſt it, but then I am ſure the Court will take Care they ſhall be confin'd to thoſe Particulars that are mentioned in the Act.

L. C. J. No Doubt of it: Therefore Sir *Bartholomew Shower*, are your Exceptions for Miſſpelling, Miſ-writing, or falſe or improper Latin? for if they be ſuch Things as you may move in Arreſt of Judgment, and have that Advantage, then there is no Colour that we ſhould break through all the Rules of Proceedings to admit ſuch an irregular Motion as this.

Sir *B. Shower*. My Lord, in the Caſe of a Life of a Man I will not take upon me to ſay what is Miſ-ſpelling, Miſ-writing, or falſe or improper Latin, or what is ſubſtantial, but all that I ſay is, I have Five Exceptions, every one of them imports a Doubt, as I take it, worthy the Conſideration of the Court, and ſome of them effectual enough to quaſh the Indictment; but for me, when a Man's Life is at ſtake, and it partly depends upon me as his Council, to ſay what is proper or improper Latin, or to admit it to be Matter of Subſtance, and then to Morrow to have it come and told me, you ſhould have mov'd this to Day, then I am ſure they would have Reaſon to ſay, it was the Fault of the Priſoner's Council; for he would have choſen very ill Council, in me, I confeſs, if I ſhould conſent to put any ſuch Diſadvantage upon him. I beg the Favour that I may have the Liberty to propoſe my Objections, which I think are worth Conſidering of; it is for the Advantage of the King for us to take our Exceptions all together, becauſe, elſe if any of them prove material, the Trouble of the Tryal will be but Miſpence of Time.

L. C. J. No, we cannot hear all your Objections, but thoſe that are mention'd particularly in the Act of Parliament, for ſuch as are not mentioned in the Clauſe, you have a proper Time to move them in Arreſt of Judgment.

Sir *B. Shiwer*. Then we will put thoſe that are within the Act.

Mr *Att. Gen.* If we do any Thing by Way of Conſent in this Matter, we muſt inſiſt upon it, that they be confin'd to the Particulars in the Act, we deſire they may open their Objections to the Court, and if the Court ſhall think they are properly under thoſe Heads, then they will conſider of them, if the Court be of another Mind, then they muſt be reſerv'd till the proper Time.

L. C. J. Do you conſent then, Mr. Attorney, that they ſhall now take thoſe Exceptions that are mentioned in the Act of Parliament?

Mr *Att. Gen.* If the Court think it reaſonable upon thoſe Terms, I do.

Mr *J. Powys*. Let them open them if your Lordſhip pleaſe, and let us keep the Power in our own Hands to do as our Diſcretions ſhall direct.

L. C. J. Truly I do not know whether we can do any Thing in this Matter, I queſtion much whether it be diſcretionary in us to break through all the common Method of Proceeding, and admit of ſuch Irregularities.

L. C. J. Treby. I have a great Inclination to hear them, that we may get rid of theſe pretended Exceptions, which I am apt to think will, when opened, diſappoint the Expectations that may be raiſed by this mentioning them in general; for, I have that Opinion of the Ability and Circumſpection of the Council, that I believe if they had had Exceptions ſufficient to quaſh the Indictment, we ſhould have heard of them at a Time more proper than this now between the Swearing the Jury and giving Evidence to them. But, poſſibly, the Council may think fit to make an Eſſay, and try what can be got out of this unuſual Expreſſion in this new Act.

L. C. J. No, no, I know this is a Piece of Art, and the Court is not well dealt with in it.

L. C. J. Treby. Indeed I am very willing to hear them for that Reaſon.

L. C. J. I look upon it only as meer Trick, and a Piece of Art to taſte the Opinion of the Court.

Sir *B. Shower*. My Lord, it was my Miſtake then, for I take it, if the Act of Parliament had intended otherwiſe they would have expreſt it otherwiſe.

L. C. J. Does the Act of Parliament give you another Liberty, and a greater than you had before? Does it not deſign to abridge you of a Liberty that you had before? Certainly it never intended that the Court ſhould admit of any irregular Proceedings.

Mr *J. Powell*. You ſhould have tim'd your Motion better, for certainly now the Jury is charg'd they muſt give a Verdict either of Acquittal or Conviction; and if you move to quaſh the Indictment, and your Exceptions are material, the Jury cannot proceed; you ſee what a Paſs your Motion has brought it to, 'tis certainly a mighty irregular Motion.

L. C. J. Treby. What Judgment would you have us give? I would ask you that: If any Exception were moved before the Jury were ſworn, and it proved material, the proper Judgment were, that the Indictment be quaſh'd; but now they are ſworn, what Judgment muſt we give? Muſt we not expect the Verdict of the Jury firſt upon the Fact? And muſt we then give Judgment upon your Exception?

Sir *B. Shower*. I know not whether your Lordſhip may not give Judgment firſt to quaſh the Indictment, and then diſcharge the Jury.

L. C. J. Treby. And what, if we do not find Cauſe to quaſh it, then you'll ſay, we muſt go on with the Evidence, as we were going before this Interfering? Are we to be doing two Things at once. I am pretty certain you can ſhow me no Preſident for any like Proceedings in any Caſe: It is confounding the Offices of the Judge and Jury.

Mr *Phipps*. If your Lordſhips try'd the Validity of our Exceptions, and find Occaſion to quaſh the Indictment, there will be no need of a Jury.

L. C. J. Upon the Statute of *Jeofailes* in a civil Cauſe, ſuppoſe at a Tryal at Bar, it appears upon the Face of the Declaration, that there is ſuch a Miſtake as will be cured by the Verdict; but if the Party had demurred, and ſhown it for Cauſe, it would have been fatal. Do you think when he has wav'd the Benefit of Demurrer and pleaded to Iſſue, that you ſhall move this and help your ſelf by ſuch a Motion, becauſe it will be helpt after a Verdict?

Sir *B. Shower*. If this Act had been worded as that Statute of *Jeofailes* is, it may be we might not.

L. C. J. Why, it is not ſaid in the Statute of *Jeofailes*, that it ſhall be good after Iſſue joined, before the Jury is charg'd or ſworn, but that it ſhan't be good after the Verdict.

Sir *B. Shower.* It is before the Evidence given.

L. C. J. Could he do ſo in any Caſe before this Act, and does the Act enlarge your Liberty or abridge it?

L. C. J. Treby. Sir *Bartholomew Shower*, you inſiſt upon Part of the Words of the Act of Parliament, it ſays, no Indictment or Proceſs ſhall be quaſht upon the Motion of the Priſoner or his Council, unleſs it be made before any Evidence, *&c.* Now, I ſuppoſe, the Parliament uſe that Expreſſion, *upon the Motion*, in the ſame Senſe as it is uſed in Law, *viz.* for ſuch a one as ſhould be in the Time when Motions for quaſhing the Indictments are properly to be made; now, when is that? It is plain, it was always before the Jury come to the Bar, nay before the Plea of the Party. If that be the proper Time to make ſuch a Motion, then that Expreſſion in this Act of a *Motion to quaſh the Indictment* will very well help to conſtrue the other Part of the Clauſe that you inſiſt upon: For if the Motion be made before Plea pleaded, it is certainly before the *Evidence given* in your Senſe. And I conceive, that under that Expreſſion [*Evidence given*] which ſignifies the main Part, the Parliament intended to comprehend the whole Proceeding to Tryal, beginning, if not from the Pleading *Not Guilty*, at leaſt, from the *Swearing* the Jury. *Before Evidence given in Court*, may reaſonably be expounded, *Before the Priſoner hath fully entred into that Conteſtation of the Fact, which is to be determined only* by Evidence in Court. I attended the Court of *King's-Bench* a long Time, and I believe that I have heard it ſaid a hundred Times, upon Motions to quaſh Indictments of great or odious Offences; No, try it, ſays the Court, we will not quaſh it, plead to it, let the Fact be tryed, you may then move it in Arreſt of Judgment. Thoſe Expreſſions ſhew'd that the proper Time for a Motion to quaſh an Indictment was before Plea, tho' they, in their Diſcretion, would not grant a Motion to quaſh, in Caſes of ſuch great Offences. But ſure they did not think that when a Jury came to the Bar, it was a tolerable Time to move to quaſh an Indictment, there was no Expectation of hearing of ſuch a Motion then. And certainly this Clauſe which is made wholly againſt the Priſoner, ſhould not be conſtrued to help him to ſuch a new extraordinary and abſurd Liberty.

Sir *B. Shower.* My Lord, with Submiſſion, that Practice goes upon another Reaſon, the Court would not quaſh it at all upon a Motion; this Act of Parliament ſuppoſes that you will quaſh upon a Motion at any Time before Evidence given; We never heard of a Motion to quaſh an Indictment for Felony or Treaſon, but ſtill the Court would always ſay, Demur, or Plead, or move in Arreſt of Judgment, but by this Law it ſeems the Senſe of the Parliament was, that it might be quaſht upon a Motion.

Mr *Sol. Gen.* Sir *B. Shower* is come to what I ſaid, that in Truth there is no ſuch Thing as Quaſhing an Indictment for Treaſon or Felony, as I mention'd in Sir *Rich. Manſel*'s Caſe, and I think the Rule that was given in that Caſe will ſerve now in this Caſe; I am for conſenting if they be kept within the Limits of the Act of Parliament, but I muſt deſire the Opinion of the Court before we do conſent.

L. C. J. Holt. Aye, aye, Go on Brother *Nevile.*

Mr. *J. Nevile.* I muſt confeſs I cannot but doubt, as this Act is, there were two Times that they had Liberty of taking theſe Exceptions to Indictments; but indeed, in Murder and Treaſon they were ſeldom admitted, till they came to move in Arreſt of Judgment; but ſtill there was always a Privilege, and a Time given to the Priſoner, be the Crime what it would, to take that Advantage which the Law gave him, to prevent Judgment againſt him. Now I agree, it is irregular and unſeaſonable to offer it now, and quite different from all former Practice; you might have done it before now, the Act ſays expreſly it muſt be done before Evidence; but you might have taken Advantage before the Jury was ſworn nay before you had pleaded, but you have lapſed your Time. Yet truly, notwithſtanding you have lapſed your Time, I cannot ſatisfie my ſelf to take away the Liberty that the Law has given the Priſoner ſometime or other, to except againſt the Indictment. It is plain that before this Act after Verdict he might have moved in Arreſt of Judgment, now he cannot do ſo, whether the Fault be in the Council I cannot tell, but the great Prejudice is to the Perſon that is to be try'd, who will now be wholly precluded from making any Advantage of the Exceptions he has to the Indictment, becauſe by the Act he cannot move in Arreſt of Judgment. This ſeems a ſtrong Implication that the Parliament intended he muſt have ſome Time or other, but before Evidence given, to offer his Exceptions. I ſay this only to thoſe particular Things that are mentioned in the Act, Miſwriting, Miſſpelling, Falſe or Improper Latin; as to theſe four particular Things which the Party is barr'd from moving in Arreſt of Judgment, I cannot ſatisfie my ſelf but that he ſhould have one Time or another to take this Advantage before the Evidence given, and therefore I think he ſhould have it now: It is true, it is altogether irregular, the Jury being ſworn, and it ought to have been done before; but I hope if it be admitted now, it will be with ſuch Obſervation, that no Body will ever offer at it for Time to come. As this Caſe is before us, and the Act of Parliament, which perhaps may have led the Council into that Miſtake, that it might be any Time before Evidence given, tho' they know the proper Time, and the regular Method in other Caſes, yet I doubt it is hard to put ſuch a Conſtruction upon this Act on the ſudden, quite to debar the Priſoner of the Benefit of his Exceptions to the Indictment.

Mr. *J. Powell.* I have already declar'd my Opinion, that the Priſoner has had his proper Time for making his Exceptions, but he has elapſed that Time; but I am not againſt that Motion in a Caſe of Life, upon an Indictment for ſo great a Crime as Treaſon is, and where the Conſequence is ſo great, if it may conſiſt with the Rules of Law, and it be the Senſe of the Court, and the King's Council conſent to let them be heard, I ſubmit to it, nay I would Second or Third that Motion that they may be heard.

Mr. *J. Eyres.* Truly I am of the ſame Opinion, I think we ought not to alter the ancient Courſe of Law by Words of Implication, nor go any farther than the Act of Parliament does expreſs. The Act appoints that a Copy of the Indictment ſhould be delivered to the Priſoner ſo many Days before, to enable him to make his Exceptions, and therefore deprives him of the Benefit of thoſe Exceptions after Conviction in Arreſt of Judgment. I ſee

no

no Words in the Act of Parliament that do alter the Courſe of Proceedings, as to this Matter, from what it was in all Civil and Criminal Cauſes before; Perſons muſt take their Advantage of Excepting in their proper Time, but when it comes to Iſſue, the next Thing to be done is the Tryal; and truly I muſt needs ſay the Council are to blame, that knew this ſo very well, that if they have any Advantage of Excepting, they did not take that Advantage ſooner, it is their Fault; but ſeeing it is ſo, I am of Opinion not to foreclose the Priſoner, as the Caſe ſtands. I would be Tender of Life, but at the ſame Time I declare my Opinion upon this Act of Parliament as the reſt of my Brothers have done, to prevent the Objection for the Time to come; yet ſeeing there is this Misfortune, and there would be a Hardſhip upon the Priſoner by the Default and Neglect of his Council in the Caſe of a Man's Life, I would be ſo tender as to indulge them to make their Objections now.

Mr. *B. Powys.* I am of the ſame Opinion the Priſoner has lapſt his Time, for I take it this Clauſe of this Act of Parliament has not altered the common Courſe of Proceedings, nay, I take it ſignifies very little in this Caſe, for certainly it was intended to diſable the Priſoner, and not enable him at all; and therefore, as the Caſe is, I think it very Irregular and Impracticable to introduce ſo great a Novelty, as to admit the Motion for quaſhing the Indictment; when the Jury is ſworn, and when the Fact is the only ſingle Point to be determin'd and every Thing elſe ought in legal Courſe to come before or after; but for us to confound Time, one Time for Pleading, another Time for Tryal, and another for Arreſt of Judgment, all at once, and to have a Jury attending meerly to hear Council at the Bar moot Points of Law, which might be determin'd either before or after the Tryal, is ſo very irregular, that it really introduces nothing but Confuſion, which Courts of Juſtice ought to avoid above all Things, and ought to keep to the proper Seaſons that the Law allows. Therefore, truly I think in Strictneſs of Law we ought not to allow it; but it being in a Caſe of Life, and it being a new Caſe upon a new Act of Parliament, if the King's Council think's fit to Conſent, I ſhall be for it, if not, I think in Strictneſs of Law we cannot allow it.

Mr. *At. Gen.* My Lord I am very unwilling to deny the Priſoner any Advantage, that he might have had by this Act of Parliament, though his Council have ſlipt the proper Time; if Sir *Bartholomew Shower* will ſay his Exceptions are to any of the four particular Heads mentioned in this Clauſe of the Act of Parliament, for we muſt confine them to that, then we do conſent that he ſhould make them now.

L. C. J. Truly Mr. Attorney, if you do conſent that they take their Exceptions now, we may conſider of it whether it can be; but I know not how we could admit them to that Liberty otherwiſe, for if there be any Thing material, they may move it in Arreſt of Judgment.

Mr. *At. Gen.* And I believe they won't ſay their Objections are ſo ſlight, as to be only Matter of Form, they ſay they are Subſtantial, and then your Lordſhip will hear them in a proper Time.

Sir *B. Shower.* I don't kuow whether I am miſtaken in the Law, I am ſure you are mikaken in the Indictment.

L. C. J. Well, do you conſent to let them make their Objections, as to thoſe four Heads in the Act of Parliament.

Mr. *At. Gen.* Yes, my Lord, if it be any Matter of Subſtance, that is out of the Caſe at preſent, for the Proviſion of the Act of Parliament is onely for meer Matter of Form, and I ſhould be very unwilling in any Point that is material, to make a Preſident in ſuch a Caſe as this.

L. C. J. I confeſs if you had conſented farther, I do not know how we ſhould have admitted of it.

L. C. J. Treby. I tell you how I thought it might be done, you might have committed an Irregularity, for which in a Caſe of Life, and upon a new Law, I believe and hope we ſhould have been forgiven.

L. C. J. Well, for my Part I will not commit any Irregularity upon any Account whatſoever; I cannot ſee how by Law they can take any Exceptions to the Indictment, Mr. Attorney cannot conſent, and if he did, I think it could not be, unleſs he did alſo conſent to diſcharge the Jury; but I ſee they will not offer any Objections according to your Conſent, Mr. Attorney, and therefore pray go on to open the Evidence.

Mr. *At. Gen.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, the Priſoner at the Bar, *Ambroſe Rookwood*, ſtands Indicted for High Treaſon, in Compaſſing and Imagining the Death of his Majeſty. Gentlemen, the Overt Acts that are laid in the Indictment to prove this Treaſon, are, that He, together with divers Others, had frequent Meetings and Conſultations, in order to Aſſaſſinating His Majeſty's Royal Perſon, and did provide Horſes and Arms for that purpoſe.

Gentlemen, the Evidence that you will hear, to prove theſe Facts that are thus laid, will be of this Nature; you will hear by the Witneſs, That there has been for ſome Years a Deſign carried on to Murder the King's Perſon; that this was diſcourſed of, and ſeveral Debates and Conſultations were had about it the laſt Year, ſome Time before the King went to Flanders; there was ſeveral Meetings, where were Sir *William Parkyns*, Captain *Porter*, and *Charnock* that was Executed, and ſeveral others, and there they did conſider in what way to take off the King at that Time; and you will hear they did expect a Commiſſion to authoriſe it from the late King *James*; but then the Commiſſion did not come, they had not any ſuch at that Time; but they did think fit to put it in Execution without any ſuch Order and Authority, and therefore they endeavour'd to have got a Veſſel to have carry'd them off after they had Executed this bloody Conſpiracy; but it happen'd His Majeſty went to *Flanders* ſooner then they Thought, and they could not provide Themſelves of a Security for a Retreat, and ſo at that Time the Deſign was laid aſide.

But Gentlemen, you will hear this Conſpiracy was renewed, and ſet on Foot this Winter, and in Order to the Accompliſhment of it you will hear, that about Chriſtmas laſt there were ſeveral Perſons ſent from *France* by the late King *James*, on purpoſe to put this horrible Deſign in Execution. Sir *George Barclay* was to be at the Head of it, he was a Lieutenant in one of the late King *James*'s Troops of Guards in *France*, he was ſent over with a Commiſſion, and Mr. *Rookwood*, the Priſoner at the Bar, was a Bri-

gadier in the Guards there; theſe came over, and ſeveral other Troopers of the late K. *James*'s Guards, by two or three at a Time, that they might not be obſerv'd; particularly you will hear, that when Sir *George Barclay* was come over, ſeveral Troopers were ſent to by King *James* himſelf to come to him at St. *Germains*, and there he told them he had a Piece of Service for them to do in *England*, and that they ſhould obſerve Sir *George Barclay*'s Orders and Directions. More particularly there was one *Harris* and *Hare*, two Troopers in the Guards, were ſent for by the late King *James* into the late Queen's Bed-Chamber at St. *Germains*, where Collonel *Parker* was preſent; they were told by the late King, He was ſenſible they had ſerved him faithfully, and He would advance them, and he had now a Piece of Service for them to do, which would enable him to do it; He told them, they muſt go over into *England*, and be ſure to obey Sir *George Barclay*'s Directions, and they were ordered to endeavour to find out Sir *George Barclay* when they came into *England*; and were told by him, that they would meet Sir *George Barclay* twice a Week in *Covent-Garden* Square, in the Evening, and the Token by which they ſhou'd know him, was, he would wear a white Handkerchief out of his Pocket; this they were told by the late King, when he ſent them upon this Errand; Colonel *Parker* was by at the ſame Time, and being there he was ordered to go to Mr. *Carol* Secretary to the late Queen, who had order to furniſh them with Money, to bear the Charges of their Journey into *England*, and if they were detained by contrary Winds, they had Letters of Recommendation to Monſieur *Latour*, the *French* King's Preſident at *Callis*, to furniſh them with Money, to bear their Charges over into *England*, and accordingly they went; but being detained at *Callis* for want of a Wind, they were furniſhed by the *French* Preſident; and by the Beginning of *February*, they came over.

But I omitted one Thing, Gentlemen: Before they came over, the late King when they were with him took a Liſt out of his Pocket of Names, and told theſe two, *Harris* and *Hare*, what Names they ſhould go by in *England*; *Harris* was to go by the Name of *Jenkins*, and *Hare* by the Name of *Guiny*, and accordingly they came over in a Boat, and landed in *Kent*, and when they came to Town they endeavoured to find out Sir *George Barclay*: The firſt Time I think they did not find him; but the ſecond Time they did find him; and he ſaluted them, and told them he was glad to ſee them come over, and he would furniſh them with Money, and he ſent Major *Holmes* to them, and accordingly he did come, and give them Subſiſtence Money.

Now Gentlemen, you will hear that Sir *George Barclay* being come over with theſe Troopers and many others, to the Number of Sixteen, that at ſeveral Times were ſent upon this Conſpiracy, I ſay, after they were come, Sir *George Barclay* had frequent Meetings and Conſultations with ſeveral other Perſons that were to be engaged in the ſame Deſign; and they met at ſeveral Places, ſometimes at Captain *Porter*'s, ſometimes at the *Nags-head* in *Covent-Garden*, at another Time at the *Sun* Tavern in the *Strand*; and you will find by the Evidence, that the Priſoner at the Bar, Mr. *Rookwood*, was preſent at moſt of thoſe Meetings, and there they did conſult of the beſt Ways and Methods for putting this Conſpiracy in Execution; ſometimes they thought of doing it by an Ambuſh, laid on the other Side of the Water, by Perſons on Foot, in a little Wood there near *Richmond*, where the King was to paſs by whilſt others on Horſeback were to take Notice of their Firing, and then to Attack the Guards. This was propoſed, but there was another Propoſal to do it on this ſide the Water; and therefore to ſettle the Matter, one of the Conſpirators, *King*, was ſent to view the Ground on the other Side of the Water, and he did glory that he had found a very proper Place, and thought it a very convenient Method, but yet they were not all ſatisfied, and at the *Nags-head* Tavern in *Covent-Garden* they did debate the Matter again, and it was reſolved to have the Ground viewed again, and *Porter*, and *Knightley*, and *King* that was executed went to view the Ground on both ſides the Water, to ſee which was the moſt convenient Place; this was about the 12th of *February*, they did take an Account of the moſt convenient Places on either Side, and when they had done it, they came back in the Evening to give an Account what they had done, to ſeveral others of the Conſpirators, who met for that purpoſe, and I think the Priſoner at the Bar, Mr. *Rookwood* was preſent there at this Meeting; and you will hear, the Place agreed upon was the Lane that leads from *Turnham-Green* to *Brentford*, that they thought the moſt convenient Place becauſe there were ſeveral Inns in and about *Turnham-Green* and *Brentford*, where they might place their Men by two or three in an Inn, that they might not be liable to Obſervation: This was the Place that was approved of.

Then next, the Manner of doing it was to be conſidered and adjuſted, and that was thus: That the whole Number, ſhould be divided into three Parties, one Party to be commanded by Sir *George Barclay* to attack the Coach, and kill the King, and all that were in it, while at the ſame Time the two other Parties to be commanded by Captain *Porter*, and Mr. *Rookwood* the Priſoner at the Bar, were to ſet upon the Guards; and the Time agreed upon to put it in Execution was the Fifteenth of *February* on *Saturday*, that being the uſual Day the King went to *Richmond* a Hunting, and you'll find that on *Saturday* Morning they met in ſeveral Parties, not all together, but under the ſeveral Heads of the Parties in order to be ready, if the King had gone out that Morning, to have Aſſaſſinated him.

Gentlemen, I ſay, you will hear of ſeveral Meetings that Day; there was one Meeting at Mr. *Charnock*'s where were preſent Mr. *Porter*, Sir *William Parkyns*, and ſeveral others; and another Meeting you will hear of where the Priſoner at the Bar was preſent, at the Lodgings of one *Counter*, another of King *James*'s Friends, that came over for this purpoſe, and there was Sir *George Barclay*, and there was the Priſoner at the Bar; and thoſe that were to be under Sir *George*'s Command met that *Saturday* Morning in order to make ready, in Caſe the King had gone abroad, to have Attackt him: You will find by the Evidence that the Priſoner was there, and *Harris* that was one of the Troopers ſent over from *France*, was ſent for, and came in and found them in a great Hurry, for *Harris* was not acquainted at St. *Germains* with the immediate Deſign of Aſſaſſinating the King, but finding them in a

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great Hurry, he askt them what was the Matter? And they told him they were to make ready immediately upon the Deſign. He wonder'd at it, and ask'd what it was, and then they told him they were to go to attack the Prince of *Orange* to aſſaſſinate him, and *Rookwood* the Priſoner at the Bar told him, if he would go to *Counter*, he ſhould have particular Orders and Inſtructions from him what to do. Accordingly *Harris* went to *Counter*, he told him where his Horſe, and *Hare*'s Horſe, and *Hungate*'s Horſe were; and their Horſes happen'd to be placed in *Somerſet*-Houſe, by Mr *Lewis*, in a Stable there recommended by him, to the Care of my Lord *Feverſham*'s Servants, who were to take Care of them, and of two or three more that were placed there, in all, ſix of theſe Conſpirators Horſes by the Recommendation of Mr. *Lewis* were lodged in that Stable in *Somerſet*-Houſe, and look'd after by my Lord *Feverſham*'s Men; and thither *Harris*, *Hare*, and *Hungate*, were directed by *Counter* to go for their Horſes.

But it happen'd by very good Providence, that his Majeſty did not go abroad that Day; and *Durance*, one of the Orderly Men that lodged at *Kenſington* to give Intelligence, came from thence and acquainted them, that the King did not go out that Morning, ſo there was nothing more done; but *Harris* was told that he ſhould have his Horſe at that Time, and take it away, and in the mean Time till they were to go upon their Deſign, they were to ride out upon their Horſes, as they had Opportunity, to make them fit for Service, or elſe it would be thought the Rider's Fault, if, at the Time of the Attack, they did not come up in good Time and Order to join with the reſt, and it would be thought Want of Courage in the Rider; and accordingly Major *Holmes*, another of thoſe Conſpirators, went with *Harris* and *Hare* to *Somerſet*-Houſe to take away their Horſes, and they carried them to a Stable in *Soho*; but for ſeveral Nights they had been kept at *Somerſet*-Houſe.

You will find, Gentlemen, that Mr *Rookwood*, the Priſoner at the Bar was concern'd in all theſe Conſultations and Meetings, in making Preparations for the Aſſaſſination they intended, as I ſaid, to do it on the 15*th* of *February*; but that not taking Effect at that Day, between that and the *Saturday* following, Mr *Harris* was frequently in the Company of Mr *Rookwood* and Mr *Lowick*, and others, where they did diſcourſe of this Aſſaſſination, and they did think it a very barbarous Thing; but however they reſolved they would do it, for they had Orders to obey Sir *George Barclay*: And this was expreſsly declared by *Lowick* and the Priſoner, that they had Directions to obey Sir *George*, and what he would have them to do they would do: They muſt and would obey Orders; that was their Reſolution even upon diſcourſing of the Hainouſneſs of ſo bloody and barbarous a Deſign.

You will likewiſe hear, Gentlemen, by the Evidence, that the next *Saturday* being the Two and Twentieth of *February*, they reſolved to put it in Execution again; and accordingly there was a Meeting on the *Friday* before at the *Sun* Tavern, where were preſent Sir *G. Barclay*, Mr *Porter*, and others; and there they did reſolve upon it, tho' they had at firſt ſome Apprehenſion the Thing was diſcovered, but they were ſoon ſatisfied there was no ſuch Thing, becauſe they ſaid among themſelves, that if it had been ſo they ſhould have been taken up, and not have been permitted to meet there: Therefore they reſolved the next Day to put it in Execution, and accordingly they met at ſeveral Places, and got ready in the Morning in Caſe the King had gone abroad; the Priſoner met that Morning at *Porter*'s Lodging, with ſeveral other Troopers, to make ready for the Enterprize, and there the Priſoner at the Bar did, at that Time, give a Liſt of the Names that he was to command, for he was to have one Party of thoſe that were to attack the Guards, of whom *Harris* was one, and *Hare* was another, and *Richardſon* was another, and *Blackburne* was another, and his own Name was Chief, and he ordered *Harris* to go and ſee to get them ready, for they muſt go out that Morning: Accordingly *Harris* did go, and got them ready, and came back and gave an Account of it. His Majeſty did not go abroad that Day, as it happened very fortunately by Reaſon of the happy Diſcovery; ſo that News being brought back again, though they had made all Things ready, thoſe Preparations were put off, and they did nothing that Day, and quickly after the Diſcovery was fully made, and made publick by the Apprehenſion of the Conſpirators.

Gentlemen, you will have this Matter fully proved to you by ſeveral Witneſſes, that I think there can be no Room to doubt the Truth of it, that there was ſuch a Conſpiracy, and that the Priſoner was as highly concerned in it, as thoſe who have ſuffer'd the juſt Puniſhment of the Law. We will call our Witneſſes to prove this, and I believe they will be able to give you an Account of the whole Affair, better and more fully than I can do, or can pretend to open it.

Mr *Sol. Gen.* Call Mr *Harris* and Mr *Porter*.

Sir *B. Shower*. We oppoſe the Swearing Mr *Porter*: I muſt beg the Favour of the Court to hear us in it; if my Inſtructions be true, we inſiſt upon it, that he is not capable of being a Witneſs, he ſtands convicted of Felony: Here we have the Record, and we deſire it may be read.

Capt. *Porter*. I know nothing of the Matter, that there is any ſuch Thing ſtanding out againſt me.

Sir *B. Shower*. Then ſure we are miſtaken in the Man. Pray let us hear it read.

Cl. of Arr. (*Reads the Record.*) This is an Indictment of Murther againſt *George Porter*, for the Killing of Sir *James Hacket*, Knight.

Mr *Att. Gen.* Do you know any Thing of this, Mr *Porter?*

Capt. *Porter*. I came off with Manſlaughter, and pleaded the King's Pardon in Court.

Mr *Att. Gen.* Pray, read what was done upon it.

Cl. of the Crown. Here's the Jury's Verdict. *Quod prædictus* Georgius Porter *eſt culpabilis de felonica Interfectione prædicti* Jacobi Hacket, *& non culp.* as to the Murder. Here is a *Curia adviſare vult*, and I ſuppoſe there was a Pardon afterwards.

Mr Juſtice *Powell*. Was he not burnt in the Hand?

Capt. *Porter*. No, I pleaded the King's Pardon.

L. C. J. And there are ſeveral Acts of Pardon ſince.

Mr *Cowper*. See the Time when the Indictment was.

Cl.

Cl. of Arr. It is the Eighth of *December* in the Thirty Sixth Year of King *Charles* the Second.

Sir *B. Shower.* We agree that he did plead the King's Pardon, and then the Caſe is no more than this, a Man is convicted of Manſlaugter, and the King pardons him, he ſtill remains unqualified to be a Witneſs; we ſay, this has been the Caſe that has been much debated in *Weſtminſter Hall*, and upon Debate it has been reſolved.

Mr J. *Powell.* It has been ſo, but always againſt you.

Sir *B. Shower.* It was in the Caſe of my Lord *Caſtlemaine* at this Bar; one of my Lords the Judges went to the Court of *Common Pleas* to ask their Opinion, and theſe Caſes were put: In Caſe a Man be out-law'd of Felony and pardon'd; in Caſe a Man be convicted of Felony and had the Benefit of his Clergy, and in Caſe a Man was convicted and not attainted, but pardoned upon the ſecond Caſe; they were of Opinion, that the Receiving the Puniſhment of Burning in the Hand, had purged the very Guilt, and did ſet him upright by the Statute of the 18th of Queen *Elizabeth*, they thought it did operate to that Purpoſe; but in the Caſe of a Pardon of a Man attainted or convicted, it was agreed he was not qualified to be a Witneſs; and *Dangerfield*, againſt whom the Objection was made, being burnt in the Hand, was received to be a Witneſs; and it was only made uſe of againſt him to take off his Credit. The Record of that Caſe is in this Court, and I looked upon the Print of the Tryal this Day. We ſay, that there is a Caſe in 1 *Brownlow* 47. a Man attainted of Felony cannot be of an Inqueſt, though pardon'd; and we think, he that cannot be a Juryman, ſure cannot be a Witneſs; there is the ſame Exception to his being a Witneſs as there is in the Caſe of a Jury-man; for the one ought to appear as free, and ſtand as clear and unſuſpected, in Reſpect of his Probity and Verity as the other, as the one is ſworn to try and determine upon Oath, ſo the other is ſworn, and his Oath is to ſway and determine the Jury, and in Conſequence it is all one, and upon theſe Reaſons we hope he is not a good Witneſs.

L. C. J. Where is that Caſe in *Brownlow?*

Sir *B. Shower.* It is 1 *Brownlow* 47. and then there is 11 *H.* IV. 41. 2 *Bulſt.* 154. there my Lord *Cook* ſays, if a Man be convicted of Felony, and pardoned, he cannot be a Jury-man; for though the Puniſhment is pardoned, the Guilt remains, ſo that he is not *probus & legalis Homo*, and every particular Perſon has an Intereſt in it, that they have free and clear Perſons to be Jury-men and Witneſſes.

Mr *Phipps.* My Lord, that is the Diſtinction we go upon, which was taken in *Dangerfield*'s Caſe upon the Tryal of my Lord *Caſtlemaine*, where the whole Court were of Opinion that a Pardon from the King only would not make him a good Witneſs, but if he were burnt in the Hand, that by the Statute of *decimo octavo Elizabethæ*, amounted to a Statute Pardon, and ſet him right to all Intents and Purpoſes: And there they did take Notice of that Book that Sir *Bartholomew Shower* cited of 11 of *H.* IV. that a Man attainted could not be a Jury-man, though pardoned by the King: It was objected he might be a Witneſs; but Mr Juſtice *Jones* ſaid, it was the ſame Reaſon if he be not fit for a Jury-man, he is not fit for a Witneſs; they ought to be both *probi & legales Homines*, thus the Caſe ſtood there. And that other Book of *Bulſtrode* is the ſame, it was in the Caſe of a Prohibition for a *Modus Decimandi*, where the Suggeſtion is to be prov'd by two Witneſſes, it was objected he had not prov'd it by two Witneſſes, becauſe they were both attainted of Felony, and though they were pardoned, yet that did not make them good Witneſſes in the Opinion of the Court.

L. C. J. This is quite another Caſe, it does not come up to your Point, here is no Attainder, and here is Pardon upon Pardon, by Act of Parliament.

Mr *Phipps.* As to that we think the Parliament Pardon is out of the Caſe; for if the Pardon from the King be a good Pardon, there is no Guilt for the Act of Pardon to work upon.

Sir *B. Shower.* My Lord, this we think to be a good Diſtinction as to that Matter, a Man that is actually pardon'd the Puniſhment by the King's Pardon, and afterwards an Act of Pardon comes and pardons all Offences, that we ſay does nothing, for he is not a Subject of Pardon, for he was diſcharged of his Puniſhment before.

Mr *At. Gen.* Sure theſe Gentlemen are not in earneſt when they make this Objection.

Sir *B. Shower.* When the King has once pardon'd him he is not an Offender within the Meaning of the Act of Parliament, and therefore the Act works nothing as to him, and ſo he ſtands as much diſabled from being a Witneſs, as he was before.

Mr J. *Powell.* In the Caſe of *Cutington* in *Hobbard*, there it is ſaid the Pardon takes away *tam Reatum quam Pœnam, &c.* an Action being brought for calling a Man Thief, who had been indicted for Felony, and convicted, and pardon'd, the Court adjudged, that he ought not to be called ſo; for he was no Thief, for the Pardon had waſhed him entirely clean, and he was diſcharged both of the Guilt and the Puniſhment, and all the Conſequences of it.

L. C. J. Thoſe Caſes that have been put are no Authorities at all in this Matter; for where there is a Conviction of Manſlaughter, and the Party is pardon'd, we think that Pardon of the King works in a Way of Diſcharge as much as the Burning in the Hand. I take it, it is the ſame Thing: They admit, that will diſcharge him to all Intents and Purpoſes, and ſo we think does this as effectually; for having his Clergy, and being burnt in the Hand, works by Way of Statute Pardon; for the Caſe of a Jury-man, I take it not to be the ſame with this Caſe; but even in that Caſe, I do not think that the Party convicted, after the King hath pardoned him, is diſabled from being of a Jury; but ſuppoſing that to be ſo, yet there are many Caſes wherein a Man may be a Witneſs, that cannot be a Jury-man. It is true, the Credit of ſuch a Witneſs is left to the Jury, but it is no Objection againſt his being a legal Witneſs; and it is a very ſtrange Argument to me, that becauſe he was pardoned by the King, if that ſhould be deficient, that therefore, the Act of Pardon ſhould have no Effect. Truly, that is to ſay, that the King's Pardon works ſo, as to have nothing left for the Parliament Pardon to work upon, and certainly it ſets him ſo right, that to all Intents and Purpoſes he is as good a Witneſs as ever he was; and if any Thing remained to be done, the Act of Parliament has done it, and ſupplied the Defect; but I think the King's Pardon is ſufficient.

Mr *At. Gen.* My Lord, I ſuppoſe they do not inſiſt upon it, as thinking there is any great Weight

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in it, but only for Objection ſake, but we hope that notwithſtandiug this Objection Mr *Porter* ſhall be ſworn.

Mr *Soll. Gen.* My Lord, they take this Exception at an improper Time, for they ſpeak to his Credibility.

L. C. J. No, they except to his being a Witneſs.

Mr *Soll. Gen.* If ſo, your Lordſhip remembers a Caſe that was before your Lordſhip not long ſince, but in *Eaſter* Term laſt, when one was try'd at this Bar for Treaſon, and *Aaron Smith* was produced as a Witneſs, and the Priſoner took Exception againſt him as no good Witneſs, becauſe he had ſtood in the Pillory, and your Lordſhip and the Court did ſay, that the Act of Pardon did reſtore him to all Intents and Purpoſes *ad liberam Legem.*

Mr *Conyers.* In the Caſe of the Earl of *Caſtlemaine*, both the Courts of *King's Bench* and *Common Pleas*, held *Dangerfield* a legal Witneſs, tho' burnt in the Hand for Felony, and ſo was the Opinion of *Rolls*: In *Stiles* Reports 388, one that hath been burnt in the Hand for Felony, may notwithſtanding be a Witneſs.

Sir *B. Shower.* My Lord, in anſwer to that Caſe that was put, that after the King's Pardon for one convicted of Felony another Man has not the Liberty to call him Thief, that was an Objection in my Lord *Caſtlemaine*'s Caſe, that may ſtand as good, and our Notion that we contend for, be good too; he cannot be impeach'd, or have Guilt imputed to him, when once the King has forgiven him, and yet that may not reſtore him to his entire Credit, as was my Lord Chief Juſtice *Scroggs*'s Diſtinction in the Caſe of *Dangerfield*; and as to the Caſe of *Aaron Smith*, that was very different: The Reaſon in that Caſe was, becauſe the Crime for which Mr *Smith* was indicted, did not import any ſuch ſcandalous Offence for which his Credit could be impeached.

L. C. J. No, no, we did not meddle with that, we went upon the Pardon.

Sir *B. Shower.* But in that Caſe, they did not inſiſt upon it that he had a Pardon antecedent to the Act of Pardon, ſo that he was *Subjectum capax*, for the Act to work upon, he was an Offender that needed a Pardon, whereas Mr *Porter* being pardon'd before, could not be an Offender needing a Pardon, and conſequently not within the firſt Words of the Act of Indempnity, becauſe he was pardon'd by the King before, but he was not by that Pardon, ſay we, reſtor'd to his Credit to make him a good Witneſs, and the Act of Parliament did not affect him, he being not *ſubjectum Materiæ*, as not being an Offender.

Mr *Phipps.* As to Mr Sollicitor's Caſe of *Aaron Smith*, we agree the Act of Parliament did reſtore him, becauſe he never was pardon'd before by the King, ſo there remained an Offence for the Parliament Pardon to work upon.

L. C. J. Do you agree that, then you may agree the other; for the Act of Parliament pardons none but thoſe that the King can pardon generally.

Mr *Phipps.* It is true, my Lord, but we ſay that an Act of Parliament Pardon, removes thoſe Diſabilities which the King's Pardon does not, for every one is in Law a Party to an Act of Parliament, and therefore no Perſon ſhall be permitted to alledge in Diſability of another, any Crime which he himſelf hath pardon'd, for that is to aver againſt his own Act, but 'tis otherwiſe in the Caſe of the King's Pardon.

L. C. J. Why, the very Parliament Pardon comes from the King; the King has a full Power of Pardoning, and where he does pardon under the Great Seal, it has the full Effect of the Parliament Pardon. A Pardon before Attainder, prevents all Corruption of Blood, ſo that tho' a Man forfeits his Goods by Conviction, yet after a Pardon he is capable of having new Goods, and ſhall hold them without any Forfeiture whatſoever, for the Pardon reſtores him to his former Capacity, and prevents any further Forfeiture. Indeed if he had been attainted whereby his Blood was corrupted, no Pardon, whether it were by the King or by the Parliament, could purge his Blood without Reverſal of the Attainder, by Writ of Error, or Act of Parliament, or expreſs Words in the Act to reſtore Blood; but either Pardon makes him a new Creature, gives him new Capacity, and makes him to all Intents and Purpoſes, from the Time of the Pardon, to be *probus & legalis Homo*, and a good Witneſs. Indeed this Crime might be objected againſt his Credit, but it is not to be urged againſt the Sufficiency of his Evidence, that is, his being a Witneſs.

Mr *Att. Gen.* My Lord, we deſire he may be ſworn. *(Which was done.)*

Mr *Soll. Gen.* Now, Mr *Porter*, do you give my Lord and the Jury an Account, what you know of this intended Aſſaſſination, how it came to your Knowledge, and what Share the Priſoner at the Bar had in it.

Capt. *Porter.* My Lord, the firſt Account that I had of this Aſſaſſination, was from Mr *Charnock*, who brought to me Sir *George Barclay* and Major *Holmes* to my Lodging in *Northfolk-ſtreet*, where I was ſick of the Gout. Sir *George Barclay* did not then particularly acquaint me with the Buſineſs, but ſaid, he would leave it to Mr *Charnock* to tell me what it was.

L. C. J. Who told you ſo?

Capt. *Porter.* Sir *George Barclay*; and after that we had ſeveral Meetings, at which the Priſoner at the Bar was preſent, particularly at the *Globe-Tavern* in *Hatton-Garden*, where it was conſulted of the beſt Ways and Means to aſſaſſinate the King as he came from *Richmond*: Some were of Opinion that it was beſt to be done on the other Side of the Water; others were of Opinion that it ſhould be done on this Side, by a Party of Men on Horſe-back: Upon this Difference of Opinion, there were Perſons appointed to go and view both Places; I was appointed for one to go with Captain *Knightley*, and Mr *King* went along with me, and we did view the Ground on both Sides, and when we came back, we gave an Account to Sir *George Barclay*, and thoſe that ſent us, and upon our Report, Sir *George Barclay*'s Mind was chang'd, who was for the other Side of the Water before. And he agreed to do it in the Lane that leads from *Turnham-Green* to *Brentford*; afterwards there was a Meeting at the *Globe-Tavern* in *Hatton-Garden*, and there it was agreed that the King ſhould be attack'd on *Saturday* the 15th of *February*, by Sir *George Barclay* and his Party; and Mr *Rookwood*, the Priſoner at the Bar, was to command a Party of Men that came over from *France*, who were to aſſault the Guards on one Side, and I and Mr *Charnock* were to ſet upon the

the Guards on the other Side. Sir *George Barclay*, with four Men out of each Party, was to attack the King in his Coach, and to kill him and all that were there in it.

L. C. J. Who were at that Meeting?

Capt. *Porter*. There were Sir *George Barclay*, Captain *Charnock*, Sir *William Parkyns*, My ſelf, Major *Holmes*, Captain *Rookwood*, and Captain *King*.

L. C. J. Where was this?

Capt. *Porter*. At the *Globe-Tavern* in *Hatton-Garden*, upon *Saturday* Morning the 15th, we having two orderly Men that lay at *Kenſington* to give Intelligence, had Notice brought us firſt that the King would go out; *Durance*, who was one of them, uſed to go every Morning to Court to get us what Intelligence he could, and Sir *George Barclay* told me upon the *Friday*, that he ſhould give me an Account as ſoon as ever he could the next Morning; and the next Morning at my Lodging in *Little Rider-ſtreet* in St. *James's*, he came to me, and told me, the Advance Guards were gone out, and the King's Kitchin was gone, and all was preparing for the King's going abroad, and there went a great many Noblemen and Gentlemen a Horſe-back with him, and therefore he thought there would be no Opportunity of effecting the Thing; ſaid I, that's no Objection at all, nor any Reaſon for putting it off, becauſe when the Sport is over, all the Company goes away, and the King comes only in his Coach with the Guards; he ſaid, he would give Sir *George Barclay* an Account of it, and he came back with Sir *George Barclay* and Mr *Rookwood* to my Lodging, and upon repeating that Objection, and my giving the ſame Anſwer, it was agreed if the King had gone out that Day to have put the Deſign in Execution.

Mr *Att. Gen.* Was the Priſoner at the Bar there at that Time when that was agreed upon?

Capt. *Porter*. Yes, he was.

L. C. J. Where do you ſay was that Meeting?

Capt. *Porter*. At my Lodging in *Little Rider-ſtreet*.

L. C. J. Had you that Diſcourſe with Sir *George Barclay*, in the Preſence of the Priſoner?

Capt. *Porter*. Yes, Sir *George* ſaid, he doubted we could not do it, becauſe there would go ſo many with the King; but I objected againſt that, that after the Sport was over, all the Company went away, and the King came back in his Coach; then it was agreed to go on, there was Sir *George Barclay*, *Durant*, and the Priſoner at the Bar and my ſelf, in the Room.

L. C. J. This you ſay was *Saturday* the 15th, in the Morning.

Capt. *Porter*. Yes, my Lord, but I cannot ſay I ſaw the Priſoner at the Bar at any Meeting after that.

Mr *Att. Gen.* Pray, tell my Lord and the Jury, what Method you were to take in putting this Deſign in Execution.

Capt. *Porter*. There were to be ſo many Horſemen armed and prepared for the Purpoſe. Sir *George Barclay* told me, we ſhould be about 40 or 45 Horſe-men, and they were to be divided into two Parties, and Sir *George Barclay* was to have four Men out of each Party, and his Buſineſs was to attack the King, and all that were with him in the Coach. Captain *Rookwood* was to command thoſe that were come out of *France* to ſerve under Sir *George Barclay*, and Captain *Charnock* and I were to command the other Party, and both Parties were to ſet upon the Guards at the ſame Time that Sir *George Barclay* attack'd the King's Coach.

Mr *Att. Gen.* If the Priſoner will ask him any Queſtions, let him.

Sir *B. Shower*. Pray, Captain *Porter*, when was that firſt Meeting at the *Globe-Tavern*?

Capt. *Porter*. It was one Day in the Week before the 15th.

Sir *B. Shower*. Was Mr. *Rookwood*, the Priſoner at the Bar, there that Day?

Capt. *Porter*. Yes, he was.

Sir *B. Shower*. How long before the 15th?

Capt. *Porter*. One Day that Week, but I cannot tell what Day.

Sir *B. Shower*. He ſays it was agreed ſo, and ſo I deſire to know what Words Mr. *Rookwood* uttered at that Time.

Capt. *Porter*. It was diſcourſed by every one round, which was the beſt Way and Method. I heard Mr. *Rookwood* ſay, indeed, he believed it a very deſperate Thing, and he was not very willing to engage in it; but when Sir *George Barclay* told him he ſhould command his Party, he replied in *French* ———.

Mr *Soll. Gen.* What's the Meaning of that?

Capt. *Porter*. There's an End of it.

Mr *Att. Gen.* You ſay the Priſoner was at your Lodging *Saturday* the 15th, in the Morning, What Diſcourſe had you there?

Capt. *Porter*. He was there upon *Saturday* in the Morning, the 15th of *February*, and *Durant* brought an Account that the King's firſt Guards were gone, and the King's Kitchin was gone before, and it was expected that the King would go about eleven a Clock, but it was ſaid, that there were a great many were preparing to go with him, and therefore it would not be convenient to do it that Day; ſaid I, that is no Objection at all, for the Nobility and Gentry go out of the Field as ſoon as the Sport is over, and the King uſed to go with a few People to Mr. ——— Houſe at *Richmond*, and therefore it might be as well done at that Time, as any Time: *Durant* made that Objection at firſt himſelf, and when I made him that Anſwer, he went to Sir *George Barclay*, and he came back with Sir *George Barclay*, and the Priſoner was there by at the ſame Time, and Sir *George Barclay* made the ſame Objection; it was at my Lodging in *Little Rider-ſtreet*. and when I told them my Reaſon againſt the Objection, as I had done before, they all agreed to do it that Day.

Mr *Phipps*. At that ſecond Meeting, did Mr. *Rookwood* make any Propoſal there?

Capt. *Porter*. I only ſay he came with Sir *George Barclay*, and what I heard, I tell you Sir *George Barclay* made that Objection, and I gave it that Anſwer.

Mr *Phipps*. But what did he ſay?

Capt. *Porter*. I cannot ſay that I heard Mr. *Rookwood* ſay any Thing in particular, but they all agreed to do the Thing that Day.

Sir *B. Shower*. You remember nothing that he ſaid?

Capt. *Porter*. Sir *George Barclay* ſaid, we will go and prepare, and he went away with him.

Sir *B. Shower*. Pray, when did Sir *George Barclay* come into *England*?

Capt. *Porter*. Truly, Sir, I don't know that; the firſt Time that I ſaw him after he came, Mr. *Charnock* brought him to my Lodging in *Norfolk-*

Norfolk-ſtreet, but before that, Mr *Charnock* told me, he was come into *England*.

L. C. J. Hark you, Mr *Porter*, when you came back from Viewing the Ground before the firſt *Saturday*, and you ſaid you made your Report, and then it was agreed that it ſhould be done at ſuch a Place; Do you ſay the Priſoner was there?

Mr *Att. Gen.* No, my Lord, he does not ſay ſo. Do you ſay Mr *Rookwood* was there at that Time?

Capt. *Porter*. No, my Lord, I don't ſay ſo.

Sir *B. Shower*. I am ſure he did not ſay ſo before; and beſides, your Lordſhip will obſerve there is no ſuch Overt-Act as that laid in the Indictment againſt the Priſoner, that Mr *Porter* made his Report upon the View, that only concerns Mr *Knightley*.

L. C. J. No, that is not an Overt-Act, I agree it; but I only ask the Queſtion, whether the Priſoner was there.

L. C. J. *Treby*. If it were an Overt-Act laid in the Indictment, it would not affect the Priſoner, becauſe the Viewing of the Ground, and making the Report, is Captain *Porter*'s Act, and it muſt be the Conſulting and Debating afterwards that muſt affect the Priſoner, if he be concern'd.

Mr *Conyers*. The Meetings and Conſultations that are laid in the Indictment are the Overt-Acts.

Mr *Soll. Gen.* Well, if they have done with Captain *Porter*, we deſire Mr *George Harris* may be ſworn.

Sir *B. Shower*. My Lord, we beg Leave to oppoſe Mr *Harris*'s being ſworn; here was a Proclamation that did take Notice of this barbarous Conſpiracy to aſſaſſinate the King, and the Proclamation did ſignifie, That the King had received Information of ſeveral Perſons concerned in that Conſpiracy; and for the Encouragement of taking thoſe ſo accuſed, he did promiſe a Thouſand Pounds Reward for the taking of any of the Conſpirators; and in the Concluſion of the Proclamation there is a Clauſe, *That if any of the Conſpirators ſhould diſcover or apprehend any of the other Perſons that were therein named, ſo as that they ſhould be brought to condign Puniſhment, ſuch Conſpirator ſo diſcovering ſhould receive a Thouſand Pounds Reward for any of the other Perſons apprehended, and his own Pardon.* My Lord, we have a Witneſs here ready to prove that this was Mr *Harris*'s Caſe; he was himſelf in the Proclamation, he did actually diſcover Mr *Rookwood*, the Priſoner at the Bar, and was inſtrumental in the taking of him; and conſequently upon this Clauſe of the Proclamation, if he be brought to Juſtice, then is Mr *Harris* intitled to this Reward and his Pardon; and conſequently he has ſuch an Intereſt and Advantage to himſelf as will prevent his being a Witneſs. It is true, indeed, where it is at the King's Suit, in a capital Caſe, it is pretty hard to ſay that a Man has an Intereſt; but we think, as this Caſe is circumſtantiated upon this Proclamation, that the ſame Objection lies againſt him as would do if this were a civil Cauſe; if we ſhew how he is to have an Advantage by the Event of this Cauſe, then he is not to be admitted a Witneſs.

L. C. J. Did he apprehend any Body upon the Proclamation?

Sir *B. Shower*. Yes, he apprehended Mr *Rookwood* himſelf, or was the Cauſe of it, and thereby is intitled to the Reward and his Pardon.

Mr *Phipps*. That upon which we ground our Objection is the different Penning of the Proclamation; for if any one that is not a Conſpirator do but diſcover and apprehend any of the Perſons named in the Proclamation, he is entitled to the Thouſand Pounds; but the Conſpirators themſelves muſt go further; for a bare Diſcovery and Apprehending any of their Accomplices will not entitle them to the Reward mentioned in the Proclamation, but they muſt diſcover and apprehend their Accomplices ſo as they be brought to Juſtice before they can be entitled to the Reward: And to be brought to Juſtice for any Crime, is in common Underſtanding to be brought to ſuch Puniſhment as the Law inflicts for the Offence. Now Mr *Harris*'s Caſe is this, he diſcovered Mr *Rookwood*, and went with the Guards to the Compter and ſeiz'd him: And if Mr *Rookwood* ben't convicted, Mr *Harris* is not to have any Thing for his Pains; but if he be convicted, Mr *Harris* is entitled to the Thouſand Pounds and his Pardon. And therefore ſurely Mr *Harris* cannot be admitted an Evidence againſt Mr *Rookwood*, ſince he is to receive ſo great a Benefit by his Conviction. Upon an Indictment for a uſurious Contract, the Perſon whoſe Deed it is cannot be a Witneſs, becauſe 'tis to avoid his own Act: So in an Indictment for Perjury, on the Stat. 5. *Eliz.* the Party injured by the Perjury cannot be a Witneſs, becauſe he is to have half the Forfeitures.

Mr. *Att. Gen.* I ſuppoſe they will make out their Objection before they expect an Anſwer from us.

Sir *B. Shower*. I hope your Lordſhip will not put us to prove a Copy of the Proclamation from the Inrolment, but that we may have the ſame Favour as in the Caſe of the Statute-Book, that the Print of it may be allow'd for Evidence.

Mr *Att. Gen.* My Lord, we will not ſtand with them for that, we know they are miſtaken throughout, we conſent the Proclamation ſhould be read.

Cl. of Arr. Reads,

By the King a Proclamation.

William R.

WHereas His Majeſty has received Information upon Oath, that the Perſons herein after named, have with divers other wicked and traiterous Perſons entered into a horrid and deteſtable Conſpiracy to aſſaſſinate and murder His Majeſty's ſacred Perſon, for which Cauſe ſeveral Warrants for High Treaſon have been iſſued out againſt them, but they have withdrawn themſelves from their uſual Places of Abode, and are fled from Juſtice: His Majeſty has therefore thought fit by the Advice of his Privy Council to iſſue his Royal Proclamation, and His Majeſty does hereby command and require all His loving Subjects to diſcover, take, and apprehend James *Duke of* Berwick, *Sir* George Barclay, *Major* Lowick, George Porter, *Capt.* Stow, *Capt.* Walbank, *Capt.* James Courtney, *Lieutenant* Sherborne, Brice, Blair, Dinant, Chambers, Boiſe, George Higgins, *and his two Brothers, Sons to Sir* Thomas Higgins, Davis Cardell, Goodman, Cramburne, Keyes, Pendergroſs, *alias* Prendergraſs, Bryerly, Trevor, *Sir* George Maxwell, Durance, *a Fleming*, Chriſtopher Knightley, *Lieutenant* King, Holmes, *Sir* William Parkyns, Rookwood, *wherever they may be found, and to carry them before the next Juſtice of Peace or chief Magiſtrate, who is hereby required to commit them to the next Goal, there to remain until they be thence delivered by due Courſe of Law. And His Majeſty doth hereby require the ſaid Juſtice, or other Magiſtrate, immediately to give Notice thereof to Him or His Privy Council. And for*

the Prevention of the going of the ſaid Perſons, or of any other, into Ireland, *or other Parts beyond the Seas, His Majeſty does require and command all His Officers of the Cuſtoms, and other His Officers and Subjects of and in the reſpective Courts and Maritime Towns and Places within His Kingdom of* England, *Dominion of* Wales, *and Town of* Berwick *upon* Tweed, *that they and every of them in their reſpective Stations and Places, be careful and diligent in the Examination of all Perſons who ſhall paſs or endeavour to paſs beyond the Seas, and that they do not permit any Perſon whatſoever to go into* Ireland, *or other Places beyond the Seas, without a Paſs under His Majeſty's Royal Sign Manual until further Order. And if they ſhall diſcover the ſaid Perſons above-named or either of them, then to cauſe them to be apprehended and ſecured, and to give Notice as aforeſaid. And His Majeſty does hereby Publiſh and Declare to all Perſons who ſhall conceal the Perſons above-named, or any of them, or be aiding and aſſiſting in the Concealing of them, or furthering their Eſcape, That they ſhall be proceeded againſt, for ſuch their Offence, with the utmoſt Severity, according to Law. And for the Encouragement of all Perſons to be Diligent and Careful in endeavouring to Diſcover and Apprehend the ſaid Perſons, We do hereby further Declare, That whoſoever ſhall diſcover and Apprehend the Perſons above-named, or any of them, and ſhall bring them before ſome Juſtice of Peace, or chief Magiſtrate, as aforeſaid, ſhall have and receive as a Reward, the Summ of One Thouſand Pounds; which ſaid Sum of One Thouſand Pounds, the Lords Commiſſioners of His Majeſty's Treaſury are hereby Required and Directed to pay accordingly. And if any of the Perſons above-named ſhall Diſcover and Apprehend any of their Accomplices, ſo as they may be brought to Juſtice, His Majeſty does hereby Declare, That every Perſon making ſuch Diſcovery, ſhall have His Majeſty's Gracious Pardon for his Offence, and ſhall receive the Reward of One Thouſand Pound, to be pay'd in ſuch manner as aforeſaid.*

Given at our Court at *Kenſington*, the 23d Day of *February*, 169⅞, in the Eighth Year of our Reign.

GOD SAVE THE KING.

Mr *Phipps*. My Lord, The different Penning of the Clauſes is not only in that Proclamation, but it is the Language of every Proclamation that has gone out for the Apprehending any of the Conſpirators.

Mr *Att. Gen*. My Lord, All that we ſay in Anſwer to this Objection, is, That Mr *Harris* is not nam'd in that Proclamation.

L. C. J. What ſay you to that Sir *Bartholomew Shower?* He is not named in the Proclamation: And ſo if he hath diſcovered and apprehended the Priſoner, he has earn'd his Money, whether he be Convicted or not, becauſe *Rookwood*'s Name is in the Proclamation, tho' his is not.

Mr *Phipps*. Then, my Lord, with humble Submiſſion, here is another Proclamation wherein he is nam'd, we deſire that may be read.

Mr *Soll. Gen*. And when it is read, it will be as little to your Purpoſe as the other.

Mr *Att. Gen*. Let them read what they pleaſe, we need ſay nothing at all to it.

L. C. J. Certainly upon this Proclamation, there's no Objection; for he is intitled to his One Thouſand Pound already, tho' *Rookwood* be never convicted.

Mr *Phipps*. But is he not by this Proclamation which mentions his Accomplices, intitled to his Pardon? If ſo, he ſwears to ſecure himſelf.

L. C. J. By the Apprehending and Diſcovering, he's intitled to his Pardon.

Mr *Phipps*. But not without he be brought to Juſtice; that is to ſay, till he be convicted; therefore he cannot be an Evidence to convict him.

L. C. J. That is, as to any that are there named, if any of them diſcover and apprehend one another, it muſt be ſo as that they be brought to Juſtice; But if any Perſon that is not named there does apprehend any that is, he is intitled to the One Thouſand Pound, barely by the Apprehenſion.

Mr *Phipps*. Then there is another Proclamation where they are both named, as Mr *Rookwood* tells me.

Sir *B. Shower*. My Lord, We will ſet this Matter right; we will ſhow the other Proclamation, in which, if I am rightly inform'd, for I have not read it, Mr. *Harris* is nam'd.

Mr *Att. Gen*. If you have not read it, I would adviſe you not to trouble the Court with it; for you will find the latter Part is reſtrain'd to three or four particular Perſons, of which he is none.

Rookwood. I am named in the Proclamation.

Mr *Att. Gen*. Ay, but read the latter Part of it, and you will find you are not nam'd in that Clauſe that they referr'd to: You need not read the former Part of the Proclamation, we agree the Priſoner is named there; but only look towards the bottom, which is the Clauſe that they refer to.

Cl. of Arr. (Reads) *And we do hereby further declare*, &c.

Mr *Att. Gen*. They have not conſidered the Proclamation, and therefore make an Objection of they don't know what.

Sir *B. Shower*. We are in your Lordſhip's Judgment.

L. C. J. For what? See if you can make or ſtate a Caſe for our Judgment.

Sir *B. Shower*. Mr *Rookwood* is mention'd in the firſt Proclamation, and *Harris* is not, but there are the Word Accomplices: He is likewiſe mentioned in the laſt Proclamation, but not in the laſt Clauſe of it. I confeſs, if he had it had been plain it would have taken off his Teſtimony; but now we muſt ſubmit it to you, whether he is not an intereſted Perſon, and conſequently no good Witneſs.

L. C. J. Truly I do not ſee any Colour for the Objection. Is he not as well intituled to his One Thouſand Pound, tho' Mr *Rookwood* had never been try'd, by the bare Apprehending of Mr *Rookwood*, as if he was convicted?

Sir *B. Shower*. No, my Lord; becauſe the Words are ſo as he may be brought to Juſtice.

L. C. J. That is not ſo, as to any Perſon that apprehends one mentioned in the Proclamation, if the Perſon that apprehends be not mention'd in it, and named himſelf; if any one that is not mention'd apprehend one that is mention'd, he is intituled, by the Apprehenſion, to the One thouſand Pound. If any one that is mention'd apprehend another, then he is to bring him to Juſtice; now Mr *Harris* is not named in this Proclamation, and ſo, as to the One thouſand Pound, he ſtands in the ſame Condition as any other Perſon that diſcovered or apprehended one of the Perſons there nam'd.

Sir *B. Shower*. But it ſeems he was one of the Con-

ſpirators, becauſe he is himſelf deſcribed in another Proclamation.

Mr *Att. Gen.* If it were ſo, it would not be material, nor any manner of Objection; but as they have made their Objection upon theſe Proclamations, we think there is nothing for us to give an Anſwer to.

Mr *Cowper.* Nay, my Lord, if it were ſo, will Sir *Bartholomew Shower* ſay his Client is not brought to Juſtice, unleſs he be convicted? I am ſure the Words *Convicted* or *Attainted*, are not in the Proclamation.

L. C. J. There is nothing in it; you muſt ſwear Mr. *Harris.* *(Which was done accordingly).*

Mr *Sol. Gen.* Will you give an Account to my Lord and the Jury, what you know of this Conſpiracy againſt the King's Life, from the firſt Time you were acquainted with it, and what Hand the Priſoner at the Bar had in it.

Mr *Att. Gen.* Pray give an Account of the whole Thing, your Coming over, and who ſent you, and upon what Errand, and the whole that you know of this Conſpiracy.

Capt. *Harris.* Upon the 14th of *January* laſt, the *French* Stile, New Stile, I was at St. *Germains*, where I was ſent for by King *James*, and was ordered to wait his Dinner till it was over, and accordingly I did wait till his Dinner was over, and then I came in, and Col. *Parker* was with him, and one Mr *Hare*, who is alſo mention'd in the Proclamation, was there alſo: The King told me he was ſenſible I had ſerved him well, and now he had an Opportunity of doing ſomething for me; he told me he would ſend me into *England*, where I ſhould be ſubſiſted, and I was to follow the Orders of Sir *George Barclay*, and accordingly he order'd me ten Lewidores to be paid by Mr *Caroll*, who is Secretary to the late Queen, and Col. *Parker* went along with me, and Mr *Hare*, to *Caroll*, and told him he came from the King, and we had the Lewidores, and we went to *Calais*, in Order to our coming over hither: But we were told if we were wind-bound, that the Money we received would not bear our Charges; there was Orders given for our further Subſiſtance at *Calice*, to the Preſident there. Accordingly we came to *Calice*, and the Wind did not ſerve us for eight or nine Days; and while I ſtay'd there, the Money that I ſpent at *Calice* was paid by the Preſident of *Calice*, Monſieur *Latour*. Afterwards I landed in *England*, near *Romney* Marſh, as I was told, and I came to the Houſe of one *Hunt*, and he provided me and my Comrade with a couple of Horſes; and coming from thence, I came in the firſt Place to one *Tucker*'s an Apothecary in *Sandway*, and next from thence we came to *Rocheſter*, to *Charles Croſts*'s, and from thence in a Coach to *Graveſend*, and from thence by Water to *London*: That Night we lay in *Grace-Church-ſtreet* at an Inn, it being Night, the Night-Tide, and ſomething late. The next Day I came to a Lodging at an Acquaintance of my Comrade's, Mr *Hare*, at the *Unicorn* in *Brownlow-ſtreet*, one Mr *Wateman*'s. The next Night I went to look for Sir *George Barclay*, whom the King told me I ſhould certainly find by ſuch a Sign of a white Handkerchief hanging out of his Pocket, on *Mondays* and *Thurſdays*, in *Covent-Garden*, where his Walk was to be in the Evening, becauſe he was not to appear in the Day-Time openly. It happen'd that upon *Monday* Night after I came to Town, I went there, and did not find Sir *George Barclay* according to the King's Direction, which I admired at; but there was one Mr *Berkenhead*, who told my Comrade, a Day or two after, That Sir *George Barclay* would needs ſpeak with me, and accordingly I met with him; and he asked me how the King, Queen, Prince, and Princeſs did, and I told him they were very well; I told him I was appointed to attend him, and obey his Orders. He told me he had no Money at preſent, but in two or three Days he would ſend ſome; and ſo he did, by Major *Holmes*. I had five Shillings a Day for Subſiſtance, and I had no Horſe; and when I had a Horſe, it was ſix Shillings a Day; after which rate I had Subſiſtance for a Month at five Shillings a Day, Guineas going then at Thirty Shillings. Major *Holmes* paid me the Money by Sir *George Barclay*'s Order, as he told me, and he afterwards gave me a Guinea, and that was the firſt *Saturday* when the Aſſaſſination was deſign'd; for that we told him we wanted Money, and it was not reaſonable we ſhould take our Horſes out of the Stable before we paid for them: And I met Sir *George Barclay* ſeveral Times at *Covent-Garden*, and he told me it was a ſuſpicious Place, and deſired me not to come any more there; but when he had any particular Orders to give me, he would give me Notice of it where I ſhou'd meet him; and accordingly I did meet him ſeveral Times.

Mr *Att. Gen.* Now, Sir, will you tell what you know as to the Priſoner at the Bar.

Capt. *Harris.* As to Mr *Rookwood*, the *Saturday* that the Aſſaſſination was deſign'd to be, the firſt Time that I knew of it, I met Mr *Rookwood*, at one Mr *Burck*'s Lodging, where he was up, and I ſaw him in a great Hurry and ſome Conſternation, and in came Mr *Bernarde*; I ask'd him the Meaning of it, and what they were going about; and Mr *Rookwood* told me, If I wou'd go down to Captain *Counter* I ſhou'd know; accordingly I went, and to the beſt of my Remembrance, he gave me a little Note to Captain *Counter*, but that I am not poſitive in. I went to Captain *Counter*, and as ſoon as ever I came, he told us, We muſt be immediately ready to go to *Turnham Green*.

Mr *Att. Gen.* Where was that?

Capt. *Harris.* At the *Woolpack*, that was the Sign ——— as near as I remember. Mr *Hare* and I were ordered together to come there, and there was Mr *Hungate*, who had been there ſome Time, and when I came in, Sir *George Barclay* did declare Laughing, *Theſe are my Janiſaries:* And he talk'd ſomething of bringing the Garter, and of attacking the Coach; but he went out of the Room, and afterwards he came in and declared, *We were all Men of Honour, and that the Buſineſs we were going about, was to attack the Prince of* Orange; but *Durant* came in after that, and ſaid, *The Prince of* Orange *did not go out that Day.* When he talk'd of attacking the Prince of *Orange*, I was very much ſtartled, not knowing any Thing of it before; and I came the next Morning to Mr *Rookwood*, and ask'd him if we were to be the Murderers of the Prince of *Orange*, ſays Mr *Rookwood* to me, *I am afraid we are drawn into ſome ſuch Buſineſs; but if I had known of it before I came over, I ſhould have beg'd the King's Pardon at St.* Germains, *and not have come over hither*; and ſaid I, *This is very fine, we have ſerv'd to a very good Purpoſe, to be ſent over upon ſuch an Errand and Account.* After this

this Mr *Rookwood*, and Mr *Lowick*, and I, had a Meeting at *Red-Lyon Fields*, where we did diſcourſe about the Matter. I did often declare againſt it, That it was ſo barbarous a Thing, that no Man of Honour almoſt wou'd be guilty of it; but Major *Lowick* anſwered, That we were to obey Orders, for ſure Sir *George Barclay* wou'd not undertake a Thing of that Nature without Orders.

Mr *Att. Gen.* Pray what ſaid Mr *Rookwood*.

Capt. *Harris.* He own'd it was a barbarous Thing; but he was ſent over to obey Sir *George Barclay*'s Orders, which he had ſeveral Times declared he was reſolved to do; upon that we parted: ſo afterwards I came to Mr *Rookwood*'s Lodging; it was the *Saturday* Morning I came to him, and ſo went to Sir *George Barclay*'s; while he was there, Mr *Rookwood* gave me a Note, naming ſo many Names, particularly Mr *Hungate*, Mr *Hanford*, Mr *Hare*, and his own Name at Top, not the Name that he is arraigned by here; but a ſham Name that he had, as the reſt of us all had ſham Names, which at that Time we went by.

L. C. J. What was your Name?

Capt. *Harris.* My Name is *Jenkins.*

L. C. J. Who gave you that Name?

Capt. *Harris.* King *James* at St. *Germains*, and he gave Mr *Hare* the Name of *Guiney*, and Mr *Rookwood*'s Name was *Roberts.* King *James* told us in his Bed-chamber, We were to go by thoſe Names.

Mr *At. Gen.* Pray Sir, what did *Rookwood* ſay to you, when he gave you that Liſt?

Capt. *Harris.* He told me, he was to go to *Turnham-Green*, and I was to go along with him, and ſays he to me ſmiling, *You ſhall be my Aid de Camp*; and get the Reſt of the Gentlemen ready, and accordingly I went to look for ſeveral of the Perſons ——— particularly for Mr *Blackburne*: When I came back again, I found him lying on his Bed, and that Sir *George Barclay* had told him the Prince of *Orange* did not go out that Day, and from thence we went to Dinner, where Major *Lowick* din'd with us, and Mr *Bernarde* and Major *Lowick* ſeeing me in a Heat, ask'd me, Why I was in ſuch a Sweat; I told him I were getting thoſe Men ready for Mr *Rookwood*, who had made me his *Aid de Camp*: Says Major *Lowick* to me, You may very well do it, for you have Six Shillings a Day allow'd you, and I have nothing; I bring two Men at my own Charge. Said I, Major *Lowick*, I wonder you don't apply your ſelf to Sir *George Barclay*, and then I believe, you may be ſubſiſted too. He anſwer'd me, He did not think it worth the while to trouble him, ſince he had never ſpoke to him of it before: and *Rookwood*, and *Bernarde*, and *Lowick*, and my ſelf, ſeveral Times met in *Red-Lion Fields*, and talk'd of attacking the Prince of *Orange.*

Mr *Att. Gen.* Who did?

Capt. *Harris. Rookwood*, *Bernarde*, *Lowick*, and my ſelf.

Mr *Att. Gen.* Pray Sir, let me ask you one Queſtion. Where was your Horſe at firſt?

Capt. *Harris.* At firſt it was at my Lord *Feverſham*'s Stables, as they told me, in *Somerſet-Houſe.*

Mr *Att. Gen.* Where were the other Perſons Horſes?

Capt. *Harris.* There was Mr *Hungate*'s and Mr *Hare*'s Horſes in the ſame Place, at the ſame Time, as they told me.

Mr *Att. Gen.* How came you by your Horſe there?

Capt. *Harris.* Maj. *Holmes* did deliver my Horſe, and committed it to my Care, and I carry'd it thence to another Place.

Mr *Att. Gen.* Did you obſerve there was any more Horſes there?

Capt. *Harris.* I believe there was Five or Six, as near as I can gueſs.

Mr *At. Gen.* Do you know where *Rookwood* was to have his Horſe?

Capt. *Harris.* He had a Horſe; but whence he had it I don't know.

Mr *Att. Gen.* Had you any Arms delivered you?

Capt. *Harris.* Yes, I had by Capt. *Counter.*

Mr *Conyers.* Were you at no other Place together that *Saturday* Night, the 22*d* of *February*, becauſe you ſay you din'd together?

Capt. *Harris.* Yes, we were at the *Bear* Tavern.

Mr *Conyers.* What Diſcourſe paſs'd between you there?

Capt. *Harris.* They were talking about the Aſſaſſination; but what any particular Perſon ſaid, I cannot tell.

Mr *Conyers.* Pray who were there?

Capt. *Harris.* There was Mr *Knightley*, Captain *Rookwood*, and Mr *King*; and *Knightley* went out, and came in again, and declared, we muſt have a great deal of Care of our ſelves, or we ſhould be taken up: and he whiſper'd it firſt, and afterwards I asked him what it was; and he told me, and ſaid, *We muſt have a Care of our ſelves.* Says Mr *King*, ſtaring this Way with his Eyes, *Surely God Almighty is on our Side*; and ſo we parted.

L. C. J. When was this?

Capt. *Harris.* This was the Night of *Saturday* the 22d, when it was diſcover'd; for ſome of them were taken up the next Day.

Mr *At. Gen.* Was *Rookwood* there at that Time at the *Bear* Tavern.

Capt. *Harris.* I cannot poſitively ſay whether he was or not.

Mr *At. Gen.* What Diſcourſe had you there?

Capt. *Harris.* We talk'd of Aſſaſſinating the King; but what it was in particular, I cannot tell.

L. C. J. Was *Rookwood* there?

Capt. *Harris.* Yes, I believe he was; but I cannot poſitively ſay.

L. C. J. You ſay it was the laſt *Saturday* that the King was to go abroad, that you apprehended you were diſcovered?

Capt. Harris. Yes, we apprehended we were diſcover'd before that; for Mr *Lowick* told me, that three or four Days before, in that Week, that his Name, and one *Harriſon*'s, were given into the Council, and another, and another, Two or Three of them, as he told me; I think Three or Four; and upon that Account Major *Lowick* went from his Lodging, and did not lie at his Lodging the Night before; and I came to Major *Lowick*, and he told me the ſame Thing at the *King's Arms* Tavern.

Mr *At. Gen.* Can you remember what Diſcourſe you had that *Saturday* Night?

Mr *Cowper.* You ſay that on *Saturday* the 22d, Mr *Rookwood* gave you the Liſt.

Capt. *Harris.* I do not ſay it was the 22*d*, for I cannot ſwear to the Day of the Month; but it

it was the ſecond *Saturday* that we were to have gone about this Buſineſs.

Mr *Cowper*. You ſay he gave you a Liſt of Names: Pray, when he gave you that Liſt, what Diſcourſe happened in the Room, juſt before, or after the giving of the Liſt?

Capt. *Harris*. Sir, I think I told the Court that before.

Mr *Cowper*. Sir. I deſire you would repeat it.

Capt. *Harris*. My Lord, I humbly deſire to know whether I am to anſwer that Gentleman that Queſtion?

L. C. J. Yes, you are to anſwer, being upon your Oath, and to tell the whole Truth.

Mr *Cowper*. I asked him the Queſtion ſo fairly, what Diſcourſe introduced the giving of the Liſt, and what followed upon it, that I perceive this Gentleman does not know which Side I am of.

Capt. *Harris*. Mr *Rookwood* ſaid we were to go to *Turnham-Green*; and he told me, that I was to be one of his Party, that we were to attack the Prince of *Orange*.

L. C. J. You ſay you were to be one of his Party; pray was it there that he told you, you ſhould be his *Aid de Camp?*

Capt. *Harris*. Yes, he did tell me I was to be his *Aid de Camp*.

Mr *Phipps*. Whoſe Hand-writting was that Liſt?

Capt. *Harris*. I cannot tell, I had it from that Gentleman.

Mr *Phipps*. But whoſe Writing was it?

Capt. *Harris*. Indeed I know not his Hand-writing, and therefore cannot tell whoſe it was: He is for his Life, but I believe he cannot deny any Thing that I have ſaid, I ſuppoſe not: I ſhould be very ſorry to accuſe Mr *Rookwood* of any Thing that was not true.

Mr *Phipps*. Pray whoſe Names were in that Liſt?

Capt. *Harris*. I have mention'd Mr *Hare*, Mr *Hanford*, Mr *Blackburne*, my ſelf, and you, Mr *Rookwood*, had your own Name at Top.

Rookwood. What is that *Blackburne?*

Capt. *Harris*. He is a *Lancaſhire* Man.

Rookwood. It's a very ſtrange Thing I ſhould give you a Liſt with a Man's Name that I don't know, I declare it, I know no ſuch Perſon.

Capt. *Harris*. Mr *Rookwood*, I believe you are very ſenſible I do not accuſe you of any Thing that is not true.

Mr *Phipps*. When did you ſee that Liſt laſt?

Capt. *Harris*. He gave it into my Hands, and had it from me again, or I threw it away afterwards.

Rookwood. But you that were to be an Evidence ought to have kept it to juſtify your Evidence.

Capt. *H.* Truly I did not intend to have been an Evidence at that Time.

Mr *At. Gen.* If they will ask him any Queſtions, let them.

Sir *B. Shower*. No, indeed, I will ask him no Queſtions.

Mr *Att. Gen.* Then, my Lord, we have another Piece of Evidence which we would offer to your Lordſhip, which is not direct Evidence againſt the Priſoner, but only to prove a Circumſtance or two of what has already been ſworn: We do acknowlege, my Lord, it does not affect Mr *Rookwood*, but only to ſtrengthen and confirm what they have ſworn.

Sir *B. Shower*. With Submiſſion we hope it will not be Evidence fit to be given as to the Priſoner at all; for becauſe a Man may ſwear true in the particular Circumſtance of a Thing, that therefore he ſwears true what he ſwears againſt the Priſoner, I think is no Coſequence in the World.

L. C. J. It is a Thing diſtinct and foreign to the Matter, as to Mr *Rookwood*.

Mr *At. Gen.* My Lord, we do not ſay it directly affects Mr *Rookwood*; but when your Lordſhip has heard it, we ſhall ſubmit it to you, how far it confirms even the Evidence given againſt him.

Mr *Conyers*. My Lord, we ſay the Priſoner was to have his Horſe from *Somerſet-Houſe*; and that there were Horſes plac'd there for that Purpoſe we are going to prove.

Mr *At. Gen.* My Lord, it is one entire Conſpiracy, in which every one had his Part; one was to have his Horſes and his Party in one Place, and another in another: Now that there were at ſuch Time ſuch Horſes at *Somerſet-Houſe*, and thoſe Horſes were delivered out from *Somerſet-Houſe*, is certainly a Confirmation of the Truth of what the Witneſſes have ſaid.

L. C. J. It is ſo. If that be it you offer, it is very material.

Mr *Conyers*. We ſhall prove, That upon the Diſappointment on the firſt *Saturday*, the 15th of *February*, they were to be ready againſt the 22d; and you will hear how the Horſes were diſpos'd of in the mean Time. Call *Chamberlain*, *Maskel*, and *Allen*.

Mr *Att. Gen.* Call any one of them, I believe it is enough.

Mr Chamberlain *appeared, and was ſworn.*

Mr *At. Gen.* Pray will you give my Lord, and the Jury an Account what you know of any Horſes that were brought to *Somerſet-houſe* about *February* laſt and how long they ſtay'd there?

Chamberlain. There was ſix Horſes.

Mr *At. Gen.* Who brought them in.

Chamberlain. They were ſent in by ſome Perſons in Mr *Lewis*'s Name.

Mr *At. Gen.* Had you any Direction to take Care of them?

Chamb. Mr *Lewis* ſent in a Note to take Care of them for a Night or two.

Mr *At. Gen.* Who carried them away?

Chamb. I cannot tell: Some People came to ſee 'em that I never ſaw before, and they took care of them; I know not who they were, and I never ſaw them ſince.

Mr *At. Gen.* What Time was it that they came for them?

Chamberlain. It was about the Middle of the Day.

Mr *At. Gen.* What Month was it in?

Chamb. I think it was much about the latter End of *February*, to the beſt of my Remembrance.

Mr *At. Gen.* How long was it before the Plot was diſcover'd.

Chamb. It was about a Week, or a ſmall Matter, before the Plot was diſcover'd, to the beſt of my Knowledge.

Mr. *Att. Gen.* How long ſtaid the Horſes there at *Somerſet-Houſe?*

Chamb. Three of them ſtaid a Night or two; but the other three of them about a Matter of a Week or ten Days.

Mr *At. Gen.* Who own'd thoſe Horſes?

Cham-

Chamberlain. They were ſent in, in Mr *Lewis*'s Name; but who own'd them I cannot tell indeed.

Mr *Conyers.* Then ſwear *John Allen. (Which was done.)*

Pray tell my Lords and the Jury, what you know concerning any Horſes about the Time of the Breaking out of the Plot.

Mr *Att. Gen.* We mean in *Somerſet-Houſe* Stable.

Allen. There were ſeven Horſes came in.

Mr *Conyers.* Who brought them?

Allen. There was Six in the firſt Place; one came in afterwards in the Evening.

Mr *Conyers.* By whoſe Order were they brought there?

Allen. By Mr *Lewis*'s Order.

Mr *At. Gen.* How long did they ſtay there?

Allen. Some of them ſtaid there ſeveral Days; Three of them went away the next Day, as I think.

Mr *Conyers.* Do you remember about what time thoſe Horſes were brought thither?

Allen. They were brought there, I believe, about ſeven or eight Days before the Plot broke out.

Mr *At. Gen.* My Lord, We only call theſe Witneſſes to confirm the Teſtimony of the others, that there were ſuch Horſes there at that time, and for the Preſent we reſt it here.

L. C. J. Then, Gentlemen, what ſay you to it for the Priſoner?

Sir *B. Shower.* If your Lordſhip pleaſe, we are of Council for the Priſoner; and that which we are to inſiſt upon is this, which we ſubmit to your Lordſhip's Judgment. In the firſt place, whether here be two Witneſſes againſt the Priſoner to prove this Treaſon according to the Statute of *Edw. 6.* which requires two Witneſſes in High-Treaſon, and lawful Ones; but that in the firſt Place we ſay there are not two Witneſſes at all, at leaſt not to any Overt-Act that is laid in this Indictment. As to what Captain *Porter* ſays of what paſs'd between him and *Durant*, the Dialogue between them where *Rookwood* was preſent, we are in your Lordſhip's Direction; and we doubt not but the Jury will take it into their Conſideration, how far that affects the Priſoner; that he ſhall not be concern'd in any Tranſaction between Mr *Porter* and any other Perſons; none of their Declarations, none of their treaſonable Practices, can be imputed to or affect him in any way whatſoever. Now all that Captain *Porter* ſays of Mr *Rookwood*, is, that he was once at the *Globe* Tavern, and there was a Diſcourſe about this Matter; and then he tells your Lordſhip of a Dialogue between him and *Durant*, and an Account of what paſs'd between them; but he does not ſay any Thing of Mr *Rookwood* being any Ways concern'd in the Matter, but only that he dropped this Expreſſion, It was a deſperate Adventure, a dangerous Enterprize, and he ſeemed againſt it, but in the End he concluded with ſomething in *French*, which what they are, and what they mean, we muſt ſubmit to your Lordſhip and the Jury; he interprets it, when Sir *George Barclay* ſaid he muſt have a Share in it, then *Rookwood* replied, There's an End of it. But there is not one Word of Agreement ſworn to that Mr *Rookwood* ſpoke, to ſhew his Conſent. There is but one Time more that Mr *Porter* ſwears to, about the Priſoner at the Bar, and that is, at his Lodgings in *Little Rider-ſtreet*; for as to the other Conſults, Mr *Rookwood* was not preſent there: It ſeems there was a Diſcourſe about the Affair, but that *Rookwood* ſaid nothing, but went away; there was not ſo much as the leaſt Intimation of an Agreement to any ſuch Deſign, or Approbation of what was agitated in the Company, and we inſiſt upon it as to this in Point of Law, that it amounts to no more than Miſpriſion of Treaſon at moſt. My Lord, I will not now contend about Notions, nor will I argue whether Conſulting and Agreeing be Evidence of an Overt-Act; I ſubmit to your Lordſhip's Directions, notwithſtanding the Variety and Difference of Opinions that have been.

L. C. J. Sir *Bartholomew Shower*, I know not what Variety of Opinions you mean; there have been ſome Diſcourſes in Pamphlets I agree, but it was always taken and held for Law, that Conſulting and Agreeing was an Overt-Act.

Sir *B. Shower.* Here is no Evidence of any Agreement.

L. C. J. Pray let us hear what you ſay to that.

Sir *B. Shower.* It is not the being preſent where Traytors do conſult and conſpire the Death of the King, unleſs they actually agree; nor is it Evidence ſufficient to guide or prevail upon a Jury's Conſcience, to affirm upon their Oaths, that ſuch a one is guilty of High-Treaſon, becauſe ſuch a one was there and ſaid nothing at all; for the not diſcovering afterwards, nor accuſing is no Evidence at all againſt Mr *Rookwood*. As to Mr *Harris*, he gives you an Account of a great deal that does not affect Mr *Rookwood*, neither all that paſt at St. *Germains*, nor in their Journey into *England*, for all that may be true, and yet the Priſoner no way concern'd in it. As to what he affirms of the Priſoner, we ſhall ſubmit it to your Conſideration: What it amounts to, and all that his Depoſition comes up to, is, That Mr *Rookwood* complain'd that he was to obey implicitly Sir *George Barclay*'s Orders; and *Harris* gives an Account but of one particular Time that Mr *Rookwood* undertook or did agree to be concern'd in this Matter; it was but once, and that was, when he gave him the Note of thoſe that were to go to *Turnham-Green*, and that he was to be his *Ayd du Camp:* And as to that, we ſhall give you an Account by Witneſſes whom we ſhall call, that theſe two Witneſſes ought not to be believed as to what they have ſworn, tho' they do not come up to make two Witneſſes according to Law upon this Indictment: What they have ſaid as to this Man is not credible, tho' they may ſpeak true as to others; and no Doubt there was a barbarous Conſpiracy; it appears there was ſuch, beyond all Exception and Contradiction; and the Perſons that have been condemn'd as Conſpirators have acknowledg'd it: But, my Lord, that which is now before your Lordſhip and the Jury, is, to enquire whether the Priſoner is concern'd in this Affair at all, and how far; and we hope the Jury will be of Opinion he is not concern'd. The Heinouſneſs of the Crime, and the Aggravations of it, being to be abhorred by all Mankind, we think ought not to ſway with the Jury, nor influence their Judgments to believe a Witneſs ever the ſooner in accuſing any other Perſon; it ought rather to have a contrary Allay, for the greater the Crime is, and the farther off from having any tolerable Opinion in the World,

World, they ought to expect the greater Proof; and no one is to be preſum'd guilty of ſuch an Act, without very ſufficient Evidence of it; and the greater the Crime, the Proof ought to be the more poſitive and undeniable: It is not their being plainly poſitive that is ſufficient, but whether it is ſuch that is good in Law; and about that we are ſure your Lordſhip will give true Directions in point of Law: and whether the Witneſſes be credible or no, muſt be ſubmitted and left to the Jury, after we have call'd ſome Witneſſes who will give you an Account of their Reputation.

Mr *Phipps*. My Lord, we humbly inſiſt there are not two Witneſſes, ſuch as the Law requires, to prove the Charge upon this Indictment againſt the Priſoner: The two Overt-Acts that touch Mr *Rookwood*, are firſt Conſulting and Agreeing how to kill the King; the other is the finding Arms and Horſes for that purpoſe: But as to this latter, the finding Arms and Horſes, there is not one Evidence that comes up to it: And as to the former, the Conſultations, whether there be ſufficient Evidence that comes up to that, is very much a Queſtion with us: But we ſay, with Submiſſion, there are not two Witneſſes in that Caſe; for Mr *Porter* ſays only what he was told by Sir *George Barclay*, that Sir *George* propoſed this Matter; but withal he tells you, that when Sir *George Barclay* propoſed it, and Mr *Rookwood* was inform'd what the Deſign was, he was ſo far from Conſpiring, Conſulting, or Agreeing to do it, that he ſaid it was a barbarous Act, and he recoil'd at it. Then at laſt ſays Sir *George Barclay*, *You muſt command a Party*.

L. C. J. Well, and what ſaid *Rookwood* then?

Mr *Phipps*. *Porter* ſays, he then ſaid, There's an End of it. Now, my Lord, what Evidence is this of a Conſultation and Agreement? And this is all that *Porter* ſays. As to what Mr *Harris* ſays, we are to conſider whether the Liſt given to him be an Overt-Act; and there the Point in Queſtion is, Whether that Liſt can be given in Evidence againſt Mr *Rookwood*, upon this late Act of Parliament, as an Overt-Act, it not being laid in the Indictment? There is indeed an Overt-Act of a Liſt laid in the Indictment, as given to *Granburne*, but none as given to Mr *Rookwood*.

L. C. J. Pray take the Evidence right: Firſt, What will you make an Overt-Act? What do you think when there is a Debate among divers Perſons about killing the King?

Sir *B. Shower*. With Submiſſion that will be no Overt-Act, if there be a Debate of ſuch a Matter, tho' he be preſent.

L. C. J. Aye; but when there is a Conſult, and upon Debate a Reſolution is formed, and tho' he does at firſt diſlike it, yet when he is told he muſt command a Party, he ſays he is content, or there's an End of it; What do you make of that?

Sir *B. Shower*. He ſaid he did not like it, it was a barbarous deſperate Deſign.

L. C. J. It's true, but when Sir *George Barclay* ſaid he ſhou'd command a Party, he acquieſced, and ſaid there was an End of it: There was a Diſcourſe about Cutting off the King, and that was agreed upon in the Company at that Time; and tho' at firſt he did not like it, yet he might afterwards agree to it.

Sir *B. Shower*. My Lord, that is it which we deny; we ſay there is no Proof of his Agreement to it.

L. C. J. Capt. *Porter* ſays, he did declare that he ſaid he look'd upon it as a deſperate Deſign, and was averſe from being engag'd in it, but afterwards did agree to it; Whether is not that ſuch an Overt-Act, as is laid in the Indictment?

Sir *B. Shower*. My Lord, We muſt beg Leave for the Priſoner in a Caſe of this Nature, that it may be recollected what the Evidence did ſay. Mr *Porter* did not take upon him to affirm that Mr *Rookwood* conſented to it, but only ſaid, *There was an End of it*. Now we muſt leave that to the Jury, what they can make of ſuch a doubtful Expreſſion.

L. C. J. Call Mr *Porter* in again.

Mr *Conyers*. My Lord, the firſt Meeting Mr *Porter* ſpeaks of, where the Priſoner Mr *Rookwood* was, is at the *Globe Tavern*, where this Diſcourſe was; the next Meeting that he ſpeaks of, was on the *Friday* Night, before the firſt *Saturday* when the Buſineſs was to be done, and afterwards he met at *Porter*'s Lodgings, on *Saturday* Morning, in *Ryder-ſtreet*.

Then Capt. Porter *came in again.*

L. C. J. Hark ye, Mr *Porter*, the firſt Time that this Matter was propoſed, when Mr *Rookwood* was preſent, you ſay was at the *Globe Tavern*.

Capt. *Porter*. Yes, my Lord, it was.

L. C. J. And you ſay he diſlik'd it, and did not care to be concern'd in it.

Capt. *Porter*. Yes, my Lord, he did ſo.

L. C. J. Well, What ſaid Sir *George Barclay?*

Capt. *Porter*. Sir *George Barclay* ſaid he ought to obey his Orders, for he had ſuch a Commiſſion for ſuch a Thing, and he drew out a Scheme how it was to be done; and when Sir *George Barclay* told Mr *Rookwood* he ſhou'd command his Party, he replyed in *French*,

There's an End of it.

L. C. J. This was at the *Globe Tavern*, Was it not?

Capt. *Porter*. Yes, my Lord, it was.

Mr *Att. Gen.* Pray then, Capt. *Porter*, let me ask you another Queſtion, Was he afterwards with you at any other Meeting, and when and where?

Capt. *Porter*. He was with me upon *Saturday* the 15th, at my Lodging in *Little Rider-ſtreet*, where was Sir *George Barclay* and others.

Mr *Att. Gen.* What Diſcourſe happen'd then, I pray?

Capt. *Porter*. They did there diſcourſe the whole Matter, and Sir *George Barclay* was not for going at that Time, becauſe there was ſo many People that went with the King; that there wou'd not be a good Opportunity to effect the Deſign: But I told him they wou'd go off after the Hunting was over, and ſo it was agreed upon to go on with the Undertaking.

Mr *Att. Gen.* Pray, at that Time did Mr *Rookwood* pretend to diſlike the Affair, or refuſe to be any Way at all concern'd in it?

Capt. *Porter*. No, my Lord, I can't remember that he ſpoke one Word.

L. C. J. Was Mr *Rookwood* there?

Capt. *Porter*. Yes, there was Mr *Rookwood*, Sir *George Barclay*, and Mr *Durant*.

Mr *Att. Gen.* And had you Diſcourſe at that Time about this Buſineſs?

Capt. *Porter*. Yes, my Lord, there was that Objection made of ſo many People going with the King, and I made that Anſwer that I tell you.

L. C. J.

L. C. J. Why then, ſuppoſe at the *Globe Tavern*, ſuch an Expreſſion had not dropt from the Priſoner, but a Man is preſent at two Conſults that are held about the Death of the King, but ſays nothing either at the firſt or ſecond, What wou'd you make of that Caſe?

Sir *B. Shower.* My Lord, I confeſs this is a Caſe of a very barbarous Nature, of which I hope my Client will acquit himſelf: But I think we have the Authority of Parliament on our Side, that this does not amount to a Proof of Treaſon. It ſeems they lay a ſtreſs upon this, that Mr *Rookwood* came to Captain *Porter*'s Lodgings on the Saturday Morning the 15th: But then take the Caſe as it is; for ought that does appear upon the Proof, he knows not upon what Account the Meeting is beforehand. I think that is the Caſe of my Lord *Ruſſel*, upon which the Reverſal of his Attainder went, that the Evidence came ſhort, and that it was but Miſpriſion; for the Evidence was, That he was preſent at the ſuppoſed Declaration's reading, but ſaid nothing at all to it.

L. C. J. But I ſpeak of two Meetings; there was but one.

Sir *B. Shower.* My Lord, I do not know whether there were two Meetings or one then: But this is the Ground we go upon, there ought to be two Witneſſes: And if there be two Meetings upon ſuch a Deſign, the ſecond may be is accidental, and it does not appear to be a deſign'd Meeting; and there was no Appointment of Mr *Rookwood* to be there, nor any Negotiation by way of Meſſage or otherwiſe, to that Purpoſe. Is this, my Lord, an Overt-Act? Suppoſe a Man be preſent at a Conſult about treaſonable Practices, and he uſes Words that are indifferent; it is true, in the Caſe of a Wager it amounts to an Aſſent, but it hardly will come to that when People meet by Accident, or for they don't know what.

L. C. J. How is this by Accident?

Sir *B. Shower.* It does not appear that it was by Deſign or Appointment.

L. C. J. They were Acquaintance.

Sir *B. Shower.* He had no Acquaintance with him but in Sir *George Barclay*'s Company.

L. C. J. But beſides, there was an expreſs Conſent at the Globe Tavern, when *Rookwood* ſaid there is an End of it.

Sir *B. Shower.* That is as much as to ſay, I will not do it, I will not go with you——

Mr *Sol. Gen.* Sir *G. Barclay* was the Perſon whom they were to obey; and *Harris* tells you he told them what they were to do, and ſix Horſes were firſt plac'd, and three of them afterwards remov'd.

Sir *B. Shower.* That won't affect him what Sir *George Barclay* ſaid, any more than *Lewis*'s appointing of the Horſes.

L. C. J. Then here is another Thing, Why did he give a Liſt to Mr *Harris?* the Liſt that was given had Mr *Rookwood*'s Name a Top, as he was to command the Party, and there was *Harris*'s Name and *Hare*'s Name as of his Party; that is, their feign'd Names: Mr *Rookwood*'s feigned Name was *Roberts* that was at Top, and they were to go to *Turnham-Green*, and *Rookwood* told *Harris*, he ſhould be his *Aid du Camp*.

Sir *B. Shower.* My Lord, for that I think we have a Point of Law, that we apprehend will turn off all that Evidence, and ſure we may take that Exception now: The Words of the Act are, That no Evidence ſhall be given of any Overt-Act that is not expreſsly laid in the Indictment. Now cannot I ſhew upon this Indictment, that there is no Overt Act in ſuch a poſitive direct Manner as they now urge about this Liſt. Will not that ſatisfy your Lordſhip's Judgment to ſet aſide all this Evidence? To make the Indictment good for Treaſon, there ought to be a Compaſſing of the Death of the King laid, and an Overt Act laid declaring that Compaſſing; but no Evidence is to be given of any Overt-Act that is not laid in the Indictment.

L. C. J. You are not to take Exceptions to the Indictment now, but only to the Evidence.

Sir *B. Shower.* I have this one Exception more; there is never a *Quodque*, nor a *Juratores ulterius preſentant.*

L. C. J. There does not need; but that is a Fault, if any, in the Indictment, and is not to be ſtirr'd now.

Sir *B. Shower.* If there be not a Preſentment by the Jury, then there is no Overt Act alledged: And if there be no Overt Act alledged, or no ſuch Overt Act, then we are within the Words of the Act, That no Evidence ſhall be given of any ſuch Overt Act but what is alledg'd; and it is, if not expreſsly alledg'd, as if it were not alledg'd at all: Now here it is very looſe, *& iidem Chriſtophorus Knightley*, and ſo it goes on with the reſt, did ſo and ſo. There is a Preſentment at firſt, that they did compaſs and imagine the Death of the King; and then the Indictment comes farther, and ſays, that Forty Men ſhould do this Buſineſs, and of thoſe Forty theſe four ſhould be ſome; and then the *iidem* bought Horſes and Arms, and ſo it muſt go to the laſt Antecedent, and then there is no expreſs alledging of any Overt Act, and then it is as if no Overt Act at all was alledg'd.

L. C. J. This Exception is not to the Evidence, but to the Indictment: It begins, *Juratores preſentant quod*; Does not that relate to all?

Sir *B. Shower.* No, my Lord; and I can tell you a Reaſon why not: If it be not ſo well alledg'd as it ſhould be, it is in an Indictment as if it were never alledg'd at all; and ſo within the Words of the Act of Parliament this is not an Overt Act alledg'd, and therefore they cannot give Evidence upon it.

Mr *Sol. Gen.* Truly, my Lord, I can't imagine what they are doing, they are moving in Arreſt of Judgment before a Verdict given: They ſay the Overt Act is not expreſsly laid; Is that an Exception to the Evidence, or to the Indictment?

Sir *B. Shower.* If my Lord will pleaſe to give us the Liberty, we would ſhew there can be no Verdict given upon this Indictment.

L. C. J. Certainly this is an irregular Proceeding; this is not a Time of Exception to the Judgment.

Mr *Phipps.* Then, my Lord, we are in your Judgment, as to the Proof that has been given: If a Man be preſent at a Meeting of ſeveral Perſons, and there is a treaſonable Debate about Killing the King, and this Man is only preſent, but neither aſſents, nor makes the Propoſal how it ſhall be done, whether the bare being ſilent, and ſaying nothing, is ſuch an Overt Act as ſhall convict a Man of Treaſon.

L. C. J. I tell you, Conſenting to a traiterous Deſign is an Overt Act of High Treaſon, if that Conſent be made to appear by good Proof: Now the Queſtion is, What is a good Proof and Evi-

dence

dence of this Conſent? A Man is two or three Times at a treaſonable Conſult for Killing the King, and though perhaps at the firſt he did not, yet at the ſecond he did know that the Meeting was for ſuch a Deſign, (ſuppoſe for the Purpoſe there was but two Meetings) and at the ſecond it is determined to go on with the Deſign; Is not that an Overt Act, tho' it cannot be proved that the Priſoner ſaid any Thing?

Mr *Phipps.* If the firſt Meeting is not a Conſent, or an Overt Act, neither will a ſecond or a third be, if there was no more done than at the firſt, but they are like ſo many Cyphers without a Figure.

L. C. J. The firſt Meeting poſſibly might be accidental, he might not know what it was for, though that will go a great Way if he does not diſſent or diſcover; but then he meets again with the ſame Company, knowing what they had in Deſign; Does not that prove a Conſent? That was the Caſe of Sir *Everard Digby* in the Powder Plot.

Mr *Phipps.* But where it may be uncertain, my Lord, whether it were with a good Deſign, or a bad Deſign, that he met with that Company, it ought to be taken moſt favourably for the Priſoner: This Man might be preſent in Order to a Diſcovery.

L. C. J. But beſides, that is not this Caſe; you are mooting upon Points that are not in the Caſe. When Mr *Harris* came to Mr *Rookwood*, and finding them in ſome Diſorder, and being inquiſitive what was the Occaſion, he was ſent to *Counter*; and when he diſcovered what they were to go about, he afterwards meeting Mr *Rookwood*, ſays to him, Are we ſent over to murder the Prince of *Orange?* ſays *Rookwood*, if I had known of this Deſign before I came from *France*, I would have begg'd the King's, that is, King *James*'s Pardon, and deſir'd to have been excuſed. Hereby he expreſſes his Knowledge of the Deſign, and what he was to do; and though he diſliked, yet would obey Orders.

Mr *Phipps.* There is no Doubt, my Lord, but he knew of it; but whether your Lordſhip will conſtrue his Silence as a Conſent, in Treaſon, is the Queſtion.

L. C. J. A Man is at frequent Conſults about Killing the King, and does not reveal it, it is a great Evidence of his Conſent.

Mr *Phipps.* But it is not prov'd that he did actually conſent to it.

Mr *Soll. Gen.* My Lord, we muſt ſubmit it to your Lordſhip, whether this is not totally improper and irregular at this Time; they are arguing how far the Evidence is to be believ'd, before the Time proper for ſuch an Argument comes.

Mr *Att. Gen.* If they will call their Witneſſes, let them; or if they ſay they have none, then they may make their Obſervations upon the Evidence; but elſe we deſire we may be kept to the uſual Method of Proceedings.

Mr *Phipps.* With Submiſſion, we thought it fit to know the Opinion of the Court firſt, if there be two Witneſſes againſt the Priſoners; for if there be not two Witneſſes, as the Law requires, we need not trouble the Court with our Evidence.

Sir *B. Shower.* Then, my Lord, we muſt deſire that the Record may be read of Captain *Porter*'s Conviction of Manſlaughter; a Man that has been guilty of doing ſuch an Act, feloniouſly, maliciouſly, and voluntarily, as that is, ſure is not a competent Witneſs.

Cl. of Ar. It has been read already.

Mr *At. Gen.* I thought we had been over that Objection before.

Sir *B. Shower.* We think it is proper for us to move it now again; for though it is no Objection to his being a legal Witneſs, yet we hope it will influence his Reputation as to his Credit; for he that has been guilty of killing a Man in ſuch a Manner as the Indictment lays it, will find but little Credit, we hope, with a Jury of Countrymen. But ſince it has been read, and your Lordſhip and the Jury have taken notice of it, we will call ſome other Witneſſes as to Mr *Porter*'s Reputation and Behaviour, we think they will prove Things as bad as an Attainder. I ſhall not open them to your Lordſhip, but beg Leave to call our Witneſſes, who will acquaint you what they have to ſay.

Mr *At. Gen.* Certainly, my Lord, you will not think fit to let them do ſo. I deſire they would not uſher in any Thing of Evidence without acquainting the Court what they call them for: For that were the Way to let them in to call Witneſſes to Things that are not proper.

L. C. J. Nay, without doubt it is not regular to produce any Evidence, without opening it.

Mr *At. Gen.* For if it be for any Crime that a Man may be preſented for, and there is no Conviction; I think that ought not to be given in Evidence to take away a Witneſs's Credit: If it be only to his general Reputation and Behaviour, ſo far they may go, and we can't oppoſe it. Therefore I deſire Sir *Bartholomew Shower* will open to the Court of what Nature his Evidence is.

Sir *B. Shower.* Well, I will tell you then what I call them to.

L. C. J. You muſt tell us what you call them to.

Sir *B. Shower.* Why then, my Lord, if Robbing upon the High-way, if Clipping, if Converſing with Clippers, if Fornication, if Buggery, if any of theſe Irregularities, will take off the Credit of a Man, I have Inſtructions in my Brief, of Evidence of Crimes of this Nature, and to this Purpoſe againſt Mr *Porter*; and we hope that by Law, a Priſoner ſtanding for his Life is at Liberty to give an Account of the Actions and Behaviour of the Witneſſes againſt him. I know the Objection that Mr *Attorney* makes, a Witneſs does not come prepar'd to vindicate and give an Account of every Action of his Life, and it is not commonly allowed to give Evidence of particular Actions; but if thoſe Actions be repeated, and a Man lives in the Practice of them, and this Practice is continued for ſeveral Years, and this be made out by Evidence; we hope no Jury that have any Conſcience, will upon their Oaths give any Credit to the Evidence of a Perſon againſt whom ſuch a Teſtimony is given.

Mr *Phipps.* We are ſpeaking only, my Lord, to the Credit of Mr *Porter*, and if we can ſhew by Evidence that he is ſo ill a Man as to be guilty of thoſe Crimes that we have open'd, according to the Inſtructions in our Brief; we hope the Jury will not think him fit to be a good Evidence againſt us in this Matter.

L. C. J. What ſay you to this, Mr *Attorney?*

Mr *Att. Gen.* My Lord, they themſelves know, that this Sort of Evidence never was admitted in any Caſe, nor can be, for it muſt tend to the Overthrow of all Juſtice and legal Proceedings; for inſtead of trying the Priſoner at the Bar, they would try Mr *Porter*. It has been always deny'd where it comes to a particular Crime that a Man may be proſecuted for, and this it ſeems is not one Crime or two, but ſo many and ſo long continued as they ſay, and ſo often practis'd, that here are the whole Actions of a Man's Life to be ript up, which they can never ſhew any Precedent when it was permitted, becauſe a Man has no Opportunity to defend himſelf. Any Man in the World may by this Means be wounded in his Reputation, and Crimes laid to his Charge that he never thought of, and he can have no Opportunity of giving an Anſwer to it, becauſe he never imagined there would be any ſuch Objection: It is Killing a Man in his good Name by a Side-wound, againſt which he has no Protection or Defence. My Lord, this muſt tend to the preventing all Manner of Juſtice; it is againſt all common Senſe or Reaſon, and it never was offer'd at by any Lawyer before, as I believe, at leaſtwiſe never ſo openly; and therefore I wonder that theſe Gentlemen ſhould do it, who acknowledge, at leaſt one of them did, that as often as it has been offer'd it has been over-rul'd; and I know not for what End it is now offer'd, but to make a Noiſe in the Court: They know that it is irregular as much as any thing that could be offer'd.

Mr *Soll. Gen.* Indeed, my Lord, if the Priſoner at the Bar had offer'd this Matter, it had been excuſable; but, that Gentlemen of the long Robe, and who are ſo well acquainted with the Practice of the Courts of Law, ſhould pretend to do ſuch a Thing, is unaccountable. There was ſomewhat like this that was offered at *Mancheſter*, but that was by the Priſoner, to prove that one *Lunt* who was a Witneſs had two Wives, and they brought a Copy of an Indictment upon which there was no Proceſs; after that they endeavour'd to prove him guilty of ſeveral Robberies; but all that Sort of Evidence was refus'd. I only give them this Inſtance to ſhew, that where the Priſoner has attempted it, it has been always rejected; and I am ſure they cannot ſhew me that ever it was allowed, even to the Priſoner himſelf to give any Thing of this Kind in Evidence; and this I muſt ſay, they can never ſhew me any one particular Inſtance, when Council ever endeavoured to do it, before this Time.

Sir *B. Shower.* My Lord, I mentioned the particular Crimes, the Faults which I had in my Inſtructions to object againſt the Credit of the Teſtimony of Cap. *Porter*, in Anſwer to Mr *Attorney*'s Deſire, that I would open the Particulars of the Evidence, that I would call my Witneſſes to the Truth of it; I was loth to repeat the Words, I think the Things themſelves ſo abominable; but we conceive with Submiſſion, we may be admitted in this Caſe to offer what we have offered. Suppoſe a Man be a common, lewd, diſorderly Fellow, one that frequently ſwears to Falſehood for his Life: We know it is a common Rule in Point of Evidence, that againſt a Witneſs you ſhall only give an Account of his Character at large, of his general Converſation; but that general Converſation ariſes from particular Actions, and if the Witneſſes give you an Account of ſuch diſorderly Actions repeated, we hope that will go to his Diſcredit, which is that we now are labouring for, and ſubmit it to your Lordſhip's Opinion whether we may not do it.

L. C. J. Look ye, you may bring Witneſſes to give an Account of the general Tenour of his Converſation, but you don't think ſure that we will try now at this Time, whether he be guilty of Robbery or Buggery.

Sir *B. Shower.* My Lord, we will give you an Account that he uſed to have a private Lodging, and come in with his Horſe tir'd, and ſeveral other ſuch Things, as that he us'd to go out in Diſguiſes, and the like.

Mr *Phipps.* My Lord, I cannot imagine why a Man that has been guilty of any ſuch Crimes, and is not taken, ſhould be of greater Credit than a Man that has been taken and puniſh'd.

L. C. J. What is that you ſay Mr *Phipps?*

Mr *Phipps.* My Lord, I ſay 'tis the Crime that renders a Man infamous, and I do not know why a Man that has had the good Fortune not to be taken and puniſhed for great Crimes by him committed, ſhould be in a better Condition as to the Credit of his Teſtimony, than one that is taken and undergoes the Puniſhment of the Law.

Mr *Soll. Gen.* Mr *Charnock* urg'd that as far as it would go, but we are oblig'd, it ſeems, to hear Things that have been over-ruled over and over; but I deſire to know of them, whether they can ſhew he has been guilty of a greater Crime than he has confeſt himſelf guilty of in Court, I mean of the intended Aſſaſſination.

Mr *Phipps.* No, we agree we can't, but pray let us prove him guilty of as many Crimes as we can.

Mr *Sol. Gen.* But, my Lord, I hope you'll keep them to the general Queſtion of the common ordinary Tenour of his Converſation.

Sir *B. Shower.* Call Mr *Oldfield*, Mr *Nicholas*, Mr *Milford*, *Black Will.*

(*Mr* Milford *appeared*)

Cryer. Lay your Hand on the Book. The Evidence that you ſhall give on behalf of the Priſoner at the Bar, ſhall be the Truth, the whole Truth, and nothing but the Truth: So help you God.

Sir *B. Shower.* Pray will you give my Lord and the Jury an Account whether you know Capt. *Porter*, and how long you have known him.

Milford. I have known him about Four Years.

Sir *B. Shower.* What Reputation is he of.

Milford. I never knew any Hurt by him in my Life.

Sir *B. Shower.* Pray what is your Name?

Milf. Frederick Milford.

Sir *B. Shower.* But the Name in my Brief is *John Milford*, that is my Man.

L. C. J. But you ſee this Man knows him.

Sir *B. Shower.* Call Mr *Oldfield.*

(*Which was done, and he appear'd accordingly.*)

Mr *Phipps.* Do you know Capt. *Porter?*

Oldfield. Yes I do.

Mr *Phipps.* How long have you known him?

Old. I believe about Twenty Years.

Mr *Phipps.* Pray will you give my Lord and the Jury an Account of his Life and Converſation.

Oldfield. I can ſay nothing, he was always civil in my Company, but he was lewd in his Diſcourſe.

Sir

Sir *B. Shower.* What do you mean by being lewd in his Diſcourſe?

Oldfield. Why he would be talking very extravagantly.

Mr *Phipps.* What do you mean in talking, was it of what he had done himſelf, Sir?

Oldfield. No otherwiſe than that he had whor'd, and thoſe Kind of Things.

Sir *B. Shower.* What other Things beſide Whoring?

Old. I know no other Part of it.

Sir *B. Sh.* Where is *Edward Bowchey?*

(He did not appear.)

Mr *Phipps.* Call *William O Bryan.*

(He did not appear.)

Sir *B. Shower.* Where is Mr *Page* and Mr *Hardiman?*

(None of them appeared.)

Cryer. There is not a Man of them here, Sir.

Sir *B. Shower.* Mr *Webber*, Do you know where they are, for the Court ſtays for them.

Mr *Webber.* Indeed I do not, they were ſummon'd to be here.

Sir *B. Shower.* Where is black *Will?*

Cryer. Black *Will.*

(He appear'd, and was a Moor.)

L. C. J. Ask him if he be a Chriſtian.

Cryer. I have ask'd him, and he ſays he is a Chriſtian.

(Then he was ſworn.)

L. C. J. Well, what do you ask him?

Rookwood. Will, Pray give an Account of your Maſter, and of his Life and Converſation.

Mr *Phipps.* You are ſworn to tell the Truth, Sweet-heart.

Will. I ſerved him almoſt Eight Years, and he has been a very good Maſter to me, my Lord.

Sir *B. Sh.* What do you know him to be guilty of?

Will. Nothing at all.

Sir *B. Sh.* I believe they have put in theſe Men to confirm his Reputation.

L. C. J. Indeed, I think the King's Council ſhould have called theſe Witneſſes, if there had been Occaſion.

Sir *B. Shower.* We ſubmit it to your Direction, how far this Evidence will affect him; there is nothing ſaid, as we apprehend that will amount to Treaſon: If the Priſoner has a Mind to ſay any Thing himſelf, we hope your Lordſhip will pleaſe to hear him.

L. C. J. Ay, if he will, let him.

Rookwood. My Lord, Mr *Porter* does not ſay, that I conſented to command a Party.

L. C. J. Is that all you have to ſay? Then, Gentlemen, will you ſum up?

Mr *Conyers.* My Lord, we are agreed, we ſubmit to the Court on both Sides.

L. C. J. Then Gentlemen of the Jury, the Priſoner at the Bar, Mr *Rookwood* is Indicted for High Treaſon, in Compaſſing, Imagining, and Intending the Death and Deſtruction of the King, by a moſt barbarous and wicked Aſſaſſination; you have had an Account of this Deſign from Two Witneſſes that have been produced, the One is Captain *Porter*, and the Other is Mr *Harris*, who ſwear they were both concerned as Actors in it.

Captain *Porter* tells you, about the latter End of *January* or the Beginning of *February* laſt, Sir *George Bartlay* came over into *England* from *France*; and there was a formed Deſign to murder the King; and after ſeveral Meetings and Conferences among the Conſpirators, they came to a Reſolution that he ſhould be Aſſaſſinated; but which way to effect it, admitted of a Diſpute among them, for the King, as you have heard, going frequently, about once a Week a Hunting, on the other ſide the Water near *Richmond*, the Deſign was firſt to Aſſaſſinate him at *Richmond Park*, or thereabouts, as he returned from Hunting; and Preparation was made accordingly; but that not being ſo fully agreed upon, the Conveniency of the Place held ſtill ſome Debate; for ſome were of Opinion, that it was better to make the Attempt on this ſide the Water, than on the other; therefore as Mr. *Porter* tells you, to determine that Difficulty, there were ſeveral Men ſent, whereof he was one, *Knightley* another, and *King* a Third, to View the Ground on both ſides the Water, and to make their Report; the Ground being View'd and the Report made to ſome of their Accomplices, who to receive it met at the *Nagg's-Head* in *Covent-Garden*, which was about the Tenth or Twelfth of *February* laſt; it was then agreed, that the King and his Guards ſhould be attack'd on this ſide the Water about *Turnham-Green*.

Mr. *Porter* has told you, that at ſeveral Meetings for the carrying on this Deſign, the Priſoner Mr. *Rookwood* was preſent, more particularly at the *Globe-Tavern* in *Hatton-Garden*, where were alſo Sir *George Barclay*, Mr. *Charnock*, Sir *William Parkyns*, himſelf, and others, and there they did enter into a Conſult how they might Aſſaſſinate the King; and it being propoſed, Mr. *Rookwood* did not like it, as Mr. *Porter* ſays, but ſaid it was a deſperate Attempt, and thereupon Sir *George Barclay* pulled out a Scheme that he had and ſhew'd it at that Time to Mr. *Rookwood*, and ſaid you are ſent over from *France* and are to Obey my Orders, and you are to command a Party, and then Mr. *Rookwood* made an Anſwer in French, there's an End of it, which, as he ſays, Imports a Conſent.

Then at another Time, which was the *Saturday* Morning the 15th of *February*, they met at Captain *Porter*'s Lodging; and there was a Diſcourſe about going on to put the Deſign in Execution, and one *Durant*, one of the Men that was to watch the King and the Guards going out at *Kenſington*, came in, and the Queſtion was, whether they ſhould go that Day upon the Deſign; they had Diſcourſe about it, and Mr. *Rookwood* the Priſoner was there preſent, and there did not appear any Diſſent in him to the Proſecution of the Deſign, but it ſeems it was readily agreed among them, to purſue it according to the former Determination.

Then the next Witneſs that is produc'd is Mr. *Harris*, who gives you a large Account of the Beginning of his Knowledge, and of his being concern'd in this Matter; he tells you he was in *France*, and at the Court of St. *Germains*, where the late King then was, and that he ſpoke with him, and where was alſo Colonel *Parker*, and King *James* took Notice of him and of his faithful Service, and told him, he always deſigned him a Kindneſs, and then had Opportunity of doing it, and ſaid he would ſend him over into

England, where he ſhould be ſubſiſted, and directed him to obey the Orders of Sir *George Barclay*, and there being one *Hare* by, who was to come over with him, King *James* gave them both Names of Diſguize, which they were to go by in *England*, and, as it ſeems, others that came over did alſo aſſume, for Mr. *Rookwood* went by the Name of *Roberts*, *Harris* was to go by the Name of *Jenkins*, and *Hare* by the Name of *Guiney*; they were directed to apply themſelves to Sir *George Barclay*, and had Directions how they ſhould find him, which were to go into *Covent-Garden* in the Evening, upon a *Monday* or a *Thurſday*, and if they ſaw a Perſon that had a white Handkerchief hanging out of his Pocket, they were to take Notice of him to be Sir *George Barclay*, and they had Ten *Lewis d'Ores* a-piece for their Journey's to carry them off, and you have heard from whom they had them; and they were told, that if at *Calais* they were kept longer than they expected, whereby their Money was ſpent, Care was taken that they ſhould be ſupplied from the Governor of *Calais*, the Preſident there; and it ſeems Mr. *Harris* and Mr. *Hare* went together to *Calais*, and lay a conſiderable Time for want of a Wind, whereby their Money fell ſhort of defraying their Expences, but they were afterwards ſupplied by the Governor of *Calais*, according as was promiſed at St. *Germains*.

Gentlemen, he tells you, that after they came into *England*, the firſt Time they went to ſeek Sir *George Barclay*, was upon the *Monday* Night, but they did not find him at that Time, but afterwards they met with him, and Mr. *Harris* had Subſiſtence-Money from him, according to King *James*'s Promiſe, which was at the Rate of 5 *s.* a Day when he had no Horſe, and afterwards when he had a Horſe at 6 *s.* a Day; this is the Account he gives you how he came over, and of his Journey and meeting with Sir *George Barclay*.

And now he comes to ſpeak particularly concerning the Priſoner at the Bar, Mr. *Rookwood*: He tells you that on *Saturday* Morning the 15th of *February*, the firſt Day when this Aſſaſſination was deſigned to be committed, he went to the Lodging of one *Burk*, where Mr *Rookwood* was, with others, and he found them all in great Diſorder; and thereupon he ask'd them, What was the Matter, and what they were going to do? And *Rookwood* bid him go to one *Counter*, and he ſhould know of him what was the Matter: Accordingly he went to his Lodging, and *Counter* told him and thoſe who were with him, That they muſt get ready to go to *Turnham-Green*; and at the ſame Time and Place he met with Sir *George Barclay*, and after ſome Diſcourſe of Attacking the Coach, Sir *George Barclay* at the firſt ſaid, They were his Janizaries; and afterwards going out, he came in again and ſaid, They were Men of Honour, and that they were to go abroad to attack the Prince of *Orange*.

The next Day, or a little Time after, Mr *Harris* met with Mr *Rookwood*, and enters into Diſcourſe with him to this Effect: What! are we ſent over to murder the Prince of *Orange?* It is a ſtrange Sort of Employment: (for it ſeems they were not informed in *France* what they were to do here, but they were to put themſelves under the Conduct of Sir *George Barclay*, and obey his Orders.) Mr *Rookwood* ſaid, He was afraid the Thing was ſo, and that they were drawn in; but ſaid, If he had known of the Deſign before-hand, he would not have come over but have begg'd the King's Pardon. Which ſhews not only his Knowledge of the Deſign, but his being engaged in the Proſecution of it.

And then, Gentlemen, you are told further, That upon the Going out upon *Saturday* the 22d, which was the ſecond Time it was to have been put in Execution, there was a Liſt of Men that Mr *Rookwood* gave to Mr *Harris* of ſeveral Names that he has mentioned to you; he ſays, Mr *Rookwood*'s Name was at the Top, as one that was to command the Party, and the Name he went by was *Roberts*; and there was *Harris*'s Counterfeit Name, which was *Jenkins*; and *Hare*'s Counterfeit Name, which was *Guinea*; and they were to make ready to go to *Turnham-Green*. He told him, There was the Liſt, and that he and *Harris* was to be of his Party, that he was to attack the Prince of *Orange*, and that Mr *Harris* ſhould be his *Aid-du-Camp*.

Gentlemen, I forgot to tell you, That between the firſt *Saturday* and the ſecond, Mr *Harris*, Mr *Rookwood*, and Mr *Lowick*, walking in *Red-Lion* Fields, and there in Diſcourſe among themſelves, Mr *Harris* and Mr *Rookwood* did expreſs themſelves to be much concerned that they were to be imployed upon ſuch a Deſign as this was, which they owned to be very barbarous; but Mr *Rookwood* and *Lowick* ſaid, They were under Command, and muſt obey Orders, tho' Mr *Rookwood* did not like the Deſign they were engaged in.

Gentlemen, they have told you of Horſes that were placed at *Somerſet-houſe* in a Stable there, under the Care of Mr *Lewis* my Lord *Feverſham*'s Gentleman of the Horſe, about ſix or ſeven Horſes, and thoſe ſix Horſes that were there at that Time were afterwards taken away; but that is only a Circumſtance.

So that, Gentlemen, this is now the Sum and Subſtance of this Evidence that has been given you as far as it relates to the Priſoner; his Council in his Defence have inſiſted upon ſeveral Things; in the firſt Place, tho' it was laſt mentioned in Time, yet it ought to have the firſt Conſideration; The Council for the Priſoner have endeavoured to take off the Credit of Mr *Porter*, and have opened indeed very great Crimes that he ſhould be guilty of, which muſt render him a Perſon not to be believed, but they have not proved any Thing; no Witneſs that they have called againſt Mr *Porter* ſays the leaſt againſt him to invalidate his Teſtimony, or to induce you to disbelieve what he has ſaid.

Then they ſay in Point of Law, There is no Overt-Act proved of any Deſign againſt the King's Life that affects Mr *Rookwood*; now that Matter you are to conſider of, Whether or no it does appear by the Teſtimony of two Witneſſes, that Mr *Rookwood* was concerned in this Deſign of Aſſaſſinating the King; Capt. *Porter* is poſitive that he was at the Conſult at the *Globe* Tavern, where it was propoſed, debated, and reſolved upon; but Mr *Rookwood* ſays, he did diſlike it; ſo ſays Captain *Porter*, he did not approve of it at the firſt upon his being acquainted with it; but being ſent over to obey the Orders of Sir *George Barclay*, and Sir *George Barclay* producing a Scheme ready drawn, wherein he was to command the Party, telling him, That he muſt obey Orders. You hear what he ſaid,

and

and the Anſwer he return'd in *French*, There's an End of it; Whether that does not amount to a Conſent and Agreement to be engaged in this Deſign, is left to your Conſideration, for if it do, it is plainly an Overt-Act.

Then, Gentlemen, you hear further that *Harris* was told by Mr *Rookwood*, that he ſhould be of his Party, and be his *Ayd du Camp*, and go to *Turnham-Green*, to attack the Prince of *Orange*, and he had a Liſt of Men given him by *Rookwood*, and was directed to get the reſt ready.

Rookwood. That was not in the Indictment.

L. C. J. But you were at that Meeting, which is laid in the Indictment.

Rookw. My Lord, that Liſt is not in the Indictment; the Liſt in the Indictment refers to Mr *Cranburne*.

L. C. J. No, but that is an Evidence of your being in the Deſign; I hope that Liſt of Men will be ſome Evidence of the Conſent and Agreement that Mr *Rookwood* was to command a Party.

Sir *B. Shower*. With Submiſſion, my Lord, the Words of the Act ſeems otherwiſe, and that no Overt Act ſhould be given in Evidence, that is not expreſsly alledged.

L. C. J. But cannot there be one Act, that may be Proof of another Act which is alledged.

Sir *B. Shower*. Then there is no Advantage of this Law; for my Lord, the End of the Act was, That they ſhould know the particular Crimes that they were to anſwer to.

L. C. J. That could never be the End of the Law, that all particular Facts that are but Evidence of the Facts alledged ſhould be ſet forth in the Indictment, it was ſufficient before the Act, to alledge any Overt Act, and any other Overt Act, though not alledged, and had no Relation to the Overt Act that was alledged, yet if it were to the ſame Sort of Treaſon, might be given in Evidence.

Sir *B. Shower*. The Law ſays, ye ſhall not give Evidence of any Overt Act that is not expreſsly mentioned.

L. C. J. It is not urged as an Overt Act, but as Evidence of an Overt Act that is alledged; for Inſtance, the Overt Act alledged, is, That they did meet and conſult, ſhall not they give in Evidence what was ſaid and done at thoſe Meetings, tho' not alledged? Sir *George Barclay* produced a Scheme at the *Globe* Tavern, ſhall not the producing of that Scheme be given in Evidence, if it may, why not the giving the Liſt to *Harris?*

Mr *Phipps*. My Lord, it is plain it was Mr *Attorney*'s Opinion, it could not be given in Evidence, unleſs it was alledged in the Indictment; becauſe he has particularly alledged the Liſt in *Cranburn*'s Caſe, in this very Indictment.

Mr *Sol. Gen.* I know not what thoſe Gentlemen mean by this Sort of Practice; certainly there never were ſo many Irregularities committed in any Trial as in this, and now particularly to break in upon the Court in the midſt of the Charge.

L. C. J. Nay, nay, if there be any Miſtake, let us hear them, that it may be rectified.

L. C. J. *Treby*. I think we ſhould receive them, to try if they can make it out. But the Objection I do not very well underſtand yet; for, as I take the Matter to ſtand, it is alledged in the Indictment, That they had prepared Men, and Arms, and Horſes, for the Execution of this Deſign. Now is it not reaſonable, or can there be any Thing more proper, than to give in Evidence, and prove that the Priſoner had, and delivered to ſome of the Complices, a Liſt of thoſe Men that were to do it. Why, it proves the very Thing alledged, but let us ſee whether it be ſo?

Sir *B. Shower*. My Lord, there is no ſuch Thing alledged.

L. C. J. That is ſtrange, pray ſee if it be not in the Indictment.

Clerk of Arraignment. (Reads.) *Conveniebant, propoſuerunt, tractaverunt, conſultaverunt, conſenſerunt, & agreaverunt, ad ipſum Dominum Regem nunc ex Inſidiis & Dolo percutiendum, Anglice*, to aſſaſſinate, *interficiendum, & murdrandum, & ad execrabilem, horrendam, & deteſtabilem Aſſaſſinationem, Anglice*, Aſſaſſination, *& Interfectionem illam citius exequendum & perpetrandum poſtea, ſcilicet eiſdem Die & Anno, ac diverſis aliis Diebus & Vicibus, apud Parochiam prædictam in Comitatu prædicto, proditorie tractaverunt, propoſuerunt, & conſultaverunt de Viis, Modis & Mediis, ac Tempore & Loco, ubi, quando, qualiter & quomodo dictum Dominum Regem ſic ex Inſidiis facilius interficerent; & conſenſerunt, agreaverunt & aſſenſerunt, quod quadraginta Homines equeſtres aut eo circiter, quorum iidem* Chriſtophorus Knightley, Robertus Lowick, Ambroſius Rookwood & Carolus Cranburne *forent quatuor, & quilibet horum proditorie ſuper ſe ſuſcepit eſſe unum, cum Bombardis, Sclopis & Sclopetis Pulvere bombardico & Globulis plumbeis oneratis, & cum Gladiis, Enſibus & aliis Armis armati inſidiati forent, & eſſent in Subſeſſu, Anglice*, in Ambuſh, *ad eundem Dominum Regem in Rheda ſua, Anglice* his Coach, *exiſtentem, quondo foris iret invadendum; quodque quidam & competens Numerus de Hominibus illis ſic armatis in Satellites, Anglice* the Guards, *ipſius Domini Regis eum tunc attendentes & ſecum exiſtentes aggreſſi forent, & eos expugnarent & devincerent, dum alii eorundem Hominum ſic armatorum ipſum Dominum Regem percuterent, interficerent, occiderent & murdrarent.*

Mr *Conyers*. And my Lord, there is Evidence of ſome of theſe Forty Men, whoſe Names were given in a Liſt, by *Rookwood* to *Harris*.

Mr *Phipps*. But now in *Cranburne*'s Part, the Liſt is expreſsly alledged as an Overt Act.

L. C. J. Never talk of *Cranburne*, we have not him before us now, but what do you ſay to this of the Liſt given by *Rookwood* to *Harris*.

Sir *B. Shower*. My Lord, we ſay this is not Evidence of an Overt Act, according to this Act of Parliament; which ſays, No Evidence ſhall be given of any Overt Act, that is not expreſsly alledged in the Indictment; now the Indictment ſays, they did agree that Forty Horſemen armed, of which the Four named were to be Four, and every one undertook to be one, who ſhould lie in wait to ſet upon the King in his Coach, and a competent Number ſhould ſet upon the Guards; and then it ſays, in order to fulfil this, they did prepare Horſes and Arms, and one of them by the Conſent of all the reſt, did carry forward and backward a Liſt, that is, *Cranburne*; and that particular Liſt is a particular Overt Act alledged in the Indictment, which makes it plain, they thought it neceſſary to be particularly alledged by this Act of Parliament, or they could not give any Evidence of it; now the Liſt that Evidence is given of, is ſuppoſed to be delivered by the Priſoner to *Harris*. Now firſt we ſay, it is not Evidence that Forty ſhould do it, for they may do it without a Liſt, and next it is not Evidence of the Liſt that they have mentioned, for that is alledged to be carried about by *Cranbourne*, and as the Priſoner himſelf

himſelf has obſerved, this Liſt given to *Harris* is not in the Indictment, and therefore no Evidence can be given of it.

Mr *Conyers*. It is an Evidence of that Overt Act which is expreſsly alledged in the Indictment, that they met together to conſult how to effect this Treaſon.

Mr *Comper*. My Lord, we are in a very ſtrange Caſe here, if we be not very proper in this Part of our Evidence; the Overt Act laid, is, That the Priſoner met together with others to conſult how to aſſaſſinate the King, and there the Priſoner among the reſt did agree it ſhould de done ſo and ſo. 'Tis admitted the Priſoner was there; but, ſay they, if you only prove that he ſate by while there was a general Diſcourſe of ſuch a Matter, but do not prove that he ſaid or did any Thing, expreſſing his Aſſent, that will not amount to a Proof of the Overt Act laid, and yet, if we go about to prove further, any Act done that manifeſts his Aſſent, then they ſay you go too far, and prove an Overt Act that is not mentioned in the Indictment: Thus they grant, the Agreement is a ſufficient Overt Act, but object, that being preſent barely is not a ſufficient Proof of his Agreement; then when we go to make Proof of any Thing that is a ſufficient Proof of his Agreement, they tell us it is not proper upon this Act of Parliament, becauſe not laid in the Indictment, though his Agreement be laid in the Indictment: And ſo they would amuſe us, rather than make any ſolid Objection to our Evidence. This Doctrine is certainly very odd, my Lord, and we doubt not will have little Weight with the Court or the Jury.

Mr *At. Gen*. According to this Doctrine all the Evidence muſt be put in the Indictment.

L. C. J. They ask you what this giving this Liſt does prove?

Mr *At. Gen*. His Agreeing at that Meeting to the Conſpiracy, and the Execution of it, by giving that Liſt of the Names of them that were to be of his Party, and his own Name as Commander of that Party, this he gives to one that was to be of the Party, and particularly was to be his Aid du Camp, in order to get them ready for the Execution; is not this an Evidence of the Agreement, which is the Overt Act? No Man in the World can be convicted of Treaſon, if this Doctrine be true.

Mr *Soll. Gen*. My Lord, they have not expreſs'd ſomething in the Indictment that has been read, which will make it plain that this is the moſt proper Evidence of the Overt Act laid in the Indictment. The Indictment ſays, they agreed there ſhould be forty Men or thereabouts armed, of which a certain Number ſhould make an Aſſault upon the King's Coach, while another Part ſhould ſet upon the Guards: Now the Proof we make is, that Mr *Rookwood* the Priſoner, was to command a Party that was to ſet upon the Guards, and in order to it, he gives a Liſt of his Men to *Harris* who was to be his *Aid du Camp*, and bids him get thoſe Men ready; and this was upon the Day that this Matter was to be acted: So that it proves very plainly that Overt Act that we ſuggeſt in the Indictment, that a certain Number of thoſe Men were to aſſault the King's Perſon, and another Part the Guards. And therefore they needed not to have interrupted your Lordſhip; for this Liſt that *Harris* ſpeaks of, is a very good Proof of the Overt Act that is laid in the Indictment.

L. C. J. Then, Gentlemen, as to this Matter which they have objected, that this Liſt given on the Day of the intended Aſſaſſination, ought not to be allowed as Evidence to prove the Treaſon, becauſe it is not ſpecially laid in the Indictment, but is by the late Act of Parliament excluded from being proved to convict the Priſoner; now tho' the Act doth exclude the giving in Evidence of any Overt Act that is not laid in the Indictment, yet it doth not exclude ſuch Evidence as is proper and fit to prove that Overt Act that is laid in the Indictment. Therefore, the Queſtion is, whether this giving of the Liſt does not prove ſome Overt Act that is alledged in the Indictment? There is in the Indictment an Agreement laid to kill the King, and if that be proved, that's an Overt Act of this Treaſon; now when the Conſent and Agreement of Mr *Rookwood* to that Deſign is proved, ſurely the Proof of his giving a Liſt of Men is a further Proof that he did agree to it, and then it is very proper to be given in Evidence; for if by the new Statute no one Act can be given in Evidence to prove another, then muſt not only the Overt Act, but alſo the Evidence of that Act be expreſſed in the Indictment.

Gentlemen, you have heard the Witneſſes what they ſay concerning this Matter. In the firſt Place, if you do believe that there was ſuch Conſults and Meetings, where this intended Aſſaſſination of the King was debated and reſolved upon, and that Mr *Rookwood* was preſent and did agree to it, that is an Overt-Act; and again, if you are ſatisfied that there was an Agreement to prepare and provide a Number of Men to ſet upon the King and his Guards, in the Manner you have heard, and he was concerned in making this Proviſion, and was to have a Poſt, and command a Party in that Attack, that is a further Proof of that Conſent and Agreement, that is laid in the Indictment.

Gentlemen, I muſt leave it to you, upon the Evidence that you have heard; if you are ſatisfied upon the Teſtimony of theſe two Witneſſes that have been produc'd, That Mr *Rookwood* is guilty of this Treaſon of which he is indicted, in Compaſſing and Imagining the Death of the King, then you will find him guilty: If you are not ſatisfied that he is guilty, you will acquit him.

Cl. of Arr. Cryer, ſwear an Officer to keep the Jury. (*Which was done*)

L. C. J. Now if you have any Thing to move on Behalf of your other Clients pray do it.

Sir *B. Shower*. Yes, we have an Exception, but never a one of falſe Spelling.

L. C. J. If ſo be it be any ſuch Matter as you can move in Arreſt of Judgment, it had beſt be reſerv'd till after the Verdict.

Sir *B. Shower*. Our Exceptions will ſerve if Occaſion be for Mr *Rookwood* in Arreſt of Judgment, and they will ſerve for the others alſo to prevent the Trouble of the Tryal, if we have your Lordſhip's Opinion that they are good Exceptions.

Then the Jury *withdrew to conſider of their Verdict, and after a Quarter of an Hour's ſtaying out return'd, and gave in their Verdict.*

Cl. of Arr. Gentlemen of the Jury, Anſwer to your Names. *Samuel Powell.*

Mr *Powell*. Here.

Cryer. Vous avez. (*And ſo of the Reſt.*)

Cl. *of*

Cl. of Ar. Gentlemen, are you all agreed of your Verdict?

Jury. Yes.

Cl. of Ar. Who ſhall ſay for you?

Jury. Our Foreman.

Cl. of Ar. *Ambroſe Rookwood*, hold up thy Hand, (*which he did.*) Look upon the Priſoner; how ſay you, is he guilty of the High-Treaſon whereof he ſtands indicted, or not guilty?

Foreman. Guilty.

Cl. of Ar. What Goods or Chattels, Lands or Tenements, had he at the Time of the Treaſon committed?

Foreman. None to our Knowledge.

Cl. of Ar. Then hearken to your Verdict as the Court has recorded it. You ſay that *Ambroſe Rookwood* is guilty of the High-Treaſon whereof he ſtands indicted, but that he had no Goods, or Chattels, Lands, or Tenements, at the Time of the High-Treaſon committed, or at any Time ſince, to your Knowledge, and ſo you ſay all.

Jury. Yes.

Mr *Powell.* We deſire we may be diſcharged.

L. C. J. We cannot do that, till we ſee whether there be enough upon the other Pannel, we will give you as much Eaſe as we can, we ſhall not I ſuppoſe try the other till the Afternoon, therefore you may take your Eaſe for the preſent, but you muſt be about the Court when the other Tryals come on.

While the Jury was withdrawn, the Court offered to the Council for the Priſoners, that they might move what Exceptions they had before the Jury was ſworn as to any of the other; which accordingly they did; but that relating to the Caſe of Mr Charles Cranburne, *in whoſe Preſence, being then at the Bar, the Objections were made, that Part is left to his Tryal.*

The TRYALS *of* CHARLES CRANBURNE *and* ROBERT LOWICK,

Publiſh'd by AUTHORITY.

Die Martis viceſimo primo Die Aprilis, *Anno Dom.* 1696. *Annoque Regni Regis* Gulielmi *Tertii Octavo.*

At the Seſſion of Oyer and Terminer for the County of *Middleſex*, ſitting in the Court of *King's-Bench* at *Weſtminſter.*

AFTER the Tryal of *Ambroſe Rookwood* was over, while the Jury were withdrawn to conſider of their Verdict, the Court proceeded in this Manner.

Sir John Holt. *L. C. J.* Mr *Attorney*, Who will you have try'd next?

Sir Thomas Trevor. Mr *Att. Gen. Cranburne*, if your Lordſhip pleaſes.

Cl. of Arr. Then, Keeper of *Newgate*, ſet *Charles Cranburne* to the Bar.

L. C. J. You, Gentlemen, that are of Council for the Priſoner, if you have any Thing to move for your Clyent, you may move it; but firſt let the Priſoner be here.

Then Charles Cranburne *was brought to the Bar in Irons.*

L. C. J. Look you, Keeper, you ſhould take off the Priſoners Irons when they are at the Bar, for they ſhould ſtand at their Eaſe when they are try'd.

Keeper. My Lord, we have no Inſtruments here to do it juſt now.

Cl. of Ar. You may ſend to the *Gate-houſe*, and borrow Inſtruments.

Mr J. *Powell.* It ſhould be done indeed; they ought to plead at Eaſe.

L. C. J. Well go on Sir *Bartholomew Shower.*

Mr *Att. Gen.* My Lord, before Sir *Bartholomew Shower* enter upon his Exceptions, unleſs thoſe Exceptions of his are ſome of the Particulars mention'd in this Act he muſt not do it now, after Plea pleaded, before the Tryal; but he muſt do it in Arreſt of Judgment.

L. C. J. *Treby.* It is true, regularly; but let him uſe his own Judgment.

L. C. J. It is very true; the Courſe has not been to allow them to move to quaſh an Indictment for Treaſon, or Felony; but it may be done.

Mr *Att. Gen.* Sure it muſt be only for ſuch Things as they cannot take Advantage of in Arreſt of Judgment after the Verdict.

L. C. J. It has not been the Courſe, but it may be done.

Mr *Att. Gen.* Not where there is an Iſſue join'd, and a Jury return'd to try that Iſſue; I believe that never was done, nor attempted.

L. C. J. Treby. If there were any Prejudice to the King by it, it were not fit for us to alter the Courſe; but let us hear what his Exceptions are.

Sir *B. Shower.* I have ſeveral Exceptions; five at leaſt; one of them is within the very Words of the Act, that is, improper *Latin*; I am ſure ſome of it is ſo.

L. C. J. Well, let's hear what that is.

Sir *B. Shower.* It ſays, *Anno Regni dicti Domini Regis nunc Septimo*, and *Lewis* is the laſt King mention'd

tioned before; and ſo here is no Year of the King of *England* mention'd. It is a certain Rule, that Relatives muſt refer to the laſt Antecedent, and that Rule holds always, unleſs there be Words that accompany the Relative, which undeniably ſhew to what it refers.

L. C. J. Ay; but do we call the *French* King *Dominus Rex?*

L. C. J. Treby. He would have been ſo, if he had ſucceeded in his Invaſion, and this Aſſaſſination.

Sir *B. Shower.* In every Indictment, if there be Occaſion to mention a former King, it is always *nuper Rex*, and ſuch a one, naming the Name of the King, where the preſent King's Name does intervene, to prevent Confuſion; and ſo in Civil Actions it is the ſame; and ſo it ſhould have been here.

L. C. J. Ay; but I tell you, it is *Dominus Rex nunc*, which is our King.

Mr *Phipps.* It is not ſaid *Angliæ.*

L. C. J. But wherever it is *Dominus Rex*, we underſtand it of the King of *England*, and no Body elſe. Read the Indictment.

Cl. of Arr. *Necnon eundem Dominum Regem ad Mortem & finalem Deſtructionem ponere & adducere, ac ſubditos ſuos fideles, & Liberos Homines Hujus Regni Angliæ in ſervitutem intolerabilem, & miſerrimam Ludovico Regi Gallico ſubjugare, & mancipare, Decimo Die* Februarii, *Anno Regni dicti Domini nunc Regis, ſeptimo, & diverſis aliis Diebus,* &c.

L. C. J. Can any Man imagine this to be the *French* King?

Sir *B. Sh.* My Lord, your Lordſhip is not to imagine one Way or other.

Mr *Cowper.* In the ſtricteſt Senſe and Grammar in the World, it muſt mean King *William*, and no other. We do not need any Imagination, when in the ſtricteſt Conſtruction, it is plain who it refers to.

Sir *B. Shower.* I am ſure no Grammar can make it good; nothing but a Suppoſition can help it.

Mr *Cowper.* When it is ſaid *Dictus Dominus Rex*, if Sir *Bartholomew Shower* can find out another *Dominus Rex* in the Indictment, then he may make ſomething of his Objection; but the *Dominus* is only apply'd to our own King throughout.

L. C. J. *Treby.* Beſides, as to the Rule that Sir *Bartholomew Shower* mentions, it is that *ad proximum Antecedens fiat Relatio niſi impediat Sententia.* That's the Reſtriction of the Rule, it muſt relate to the next Antecedent, unleſs the Senſe would be prejudiced; but here if this Conſtruction ſhould be, it would make this Clauſe to be no better than Nonſenſe, *viz.* That the Subjects and Freemen of this Realm were to be brought into intolerable Slavery to *Lewis* the *French* King, ſuch a Day in the Seventh Year of the Reign of our Lord the *French* King.

Sir *B. Shower.* We ſay it is little better than Nonſenſe, I am ſure it is looſe, and uncertain, and not Grammar, but carries a new Form with it.

L. C. J. No, It is as well as it can be.

Sir *B. Shower.* Then, my Lord, there is another Exception; it is ſaid, *Diverſis Diebus & Vicibus tam antea quam poſtea*; and then afterwards it ſays, *poſtea ſcilicet eodem Decimo Die* Februarii; that is repugnant; it is as much as to ſay, That upon the Tenth of *February*, and two Days afterwards (to wit) the ſaid Tenth Day of *February*; that is, after two Days after the Tenth of *February*, viz. upon the ſame Tenth Day.

Mr *Att. Gen.* That *Poſtea* is another Sentence and relates to other Matters.

Sir *B. Shower.* It can't in Propriety of Speech be ſaid to be afterwards the ſame Day.

Mr *Sol. Gen.* If Sir *Bartholomew Shower* remembers the Evidence that we have given this Day, he will find it was in Fact ſo; they met on the *Saturday* Morning, and afterwards met again the Night of the ſame Day.

L. C. J. There is nothing in that Objection ſure, it is a common Form, when they tell of different Matters.

Sir *B. Shower.* Well then, if you will hear the reſt which are not of the ſame Nature, we ſhall come to what we think a fatal Exception; we ſay this Indictment of High-Treaſon being againſt a Subject born, ought to have had the Words in it, *Contra ſupremum naturalem Ligeum Dominum ſuum*; according to *Calvin*'s Caſe in the 7th Report, *Fol. Septimo.*

L. C. J. It is *Contra Ligeantiæ ſuæ Debitum*, is it not?

Sir *B. Shower.* That won't help it, my Lord, for all that is applicable to an Alien born: And ſo is the Caſe in my Lord *Dyer*, 144. where it is ſaid, That if an Indictment of Treaſon be againſt an Alien, you muſt not put in the Word *naturalem*, if you do, it will be faulty, becauſe he owes but a local Allegiance to the King of *England*; and not a natural one. Now we ſay, there are none of theſe Priſoners but are Subjects born, and the conſtant Form in Queen *Elizabeth*'s Time, and Queen *Mary*'s, was to put in the Words *Naturalem Dominum*, and they cannot ſhew me any of thoſe Precedents without it. There was Occaſion in *Tucker*'s Caſe to look into this Matter, and ſearch all the Precedents. I have look'd into my Lord *Coke*'s Entries, and all the Precedents; I have ſeen my Lord of *Eſſex*'s Indictment, and all the others in Queen *Elizabeth*'s Time, and thoſe of the Traitors in the Powder-Plot, and thoſe of the *Regicides*, and *Tucker*'s own Indictment it ſelf; all along it is *Naturalem Dominum ſuum*; and the Reaſon for it is, he that is Alien born, you never put in *naturalem Dominum ſuum*, becauſe he owes a double Allegiance; one Natural, to his own King under whoſe Dominion he was born, and the other Local, to the King in whoſe Dominions he reſides, for he is bound to obſerve the Laws of the Place where he lives: And if he violate them, he does break the Allegiance that he owes to the Government where he lives, upon Account of the Protection he enjoys under it. But if he be born a Subject of the King of *England*, he has but one natural Liege-Lord: and he being an *Engliſhman* born, the King ſtands in that Relation to him, as he does to all his Native Subjects, but not to Foreigners; and therefore it was thought requiſite to be, and has always been inſerted into Indictments of Treaſon againſt Subjects born. And, my Lord, we think the very Reſolution of the Court, afterwards affirm'd in the Houſe of Lords that revers'd *Tucker*'s Attainder, went upon this Opinion, That the Law required *naturalem Ligeum Dominum* to be put in. There the Exception was, that *Contra Debitum Ligeanciæ ſuæ* was omitted; To which it was objected, that there was *Dominum Supremum Naturalem*, which was Equivalent: No, it was anſwered, both were requiſite, becauſe every Act charg'd in the Indictment ought to be laid againſt

a gainſt the Duty of his Allegiance. Now in Indictments of Treaſon, there are certain Words that are eſſential, becauſe of their Relation between the King and his People. There are certain Forms of Words, which if the conſtant Practice has been to make Uſe of them, the Omiſſion is an Error. Thoſe uſual Forms ought to be obſerv'd, and the Want of them will be a fatal Exception; ſo we think it would be in this Caſe, as much as if the Word *Proditorie* had been left out; or as if in a Caſe of Felony and Burglary, the Words *Felonicè*, and *Burglariter* had been left out.

Mr *Phipps*. My Lord, we take the Practice, and Precedents to be the Rule of Law in the Caſe; and I have look'd over a great many Precedents, beſides thoſe that Sir *Bartholomew Shower* has cited; and I never ſaw any one Precedent of an Indictment of Treaſon againſt a Subject born without the Word *naturalem*; and all the Caſes cited by Sir *Barthol. Shower* are full in the Point. *Counter*'s Caſe in my Lord *Hobbart*, 271. where 'tis ſaid, that if there be an Indictment againſt a Subject born, it muſt be *Contra naturalem Dominum*; if againſt an Alien, *naturalem* muſt be left out. To ſay *Contra Ligeantiæ ſuæ Debitum* will not do, it is not enough, for that may be ſaid againſt an Alien, becauſe he owes a local Allegiance, tho' not a Natural one. And I take it, upon this Difference, this Indictment is not good.

Mr *Att. Gen.* My Lord, I do not know how far you will think it proper to enter into this Matter before the Tryal.

L. C. J. Mr *Attorney*, I think you had as good ſpeak to it now as at another Time; tho' I muſt confeſs it is not ſo proper in Point of Practice.

Mr *Att. Gen.* Well, my Lord, then we will ſpeak to it now. The Objection is, That the Word *naturalem Dominum* is not in the Indictment; which they ſay is contrary to the uſual Form: As to the Precedents, there are a great many where it has been, and I am ſure a great many where it has not been; and I am ſure for this Six, Seven, or Eight Years laſt paſt, it has always been omitted: And, with Submiſſion to your Lordſhip, it is not at all neceſſary, if there be Words in the Indictment which ſhew, that what he did was againſt the Duty of his Allegiance to his Lawful and Undoubted Lord (which are the Words in this Indictment.) It is true, if he be not a Subject born, *naturalem* cannot be in, becauſe that is contradictory to the Obedience which he owes, for it is not a natural Obedience that he owes, but a Local; but if a Man be a Subject born, and commits Treaſon againſt the Allegiance that he owes, that is againſt his natural Allegiance; for whatſoever he does againſt his Allegiance, he does againſt his natural Allegiance, and ſo there's no need to put in the Word *naturalem*; becauſe he owes no other Allegiance but that; it is ſufficient if that be put in which ſhews its being againſt his Allegiance. If they could ſhew that a Subject born has two Allegiances, one that is natural, and the other that is not natural; then if you would proſecute him you muſt ſhew, whether it was againſt his natural, or againſt his other Allegiance. But when he has none but a natural Allegiance, certainly againſt his Allegiance, without putting in natural, will be well enough, It is true where there is no natural Allegiance, it muſt be wrong if you put it in, becauſe you put in that Allegiance which he does not owe; but where he is a Subject born, to put in natural Liege-Lord there is no Ground at all for it; there are Words enow that ſhew it was againſt his Allegiance to his Lawful and Undoubted Lord.

L. C. J. Look you, Sir *Bartholomew Shower*, how does it appear, that theſe Men are Subjects born? The Matter you go upon does not appear upon the Indictment, and you are not to go off from that.

Sir *B. Shower*. Every Man is preſum'd to be ſo, unleſs the contrary appears.

L. C. J. You quote *Calvin*'s Caſe, and the other Caſes that are there put; thoſe are all Caſes of Aliens; there is Dr. *Lopez*'s Caſe; He being an Alien comes into *England*, and commits High-Treaſon: Why, ſay they, how ſhall we indict this Man? We cannot ſay it is *Contra Naturalem Dominam ſuam*; for he owes no natural Allegiance to the Queen of *England*; How ſhall we do to frame a good Indictment againſt this Man? They conſidered of this; and they ſaid it will be a good Indictment, to charge him with High-Treaſon, or any one elſe, leaving out the Word *Naturalem*: For if it appear he has committed an Offence againſt the Laws of the Kingdom, and againſt the Duty of his Allegiance, which is High-Treaſon, that's enough. Now as to *Tucker*'s Caſe, it was reverſed for want of the Concluſion, *contra Debitum Ligeantiæ ſuæ*. Thoſe Words are material; for let the Offence be never ſo much againſt the Perſon of the King, as to aſſaſſinate him, or levy War againſt him, yet ſtill if it be not againſt the Duty of his Allegiance, as it cannot be if he owes him none, it is not High-Treaſon. And therefore if it be againſt his Allegiance, whether that Allegiance be natural or local, it is all one, it's enough to make it High-Treaſon.

Mr *Soll. Gen.* In that Caſe in *Dyer*, they ſhew where it was a Fault to put the Word in, but they can ſhew no Caſe where it has been adjudged to be a Fault to leave the Word out.

L. C. J. No Doubt it would be a Fault to have that in, *Contra Naturalem Dominum ſuum*, where there is only a local Allegiance due.

Mr *Phipps*. How does it appear whether it is the one or the other that is due?

L. C. J. It is no Matter whether the one or the other do appear, it is High-Treaſon be it the one or the other, if it be againſt the Duty of his Allegiance.

Mr *Phipps*. Suppoſe an Indictment againſt an Alien were, *Contra Naturalem Dominum*.

L. C. J. That would be ill, becauſe then you had laid it more ſpecially, and otherwiſe than really it is, and reſtrained it where you ought not to do it.

Mr *Phipps*. How then, my Lord, ſhall it appear that he only ow'd a local Obedience?

L. C. J. It may be given in Evidence, That he is an Alien born.

Mr *Soll. Gen.* He may plead it in Abatement to the Indictment.

L. C. J. He ought to be acquitted, for you have indicted him of a Crime againſt his natural Allegiance, when he owes no ſuch. But Allegiance generally comprehends all Sorts of Allegiance, Natural, and Local.

Sir *B. Shower*. How then, my Lord, come all the Lawyers of all Ages to put in thoſe Words

in Indictments of High Treaſon againſt Subjects born?

L. C. J. No, I have ſeen Abundance of Precedents, that have only *Contra Ligeantiæ ſuæ Debitum* Generally, and for the moſt part are; for Allegiance is the Genus, and if that be ſuggeſted, all the Species are contain'd under that.

Mr *Att. Gen.* Well, have they any more.

Sir *B. Shower.* Yes, we have more.

L. C. J. Well, you ſhall have them all in time.

Sir *B. Sh.* My Lord, here is another Objection, and that's this; here is one Fact that they have laid, and that's the 2d Overt-Act in this Indictment, that they conſented and agreed that Forty Men (whereof theſe Four were to be Four) but do not lay it to be done traiterouſly. They ſay *Conſenſerunt Agreaverunt & Aſſenſerunt*, but not *proditorie*; and I never ſaw an Indictment that laid an expreſs Overt Act, without repeating the Word again. If your Lordſhip pleaſes, the Words in the Indictment are thus; as to the firſt Overt Act, it is laid in this manner, *Et ad execrabilem Aſſaſſinationem illam exequend.* at ſuch a Time and ſuch a Place *proditorie tractaverunt propoſuerunt & Conſultaverunt de vijs modis & medijs, &c*, and then comes this which we except againſt; *& Conſenſerunt Agreaverunt & Aſſenſerunt quod Quadraginta Homines, &c.* Now this is a plain diſtinct Act, and there is no *proditorie* to it; and if ever they can ſhew me any Indictment, in which an Overt Act was laid, of which they gave any Evidence, and it had not the Word *proditorie* in it I am very much miſtaken. I am ſure, I never ſaw any ſuch. And it is not enough to ſay, that the Nature of the Thing is ſuch, as that it cannot but be a Treaſonable Act; but they muſt alledge it to be ſo, by the expreſs Uſe of that Word, which the Law has appointed to expreſs this Crime by. In the Caſe of an Indictment for Felony, if it be not ſaid Felony, it is not good. They are not to deſcribe that by Circumlocution, which is a particular Crime fixt by Law, they muſt uſe the *Verba Artis*, the Terms of Art, and no other: If your Lordſhip pleaſes it may be read.

Mr *Sol. Gen.* Let it be read if you pleaſe; but take it in *Engliſh*, and it is no more than this, they did traiterouſly compaſs the Death of the King, and for that purpoſe they did traiterouſly meet, and conſult about the Ways and Means, and did conſent and agree that forty Men, *&c.*

Cl. of Arr. Reads, *Et ad execrabilem Horrendam & Deteſtabilem Aſſaſſinationem Anglice* Aſſaſſination *& Interfectionem illam Citius exequendum & anno ac Diverſis aliis Diebus & vicibus apud parochiam prædictam in Comitatu prædicto proditorie tractaverunt, propoſuerunt & Conſultaverunt de viis modis & mediis ac Tempore & Loco ubi quando qualiter & quomodo Dictum Dominum Regem ſic ex Inſidiis facilius Interficerent.*

Sir *B. Shower.* There is an End of that, now go on.

Mr. *Att. Gen.* No, Sir *Bartholomew*, you miſtake there is no End of it, that's done at the ſame time with that which follows.

Sir *B. Shower.* No it is not the ſame Overt Act; but let him go on.

Cl. of Arr. *Et Conſenſerunt Agreaverunt & Aſſenſerunt quod quadraginta Homines Equeſtres.*

Sir *B. Shower.* Well, you need read no further for our Objection. We ſay, there wants the Word *Proditorie*: For there are two Overt-Acts, the One is, that they traiterouſly did conſult of the Ways and Means, how to kill the King, and that Overt-Act we agree to be well laid: But then it ſays they conſented, and agreed that there ſhould be Forty Men, whereof theſe Four ſhould be Four, but does not ſay they traiterouſly agreed are not theſe diſtinct Acts?

Mr *Phipps.* Surely, My Lord, they are diſtinct Acts, for this Part of the Indictment upon which Sir *Bartholomew* grounds his Objection, is that Overt-Act of which the Liſt in Mr *Rookwood's* Caſe was urg'd by the King's Council, and agreed by the Court to be an Evidence.

Then the Jury againſt Mr. *Rookwood* came in, and delivered in their Verdict, as it is in his Trial, then afterwards the Court went on thus.

Mr *Att. Gen.* My Lord, the Objection is, that *Proditorie* is not inſerted into that particular Clauſe of the Indictment, which ſhews their particular Agreement that there ſhould be forty Men, whereof the Four named in the Indictment were to be Four. Now your Lordſhip obſerves how the Indictment runs, it is for compaſſing and imagining the Death and Deſtruction of the King; and it ſets forth for this Purpoſe, that to affect this Compaſſing and Imagination, they *Proditorie tractaverunt & Conſultaverunt de viis mediis & Modis*, how they ſhould kill the King. Now that which immediately follows after is, the particular Method and Means that were agreed upon, that is, that there ſhould be forty Men. Now this is the ſtrangeſt Suggeſtion that ever was, when we have ſet forth, that traiterouſly they did ſo agree of the Ways and Means, and then ſet forth the particular Means that here muſt be *proditorie* again to that. This is ſuch a Conſtruction as I cannot but admire how it could come into any one's Head. It is Part of the Sentence; for the other Part, as we have laid it, is not compleat before: It may be it might be ſufficient without ſetting forth the particular Way and Means, but when it is ſet forth, it is Part of the Sentence, and refers to the firſt Begining.

L. C. J. Aye ſure it does.

Mr. *Att. Gen.* I cannot tell what they would have unleſs they would have us repeat the Word *proditorie* in every Line.

Mr *Soll. Gen.* Or before every Verb.

Sir *B. Shower.* No, but I think it ought to be repeated at every Overt-Act.

Mr *Conyers.* If your Lordſhip pleaſes, after that they have ſet forth that this was the particular Method and Way agreed upon at their Conſultation, that forty Horſemen or thereabouts ſhould go about it, of which the Perſons Indicted were to be Four, it goes on, *Et Quilibet eorum proditorie ſuper ſe Suſcepit eſſe unum* there it is put in, and it appears to be as particular as poſſible can be.

Mr *Cowper.* Sir *Bartholomew Shower* ſays, that when we have alledg'd that they did traiterouſly treat, propoſe and conſult of the Means and Ways of killing the King, there we have done the Sentence and made that one Overt-Act. Now how is the Sentence done? The next Word is a Conjunction Copulative, *& Conſenſerunt &c.* And what is the Uſe of a Conjunction Copulative? But to convey the Force of the Words in a former Sentence to the Sentence following, and to prevent the Repetition of every Word in the ſubſequent Sentence that was in the Precedent: But it is plain, they are both one and the ſame Overt-Act, and theſe ſubſequent Words are only an Explanation

planation, more particularly of the Overt-Act ſet forth in the precedent Words.

Sir *B. Shower*. In Anſwer to that, that has been ſaid, if they ſhew me any Precedent, where an Indictment has been for High-Treaſon, ſetting forth ſeveral Overt Acts, and not the Word *proditorie* ſet to every Overt-Act, then they anſwer my Objection. If the Word *Quod* had come in, that would have made them diſtinct to be ſure; and I think they are as diſtinct Acts now; ſuppoſe they had concluded at the End of the Word *Interficerent*, that had been a good Overt-Act, I am ſure they will agree that: And if it be ſo, then the other is a good Overt-Act too. For it is a diſtinct Thing from that which was a perfect Sentence before; and it either requires a *Likewiſe*, or the Word *Proditorie* muſt be repeated. They have not ſo much as ſaid *ſimiliter Conſenſerunt* or *ſimili modo* there is an (&) indeed, but that does not ſo couple the Sentences together, as not to make them diſtinct Acts. There are ſeveral *Ets* thorough the whole Indictment, but that does not, as Mr *Cowper* would have it, couple altogether to make one Overt-Act.

Mr *Phipps*. My Lord, if what Mr *Cowper* ſays be allow'd, (*viz.*) that the (&) makes it one intire Sentence, then there is no Overt-Act at all; for after the Treaſon alledg'd, and the Clauſe is coupled to one another by an *Et*, and conſequently by Mr. *Cowper*'s Way of arguing the whole Indictment is but one intire Sentence.

L. C. J. I do not underſtand your Meaning as to that, they tell you *Proditorie* it is alledg'd to the Conſulting, Contriving and Agreeing, then they tell you what was the ſubject Matter of that Contrivance and Agreement to aſſaſſinate the King, and in order to that they agreed there ſhould be 40 Men, is not that good enough, without *Proditorie* to every Line.

Sir *B. Shower*. No, it is not ſaid in *Ordine ad*, there is no ſuch Thing; but only they did conſult of the Ways and Means, and did agree that 40 Horſemen ſhould do it, and afterwards did agree to provide Horſes and Inſtruments of War. Now that being with a *Quodque*, they ſay makes a new Overt-Act; but I cannot underſtand why *Quodque* is not as much a *Copulative* as *Et*, and the one ſhould not have the ſame Effect as the other.

L. C. J. Firſt it tells you there was a Conſult and Agreement to aſſaſſinate the King, and for the Accompliſhment of the ſaid Aſſaſſination, afterwards *eiſdem die & Anno Proditorie Tractaverunt & Conſultaverunt de viis & modis*, how they ſhould kill the King.

Sir *B. Shower*. That is one Overt-Act, ſay we, and there you ſhould ſtop.

L. C. J. Et Conſenſerunt & Agreaverunt quod quadraginta Homines, &c. it is all at the ſame time, and muſt be intended the ſame Conſult and Contrivance; that they conſulted of the Ways and Means, and then agreed ſo many Men ſhould be provided.

Mr *Phipps*. No, My Lord, we ſay that is another Overt-Act.

L. C. J. Treby. It ſeems to me to be a ſpecifying, and particulariſing the Ways and Means, that they had conſulted of, and concluded on.

Sir *B. Shower*. If it had been a ſpecifying, it had been much better to put in either then and there, or that this was the Reſult of the Conſultation.

L. C. J. Treby. It does ſeem to me ſo, that it was the Reſult of the Conſultation, and it is well enough.

L. C. J. You had better have ſav'd theſe kind of Exceptions till the Trial was over.

Sir *B. Shower*. But, my Lord, if there be one Overt-Act ill laid, I ſubmit it whether they can give any Evidence of that Overt-Act.

L. C. J. Treby. No doubt of that they cannot; but we think it is as well laid as it could be laid.

L. C. J. Truly I am not well ſatisfied, that it is neceſſary after you have laid the *Proditorie*, as to the particular Treaſon, to lay it again to the Overt-Act. For the Overt-Act is but Evidence of the Treaſon: The Treaſon it ſelf lies in the Compaſſing which is an Act of the Mind.

L. C. J. Treby. You cannot Indict a Man of Treaſon for Aſſaſſinating or killing the King; but you muſt in every ſuch Caſe frame the Indictment upon the Article for compaſſing and imagining the Death of the King; which muſt be laid to be done traiterouſly. Then when afterwards you ſay the Perſon accuſed did wound him, or impriſon him, or conſult and agree to aſſaſſinate him, or did actually aſſaſſinate him, theſe are but ſo many Overt-Acts of compaſſing the Death, and you having firſt ſaid that he did *Proditorie* compaſs and imagine the King's Death, you have thereby ſhewn that you charge him with a greater Offence than Felony (which my Lord *Coke* ſays is the Uſe of the Word *Proditorie*;) and that being thus done, I do not apprehend it to be neceſſary that you ſhould add *Prodtorie* to all the reſt of the following Particulars; for they are only external Diſcoveries of the inward Treaſon; and more properly deemed to be Evidence of the Treaſon, than to be the Treaſon it ſelf.

L. C. J. The Treaſon is conſummate in the Intention, beſides the Words of the Statute make that the Treaſon, not the Overt-Act, that is but Evidence, and ſo it was held, (not upon this Exception, but upon the Reaſon that my Lord ſpeaks of) in Caſe of the Regicides of King *Charles* the Firſt, That the Indictment ſhould not be for killing the King, but for compaſſing and imagining his Death, and the Killing was alledg'd as an Overt-Act.

Sir *B. Shower*. It muſt be ſo if it were for levying of War.

L. C. J. Moſt true, for levying the War is the Treaſon, but in this Caſe we think it is no Exception.

Mr *At. Gen.* Then let us have the Fifth.

Sir *B. Shower*. Then, my Lord, here is another Thing. It is a Queſtion whether there be any Overt-Act preſented by the Jury at all. The Indictment ſays, *Juratores pro Domino Rege præſentant*, that they as falſe Traytors did compaſs the Death of the King, and the Slaughter of his Subjects, and they did meet, and conſult, and agree how to do it, *Et iidem Chriſtophorus Knightley* and the reſt, to fulfil their ſaid traiterous Intentions and Imaginations did, afterwards, the tenth of *February*, buy Arms and Horſes. Now our Objection is, that it does not appear, that any one of theſe Overt-Acts are the Preſentment of the Jury; with Submiſſion they ought to have begun it again, either with a *Quodque*, or ſomething that ſhould have referred it to the firſt, *Juratores præſentant*, or elſe they muſt have begun quite again, with a *Juratores Ulterius præſentant*, and not have coupled them, as this is with an *ulterius præſentant*, and

not have coupled them as this is with an *Et*. The moſt Forms begin with an *ulterius præſentant*, but here we find no Overt-Act is ſo introduced. They might preſent Part, and not preſent the other Part, for any Thing that does appear. Every Thing ought to be laid poſitively, as the Jury's *Dictum*, it may be only the Clerk's Saying, and not the Juries, for any Thing that does appear. Your Lordſhip remembers the Caſe of the King and *Trobridge* upon a Writ of Errour to reverſe a Judgment for erecting and continuing a Cottage againſt the Form of the Statute, now *Contra formam Statuti* was in the Beginning of the Indictment, but not in the Concluſion; to the erecting but not the continuing. And though there was there *Juratores ulterius dicunt*, it was not *ſuper Sacramentum ſuum*, and they did not ſay, he did continue it againſt the Statute, and there being no formal Preſentment, that he maintain'd the Cottage notwithſtanding the Act, *Et* did not ſo couple it to the firſt Part, as to make it a good Preſentment. So we ſay in this Caſe, this is a Fault, and different from all the common Forms; there ought to be a direct Preſentment of each Overt-Act, and not coupled by an *Et*. For *Et* will not do it; for it is a diſtinct Overt-Act every one, and ſhould have been *Et quod conſultaverunt, quodque Agreeaverunt*, that a certain Number ſhould do ſo and ſo, and to be ſure, it ſhould have been ſo at the laſt Overt-Act, which is only, *Et eidem Chriſtophorus Knightley* did buy Arms and Horſes. Now this laſt *Et*, being a looſe Conjunction *Copulative*, in common Senſe ought to refer to that which they had agreed upon, for that is laſt mention'd there, and the natural Senſe leads thither, and not to the Beginning of the Bill *Juratores præſentant quod*.

Mr *Phipps*. I ſhall not tronble your Lordſhip further, they ought to have put in a *Quodque*, or an *Ulterius præſentant*.

Mr *At. Gen*. Where would you have the *Quodque*, or the *Ulterius præſentant* ?

Mr *Phipps*. Either to every Overt-Act, or at leaſt to that laſt.

Mr *Att. Gen*. The Indictment ſets forth, that they committed ſuch, and ſuch Treaſon; Their Objection is, that *Quodque* is not put into every Overt-Act, and our Anſwer is, that the firſt *Quod* governs all that relates to that Treaſon. It may be if there were two diſtinct Treaſons in the Indictment, when you come to ſet forth the Second Treaſon, you ſhould ſay *Juratores ulterius præſentant* the Second Treaſon; but the Overt-Acts to prove the ſame Treaſon, are all Parts of that Treaſon, and make but one Species of Treaſon, which is the Imagining the Death of the King. There's the Treaſon; and to bring it to paſs, they did ſo, and ſo: This, my Lord, muſt be Part of the finding of the Jury as well as the Treaſon it ſelf, of which theſe are the Overt-Acts. But then if you will lay the levying of War in the ſame Indictment, then it may be you muſt ſay *Juratores ulterius præſentant quod*, &c. But it had been a ſtrange Abſurdity to ſay, *Juratores ulterius præſentant*, ſuch and ſuch Overt-Acts: For the Overt-Act is not a further Indictment, but only a ſetting forth that which is Evidence, upon which they found the Indictment for Treaſon.

Mr. *Sol. Gen*. What the Indictment ſays, is as direct Affirmation as can be all along in the Preſentment of the Jury, that the Priſoner and others did compaſs and imagine the Death of the King, and to bring it about, they did conſult together, and did agree to make uſe of ſuch and ſuch Means, and were to have a Party of 40 Men, and they bought Arms and Horſes. Now it does not repeat *quodque*, or *ulterius præſentant quod*, to every one of thoſe Sentences, that they did ſo and ſo, and that they did ſo and ſo. Now I would fain know the Difference between Saying, and they did ſuch a Thing, and Saying, and that they did ſuch a Thing. That's all the Difference that they think to overturn this Indictment for. The omitting of a *Juratores ulterius præſentant*, certainly is nothing; for the firſt Preſentment runs through the whole Indictment, and there does not need an *Ulterius*.

Sir *B. Shower*. Certainly there ſhould have been a *Quodque* at leaſt.

L. C. J. No indeed, I think it is better as it is, than as you would have had it; becauſe the firſt *Quod* goes through the whole, That in order thereunto he did ſo and ſo, would you have it ſaid *& quod* in order thereunto he did ſo and ſo, but that may be good Senſe, I think it is not ſo good as the other. This Indictment is for one Sort of Treaſon, and that is, for compaſſing the Death of the King; and it is, I think, more proper to have but one *Quod*, than to have more; for it makes the whole Indictment more entire. As to the *Juratores ulterius præſentant*, that is never proper, where the *Species* of Treaſon is the ſame: For indeed if there had been two diſtinct Treaſons, the one for compaſſing the Death of the King, and the other for levying of War, in that Caſe you muſt bring it in by *ulterius præſentant*: Becauſe they are two ſeveral Offences, though compris'd in one Bill, and they are in Law as two Indictments. And ſo it is in the Caſe that you mentioned of Cottages: It is one Offence to erect a Cottage, and another Offence to continue a Cottage, and they are to have ſeveral Puniſhments; and becauſe they there jumbled them both together in one Indictment, that Indictment was held to be nought: For by Law, the Indictment for erecting a Cottage, ought to conclude *contra formam Statuti*, and then the Jury muſt begin again, *& ulterius præſentant quod* the Cottage was continu'd againſt the Form of the Statute; becauſe they are ſeveral Offences. But here the High-Treaſon is but one and the ſame Offence, and the other Things are but Overt-Acts to manifeſt this Treaſon, the Compaſſing the Death of the King; and truly I think it is better as it is.

Mr *Phipps*. I have ſeen ſeveral Precedents of Indictments, where the ſeveral Overt-Acts were to the ſame High-Treaſon, but ſtill they had each an *ulterius preſentant*.

At. Gen. I believe it is hard to find many Indictments in the ſame Words: I am ſure all are not.

L. C. Baron. Is it not as great an Affirmation to ſay, and they did ſuch a Thing, as to ſay, and that they did ſuch a Thing.

L. C. J. I cannot reconcile it to my Reaſon, but it ſhould be as good Senſe without *that* as with.

L. C. J. Treby. In a long Deed it begins, *This Indenture witneſſeth, that* the Party granted ſo and ſo, and the Party covenants thus and thus; and ſo it goes on commonly, without renewing the Word *That* to the ſubſequent Clauſes: But yet the firſt Expreſſion (*This Indenture witneſſeth, that*) governs the whole Deed, though it be many Skins of Parchment.

L. C. J.

L. C. J. If you begin with an Indenture, you begin, That it witneſſeth ſo, and ſo, without renewing, unleſs it be a very diſtinct Thing.

Sir *B. Shower.* My Lord, we think that Similitude makes for us. *A B.* covenants ſo and ſo in a Conveyance, and then further, that ſo and ſo.

L. C. J. But there you reſtrain that in the Beginning of the Covenant to every Particular in that Covenant.

Mr *At. Gen.* Will your Lordſhip pleaſe to call the Jury now?

L. C. J. Have you a Mind to go on with the Trial, or to go to Dinner?

Mr *At. Gen.* I believe your Lordſhip can try but one more to Night, and that may be as well after Dinner as before.

L. C. J. Well than, adjourn till 5 a Clock, and in the mean time, you Keeper, knock off the Priſoners Fetters.

Keeper. They ſhall, my Lord.

Then the Court adjourned till 5 a Clock in the Afternoon, it being then about 3.

Poſt Meridiem, the 21ſt of April, 96. *The Court returned, and was reſum'd about 6 in the Evening.*

Cl of Ar. Keeper of *Newgate*, bring *Charles Cranburne* to the Bar (which was done.) *Charles Cranburne*, hold up thy Hand (which he did.) Thoſe good Men that you ſhall hear called and perſonally appear, are to paſs between our Sovereign Lord the King and you, upon Trial of your Life and Death; and therefore if you will challenge them or any of them, your Time is to ſpeak unto them as they come to the Book to be ſworn, and before they be ſworn.

Cranburne, My Lord, I humbly deſire I may have Pen, Ink, and Paper.

Court. Aye, Aye. *He had them.*

Cl. of Ar. Where is *George Ford?*

Cryer. Vouz Avez.

Cranburne. I challenge him.

Cl. of Ar. William Underhill.

Cranburne. I challenge him.

Cl. of Ar. William Withers.

Cranburne. I challenge him.

Mr *Phipps.* If your Lordſhip pleaſes, thoſe that were of the laſt Jury I hope ſhall not be call'd of this Jury: This Priſoner being tried upon the ſame Indictment the laſt was.

L. C. J. If they be not, it ſhall be in Eaſe to them, but it is not in Favour of you.

Mr *Phipps.* We humbly conceive, having given their Verdict upon the ſame Indictment, they are not ſuch indifferent Perſons, as the Law intends they ſhould be, and think it is good Reaſon they ſhould not ſerve upon this Jury.

L. C. J. What though it be upon the ſame Indictment? the Evidence is not the ſame; for they are diſtinct Offences.

Mr *Phipps.* I do not know whether it be a good Cauſe of Challenge, but ſubmit it to your Lordſhip.

L. C. J. Well, you may doubt of it if you pleaſe, and try the Exception.

Cl. of Ar. Thomas Trench.

Cranburne. I challenge him.

Cl. of Ar. John Wolfe.

Cranburne. I challenge him.

Cl. of Ar. James Bodington.

Cranburne. I challenge him.

Cl. of Ar. Jonathan Andrews. (He did not appear.) *John Raymond.*

Cranburne. I challenge him.

Cl. of Ar. George Hawes.

Cranburne. I challenge him.

Cl. of Ar. Francis Barry.

Cranburne. I challenge him.

Cl. of Ar. Arthur Bailey.

Cranburne. I challenge him; he was upon the laſt Jury.

L. C. J. That is no Reaſon; Will you challenge him peremptorily?

Cranburne. I do challenge him.

Cl. of Ar. John Caine.

Cranburne. I do not except againſt him.

Cl. of Ar. Hold Mr *Caine* the Book, Cryer.

Cryer. Look upon the Priſoner, Sir. You ſhall well and truly try, and true Deliverance make between our Sovereign Lord the King and the Priſoner at the Bar, whom you ſhall have in Charge, and a true Verdict give, according to your Evidence, ſo help you God.

Cl. of Ar. Thomas Glover.

Cranburne. I challenge him.

Cl. of Ar. Dormer Sheppard. (He did not appear.) *George Tredway.* (He did not appear.) *Matthew Bateman.* (He did not appear.) *Timothy Thornbury.*

Cranburne. I challenge him.

Cl. of Ar. James Partherich.

Cranburne. I challenge him.

Cl. of Ar. Thomas Freeman. (He did not appear.) *Robert Bredon.*

Cranburne. I do not except againſt him. *(He was ſworn.)*

Cl. of Ar. Joſeph Bliſſet.

Cranburne. I challenge him.

Cl. of Ar. Timothy Lanno. (He did not appear.) *John Harris.* (He did not appear.) *John Billiers.*

Cranburne. I have nothing to ſay againſt him. *(He was ſworn.)*

Cl. of Arr. Richard Bourn.

Cranburne. I do not except againſt him. *(He was ſworn.)*

Cl. of Arr. George Carter. (He did not appear.) *Francis Chapman.*

Cranburne. I challenge him.

Cl. of Arr. Alexander Forth.

Cranburne. I challenge him.

Cl. of Ar. Nicholas Roberts.

Cranburne. I have nothing to ſay againſt him. *(He was ſworn.)*

Cl. of Ar. Thomas Playſtead.

Cranburne. I challenge him.

Cl. of Ar. William Atlee.

Cranburne. I challenge him.

Cl. of Ar. John Marſh. (He did not appear.) *Andrew Cook.*

Cranburne. I do not except againſt him. *(He was ſworn.)*

Cl. of Ar. John Hall.

Cranburne. I challenge him.

Cl. of Ar. William Partridge.

Cranburne. I challenge him.

Cl. of Ar. Peter Levigne.

Cranburne. I challenge him.

Cl. of Ar. Thomas Moody.

Cranburne. I challenge him.

Cl. of Ar. Richard Belinge.

Cranburne. I challenge him.

Cl. of Ar. Thomas Evans.

Cran-

Cranburne. I do not except againſt him. (*He was ſworn.*)

Cl. of Ar. Thomas Ramage.

Cranburne. I have nothing to ſay againſt him. (*He was ſworn.*)

Cl. of Ar. Edward Townſend.

Cranburn. I challenge him.

Cl. of Ar. William Gunſon.

Cranburne. I challenge him.

Cl. of Ar. Philip Wightman.

Cranburne. I ſay nothing againſt him. (*He was ſworn.*)

Cl. of Ar. John Wyborne.

Sir *B. Shower.* I hope you take an Account of the Challenges, Mr. *Hardiſtey.*

L. C. J. Nay, you ſhould take care of the Challenges, who are his Council; if he had no Council we wou'd take care of him.

Cryer. Here is Mr *Wyborne*, What ſay you to him?

Cranburne. I have nothing to ſay. (*He was ſworn.*)

Sir *B. Shower.* I hope your Lordſhip will alſo be of Council for him.

L. C. J. We are to be equal and indifferent between the King and the Priſoner: But you that are now his Council by Law, ought to take care that he loſe no Advantage.

Cl. of Ar. William Strode.

Cranburne. I have nothing to ſay againſt him. (*He was ſworn.*)

Cl. of Ar. Daniel Byfield. (He did not appear.) *Benjamine Noble.* (He did not appear.) *Thomas White.*

Cranburne. I do not except againſt him. (*He was ſworn.*)

Cl. of Ar. Cryer Countez. *John Caine.*

Cryer. One, *&c.*

Cl. of Ar. Thomas White.

Cryer. Twelve good Men and true, ſtand together, and hear your Evidence.

The Names of the Twelve Sworn were theſe,

John Caine, Eſq;	*Thomas Evans*, Gent.
Robert Bredon, Eſq;	*Thomas Ramage*, Gent.
John Billers, Eſq;	*Philip Wightman*, Gent.
Richard Bourn, Eſq;	*John Wyborne*, Gent.
Nicholas Roberts, Gent.	*William Strode*, Gent. and
Andrew Cook, Gent.	*Thomas White*, Gent.

Cl. of Ar. Cryer, make Proclamation.

Cryer. Oyez. If any one can inform my Lords the King's Juſtices of *Oyer* and *Terminer*, the King's Serjeant, or the King's Attorney General, before this Inqueſt be taken of the High-Treaſon, whereof the Priſoner at the Bar ſtands Indicted, let them come forth and they ſhall be heard; for now the Priſoner ſtands at the Bar upon his Deliverance: And all others that are bound by Recognizance to give Evidence againſt the Priſoner at the Bar, let them come forth, and give their Evidence, or elſe they forfeit their Recognizance.

L. C. J. Mr Attorney, Do you think we ſhall be able to try the other to Night.

Mr *At. Gen.* That is according as this holds, my Lord.

L. C. J. I ſpeak it for the Eaſe of the Jury, that they might be diſpatched, and not attend another Day.

Mr *At. Gen.* I doubt we cannot try any more than this to Night.

L. C. J. Well it is no great Matter, it will be but a Morning-Work; it may be too great a Streſs and a Hurry to do any more to Night; and therefore we will diſcharge the Jury for to Night, thoſe of them that are not ſworn; but we will be here to Morrow Morning by Seven a Clock; and therefore pray Gentlemen attend early.

Cl. of Ar. C. Cranburne Hold up thy Hand. (*Which he did.*) You that are ſworn look upon the Priſoner, and hearken to his Cauſe. He ſtands indicted by the Name of *Charles Cranburne*, late of the Pariſh of St. *Paul Covent Garden*, in the County of *Middleſex*, Yeoman, for that he, with *Chriſtopher Knightley*, late of the ſame Pariſh and County, Gentleman, *Robert Lowick*, late of the ſame Pariſh and County, Gentleman, and *Ambroſe Rookwood*, late of the ſame Pariſh and County, Gentleman, the Fear of God in their Hearts not having, nor weighing the Duty of their Allegiance, but being mov'd and ſeduc'd by the Inſtigation of the Devil, againſt the moſt Serene, moſt Illuſtrious, moſt Clement, and moſt Excellent Prince, our Soverign Lord, *William* the Third, by the Grace of God, of *England*, *Scotland*, *France* and *Ireland*, King, Defender of the Faith, *&c.* their Supreme, True, Righful, Lawful, and undoubted Lord, the Cordial Love, and the true and due Obedience, Fidelity and Allegiance which every Faithful Subject of our ſaid Lord the King that now is, towards him our ſaid Lord the King ſhou'd bear, and of Right ought to bear, withdrawing and wholly to extinguiſh intending and contriving, and with all their Strength, purpoſing, deſigning and conſpiring the Government of this Kingdom of *England*, under him our ſaid Lord the King that now is, of Right, duly, happily, and very well eſtabliſhed, altogether to ſubvert, change and alter; as alſo our ſaid Lord the King to Death and final Deſtruction to put and bring, and his Faithful Subjects, and the Freemen of this Kingdom of *England* into intolerable and moſt miſerable Slavery to *Lewis* the *French* King to ſubjugate and enthral, the 10th Day of *Feb.* in the 7th Year of the Reign of our ſaid Lord the King that now is, and divers other Days and Times, as well before as after, at the Pariſh of St. *Paul Covent-Garden* aforeſaid, in the County aforeſaid, falſely, maliciouſly, deviliſhly, and traiterouſly, did compaſs, imagine and contrive, purpoſe, deſign and intend our ſaid Lord the King that now is, to Slay, Kill and Murder, and a miſerable Slaughter among the faithful Subjects of him our ſaid Lord the King, throughout this whole Kingdom of *England* to make and cauſe; and their ſaid moſt wicked, impious, and deviliſh Treaſons, and traiterous Compaſſings, Contrivances and Purpoſes aforeſaid, to fulfil, perfect, and bring to Effect, they the ſaid *Chriſtopher Knightley*, *Robert Lowick*, *Ambroſe Rookwood*, and *Charles Cranburne*, and very many other falſe Traitors, to the Jurors unknown. Afterwards, to wit, the ſame Tenth Day of *February*, in the Year aboveſaid, at the Pariſh aforeſaid, in the County aboveaid, and divers other Days and Times, as well before as after, there and elſewhere in the ſame County, falſely, maliciouſly, adviſedly, ſecretly, traiterouſly, and with Force and Arms, did meet, propoſe, treat, conſult, conſent, and agree, him our ſaid Lord the King that now is, by lying in wait and wile, to Aſſaſſinate, Kill and Murder: And that execrable, horrid, and deteſtable Aſſaſſination and Killing the

ſooner

ſooner execute and perpetrate. Afterwards, to wit, the ſame Day and Year, and diverſe other Days and Times, at the Pariſh aforeſaid, in the County aforeſaid, traiterouſly did treat, propoſe, and conſult of the Ways, Manner, and Means, and the Time and Place where, when, how, and in what manner our ſaid Lord the King ſo by lying in wait the more eaſily they might Kill: And did conſent, agree, and aſſent, that Forty Horſemen, or thereabouts (of whom they the ſaid *Chriſtopher Knightley*, *Robert Lowick*, *Ambroſe Rookwood*, and *Charles Cranburne*, ſhould be four; and every one of them traiterouſly took upon himſelf to be one) with Guns, Muskets, and Piſtols, charged with Gun-powder and Leaden Bullets, and with Swords, Rapiers, and other Weapons, Armed, ſhould lie in wait, and be in Ambuſh our ſaid Lord the King, in his Coach being, when he ſhould go abroad, to ſet upon; and that a certain and competent Number of thoſe Men ſo armed, upon the Guards of our ſaid Lord the King, then attending him, and being with him, ſhould ſet upon, and them ſhould fight with, and overcome; whilſt others of the ſame Men ſo armed, him our ſaid Lord the King ſhould Aſſaſſinate, Slay, Kill, and Murder. And they the ſaid *Chriſtopher Knightley*, *Robert Lowick*, *Ambroſe Rookwood*, and *Charles Cranburne*, the Treaſons, and all their treaſonable Intentions, Purpoſes and Contrivances aforeſaid to execute, perform, fulfil, and bring to effect, afterwards, (to wit) the aforeſaid Tenth Day of *February*, in the Seventh Year aboveſaid, at the Pariſh aforeſaid, in the County aforeſaid, divers Horſes, and very many Arms, Guns, Piſtols, Swords and Rapiers, and other Weapons, Ammunition, and Warlike Things, and Military Inſtruments, falſely, malitiouſly, ſecretly and traiterouſly did obtain, buy, gather together, and procure; and to be bought, obtained, gathered together, and procured, did cauſe with that Intent them in and about the deteſtable, horrid, and execrable Aſſaſſination, Killing, and Murder of our ſaid Lord the King that now is, as aforeſaid, to be us'd, imploy'd, and beſtowed: And the ſame Premiſſes the more ſafely and certainly to execute, do, and perpetrate, the aforeſaid *Chriſtopher Knightley*, with one *Edward King* (late of High Treaſon, in contriving and conſpiring the Death of our ſaid Lord the King that now is, duly convicted and attainted) by the Conſent and Aſſent of divers of the Traitors and Conſpirators aforeſaid, the aforeſaid Tenth Day of *February*, in the Seventh Year aboveſaid, traiterouſly did go, and came unto the Place propoſed, where ſuch intended Aſſaſſination, Killing, and Murder of our ſaid Lord the King, by lying in wait, ſhould be done, perpetrated and committed, to view, ſee, and obſerve the Conveniency and Fitneſs of the ſame Place for ſuch lying in wait, Aſſaſſination, and Killing, there to be done, perpetrated and committed; and that Place ſo being ſeen and obſerved, afterwards, to wit, the ſame Day and Year, his Obſervations thereof to ſeveral of the ſaid Traitors and Conſpirators did relate and impart, to wit, at the Pariſh aforeſaid, in the County aforeſaid; and the ſaid *Charles Cranburne* the ſame Day and Year there, in order the ſame execrable, horrid, and deteſtable Aſſaſſination and Killing of our ſaid Lord the King, by the Traitors and Conſpirators aforeſaid, the more readily and boldly to execute, perpetrate, and commit adviſedly, knowingly, and traiterouſly did bear and carry among divers of thoſe Traitors and Conſpirators forward and backward from ſome to others of them, a Liſt of the Names of divers Men of them who were deſigned and appointed our ſaid Lord the King, ſo as aforeſaid, by lying in wait, to Kill and Murder, againſt the Duty of his Allegiance, and againſt the Peace of our ſaid Sovereign Lord the King that now is, his Crown and Dignity, and againſt the Form of the Statute in that Caſe made and provided. Upon this Indictment he hath been arraigned, and thereunto hath pleaded not guilty, and for his Trial hath put himſelf upon God and his Country, which Country you are; your Charge is to inquire, whether he be guilty of the High-Treaſon whereof he ſtands indicted, or not guilty; if you find him Guilty, you are to inquire what Goods or Chattels, Lands or Tenements, he had at the Time of the High-Treaſon committed, or at any Time ſince: If you find him not guilty, you are to inquire whether he fled for it; if you find that he fled for it, you are to inquire of his Goods and Chattels, as if you had found him guilty; if you find him not guilty, nor that he did fly for it, you are to ſay ſo and no more: And hear your Evidence.

Mr. *Montague*. May it pleaſe your Lordſhip, and you Gentlemen of the Jury; This is an Indictment of High-Treaſon that is found againſt four Perſons; but the particular Treaſon againſt the Priſoner at the Bar is for compaſſing and imagining the Death of the King, and endeavouring to ſubvert the Government, and enſlave the Nation to *Lewis* the *French* King: And the Indictment ſets forth, that the Priſoner at the Bar did for this purpoſe meet and conſult with ſeveral falſe Traitors to the King and Government, of the Way, Manner, and Means how, and the Time and Place when and where to Aſſaſſinate the King; and at length they agreed that forty Horeſemen ſhould go together, and ſet upon the King in his Coach, as he returned from Hunting; ſome to attack the Coach, while others ſet upon the Guards. The Indictment does further charge him with getting Horſes and Arms, and particularly with carrying a Liſt of the Aſſaſſinators from one to another. Theſe are the particular Things charged in the Indictment, and to this Indictment he has pleaded not guilty; if we prove the Fact, Gentlemen, we don't doubt your Juſtice.

Mr *At. Gen.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury; the Priſoner at the Bar, *Charles Cranburne*, is indicted for High-Treaſon, in compaſſing and imagining the Death of the King. Gentlemen, the Overt-Acts laid in the Indictment to prove the Priſoner guilty are, That he was at ſeveral Meetings and Conſultations about the Manner of putting this Deſign in Execution; at which Meetings it was agreed, that there ſhould be about forty Horſemen in Number prepar'd, and arm'd for that Purpoſe, and they did provide Horſes and Arms for that very Thing, and did agree to put it in Execution.

Gentlemen, the Evidence that you will hear produc'd againſt the Priſoner at the Bar will be of this Nature. You will hear from the Witneſſes, that about *Chriſtmas* laſt, or the Beginning of *January*, Sir *George Barclay*, did come over from *France* from the late King *James*, to whom

whom he was an Officer in his Guards, with a Commiſſion for attacking the Prince of *Orange*, or levying War upon his Perſon. He came over about that Time, and ſeveral Troopers of the late King *James*'s Guards, to aſſiſt him in that barbarous Conſpiracy. When Sir *George Barclay* came over, he did acquaint with this Deſign ſeveral Perſons in *England*, that he thought proper to be Accomplices with him in it, particularly Capt. *Porter*, Mr *Charnock*, Sir *William Parkyns*, and ſeveral others whoſe Names you will hear of, and they had ſeveral Meetings about it the Beginning of *February*, at Capt. *Porter*'s Lodgings, at the *Nagg's-Head* in *Covent-Garden*, at the *Sun* Tavern in the *Strand*, at the *Globe* Tavern in *Hatton Garden*, and ſeveral other Places where they conſulted in what manner they might attempt and accompliſh this bloody Deſign

Gentlemen, you will hear, that at theſe Meetings it was propos'd, that they ſhould do it by Ambuſcade as the King came from *Richmond* a Hunting, whither he uſed to go upon *Saturdays*: Others were for doing it on this Side the Water. And ſo their Opinions being divided, it was thought neceſſary to find out and ſettle which was the beſt Place; and in Order thereunto they employ'd Capt. *Porter*, Mr *Knightley*, and Mr *King* (who was executed) to view the Ground, and accordingly they went, and pitch'd upon the Lane between *Brentford* and *Turnham-Green* for this Purpoſe, as the moſt convenient Place: And having ſo done, they came back and gave an Account to thoſe that had appointed to meet 'em, to hear the Succeſs of their Expedition, to the *Nagg's-Head* in *Covent-Garden*, and in that Place you will find by the Evidence, that thoſe Perſons, who were the Heads of the Conſpiracy, undertook to find their ſeveral Proportions of Men, for whom they would undertake, that would go with them, and be concern'd in this Deſign. Sir *George Barclay* was to furniſh about twenty. He had the Command of the Troopers that came from *France*, and thoſe other Officers that came thence, were under him. Capt. *Porter* was to furniſh ſeven, *Charnock* was to furniſh eight, Sir *William Parkyns* was to furniſh five Horſes and three Men, and, I think, *Lowick* was to furniſh ſome more: In the whole Number they reckon'd there ſhould be about forty.

It will appear, Gentlemen, that the Priſoner at the Bar, Mr *Cranburne*, was one of the Men that Capt. *Porter* undertook to get, and engage in this Deſign; and accordingly Capt. *Porter* did acquaint Mr *Cranburne* with it; and he did undertake to be one, and to be ready to go with him, and be concerned in this Aſſaſſination. You will find he was acquainted with it about the 14th of *February*, the Day before the firſt Time that they intended to aſſault the King: Then he did undertake and agree to prepare himſelf againſt the next Day. The next Day, which was the 15th of *February*, they had ſeveral Meetings, and they were making Preparation in Order to go out. It happen'd, by great Providence, his Majeſty did not go abroad that Day, and thereupon they diſpers'd themſelves; but they had Meetings afterwards, at which Meetings the Priſoner was preſent, with Capt. *Porter*, Mr *Pendergraſs*, *La Rue*, and ſeveral others that were concerned in the Conſpiracy, particularly the 21ſt of *February*, the Day before the ſecond Time they were to have put this in Execution. Capt. *Porter* being at the *Sun*-Tavern, with ſeveral other Gentlemen, and they reſolving to have it executed the next Day, if the King went abroad; Capt. *Porter* ſent for *Cranburne*, and *Keys* that was executed, and *Kendrick* and *Sherborn*, four of thoſe that he had undertaken for, (of whom, I ſay, *Cranburne*, the Priſoner at the Bar, was one) and then he acquainted 'em that they were reſolv'd to go on with it the next Day. And then they agreed to be in a Readineſs accordingly. The next Day the Priſoner, with ſome others, met at Mr *Porter*'s, where they were preparing to go out and attack the King, and they had ſeveral Diſcourſes about the Ways and Means of doing it; and particularly Capt. *Porter* at that Time ſaid, that he had a very good Gun that held about ſix or eight Bullets, and that Mr *Pendergraſs* was to have, who was to attack the Coach, and ſhoot into the Coach: Mr *Cranburne* was there preſent at that Time, and Mr *Cranburne* was employ'd particularly by Capt. *Porter* to carry a Liſt that *Porter* writ of the Names of ſeveral Men that were to act in it under him, and this he was to carry to *Charnock*. *Porter* writ it and gave it him, and he carry'd it with Directions to bring it back with the Liſt of the Names of Mr *Charnock*'s Men. *Cranburne* did accordingly at that Time carry the Liſt of the Names to Capt. *Charnock*, and brought it back with an additional Liſt, from Capt. *Charnock*, of his Men.

At that Time, you will hear farther, when *Cranburne* brought the Liſt, he brought an Account that he heard the King did certainly go abroad: For Mr *Charnock* had Intelligence ſo from *Chambers*, who lay at *Kenſington* to get Intelligence: At which there was very great Rejoycing among all that were preſent at that Time, hoping they ſhould have an Opportunity to put this execrable Deſign in Execution; and ſo they prepar'd all of 'em to go out. There were ſeveral Inns in *Turnham*-Green and *Brentford*, and thereabouts, and they were to be plac'd two or three in an Inn, that they might be ready to get together when Time ſhould ſerve. It happen'd the King did not go abroad that Day neither, there being ſome Diſcovery of this Deſign, and ſo they did diſperſe themſelves, as apprehending it was diſcover'd.

Gentlemen, it will appear by ſeveral Witneſſes, that the Priſoner at the Bar was engag'd in this horrid treaſonable Deſign, and was to have acted a Part in it. We will call our Witneſſes that will make the Particulars out to you, and we do not queſtion but you'll do what is right. Firſt, call Capt. *Porter*; *(who was ſworn.)*

Mr *Sol. Gen.* Pray, if you pleaſe, Capt. *Porter*, give the Court and the Jury an Account what you know of this wicked intended Aſſaſſination, and what Share the Priſoner at the Bar had in it.

Capt. *Porter*. My Lord, before this wicked Aſſaſſination was on foot, the Priſoner at the Bar, Mr *Cranburne*, was employ'd by me to buy Arms. I us'd to give him Money to go to the Brokers to buy Arms at ſecond-hand, and he brought a Sword-Cutler to me, of whom I bought about twenty Swords. And when Sir *George Barclay* came into *England*, and this Buſineſs was reſolv'd upon, I acquainted him with the Deſign, and promis'd to mount him. He never was at any of the Meetings with Capt. *Charnock*, Sir *George Barclay*, or Sir *William Parkyns*; but he went to look for a Horſe, and was ready both *Saturdays* to go along with me. On *Saturday* the 22d I ſent

ſent him with a Meſſage to Sir *William Parkyns*, for the Note for the two Horſes, which he had promiſed me to furniſh me with, out of his five that he was to furniſh; he came back again, and told me that there was a Meſſenger came and ſaid that the King did go out, and he knew where to have the two Horſes; that Mr *Charnock* was afraid we ſhould not have the full Number of Men, and deſired me to ſend him the Names of my Men; I did write a Liſt of the Names of my Men, and I went afterwards to the *Blue-Poſts* in *Spring-Garden*, whither he was to come to me; he did ſo, and he brought back the Liſt of my Men, with the Liſt of Mr *Charnock*'s Men written underneath it, and at the ſame Time News was brought that the King did not go abroad that Day.

L. C. J. You ſay, that before the Aſſaſſination was ſet on foot, you imployed him to buy Arms and Horſes.

Capt. *Porter*. My Lord, I acquainted him with it the *Friday* before the firſt *Saturday*.

L. C. J. You ſaid before the Aſſaſſination you imployed him to buy Arms: When was that?

Capt. *Porter*. I ſaid before the Aſſaſſination was on foot I imployed him to buy Arms. I told him I was to be a Captain in Colonel *Parker*'s Regiment, and promiſed to make him my Quarter-Maſter.

L. C. J. How long ago was this? Was it a Week before the Aſſaſſination was on foot?

Capt. *Porter*. He has known of my being a Captain in Colonel *Parker*'s Regiment this two Years.

Mr *Att. Gen.* I do doubt my Lord, he does not diſtinguiſh the Times when he bought the Arms, and when the Aſſaſſination was.

L. C. J. Yes, yes, he does now; I miſapprehended him at firſt, and thought he ſaid he had imployed him to buy Arms a Week before the Aſſaſſination was on foot; but he ſays it was a longer Time.

Mr *Att. Gen.* I deſire my Lord, he may be askt what Time he bought Arms before this Aſſaſſination: When was the laſt Time he bought Arms?

Capt. *Porter*. It was ſeveral Months before the Aſſaſſination.

Mr *At. Gen.* Was it within a Year before it.

Capt. *Porter*. Yes I believe it was within a Year. I gave him ſeveral Times Money for that purpoſe, in all above ten Pounds, and he told me one with another, he had bought ten Caſe of Piſtols, and kept them in the Houſe till there were Occaſion.

Mr *Att. Gen.* How long ago is it?

Capt. *Porter*. I believe about a Year; within a Year.

Mr *At. Gen.* When did you firſt acquaint him with the Aſſaſſination?

Capt. *Porter*. Preſently after Sir *George Barclay* acquainted me with it, I ſent to him, to deſire him to get the Piſtols clean and ready.

Mr *At. Gen.* Did you tell him of the Deſign?

Capt. *Porter*. I told him there was a Deſign on foot, and I would tell him more when I ſaw him next; and I deſir'd him to get the Swords from the Sword-Cutlers, and the Piſtols clean and ready. And I met him afterwards, and told him of the Deſign, and that we intended to do it on *Saturday* the fifteenth; and he engaged to be ready and make one. On the *Friday* before the twenty ſecond he went with me to the Cock-pit, and there we met with one Mr *Gunn*, and I askt him if he knew where any good Hackney-Horſes might be had? He ſaid he believed he did; and I ſent *Cranburne* with him, and he came back, and told me he had found two or three out in *Bloomſbury*.

L. C. J. Look ye, Capt *Porter*, you muſt not ſpeak ſo faſt, it is impoſſible to underſtand ſo much Matter as you deliver without diſtinguiſhing of Times. You ſaid, that ſome long Time before the Aſſaſſination was on foot you ſent him to buy Arms, for what Purpoſe were thoſe Arms?

Mr *At. Gen.* My Lord, he has told you——

L. C. J. Pray let me hear it from him again.

Capt. *Porter*. I ſay, my Lord, he knew of my being a Captain in Colonel *Parker*'s Regiment this two Years.

L. C. J. But what were thoſe Arms for that he bought?

Capt. *Porter*. To be ready againſt King *James* landed, which was deſigned ſeveral Times.

L. C. J. Why now you make the Matter clear to me.

Mr *At. Gen.* My Lord, that is not the Thing we go upon, that is but introductory to the Buſineſs that we are now a Trying. Therefore we deſire to know of him: Captain *Porter*, when did you firſt acquaint *Cranburne* of the Aſſaſſination of the King?

Capt. *Porter*. As ſoon as Sir *George Barclay* acquainted me with it, and deſired me to get what Men I could to effect it. I ſent for *Cranburne* to my Lodgings in *Norfolk ſtreet*, and he came to me one Morning; and I told him there was a Deſign on foot, and I would tell him more of it afterwards.

Mr *Sol. Gen.* When was it that Sir *George Barclay* acquainted you with it?

Capt. *Porter*. About the latter End of *January*.

Mr *At. Gen.* And what ſaid he to it when you acquainted him with it?

Capt. *Porter*. He did agree to go with me, and I promiſed to furniſh him with Horſe and Arms; and on *Friday* before the fifteenth I ſent him with three Caſe of Piſtols to Sir *William Parkyns*, to furniſh the three Men he was to mount with his own Horſes.

L. C. J. Who was to have thoſe three Caſe of Piſtols.

Capt. *Porter*. Sir *William Parkyns* was, and he carried them to Sir *William Parkyns*'s.

Mr *At. Gen.* How long was this, do you ſay, before the Aſſaſſination was to have been?

Capt. *Porter*. It was *Friday* before the fifteenth.

Mr *Att. Gen.* That was before the firſt Time that it was to have been done.

Capt. *Porter*. Yes, and *Friday* before the laſt, I ſent him to look after the Horſes that *Gunn* ſaid he believed he could help me to, and he came to me to the Sun-Tavern in the *Strand*, and told me he and *Jeffrey Gunn* had found three Horſes in *Bloomsbury*, and I came out of the Room where I was with Sir *George Barclay* and others, and there was *Kendrick* and *Keys*, and *Cranburne*, and I told them we were reſolved to put it in Execution the next Day.

Mr *Att. Gen.* Well, pray what Diſcourſe had you with him the next Day?

Capt. *Porter*. The next Day, the 22d, he came to my Lodging at *Maiden-Lane*, and I ſent him to Sir *William Parkyns* for a Note for the two Horſes, that I was to mount of his: He came back and told me he knew where to have them, and that Captain *Charnock* was affraid we ſhould

not have our Compliment of Men, and desired me to send him an Account what Men I could bring, which I did by Mr *Cranburne*, and being to go to the *Blue-Posts*, ordered him to bring it to me thither, and he did bring it back to me to the *Blue-Posts* with Captain *Charnock*'s List underneath.

Mr *Sol. Gen.* Pray Captain *Porter*, was there any Body present when you sent the List, and the Prisoner brought it back to you?

Capt. *Porter*. Yes there was Mr *La Rue*, and Captain *Pendergrass*, and Mr *King*, I know of none else.

Mr *Att. Gen.* Pray do you remember what Healths were drunk after you heard the King was not to go abroad?

Capt. *Porter*. I don't remember what Healths were drunk that Day particularly, but whether it were *Thursday* or *Friday*, (I cannot tell particularly the Day) We drank a Health to the squeezing of the *Rotten Orange* upon the next *Saturday*.

Mr *Att. Gen.* Who was present that Day when that Health was drunk?

Capt. *Porter*. Mr *Cranburne* was there present at that Time, and did drink the Health.

Mr *Cooper*. Pray Sir did he meet you by Appointment on *Saturday* the 15th, or was it by Accident?

Capt. *Porter*. By Appointment, as all the rest did, to get ready as all the rest did, to go upon the Design; and so it was both Days.

Sir *B. Shower*. If they have done with Mr *Porter*, we would ask him a Question or two for the Prisoner: We desire to know when it was that those Arms were bought that he talks of: For we must acknowledge that Mr *Cranburne* heretofore went upon several Messages for Capt. *Porter*; When was that buying of Arms?

Capt. *Porter*. I tell you I cannot exactly tell the Month.

Mr *Cranburne*. Do you remember the Year?

Capt. *Porter*. I believe it was less than a Year before the Assassination was on Foot.

Mr *Cranburn*. If you remember, Sir, it was a Month before Col. *Parker* was put in the Tower.

Capt. *Porter*. It was several Times, I cannot tell the particular Times.

Sir *B. Shower*. My Lord, I desire to know when he first communicated this Design to Mr *Cranburne*, and who was by, and where was it?

Capt. *Porter*. I told you I sent for Mr *Cranburne* one Day in the Week before the 15th, and he came to me at my Lodging in *Norfolk-street*, and I acquainted him that Sir *George Barclay* was come, and there was such a Design on Foot; and I desired him to get those Pistols that he had of mine ready, and cleaned: that they might be ready for the Execution.

Sir *B. Shower*. What Day was that?

Capt. *Porter*. One Day in the Week before the 15th.

Mr *Cranburne*. Did you ever name Sir *George Barclay* to me in your Life?

Capt. *Porter*. Yes I did, I told you he was come from *France*.

Mr *Cranburne*. Where was that, at Mr ——

Capt. *Porter*. In *Norfolk-street*, where I lay?

Mr *Cranburne*. Who was by?

Capt. *Porter*. No Body but my self.

Sir *B. Shower*. Upon what Occasion did you meet there?

Capt. *Porter*. I sent for him to my Lodging.

Sir *B. Shower*. How long had Sir *George Barclay* been in Town, before that Time?

Capt. *Porter*. I cannot tell the Time when he came to Town.

Sir *B. Shower*. How long was it after he came to Town before you saw him? Had you seen him a Week or a Fortnight before? Pray recollect your self.

Capt. *Porter*. I told you that the first Time I heard of him, was the latter End of *January*; Capt. *Charnock* told me he was come, but I was then sick of the Gout.

Sir *B. Shower*. Now then I would desire to know, who was by upon the *Friday* before the 22d at the *Sun* Tavern in the *Strand*, when you and Mr *Cranburne* were there?

Capt. *Porter*. I did tell you, Sir.

Sir *B. Shower*. I desire to know, whether there was any Body besides Mr *Cranburne*, *Kendrick*, and *Keys*?

Capt. *Porter*. Sir, I will tell you all I can remember; I was in one Room with Sir *George Barclay*, and there was Sir *William Parkyns*, Capt. *Charnock*, and my self; and afterwards I went into another Room, where there was *Kendrick*, and *Cranburne*, and *Keys*, and *Jeffrey Gunn* came in afterwards, I remember no Body else.

Mr *Phipps*. Was not *Gunn* there when you first came in?

Capt. *Porter*. To the best of my Remembrance, he came in afterwards.

Sir *B. Shower*. My Lord, this may be a very material Part of our Defence, and therefore we must enquire a little the more into it. Mr *Porter* is pleased to say, that he was in a Room with Sir *George Barclay*, and *Charnock*, and Sir *William Parkyns*; and he came out into another Room where was Mr *Cranburne*, *Kendrick*, and *Keys*; and there he says, after he had been there some Time, *Gunn* came in, I desire to know, whether *Gunn* was there when he first came in?

Capt. *Porter*. To the best of my Remembrance, he came in afterwards, but I cannot positively tell, for I was in and out several Times.

Mr *Phipps*. At the Time that you communicated this Design to Mr *Cranburne*, what said he to you?

Capt. *Porter*. When I first communicated the Thing to him, I told him there was a Thing on Foot for the Service of King *James*, and desired him to go along with me.

L. C. J. What Kind of Service did you tell him it was?

Capt. *Porter*. He asked me, what kind of Service it was? I told him Sir *George Barclay* was come over, and I told the whole Design of the Assassination of the Prince of *Orange*, that it was intended to take him off, as he came from *Richmond* from Hunting.

Mr *Phipps*. And pray what did Mr *Cranburne* say to you?

Capt. *Porter*. He said he would be ready to go along with me.

Mr *Phipps*. You say, you sent by him three Case of Pistols to Sir *William Parkyns*, at that Time did you tell him for what Design those Pistols were?

Capt. *Porter*. I told him, they were for the three Men that Sir *William Parkyns* was to mount upon three of his five Horses.

Mr *Cranburne*. Did you speak to me to carry those Pistols to Sir *William Parkyns*?

Capt. *Porter*.

Capt. *Porter*. I think ſo, to the beſt of my Remembrance I ordered you my ſelf to carry them.

Sir *B. Shower*. Captain *Porter*, I deſire you to recollect your ſelf, and tell us plainly, whether the Deſign was communicated to Mr *Cranburne* before the 15th.

Capt. *Porter*. Certainly Sir.

Sir *B. Shower*. Are you ſure of it?

Capt. *Porter*. Yes Sir, I am ſure of it.

Sir *B. Shower*. I ask you, becauſe you know what has been ſaid upon this Occaſion in other Trials.

Cranburne. Where did you write the Note, that you ſay you ſent to Sir *William Parkyns?* Was that Note ſealed or was it not?

Capt. *Porter*. I did not tell you that I writ a Note.

Cranburne. You ſwore that you wrote a Note, and ſent it by me to Sir *William Parkyns* for two Horſes.

Capt. *Porter*. I ſaid no ſuch Thing, Sir.

Mr *Sol. Gen*. Look you, Capt. *Porter*, let him ask you any Queſtions, and if they be proper anſwer them, and let not his Affirmations, or Miſtakes provoke you to be angry.

Capt. *Porter*. I ſaid, I ſent him to Sir *William Parkyns*, for a Note to have the Horſes from Mr *Lewis*.

Mr *Phipps*. Did you ſend him with a Letter, or was it a Meſſage by Word of Mouth?

Capt. *Porter*. I did ſend him by Word of Mouth, for a Note.

L. C. J. Pray, Gentlemen, obſerve the Evidence, Sir *William Parkyns* was to give a Note for two Horſes, and Capt. *Porter* ſent *Cranburne* for the Note.

Mr *Phipps*. The Queſtion therefore that I ask, is, Whether he ſent a Letter for the Note, or whether by Word of Mouth?

Capt. *Porter*. I ſent by Word of Mouth.

Mr *Cranburne*. Pray will you tell the Court what you ſaid upon the 22d to Mr *Pendergraſs* and me, after you came down from the *Blue-Poſts* leaning upon the Rail.

Capt. *Porter*. I don't remember a Word of it, for I cannot remember every Word that I have ſpoken.

Sir *B. Shower*. If you can remember one Particular, ſure you can remember another. If you can't remember this, how came you to remember any Part of the Diſcourſe that happen'd at the *Blue-Poſts*.

Capt. *Porter*. Becauſe that was material to this Buſineſs, for I had very ſoon after a particular Occaſion to recollect it upon the breaking out of the Plot.

Mr *Cranburne*. Pray what Hour was it this *Saturday* the 15th that you communicated this Deſign to me?

Capt. *Porter*. I cannot tell what Hour, but I ſay you met me at the *Blue-Poſts Saturday* the 15th.

Mr *Cranburne*. You ſay, you communicated it to me the 15th.

Mr *Att. Gen*. He ſays he communicated it to you, before the 15th.

Mr *Cranburne*. I deſire to know where he was the 14th.

Capt. *Porter*. I ſay, one Day before the 15th, in that Week I ſent for you to come to my Lodgings, and you did come, and there I communicated it to you.

Cranburne. Sir, I was not at your Lodgings that Week.

Mr *Phipps*. What Day of the Week?

Capt. *Porter*. I cannot be poſitive whether it was *Thurſday*, or *Friday*, or what Day; but one Day that Week it was.

Mr *Phipps*. You ought to be poſitive when it was.

Capt. *Porter*. I do tell you as near as I can.

Mr *Phipps*. With Submiſſion, my Lord, he ought to be poſitive one Way or other.

L. C. J. Nay, I don't ſee that he ought to be poſitive to a Day; he may be ſo if he can.

Cranburne. Pray what Day did you ſay you ſent me to Sir *George Barclay?*

Capt. *Porter*. I do not ſay that I ever ſent you to Sir *George Barclay?*

Mr *Phipps*. Can you take upon you to ſay, That he was at your Lodgings that Week before the 15th?

Capt. *Porter*. To the beſt of my Knowledge it was one Day that Week.

Mr *Phipps*. To the beſt of your Knowledge: Are you ſure of it?

L. C. J. Speak as certainly as you can.

Capt. *Porter*. Indeed, I believe ſo, it was before the 15th. I am ſure, I think, it was within three or four Days after Sir *George Barclay* had acquainted me with it, I ſent to the Priſoner to come to me to my Lodgings, at Mrs —— —— in *Norfolk-ſtreet*, and acquainted him with it.

L. C. J. And when you acquainted him with it, What did you tell him? What Part was he to act in it?

Capt. *Porter*. I told him, I would have him go along with me, and that I had ſet him down for one of my Party, and would provide him Horſe and Arms; and he did agree to go along with me.

Sir *B. Shower*. Mr *Webber*, Pray let me ſee *Charnock*'s Tryal.

Mr *Sh. Buckingham*. Why, Sir *Bartholomew*, is the Tryal any Evidence?

Sir *B. Shower*. Mr Sheriff, I know what Uſe I can make of it.

Mr *Soll. Gen*. Will you ask him any more Queſtions?

Sir *B. Shower*. No, Sir.

Mr *Sol. Gen*. Then ſwear M. *De la Rue*. *(which was done.)*

Pray, Sir, give the Court, and the Jury, an Account what you know of the intended Aſſaſſination, and what Share the Priſoner had in it.

M. *De la Rue*. It is too long a Story to tell you all that I know of this Matter; but, if you pleaſe, I will tell you what concerns the Priſoner at the Bar. I am heartily ſorry that I have Occaſion to appear againſt him, as I wou'd be truly againſt any Body: But ſince I am here upon my Oath, I muſt declare the Truth, and nothing but the Truth; and I hope I ſhall not declare any Thing but what is Truth. Upon *Saturday*, the 15th of *February*, the Day that the Deſign was to have been put in Execution againſt his Majeſty, and all that were in the Coach with him, and againſt his Guards, I went to Mr *Charnock*'s Lodgings in *Norfolk-ſtreet*, to inform my ſelf whether they reſolved on that Day to go out upon the Deſign; and I found by Mr *Charnock* that they did reſolve it, and I ſtay'd there a while, till ſuch Time as Mr *Chambers* came in; I did not know whence he came then, but, as I was informed afterwards, he came from *Kenſington* to Mr *Charnock*,

and his Boots were dirty; and Mr *Charnock* told me he had ſent a Meſſenger to Mr *Porter*, *And*, ſays he, *if you will ſtay a little Time, I ſhall have an Anſwer.* The Meſſenger came back, and told him, That Capt. *Porter* din'd at the *Blue-Poſts* in *Spring-Garden*. I did not go to dine with him, but went Home, where I ſaw Mr *King* at my Lodging, who told me, that the King did not go out that Day. I told him, I heard he did not: I found by Mr *Chambers*'s coming back, and that we had no Notice from Mr *Charnock*, that it was concluded the King did not go out as it was ſuppoſed he ſhou'd have gone. When I had din'd at my Lodging, I went to the *Blue-Poſts* in *Spring-Garden*, to Mr *Porter*, and there were four, or five, or ſix People with him; there was one Mr *Sherborn*, and Mr *Kendrick*, and two People that I never ſaw before, and another Perſon, but I can't tell now who he was. When we had been there a little while, comes in this unfortunate Man at the Bar, Mr *Cranburne*; I don't know where he had been; but by his coming in ſo late, I ſuppoſe he had not din'd, and he ordered the Drawer to get him ſome Coſtelets. This is all that I can ſay as to that Day: I had ſeen Captain *Porter* twice or thrice between that, and the 22d, and he deſired me to be at Home on *Friday* Night, between Eight and Nine, and he wou'd ſend to me: He did ſend, and I was from Home. But when I came, I was informed his Servant had been to ſpeak with me; and in the Morning, about Eight or Nine a Clock, *Saturday* the 22d, he ſent his Servant to me to tell me his Maſter would ſpeak with me at his Lodgings. I went to his Lodgings, and he then lay in *Maiden-Lane*, at one *Brown*'s a Surgeon's: When I came in, he was in Bed; and he told me in *French*, *Touts Parties ſont Preſts*, All Parties are ready. I underſtood all along that there were three Parties to be engag'd; one to attack the King's Coach, and the two others the Guards; Sir *George Barclay* was to head the firſt, and *Porter*, and *Rookwood*, the reſt. Mr *Porter* aroſe and dreſs'd himſelf, and in came Mr *Cranburne*; and Mr *Porter* went out to him into the Dining-Room, and what he ſaid I can't tell: But ſoon after came in *Pendergraſs*, Mr *Keys*, and Mr *King*, and then he takes Pen, Ink, and Paper.

Sir *B. Shower*. Who took that?

M. De la Rue. Capt. *Porter* took Pen, ink, and Paper, and writes down a Liſt of his Party, and puts me down firſt. Mr. *Pendergraſs* ask'd me if I was the Captain, and I made him ſome Anſwer, but what in particular I cannot tell; I think I told him, I knew of the Thing before the moſt did: But I can remember particularly that Liſt was given to Mr *Cranburne*, to carry to Mr. *Charnock*; upon what Account it was, I cannot tell; but I concluded, that Mr. *Charnock* was to be acquainted with thoſe Perſons that Mr. *Porter* was ſure of: And Mr. *Porter* at that time told me that he was diſappointed of ſome People, and deſired me to get him ſome other Men in their Rooms; and he ſent particularly to one that Mr. *King* propoſed; and I did go, and brought him to the *Blue-Poſts*, where Cap. *Porter* told me he was to dine; and the Gentleman I went to, told me he wou'd meet me at the *Blue-Poſts* in *Spring-Garden*. When I came back to Mr *Porter*'s Lodgings, Mr *Porter*, and Mr *Pendergraſs*, and Mr *Oldfield*, and I, went in a Coach to the *Blue-Poſts* in *Spring-Garden*; and when we had been there a little while, Mr. *Cranburne* came back to give an Account of the Errand Mr. *Porter* had ſent him upon, and he brings this Liſt.

Mr *At. Gen*. Who brought it?

M. De la Rue. Mr. *Cranburne?*

Cranburne. Whither did I bring it?

M. De la Rue. To the *Blue-Poſts* in *Spring-Garden*.

L. C. J. You muſt not ask any Queſtions till they have done with him. But, Mr *De la Rue*, let me ask you what Day was this?

Mr. *De la Rue*. This was *Saturday*, the 22d of *February*; and he told Mr *Porter* there was a Liſt of Mr *Charnock*'s Men at the Bottom of that Liſt, and I took the Liſt in my Hand, and there was Mr *Charnock*'s Liſt of Six or Seven, or thereabouts, of his Party, and at the Bottom of it was *R. C.* I think, for *Robert Charnock*. Mr *Porter* takes Mr *Cranburne* from the Company into another Room, and I went after them, and he told Captain *Porter*, in my hearing, that the King did not go out that Day. There is one Thing I forgot, which now I recollect, and I am upon my Oath to tell the Truth, and the whole Truth: When I was at Mr *Porter*'s Lodging, he told me the King was to go out; and that Mr *Chambers*, the orderly Man, had ſent Word, That the King reſolv'd to go out between Ten and Eleven.

L. C. J. Who ſaid ſo?

M. *De la Rue*. Mr *Cranburne* told me ſo at Mr *Porter*'s Lodgings, I ſay I had forgot it, but it occurs to my Memory now, that he told me there before we went to the *Blue-Poſts*, that the King did go out that Day between 10 and 11; for Mr *Chambers*, the orderly Man, had been with Mr *Charnock* or Sir *William Parkyns*, to let them know ſo much. And afterwards when he came back with the Liſt of Captain *Porter*'s Men, to Captain *Porter* at the *Blue-Poſts* in the *Spring-Garden*; there was at the Foot of that Liſt, a Liſt of Mr *Charnock*'s Men in another Hand, I ſuppoſe writ by himſelf, but that I cannot ſwear whoſe Hand it was, and Mr *Porter* took him into another Room, and then Mr *Cranburn* told him the King did not go out, and I believe it was then between 11 and 12 a Clock, and he alſo told Mr *Porter*, that Mr *Charnock* was apprehenſive the Thing was diſcovered, and therefore deſired him to have a Care of himſelf, for he himſelf was reſolved not to lie at home that Night; I think, my Lord, Mr *Porter* did ſend back Mr *Cranburne* to Mr *Charnock*, I cannot be poſitive whether he did or not, but I believe he did; becauſe I am ſure Mr *Cranburne* did tell Mr *Porter*, Sir *George Barclay* would ſpeak with him, and Mr *Porter* made Anſwer, why ſhould he deſire me to go to him, when he knows I am under ſome ill Circumſtances, and he can better come to me? and I believe Mr *Porter* did ſend Mr *Cranburne* once again to Mr *Charnock*.

L. C. J. Well, pray do not ſay any Thing of any Matter but what you can be poſitive in.

M. *De la Rue*. But Mr *Porter* did not go to Mr *Charnock*, nor did Mr *Charnock* come to him, therefore they ſtay'd there and dined; and after Dinner, or a little before Dinner, *Keys* the Trumpeter, came up, and told us, that my Lord of *Oxford*'s Regiment of the Guards was returned from *Richmond*, foaming: *Keys* went down Stairs again to learn Intelligence as I thought, and came up and told us he ſaw the King's Coaches newly return'd to the *Mews*, and Mr *Cranburne* was by all the Time; I think this was before Dinner, and then we went to Dinner.

L. C. J. I tell you again, don't ſpeak any Thing that is material but what you can be poſitive in.

M. *De la Rue*.

M. *De la Rue.* I am positive as to the Thing, and that it was the 22d of *February*, but I cannot be positive as to all the Circumstances: After Dinner there was the usual Healths, the Jacobite Healths to King *James*, and the Prince of *Wales*, and the Restoration, and the like; and after that I think it was Mr *Porter* took an Orange in his Hand and squeez'd it, I am sure one in the Company did, and drank something to the Rotten Orange, I cannot very well remember just now what it was; but I would be cautious of saying any Thing but what is Truth, but if your Lordship will give me leave to recollect my self, I will tell you what it was—— Oh! it was to the squeezing of the Rotten Orange, and the Health went round, and Mr *Cranburne* was in the Company, and drank the Health, but being disappointed and frustrated of the Design by the King's not going abroad that Day, and Mr *Porter* being cautioned by Mr *Charnock* to take care of himself, and being told that Mr *Charnock* would not lie at home that Night, and the Guards returning in that Manner, they were all apprehensive that the Thing had taken Air, and the Design of Assassinating the King was discovered, and therefore Mr *Porter* concluded of going out of Town; several Healths were drunk round, and I think about Two a Clock he went out of Town, and then the Company broke up. This is what I can say as to the Prisoner, and I hope I have said nothing but what is Truth.

Mr *Sol. Gen.* Then, my Lord, we desire to know whether they will ask him any Questions?

Mr *Phipps.* At the Time you say this List was given by Captain *Porter*, to Mr *Cranburne*, did Mr *Porter* declare to what purpose the List was sent?

M. *De la Rue.* No, Sir, not a Word of any such Thing. Mr *King* was by, and Mr *Pendergrass* was by, and I think Mr *Keys* was by, and he writ a List of his Party, putting me down First, and Mr *Pendergrass* said to me, you are Captain, and he gave it to Mr *Cranburne* to carry it to Mr *Charnock*; what the particular Message was, I cannot be positive: Indeed I don't very well remember the Message, but the List was carried to Mr *Charnock*, and to the best of my Memory it was to give Mr *Charnock* an Account what Men he was sure of; for Mr *Porter* told me of several Disappointments he had had, of Persons that had promis'd him and fail'd.

Mr *Phipps.* Can you remember what Mr *Cranburne* said upon that?

M. *De la Rue.* No, I do not.

Cranburne. What Message was that you say, I brought from Sir *George Barclay?*

M. *De la Rue.* I do not say that you brought any Message from Sir *George Barclay.*

Cranburne. You said that I brought a Message that Sir *George Barclay* would see him.

M. *De la Rue.* I do not say so; but I say that you told Mr *Porter* that Mr *Charnock* sent you with a Message to let him know that Sir *George Barclay* was desirous to see Mr *Porter*, to confer about taking care of themselves.

Cranburne. Did you hear me name Sir *George Barclay*'s Name?

M. *De la Rue.* Yes, I say you told Mr *Porter* that Mr *Charnock* bid you caution him to take care of himself, and that he would go that way, for Sir *George Barclay*, and he, desired to see him; and Mr *Porter* said it was an unreasonable Thing for Mr *Charnock* to desire it, because they knew he was under Circumstances that it was not proper for him to go, and he wondered rather they would not come to him.

L. C. J. What time a Day was this?

M. *De la Rue.* It was about Twelve a Clock, I think.

L. C. J. Was it after such time as the News was brought that the King did not go abroad that Day?

M. *De la Rue.* Yes, my Lord, it was after that time.

Mr *Phipps.* Were you with Sir *George Barclay* when he was here in *England?* Did you see him here?

M. *De la Rue.* I did not see him on this Side of the Water. I knew him abroad, and a great many other unfortunate Persons, that were concern'd in this Affair; I knew some of them here, and that they were concern'd in the Design, but I did not converse with many, indeed with but a very few about it; for to shew that I was not a Man that designed to trappan or insnare any Man, I did never exchange Two Words about this Matter with any Persons that I knew were concern'd in it, but Sir *William Parkyns*, (and that but in a small Measure) and Mr *Charnock*, and Mr *Porter* and Mr *King*, and Col. *Parker*, except what past upon the 22d, between Mr *Porter*, and Mr *Charnock*, when Mr *Porter* sent Mr *Cranburne* to Mr *Charnock*. Mr *Cranburne* was one who Mr *Porter* called his Quarter-Master: I know this Gentleman was commonly depending upon Mr *Porter*, but I think I never was much in his Company, I did not know what Design he had upon him, but I was told by Mr *Porter*, that he intended to make him his Quarter-Master, and I understood Mr *Porter* was to have a Troop of Horse in Col. *Parker*'s Regiment.

Mr *Phipps.* You say you knew a great many of them that were concern'd, but you discoursed and conversed but with a few?

M. *De la Rue.* I do so, Sir.

Mr *Phipps.* How do you know that they were concerned, when you did not discourse with them?

M. *De la Rue.* By Information from Mr *Charnock*, and Mr. *Porter.*

Mr *Phipps.* Do you know any thing more of Mr *Cranburne*, than the List, and what have you said already?

M. *De la Rue.* I give you an Account of all that I do know.

L. C. J. Answer that particular Question. Do you know nothing more than what you have said?

M. *De la Rue.* No, my Lord, I do not remember nor know any more as to Mr *Cranburne* than what I have declared, and I am sorry I had Occasion to declare so much.

Mr *Att. Gen.* Then call Mr *Pendergrass.* (*who was sworn.*)

Mr *Sol. Gen.* Pray will you give my Lord and the Jury an Account of what you know of the Intended Assassination, and how far Mr *Cranburne*, the Prisoner at the Bar, was concerned in it.

Capt. *Pendergrass.* My Lord, the 13th of *February* last, I came out of *Hampshire*, Mr *Porter* sent for me to come to Town, and I met him that Day at the *Blue-Posts* in *Spring-Garden*, and there he told me of the Assassination that was to be done on *Saturday* following: The next Day we dined at the *Rose-Tavern*, where the Prisoner dined with us, and we talk'd of the Business,

Buſineſs, that was *Friday* the 14*th*, and we were to be in readineſs the next Day to aſſaſſinate the King, as he was coming from *Richmond*; but ſome Company coming in afterwards, we left off the Diſcourſe, and talk'd no more that Night. The next Day that we were to do the Buſineſs, we met at the *Blue-Poſts* in *Spring-Garden*, and finding the King did not go abroad that *Saturday*, we dined there at the *Blue-Poſts*, and talk'd over again of Aſſaſſinating the King, and the Priſoner was by at the ſame time, they were all mightily concerned the King did not go that *Saturday*; but when we had dined there, we had no further Diſcourſe about the Aſſaſſination that Day, but every Body was to prepare againſt the next *Saturday*.

L. C. J. Was that agreed upon then?

Capt. *Pendergraſs*. Yes it was, by all the Company; ſo we parted that Day. Some time the next Week I met Mr. *Porter*, and Mr. *Porter* ask'd me if I had a Horſeman's Sword; I told him no: Says he to Mr *Cranburne*, let Captain *Pendergraſs* have one of the Horeſemens Swords that you have got. Says Mr *Cranburne* to me, if you will come to my Houſe you ſhall make choice of one your ſelf, for I have ſeveral at home. Said I, Mr *Cranburne*, I cannot go that Way, but I'll take one of your chooſing, if ſo be you'll leave it at my Lodgings: He ſaid he would do it, and did; he left it at my Lodgings in *Suffolk-ſtreet*, which Sword I have ſtill. The Day following I met him, and he ask'd me if I had receiv'd the Sword; I ſaid I had it; and he ſaid, it was very well. After this I did not ſee Mr *Cranburne* till *Saturday* the 22d, at which Time I came to Mr *Porter*'s Lodgings between Nine and Ten a Clock in the Morning, and the Priſoner at the Bar was there, and I heard Mr *Porter* give him a Meſſage to go to Sir *William Parkyns* for ſome Horſes, I know not how many. The Priſoner went, and in ſome Time after, came back again, and brought an Account that the King went out that *Saturday* the 22d to *Richmond*; ſo every Body was to get ready: And Mr *Cranburne* ſaid, that Mr *Charnock* deſired that Mr *Porter* would ſend a Liſt of his Men; upon which Mr *Porter* wrote a Liſt of his Men, and gave it to the Priſoner to carry it to Mr *Charnock*, and bid him meet him at the *Blue-Poſts*; and Mr *Porter* and M. *De la Rue* and I took Coach, and went down to *Spring-Garden*, and when we came to the *Blue-Poſts*, there were ſome Perſons that I think M. *De la Rue* had appointed to come there; the Priſoner comes thither, and brought the Liſt back, with a Liſt of Mr *Charnock*'s Men underneath. I know not who the Men were, for I ſaw it only on the one Side of the Table, in Mr *Porter*'s Hand; at the ſame Time the Priſoner brought an Account, that the King did not go Abroad that Day, and preſently after we had the ſame Account from other Hands; and Captain *Porter* and I went out of Town, and we heard no more of it.

L. C. J. Are you ſure that he did agree to this Matter before the 15th?

Capt. *Pendergraſs*. Yes, I am ſure of it, he agreed to it *Friday* the 14th, at the *Roſe Tavern* in *Covent-Garden*.

L. C. J. On the 15th, it ſeems they were diſappointed; are you ſure there was an Agreement to purſue it the 22d?

Capt. *Pendergraſs*. Yes, I am ſure there was, my Lord.

L. C. J. Was the Priſoner there?

Capt. *Pendergraſs*. Yes, my Lord, I am ſure that the Priſoner at the Bar was there.

Cranburne. Pray, Mr *Pendergraſs*, was there any Diſcourſe about this Thing when I was there?

Capt. *Pendergraſs*. Yes, Mr *Cranburne*, you cannot but remember there was.

Cranburne. What Hour did I come there, pray Sir?

Capt. *Pendergraſs*. Truly, I cannot be poſitive to an Hour; but you was there while the Diſcourſe was.

Cranburne. Whether did I ſtay there all the while, and who was in the Company?

Capt. *Pendergraſs*. All the Company broke up about ſix a Clock, there was Mr *King*, Captain *Porter*, Mr *Kendrick*, Mr *Cranburne*, Mr *Keyes*, and my ſelf.

Cranburne. Was *Kendrick* there when I was there?

Capt. *Pendergraſs*. Yes, I am ſure of it; I will do you all the Juſtice in the World that I can.

Sir *B. Shower*. You ſay, Sir, he did agree upon the 14th to this Deſign; pray what Words did he uſe?

Capt. *Pendergraſs*. He did agree, that we ſhould attack the King the next Day.

Sir *B. Shower*. Pray, Sir, if you can, recollect your ſelf; what did the Priſoner ſay, or whether you took him to agree by being ſilent?

Capt. *Pendergraſs*. He ſaid, he hop'd we ſhould execute our Buſineſs the next Day.

L. C. J. What Day was that?

Capt. *Pendergraſs*. That was the 14th of *February*, and the ſame Night I gave Account of the Matter to my Lord *Portland*.

Mr *Phipps*. Did he agree to be one in the Execution of the Deſign.

Capt. *Pendergraſs*. Yes, he did; he diſcourſed the Matter to me himſelf.

Mr *Att. Gen.* My Lord, we have done with our Evidence.

L. C. J. Well, then what ſay you to it for the Priſoner?

Sir *B. Shower*. My Lord, what we have to ſay on Behalf of the Priſoner in this Reſpect is this, Here are but three Witneſſes produced, and as to one of them, *De la Rue*, there is no Evidence that he gives your Lordſhip and the Jury, that affects this Matter, but only that there was a Liſt given by Captain *Porter*, and carried by the Priſoner to Mr *Charnock*, and ſo brought back again. But he does not recollect, nor ſwear to any Meſſage that was ſent from *Porter* by the Priſoner to Mr *Charnock:* Now, my Lord, the bare carrying of a Note of Names will be no Evidence of Treaſon. M. *De la Rue* does not ſwear to any Privity of the Priſoner, what the Liſt was for, nor to the Delivery of the Liſt, which is the Overt-Act in the Indictment, nor upon what Account this Liſt was written, or ſent, or brought back again, or any Word that proceeded from Captain *Porter* to him upon giving the Liſt, or any Word when it was brought back again. So that as to *De la Rue*'s Teſtimony, we muſt ſubmit it to the Memories and Recollection of your Lordſhip and the Jury, we think he only proves a Plot in general, of which there is no peradventure, every Body is ſatisfied, that there was ſuch a horrible Conſpiracy: Thoſe that have been condemned and executed for it, have own'd it, and ſo it can never be doubted, but he does not ſay any Thing to affect the Priſoner at the

the Bar; for as to the Drinking of Healths, and being preſent when thoſe Healths were drunk, tho' it be an Evidence of Diſaffection to the Government, or too much good Manners and Complaiſance to the Company a Man is in, yet that Diſaffection, or civil Temper, or Complaiſance, we hope are no Evidences of Treaſon. It is plain the Priſoner did depend very much upon Captain *Porter*; he was in Truth his Servant to go of his Errands, and expected an Office from him, God knows when; but it does not appear by any particular Action, that he did any Thing that can be Treaſon, upon M. *De la Rue*'s Evidence. Then as to what Mr *Pendergraſs* ſays, I muſt confeſs his Evidence comes Home: For he ſays there was a Deſign of the Aſſaſſination, and ſome Agreement of the Priſoner to it; but I muſt beg your Lordſhip's Favour to obſerve, upon Mr *Pendergraſs*'s Evidence, if that ſtand alone, it will be but one Witneſs, and then we are ſafe by the Purview of this Act of Parliament.

L. C. J. Ay, and by the Law, before the making of that Act.

Sir *B. Shower.* Then, as to Captain *Porter*, I muſt beg Leave to ſay, If our Witneſſes are come that were abſent at the other Tryal, and they prove what is in my Inſtructions, it will be very much queſtionable, whether there be any Credibility due to his Teſtimony; Then if you take off his Teſtimony, there is only the Evidence of Mr *Pendergraſs*; and if he be to be believed, to which I have nothing to ſay at preſent, in the Caſe of a Man's Life, upon an Indictment of Treaſon, where the Law requires two credible Witneſſes, his ſingle Teſtimony is not ſufficient to convict the Priſoner. We beg Leave to call our Witneſſes, and then we ſhall leave it to your Lordſhip, and the Jury.

Mr *Phipps.* As to the particular Overt-Act laid in the Indictment, the carrying about the Liſt, only M. *De la Rue* ſpeaks to it, and Sir *Bartholomew Shower* has given it an Anſwer, and I ſhall not repeat it.

L. C. J. Look ye, for that, if any one Overt-Act is prov'd by two Witneſſes, it's well enough.

Mr *Sol. Gen.* Beſides, they miſtake, my Lord, extreamly; for Captain *Porter*, and Mr *Pendergraſs*, ſpeak both of them to that Particular, as to the Liſt.

Sir *B. Shower.* We do not deny it; the Queſtion is, Whether you have two credible Witneſſes?

Cranburne. Pray, Mr *Pendergraſs*, do you remember what Captain *Porter* ſaid to you, and I, when we came down to the *Blue-Poſts*, leaning upon the Rail?

Capt. *Pendergraſs.* Indeed, Sir, I do not.

Cranburne. I would have you recollect your ſelf; as we ſtood againſt the Rails in *Spring-Garden*, when we came down from the *Blue-Poſts*, after the Deſign miſcarry'd, Mr *Porter* ſaid, Mr *Charnock*, and they, might thank themſelves if it were diſcovered; *For*, ſays he, *I never communicated a Word of this Thing to any of my Party.*

Capt. *Pendergraſs.* Indeed I don't remember a Word of it, Sir.

Mr *Phipps.* My Lord, we have one Piece of Evidence to offer againſt the Teſtimony of Captain *Porter*: He ſays, That he ſent *Cranburne* with *Gunn* from the Cock-Pit to ſee for Hackney-Horſes, and that *Cranburne* came to him to the *Sun* Tavern, and there they had ſome Diſcourſe about executing the Deſign the next Day; and being ask'd who was by, when he communicated the Deſign to *Cranburne*, and particularly, Whether Mr *Gunn* was by? He ſays he came in afterwards, but was not there at the Time of the Commnnication about the Deſign. Now we ſhall prove that *Gunn* came in with the Priſoner, and was with him all the Time, and there was no ſuch Diſcourſe happen'd.

Sir *B. Shower.* Call *Geoffry Gunn*, and *Mary Gerrard.* [*They appeared.*] Your Lordſhip will obſerve, what Captain *Portter* ſwore, That he went in to the Room to *Cranburne*, and *Gunn* was not there: Now, if we falſifie him in that Particular, we ſhall ſubmit to your Lordſhip how far he is to be believed in the reſt.

Mr *At. Gen.* Pray, Sir *Bartholomew*, ask your Witneſſes what you will, but make no Deſcants upon their Evidence till you have heard them.

Then the two Witneſſes were ſworn.

L. C. J. Well look ye, you are both upon your Oaths, Conſider what you ſay, ſpeak the Truth, and tell all that you know, and nothing but the Truth. Which do you begin with?

Mr *Phipps. Jeffery Gunn:* Pray, Mr *Gun*, did you go to the *Sun* Tavern at any Time with Mr *Cranburne?*

Gunn. Yes, I did.

Mr *Phipps.* What Day of the Month was it?

Gunn. I cannot poſitively tell the Day, it was of a *Friday.*

Sir *B. Shower.* Was it of a *Friday*, in *February*, or *January?*

Gunn. It was in *February.*

Mr *Phipps.* Was it before the Plot broke out?

Gunn. Yes, It was.

Mr *Phipps.* How long was it before the Plot broke out?

Gunn. I cannot tell that, truly.

Mr *Phipps.* Whence did you go?

Gunn. I was at the Cock-Pit, and I went from thence to the *Sun* Tavern.

Sir *B. Shower.* Who did you meet there?

Gunn. I ſaw Captain *Porter* there.

Sir *B. Shower.* What Room were you in?

Gunn. We went into a Room next the Street.

Sir *B. Shower.* Who was there with you?

Gunn. There was Mr *Cranburne*, and I, and Mr *Keyes.*

Sir *B. Shower.* How long was it before Mr *Porter* came in to you?

Gunn. He came in about Half a Quarter of an Hour after I was there.

Sir *B. Shower.* Were you there from the Beginning till Mr *Cranburne* went away.

Gunn. Mr *Cranburne*, and I, went from the Cock-Pit together.

Sir *B. Shower.* How long did you ſtay there?

Gunn. I was there about an Hour and a half.

Sir *B. Shower.* Were you out of the Room at all in that Time?

Gunn. Yes, I was out of the Room once.

Sir *B. Shower.* How long were you out of the Room?

Gunn. I went Home to my Lodging.

Sir *B. Shower.* Were you ever with Mr *Cranburne* at the *Sun* Tavern at any Time beſides this?

Gunn. Never in my Life.

Sir *B. Shower.* Who did you leave with him when you went out?

Gunn.

Gunn. Capt. *Porter*, and Mr *Keyes*, as I remember.

Sir *B. Shower.* Were you there before Captain *Porter* came to him?

Gunn. I was with Mr *Cranburne*, and Captain *Porter* came in about a Quarter of an Hour after, we came from the Cock-Pit together.

Sir *B. Shower.* Pray recollect your ſelf, and tell us upon your Oath, were you there when Capt. *Porter* came in?

Gunn. Yes, I think I was there when Capt. *Porter* came in.

Sir *B. Shower.* Did you go and leave him there?

Gunn. We went all out together. I was there about an Hour and half.

L. C. J. Nay, but you ſaid you were abſent ſome Time.

Gunn. I went Home, and came back again.

Sir *B. Shower.* When you went Home, did you leave Mr *Cranburne* behind you?

Gunn. Yes, I think ſo.

Mr *Phipps.* Did you leave Captain *Porter* with him?

Gunn. I think Cap. *Porter* was with him then.

Mr *Phipps.* But upon your Oath, was you in Company with Mr *Cranburne* at the *Sun* Tavern, when Capt. *Porter* came firſt in?

Gunn. Captain *Porter* went in and out ſeveral Times.

Sir *B. Shower.* Did you ſee Capt. *Porter* before you went to your own Houſe?

Gunn. Yes ſure.

Mr *Phipps.* Then it cannot be true what Mr *Porter* ſays, that *Gunn* did not come in till afterwards.

Mr *At. Gen.* Now Mr *Gunn* I would ask you a Queſtion or two firſt, Were you there all the while that Mr *Cranburne* was there, or did you go Home?

Gunn. I went Home.

Mr *At. Gen.* Did you come back again?

Gunn. Yes, I came Home and eat ſome Victuals.

Mr *Att. Gen.* How long were you abſent?

Gunn. I came back in half a quarter of an Hour.

Mr *Att. Gen.* How far is it to your Houſe?

Gunn. 'Tis not above 100 Yards.

Sir *B. Shower.* Did Mr *Porter* come in to you before you went Home, when you firſt came in with *Cranburne?*

Gunn. He came in after we were in the Room.

Mr *Phipps.* Capt. *Porter* ſaid, when he came into the Room *Gunn* was not there.

L. C. J. He did not ſay poſitively, but as he remember'd; now I would ask you a Queſtion or two.

Sir *B. Shower.* Pray my Lord, our Inference from this Evidence is thus; Capt. *Porter* ſays, that upon *Friday* the 21ſt of *February* he was with *Cranburne* at the *Sun* Tavern, and out of one Room into another he came to Mr *Cranburne*, and talk'd with him of this Deſign, and after that *Gunn* came in to the Room, after the Communication was over: Now this Man ſwears he went from the Cock-Pit with Mr *Cranburne*, he was with him in the Room at firſt when Capt. *Porter* came in; ſome Time afterwards he went to his own Houſe, and left Captain *Porter* with Mr *Cranburne*, and came back again, and they came away together: Now we ſay, theſe two are inconſiſtent; for Capt. *Porter* ſwears that *Gunn* was not there till after the Communication was over.

L. C. J. As he remembers.

Mr *Phipps.* Nay, I think he was poſitive he came in afterwards.

L. C. J. As I remember he was not poſitive, but call Capt. *Porter* again.

Mr *Phipps.* When you came back from your Houſe, who were in the Room?

Gunn. The ſame Company as I left, as far as I remember.

Mr *Mountague.* Was Capt. *Porter* in the Room when you came back?

Gun. Indeed I can't directly tell, I believe he was.

L. C. J. Pray obſerve what your Witneſs ſays: He ſays, Capt. *Porter* came in and out, and was there ſeveral Times before he went away.

Gunn. Yes, my Lord, he was ſo.

L. C. J. And you were abſent ſome Time, but were you there ſome Time before *Porter* came in?

Gunn. Yes, I believe I was.

Then Capt. Porter *came in.*

Mr *Att. Gen.* Look ye, Capt. *Porter*, you ſee that Man there?

Capt. *Porter.* Yes.

Mr *Att. Gen.* Pray give an Account of what you know of that Man's coming in to you at the *Sun* Tavern.

Capt. *Porter.* I came ſeveral Times out of Sir *George Barclay*'s Room into theirs, and to the beſt of my Remembrance, Mr *Cranburne* was there before *Gunn* came in.

Sir *B. Shower.* Do you remember whether the firſt Time that you went out of Sir *George Barclay*'s Room to ſpeak with Mr *Cranburne*, Mr *Gunn* was there?

Capt. *Porter.* To the beſt of my Remembrance he was not; to the beſt of my Remembrance, Mr *Gunn*, I ſaw Mr *Cranburne* in the Room before you was there.

Sir *B. Shower.* Did not you order *Gunn* to come with him to the *Sun* Tavern?

Capt. *Porter.* Yes, Sir, I did.

Sir *B. Shower.* Can't you tell whether they came together?

Capt. *Porter.* I was not in the Room when they came in firſt, but to the beſt of my Remembrance he was not there when I came in the firſt Time.

L. C. J. Now, *Gunn*, you hear what Capt. *Porter* ſays, before you went away to your own Houſe did Mr *Porter* come into the Room to you?

Gun. Indeed my Lord I am not poſitive, I think he did.

Mr *Att. Gen.* Neither of them is poſitive, and it is a Circumſtance not very material; for it ſeems he was abſent, and then the Diſcourſe might be.

L. C. J. No, it is not material, but you ſee upon a ſtrict Examination what it comes to?

Sir *B. Shower.* They are agreed upon it I perceive, to be poſitive on neither Side.

Mr *Phipps.* Mr *Cranburne*, pray ask Mrs *Gerrard* what you have a mind.

Cranburn. Pray what do you know of Capt. *Porter*'s going out in Diſguiſe, and wearing falſe Hair and Vizards, and going upon the Highway, and ſuch things?

Gerrard. I know not what Mr. *Cranburn* means:

(at which the People laugh'd.)

Sir *B. Shower.* It is no laughing Matter, when a Man is upon his Life.

L. C. J.

L. C. J. No, no, let him have fair Play; Anſwer the Queſtion.

Cranburne. Do you know any thing of your Maſter's going abroad in Diſguiſes?

Gerrard. I do not know any thing of my Maſter's going upon the High-way.

L. C. J. Did he go out with Vizards, or any ſuch Things?

Gerrard. I never ſaw him wear a Vizard or falſe Beard in my Life, but he had once a Patch on when he was forced to keep out of the way, upon the Account of the Dog Tavern Buſineſs in *Drury-lane.*

Mr. *Phipps.* See if Mr. *Edward Bouchier* is here. (*He was call'd, but did not appear.*)

Sir *B. Shower.* Call Mrs *Burton*, (*which was done*; *but ſhe did not appear.*)

Mr. *Phipps.* Is *William Hardyman* here? (*He was call'd, but did not appear.*)

Sir *B. Shower.* Then call *Simon Dawſon*, and we have done. (*which was done.*)

Cryer. They are all call'd, but they do not appear.

Sir *B. Shower.* My Lord, we muſt ſubmit it to your Lordſhip's Directions upon the Evidence that has been given, as to the Credibility of theſe Witneſſes, and whether what Capt. *Porter* ſays, and what *Gunn* ſays be conſiſtent; ſo that you can be ſatisfied there are Two Lawful Credible Witneſſes to prove any Overt Act.

L. C. J. Yes ſure, but I would have you debate it if you believe there be any thing in it.

Sir *B. Shower.* I ſubmit it to your Lordſhip's Directions.

L. C. J. The Queſtion is, Whether I ſhould give any Directions at all or no, or whether there be any Occaſion for it?

Cranburne. I declare this openly before this Honourable Court, and ſo many Noblemen as are here, that Mr. *Porter* never made me acquainted with this Deſign, till what he ſwore here.

L. C. J. I can't tell, 'tis ſworn by Two Witneſſes.

Cranburne. I do declare, tho' Capt. *Pendergraſs* ſays he does not remember it, that Capt. *Porter* did declare in *Spring Garden* the 22d, when he came out of the *Blue Poſts* by the Rails, if this Deſign miſcarry, ſays he, Mr. *Charnock* may thank himſelf, for I never communicated this Secret to any of my Friends.

L. C. J. But hark ye, do you conſider what you ſay, if this Deſign miſcarry: Pray what Deſign was that?

Cranburne. He never named any thing but the Deſign, he did not ſay what it was.

L. C. J. But why were you imploy'd to carry a Liſt from Capt. *Porter* to Mr. *Charnock*, and to bring a Liſt back again from him to Capt. *Porter?*

Cranburne. I did carry the Note, but there was nothing mention'd what the Liſt was for.

L. C. J. Then you were there on *Friday* the 14th, and there the Deſign was propoſed to Aſſaſſinate the King the next Day, and you engag'd in it.

Cranburne. Not a Word of it true, my Lord.

L. C. J. Aye but Mr. *Pendergraſs* ſwears it, and that you were hearty in the Matter, and hop'd you ſhould do your Buſineſs the next Day.

Cranburne. I can't help it if he does ſwear it.

L. C. J. Then you were at the Meeting at the *Sun Tavern* the 21ſt.

Cranburne. My Lord you hear what *Gunn* ſays.

L. C. J. As to that they are neither of them poſitive, but you did there promiſe and undertake the Matter, that Capt. *Porter* is poſitive in, that it was agreed by you all to do it the 22d; and Mr. *Pendergraſs* ſays, when you were diſappointed the 15th, you all agreed to purſue the ſame Deſign the *Saturday* following.

Cranburne. My Lord, I did not dine at the *Blue Poſts* that Day.

L. C. J. But you were there; I think indeed Mr. *Pendergraſs* ſays you came in after Dinner, and had ſome Steakes.

Cranburne. I never heard directly nor indirectly of this Deſign, till what I heard them ſwear here.

L. C. J. Gentlemen of the Jury, you do underſtand for what Crime this Priſoner at the Bar is Indicted: It is for High-Treaſon, in deſigning and compaſſing the Death of the King, which was to be effected by an Aſſaſſination, in the moſt barbarous and wicked Manner, that any Attempt of that Nature can poſſibly be made, being to ſurpriſe the King, and murder him in his Coach.

The Queſtion Gentlemen is, whether this Priſoner be Guilty of this Crime or no; there have been three Witneſſes produced that have given Evidence againſt him, Capt. *Porter*, Mr. *De la Rue*, and Mr. *Pendergraſs*; and they do all tell you, that there was ſuch a Deſign on foot to Aſſaſſinate the King, as he came from Hunting at *Richmond*, after he came on this Side the Water, in the Lane between *Brentford* and *Turnham-Green.* There were diverſe Perſons ingaged in this Deſign, which Sir *George Barclay* was come from *France* to promote and manage: Capt. *Porter*, as it does appear upon his Evidence, was a Perſon that was principally ingag'd, and at that Time was hearty in the Proſecution of it.

As to Mr. *Cranburne*, Capt. *Porter* tells you he was a Man that he had had a long Acquaintance with, and had imployed him and deſigned to imploy him as an Officer under him, in caſe a Revolution happened, which it ſeems about that Time, and ſome time before it, was expected. Captain *Porter* was to have been a Captain, and I think he deſigned to promote *Cranburne* to be his Quartermaſter; and he ſent him to buy Arms; and Preparations were made for that Buſineſs; but that is not the Thing that we are now upon, the Matter that now properly falls under our Conſideration, is this; The coming over of Sir *George Barclay*, the latter End of *January*, or the Beginning of *February* laſt, upon which, as it ſeems, Mr. *Porter* was Engaged; and having an Intereſt in this *Cranburne*, and there being Horſes to be furniſh'd to attack the King and his Guards about *Turnham-Green*, this Man, *Cranburne*, was a Perſon that was ingaged to be one of the Horſe-men that were to make the Attack, and he tells you that he did imploy him to provide Horſes and Swords, and to prepare the Piſtols, and that he did Ingage in it, and particularly that the Deſign was to be executed on *Saturday* the 15th of *February*, and that he was then ready to go with Capt. *Porter*; but on that *Saturday* the King did not go abroad, whereby the Deſign was diſappointed for that Time: Afterwards there was a Meeting at the *Sun Tavern* in the *Strand*, where he met with Sir *George Barclay* and others of them, and there comes to that Tavern Mr. *Cranburne* and others, and they were in another Room, and Capt. *Porter* ſays he came to them, and did diſcourſe about

purſuing the Deſign the very next Day, which was agreed, and *Cranburne* was ready to go the next Day.

Then he tells you farther, that the next Day being *Saturday* the 22d, the ſecond Time that this Aſſaſſination was to have been Executed, upon the Deſire of Mr. *Charnock*, who was a Perſon alſo that was ingag'd in this Deſign, Capt. *Porter* writes a Liſt of the Men he could bring, and ſent it by *Cranburne* to *Charnock*; *Cranburne* carries the Liſt to Mr. *Charnock*, and brings it back again with an Addition of the Names of Mr. *Charnock*'s Men underneath.

Mr. *De la Rue* is called, and he ſwears to that very Circumſtance, that Mr. *Cranburne* was ſent by Capt. *Porter* with a Liſt to Mr. *Charnock*, and brought it back again from Mr. *Charnock*, with an Addition of other Names.

Then Mr. *Pendergraſs* tells you, that he was with this Mr. *Cranburne*, the Priſoner at the Bar, the fourteenth of *February*, and there was a Diſcourſe of going in purſuance of this Deſign the next Day, and the Priſoner agreed to it, which he is poſitive in: He tells you, that when they were diſappointed the 15th, being at the *Blue-Poſts*, they then agreed to purſue it the next *Saturday*; *Cranburne* was one of them that agreed.

Capt. *Porter* and *De la Rue* informs you that Healths were drank to the late King, and the late Queen, and the Prince of *Wales*, as they called him, and then at length, as the concluding Health, Capt. *Porter*, or ſome of them in the Company, having an Orange in his Hand, ſqueez'd it, and drank a Health to the ſqueezing of the Rotten Orange, which was pledged by all, and particularly by Mr. *Cranburne*, as is prov'd by both Capt. *Porter* and *De la Rue*.

So that now Gentlemen I muſt leave it to you, whether this is not Evidence ſufficient to prove this Man Guilty of the Treaſon whereof he is Indicted, that is, of deſigning and intending the Aſſaſſination of the King, and being engaged as a Party to execute this Deſign, whenever there was an Opportunity.

The Council inſiſt upon it, on the Behalf of the Priſoner, that what Capt. *Porter* ſays is not Evidence: In the firſt Place they urge that he is not a Man of Credit, for they have mentioned that he uſed to be diſguiſed, and wear a Vizard Mask, and go abroad under odd Circumſtances, and therefore his Reputation they hope is not good enough to make him a credible Witneſs againſt the Priſoner: Now the Priſoner's Witneſs being produced, ſays he never knew him go in Diſguiſe, or wear a Vizard Mask, but once he wore a Patch, becauſe he was under ſome ill Circumſtances about a Riot in *Drury lane*; every Body underſtands what the Meaning of that was, his drinking of Healths at a riotous Aſſembly, upon the 11th of *June*, and he being under ſome Proſecution for that, occaſioned him to wear that Diſguiſe, but it was not done to injure any Perſon, or do any Miſchief.

But then ſay they he is miſtaken in his Evidence, of the Meeting at the *Sun Tavern* the 21ſt of *February*, the Day before the laſt, that this Deſign was to have been executed, for whereas he ſays, that *Gunn* was not there when he came to them, yet *Gunn* was in the Company at that Time, and whereas he ſwears poſitively that they diſcourſed of going upon the ſame Deſign to Aſſaſſinate the King the next Day, as was agreed the *Saturday* before; *Gunn* heard no ſuch Diſcourſe. *Gunn* is called, and he tells you he did come to the *Sun Tavern* at that Time, with *Cranburne* and Capt. *Porter*, he came into the Room, and he heard no ſuch Diſcourſe. They did open it indeed that *Gunn* had been there all the while, and if ſo, then if there had been ſuch a Diſcourſe he muſt have heard it. *Gunn* has been Examined, and does tell you he was not there all the while, but went out and was abſent for ſome Time, about half a quarter of an Hour.

They have made a Queſtion whether Capt. *Porter* came in when *Gunn* was there, he ſays truly he thinks that Capt. *Porter* did come into the Room while he was there, before he went out, but he cannot tell certainly, he was there ſome Time, while he was there. Then Capt. *Porter* was called again, and Capt. *Porter* does ſay he knows *Gunn* was there, but whether he was there at that Time he came in, he cannot ſay poſitively; but *Gunn* ſays Capt. *Porter* was going in and out ſeveral times, as *Porter* ſays himſelf; and *Gunn* was abſent for ſome part of the Time. So that I cannot ſee any ſort of Contradiction between the Evidence that *Porter* gives, and the Evidence that *Gunn* gives; the one is uncertain, and ſo is the other as to that Circumſtance.

But Gentlemen, they would infer, that if there was any ſuch Diſcourſe while *Gunn* was there, it muſt be of neceſſity that *Gunn* muſt have heard it; but it is not neceſſary the Diſcourſe ſhould be when *Gunn* was there: Capt. *Porter* ſwears poſitively that there was ſuch a Diſcourſe of going the next Day to purſue the Deſign, and he ſays he thinks *Gunn* was not preſent at that Time when the Diſcourſe was, and *Gunn* ſays he was abſent ſome part of the Time.

And ſo I muſt leave it to you; upon the whole Matter, if Mr. *Cranburne* the Priſoner at the Bar did conſent and agree to act in this bloody and wicked Deſign, then you are to find him Guilty; if you are not ſatisfied of that upon the Evidence you have heard, or you think there is any Inconſiſtency, or Incoherence in the Teſtimony on the one ſide, and the other; and that there is good Reaſon to disbelieve the Evidence againſt the Priſoner, then you are to acquit him. You have heard your Evidence, and you had beſt conſider of it.

Cl. of the Crown. Who keeps the Jury?

Cryer. There is an Officer Sworn.

Then the Jury withdrew to conſider of their Verdict, and about a Quarter of an Hour after Returned.

Cl. of Ar. Gentlemen, anſwer to your Names, *John Kaine*.

Mr. *Kaine.* Here. (*And ſo of the reſt.*)

Cl. of Ar. are you all agreed of your Verdict?

Jury. Yes.

Cl. of Ar. Who ſhall ſay for you?

Jury. Foreman.

Cl. of Ar. Charles Cranburne, hold up thy Hand, (*which he did.*) Look upon the Priſoner; how ſay you, is he guilty of the High-Treaſon whereof he ſtands indicted, or not guilty?

Foreman. Guilty.

Cl. of Ar. What Goods or Chattels, Lands or Tenements, had he at the Time of the Treaſon committed, or at any Time ſince?

Foreman.

Foreman. None to our Knowledge.

Cl. of Ar. Then hearken to your Verdict as the Court has recorded it. You ſay that *Charles Cranburne* is guilty of the High-Treaſon whereof he ſtands indicted, but that he had no Goods, Chattels, Lands, or Tenements, at the Time of the High-Treaſon committed, or at any Time ſince, to your Knowledge, and ſo you ſay all.

Jury. Yes.

Mr. *Kaine.* My Lord, the Jury humbly deſires they may be diſcharged from their Attendance to morrow.

L. C. J. We cannot do it, unleſs the Jury be full without them; if you come early, we ſhall diſpatch you preſently.

Then the Priſoner was taken from the Bar, and the Court adjourned till Seven a Clock the next Morning.

Die Mercurii Viceſimo Secundo Die Aprilis, Anno Domini 1696. *Annoq; Regni Regis* Gulielmi *Tertii Octavo.*

THIS Day the Juſtices of Oyer and Terminer holden for the County of *Middleſex*, adjourned over to Seven this Morning, met, and the Court was reſum'd by Proclamation in uſual Form.

Clerk of the Arraignments. Keeper of *Newgate*, ſet *Robert Lowick* to the Bar, (which was done.) You the Priſoner at the Bar, *Robert Lowick*, thoſe Men that you ſhall hear called and perſonally appear, are to paſs between our Sovereign Lord the King and you, upon Tryal of your Life and Death; if therefore you will challenge them, or any of them, your Time is to ſpeak unto them, as they come to the Book to be Sworn, and before they be Sworn.

Mr *Mompeſſon.* If your Lordſhip pleaſes to favour me with one Word for the Priſoner at the Bar, I ſhall not trouble your Lordſhip with any Thing that was urged by the Gentlemen that were of Council Yeſterday, but I ſhall rely upon ſomething that has not yet been ſpoken to. My Lord, they have not laid any Time or Place where the Conſent or Agreement was, for the forty Men that were to ſet upon the King and his Guards: There is a Time laid before where they met and diſcourſed of the Ways and Means how to aſſaſſinate and kill the King; but when it comes to the *Aſſenſerunt, Conſenſerunt & Aggreaverunt*, with ſubmiſſion, this being another Act, there ought to be another Time and Place laid, and for That I ſhall cite your Lordſhip two or three Caſes; for Men may meet and propoſe, and diſcourſe, and conſult of ſuch Things, though they be very ill Things, and yet that may not be Treaſon. It's the Agreement that is the Treaſon, and ſo 'twas held in Captain *Blague*'s Caſe about taking the *Tower*. They may meet at one Time and Place, and at another Time and Place they may agree, in *Dyer*, 68 *B.* and 69 *Pl.* 28. A Man was indicted for Murder, That he at ſuch a Place in and upon the Perſon that was murdered *inſultum fecit, & ipſum*, the Perſon that was murdered, *cum quodam cultello*, of ſuch a Price, *percuſſit*; and he does not ſhew the Place where he ſtruck him, nor had the Indictment the Words, *ad tunc & ibidem*, and therefore the Court held it void: So it is likewiſe ruled in *Goodrick*'s Caſe, *Hell.* 35 & 119. and therefore in Indictments for Murder, ſince they generally ſet forth not only the Time and Place of the Aſſault, but likewiſe of the Blow; ſo likewiſe in Things of a more inferior Nature, as Reſcues returned by the Sheriff, that the *Capias* was ſerved, but does not ſhew where the Reſcue was; or though he ſhews where the Arreſt was, and an & coupled the Reſcue to it, yet it was adjudged an ill Return, *Dyer* 69. *Pl.* 29. 10 *Edw.* 4. 15 *Fitz. Ret. Vic.* 32 *Bro. Ret. Det. Bre.* 97. and Error 194. *Palm.* 563. and in *Noy* 114. there are theſe Words, *Note*, It was moved in diſcharge of a Reſcue, the Return was, that they, *viz. A. B.* aforeſaid, the Bailiffs, *ad tunc & ibidem vulneraverunt, &c.* And the aforeſaid *George*, &c. *Reſcuſerunt* without *ad tunc & ibidem*, referred only to the *Vulneraverunt*, and not to the *Reſcuſerunt*, and therefore the Return was adjudged inſufficient; for my Lord, although in Conveyances, a Clauſe or Word in the Beginning or End may refer to the Whole, yet, in Indictments, every Sentence muſt be certain, plain, and expreſs, and have its own Time and Place: Therefore, in *Noy*'s *Rep.* 122. *Raymond* was indicted for ſtopping a Croſs-Way leading from a certain Ville called *Stoake*, into a Ville called *Melton*, in the County of *Dorſet*, and the Indictment was quaſh'd, becauſe in the County of *Dorſet* ſhall refer only to *Melton*, and not to both: So an Indictment of forceable Entry into a Meſſuage *exiſtens Liberum Tenementum* of *J. S.* is not good for Want of the Words *ad tunc*, though the Participle *exiſtens* does ſtrongly imply that it was his Houſe at that Time, 3 *Cro.* 754. *Het.* 73 *Noy* 131. *Palm.* 426. *Bridg.* 68. 2 *Cro.* 214, & 610. *Sid.* 102. *Lat.* 109, *&c.* And my Lord *Coke* tells us in *Calvin*'s Caſe 5. *B.* that Indictments of Treaſon, of all others, are the moſt curiouſly and certainly indited and penn'd; and all thoſe that I have ſeen and obſerved, have contained more Certainty than the Indictment now before your Lordſhip: In *Reginald Tucker*'s Caſe, the Indictment was, That he and *Thomas Place apud Bridgwater, in Com. Somerſett. prædict. Compaſſaverunt*, to kill and depoſe the King, *&c.* and to bring their treaſonable Purpoſes to effect, they the ſaid *Reginald Tucker* and *Thomas Place* the ſame Day and Year, at *Bridgwater* aforeſaid, in the County aforeſaid, againſt the King, with a great Multitude of People, array'd in a warlike Manner, *viz.* with Swords, *&c. ſe ipſos illicite & proditorie inſimul ad tunc & ibidem congregaverunt & aſſemblaverunt & guerram publicam contra dictum Dominum Regem apud Bridgewater prædict. in Com. prædict. dicto viceſimo Die Junii Anno primo ſupradicto proditorie paraverunt ordinaverunt & levaverunt.* So in the Indictment of *Gate*, as it is ſet forth at large in a Plea in Bar of *Dower*, brought by his Wife, he with Force and Arms, *apud Villam de Ware*,

Ware, &c. assembled with a great many Persons, *& Bellum crudele contra dictam Dominam Reginam apud Ware, prædict. ad tunc falso & proditorie publicavit & levavit, ac insuper ad tunc & ibidem falso & proditorie*, proclaimed the Duke of *Northumberland*, to be Lieutenant-General of their Forces; *& etiam falso & proditorie apud Ware prædict. ad tunc*, proclaim'd the Lady *Jane Dudley* Queen. This is in *Bendlowe*'s Reports, publish'd by Serjeant *Rowe, fol.* 55. *placito* 91. So in the Earl of *Leicester*'s Case, *Plowd. Com.* 385. the Indictment is laid much after the same Manner, and many other Indictments, which at present I am unwilling to trouble your Lordship with; and this being one of a new Form and of the first Impression, I hope your Lordship will hold it insufficient. And, my Lord, when they go farther, and say, *Et quilibet eorum proditorie super se suscepit esse unum*, there is no Place or Time alledged where that was done, which of Necessity should be mentioned: For it is a constant Rule in our Books, that what is issuable, ought to have a Place where it may be tryed. Now, this is issuable; and the most material Thing in the Indictment is, for compassing the King's Death. The Overt-Acts are, That *Christopher Knightley* the Prisoner, and two others, did consult to kill the King; and afterwards did agree how to do it, *viz.* by forty Horsemen *Quorum*, these shou'd be four, and every one of them did agree to be one; then comes the other Overt-Act of providing Arms for them. Now suppose they should not prove the last, *viz.* the providing Arms; then, my Lord, they must resort to one of the other Overt-Acts, that these four did consult and agree to kill the King; or that these four did agree, the Manner how to do it, as is laid in the Indictment; and it is plain they must fail of Proof of either of these; for by the not prosecuting any one of the Name of *Christopher Knightley*, but preferring a new Indictment against one *Alexander Knightley*, it appears that *Christopher Knightley* was not there; and the Proving these three others making a Consult and Agreement, is not a Proof of the same Overt-Act, that is laid in the Indictment, as it ought to be by the late Act; unless they can prove that a Consult of Three is a Consult of Four: And if it be answered, that it is alledged, that *Quilibet eorum super se suscepit*, then will that come to be issuable, and the most material Part of the Indictment; and consequently a Place ought to have been laid where it should be tryed; this, my Lord, is a distinct Sentence of it self, it is in a *Parenthesis*, and though you take it away, the Sense of what remains is perfect and intire; and consequently this Sentence is or should be intire of it self, and therefore ought certainly to be express'd. Besides, if your Lordship pleases, it is not positively laid, what these Persons severally undertook to be, there is indeed mention made before of forty Horsemen, agreed upon to set upon the King, then comes the *Parenthesis*, *Quorum iidem Christophorus Knightley, Robertus Lowick, Ambrosius Rookwood & Carolus Cranburne forent Quatuor, & quilibet eorum proditorie super se suscepit esse unum*: It is perhaps express'd fully enough by the Word *Quorum*, that it was agreed these shou'd be four of the forty Horsemen; but there wants the Repetition of the Word *Quorum*, to express what they severally engaged to be; and the Word *&* cannot join and connect the Sentences: For *forent* and *suscepit* differ not only in Number but also in Mood and Tense, and the Sense is not necessarily coherent; for it might be true, that the Majority of the Company might agree, these shou'd be four, and yet they themselves might not severally ingage therein, and one or some of them might undertake it, and yet the Company not agree to it; and it cannot be mended by Intendment. There was *Vaux*'s Case, in the 4 *Rep.* 44. he was indicted for Murder, for persuading a Man to take *Cantharides*; it was laid, That he *persuadebat eundem Nicholaum recipere & bibere quendam potum mixtum cum quodam veneno vocat. Cantharides*; and the Indictment says, *Quod prædictus Nicholaus nesciens prædictum potum cum Veneno prædicto fore intoxicatum, sed fidem adhibens Dictæ persuasioni Willielmi Recepit & Bibit*; but does not say, *venenum prædictum*, but yet it adds, *Per quod prædictus Nicholaus immediate post receptionem veneni prædicti*, languish'd and dy'd; here, one would think, was a sufficient Implication, that he took and drank the Poison; but it was rul'd, that none of these Words were sufficient to maintain the Indictment; for the Matter of the Indictment ought to be plain, express, and certain, and shall not be maintained by Argument or Implication, and therefore for Want of those Words the Indictment was held insufficient, and the Man again indicted for that Offence, and there seems much more Incertainty in this Indictment, and therefore I humbly pray your Lordship that it may be quash'd.

Sir *B. Shower*. My Lord, we think the Objection is fully put, and therefore we desire to have their Answer to it.

Sir *Thomas Trevor*. Mr *Att. Gen.* We think, my Lord, this Objection will receive a very plain Answer. The Indictment sets forth, That at such a Place the Prisoner at the Bar did imagine and compass the Death of the King: There is a particular Place where the Imagining was, and that they, to accomplish that Treason, in compassing and imagining the Death of the King, did, among others *postea eisdem die & anno apud parochiam prædictam*, meet and consult, *&c.* so there's the same Place set forth again, wherein they did meet and consult of the Ways and Means, and Time and Place, when, where, and how to assassinate the King: And immediately it follows, *& consenserunt & agreaverunt, &c.* that forty Men, whereof they were to be four, and every one of them undertook to be one, should do so and so. Now, my Lord, say they, It is not said that the Agreement that there should be forty Men to do it, was at the same Time and Place where they did meet and consult about the Ways and Means: But, my Lord, with submission, it is very plain, that the Agreement for forty Men, and the particular Agreement for them to be of the Number, is but the Effect of the Consultation that is mention'd just before: For it is said, they consulted how they shou'd do it, and they agreed to do it in this Manner; the particular Manner is set forth immediately after that, it is said they did consult of the Manner; so that, my Lord, it is part of the former Sentence; a Particularizing of what they did agree upon at that Consultation; but it is no distinct Overt-Act: If it had been a distinct Overt-Act, then the Cases that have been cited by the Council, do shew, that there should be a particular Time and Place mentioned for every Overt-Act; but this is only a Part of that Overt-Act that was mentioned generally before: This tells you particularly what the Means were they did agree upon, and the Sentence is not compleat till you have gone over this; so that, my Lord, with sub-

ſubmiſſion, it had been very improper when they agreed at ſuch a Time and Place, of the Means and Ways how it ſhou'd be effected, then to ſet forth that it was at the ſame Time and Place where they did conſult of the Ways and Means, that cannot be proper; for it is not laid at firſt, that there was any particular Way propoſed, but only in general, they conſulted of the Ways and Means; therefore, my Lord, all this that Mr. *Mompeſſon* has ſaid, will not be pertinent to this Caſe, it is impoſſible to have been otherwiſe; it is but a Part of the Sentence; and it is not compleat till you have gone over the ſeveral Particulars: As to the Caſe of a *Reſcus*, that is, the Offence upon which the Matter is to be grounded; the *Verberavit* and *Vulneravit* are not the Reſcueing; but where there is not one Sentence compleat, till you come to the End of theſe Words, there it muſt be all taken together; ſo it is here, they conſulted of the Way, and agreed this to be the Way, which they ſet forth in particular: It is join'd to the former Part of the Sentence, and the Whole is not compleat without it.

Mr *Sol. Gen.* With ſubmiſſion, my Lord, it cannot be otherwiſe, nor can they make it Senſe otherwiſe.

Sir *John Holt.* *L. C. J.* They ſay you might, and ſhould have put in, *ad tunc & ibidem.*

Mr *Sol. Gen.* With ſubmiſſion, my Lord, I ſay it cannot be repeated again: Indeed if you wou'd make it like the Caſe, as Mr. *Mompeſſon* wou'd have it, that forty Men did agree to it, and forty Men did it, it were neceſſary to name Time and Place, as it is in the Caſe of Murder: That he did agree to murder him, and afterwards knock'd him on the Head, there you ſhould lay Time and Place where he agreed, and where he did the Act, for there is an Act done; but in this Caſe there is no Act done, but only an Agreement that forty ſhou'd do it, whereof theſe four were to be Part of the Number. Now, they cry, you do not ſay what theſe four were to be for. Yes, we do: The Forty were to do ſuch an Act, and theſe were to be four of that forty, and every one of them undertook to be one, ſo that it cannot be expreſs'd otherwiſe then it is; for what they ſay of the Indictment's being not in the ſame Form that other Indictments are, that will be no Argument at all; for it does not follow, that there muſt be one expreſs'd Form of Indictment; of Right there are divers Forms of Indictments, and all of them good, becauſe Indictments are to be framed according to the particular Caſe, and they cannot put me an Inſtance of ſuch a particular Caſe as this. As to that of the Miſtake of the Name of *Knightley*, that unqueſtionably can be no Objection at all: For how does it appear to the Court, that this is againſt the ſame Perſon that was before indicted by the Name of *Chriſtopher?* there may be another *Chriſtopher* for ought they know: But I will ſuppoſe, that the Conſult was proved not, as it is laid, that they were to be four; but only that they were to be three of them, it would be well enough againſt the Priſoner at the Bar, if he be proved to be one.

Mr *Conyers.* Firſt, we have here laid a Time and Place for the Treaſon alledged in the Indictment, and alſo for the two Overt-Acts, how, when, and where it was to be done, and the Providing of Arms for it; and for this Particular of the forty Men, that they would have us put the *ad tunc & ibidem* to that, is but Part of the Overt-Act, which was before alledged; for the firſt Overt-Act mentioned, is the Meeting and Conſulting, and there we lay both Time and Place; that on ſuch a Day, and at ſuth a Place, they did meet and conſult of the Way and Manner how to do ſuch an Act: And then we continue on the Sentence, by particularizing how it was to be effected; that they did agree there ſhou'd be forty Horſemen to do it, whereof they were to be four: This is but a Part of the Overt-Act, which is the Conſulting and Agreeing upon the Ways and Means; this particular Means agreed upon, being but the Reſult and Effect of the Conſultation before: So that we conceive there is no Want of Time or Place, upon which to take Iſſue in this Caſe.

Mr *Cowper.* My Lord, I think, with ſubmiſſion, there is nothing in their Objection, and I take it to have received a full Anſwer already: Yet I would ask one Thing of the Gentlemen of the other Side, had the Sentence run without the Words *de iis modis & mediis, &c.* which follow after the Word *conſultavit*, and before the Words *& aggreavit*; in this Manner, That they did then and there traiterouſly treat, propoſe, conſult, and agree, that forty Horſemen, or thereabouts, with Guns, and ſo forth. If then there had been any Colour to think it neceſſary, that it ſhould be laid in this Manner, That they did then and there traiterouſly treat, and then and there traiterouſly propoſe, and then and there traiterouſly conſult, and did then and there traiterouſly agree: And if not, then I wou'd deſire them to tell me why *then and there* is more neceſſary to one Verb *did agree*, than it is to all the Reſt, in Senſe and common Speaking. The only Uſe of a Conjunction copulative, is to derive the Force of ſome Words, in a Sentence foregoing, down to a Sentence following, to avoid Repetition: And here, though after the Conſultation be put many Words that relate to that Matter, by Way of Parentheſis; yet the *ad tunc & ibidem* ſtill does refer to all the Verbs following, being joined by the Conjunction copulative; it does not vary the Caſe at all, the Putting in that Parentheſis; it is notwithſtanding but as one Sentence: And the Suppoſing that the Parentheſis ſtood out, makes it very plain, there can be no Colour to ſay there wanted a Repetition of the *ad tunc & ibidem* to every Verb.

Sir *B. Shower.* With ſubmiſſion to your Lordſhip's Judgment, there is no Anſwer made to this Objection. I do agree, if there had been ſeveral Verbs, and no other Words had intervened, that an *&* wou'd have coupled all together, and you need not have repeated *ad tunc & ibidem* to every one: But here is a Fact after the Verbs, that makes one compleat intire Sentence; and if this of the forty Men were left out, it had been a good Sentence, that they did propoſe and treat how, where, and when; that's a Sentence of it ſelf, the Conſulting and the Treating of the Ways and Means: But then they ſay, and they did agree and aſſent that forty ſhould do it: Now there is no Neceſſity for the Interpreting of theſe Words, That they ſhou'd conſult and agree at the ſame Place and Time; there is no Neceſſity to conjoin this Agreement for the forty Men with the Conſultation; they might propoſe and conſult at one Time and Place, and not agree, and afterwards agree at another Time and Place: It is not a Specification, or, as they call it, a ſpecifick Account of the Conſultation, nor a neceſſary Effect of it, ſo as to make it neceſſary to join them together; they might meet and conſult at one Time and Place,

Place, and at another Time and Place they might agree that forty ſhould do it; and therefore when you ſay at one Time and Place they did conſult and propoſe, and afterwards they did agree; it is not neceſſarily imply'd, that it muſt be at the ſame Time and Place; and when it is not neceſſarily imply'd, we think it neceſſary in Indictments, for Certainty-ſake, to have *ad tunc & ibidem* inſerted again.

Mr *Mompeſſon*. My Lord, Mr Sollicitor ſays, That as to other Precedents, that does not make it neceſſary that this ſhou'd be like them; and that it is no Argument that it ought to be ſo here. My Lord *Coke*, in *Calvin*'s Caſe, tells us, That by Precedents the Law is known, and that Indictments of Treaſon are of all Things the moſt curiouſly penn'd; and it is common to infer the Law is ſo, becauſe uſually it is ſo in the Precedents of Indictments. Mr. Sollicitor ſays likewiſe, That there may be a *Chriſtopher Knightley* beſides an *Alexander*; but I cannot take that for an Anſwer to the Exception I urge, which is the Want of *ad tunc & ibidem* at the *Quorum*, and the *Quilibet*; for the *Quilibet* may come to be in Queſtion as the moſt material Part of the Indictment, becauſe the Agreement of the Four upon the Meeting of the Four is alledg'd as an Overt-Act. Now, with ſubmiſſion, they muſt prove the Aſſembly of the whole Four, or they do not prove the Overt-Act expreſsly laid: Then as to the *Quilibet ſuſcepit*, which is the moſt material Part, it has no Time nor Place.

Mr. *Att. Gen.* No ſure: We do not need to prove all four, for it is a diſtinct Offence in each; and if any one undertook, it is well enough againſt him: and for the Time and Place, we tell you, it is Part of the former Sentence, and makes but an intire One.

Mr *Mompeſſon*. As for the Reſidue of the Verbs, if they had been omitted, it had been good Senſe; but this is a perfect intire Sentence of itſelf, when it tells you what they conſulted and treated of, as in the Caſe of the *Reſcue* that I put; if it had ſtop'd there, it had been a good Sentence without the *Vulneraverunt*.

Mr. *Att. Gen.* The *Reſcous* is the Offence in that Caſe, the othere is diſtinct: But here, in this Caſe, nothing can be plainer than that all is one Act, as we have laid it, That at ſuch a Time and Place they did conſult and treat of the Ways and Means; but then there is no Agreement mentioned till after we have ſaid they did conſult of the Ways and Means, and did agree that this ſhou'd be the Way: This is certainly one entire Sentence that ſhews what the Agreement was upon the Conſultation as the Reſult of it.

Mr. *Cowper*. As to what Sir *Bartholomew Shower* ſays, That we ought to repeat the *ad tunc & ibidem*, unleſs the Senſe of the Words implies a Neceſſity that the Conſultation and the Agreement ſhould be at one Time and Place. My Lord, there can be nothing in that, for it does not ariſe from the Neceſſity of the Thing one Way or t'other; but we take it as an intire Sentence, and that the whole Matter is ſufficiently connected and laid to one Time and Place, though it might be divided, it muſt be taken, as alledged, to be one intire Fact, or elſe it recurs to the ſame Objection, that *ad tunc & ibidem* muſt as well be put to every Verb; for 'tis poſſible they might propoſe at one Time and Place, and conſult at another, and debate at another, as well as agree at another: So that nothing is to be argued from the Neceſſity of the Thing more in one Caſe than the other; for one Man might propoſe it in one Place, and the Reſt might then ſhake their Heads at it, and then they might again meet and conſult at another Place, and afterwards agree at a Third: But when it is ſaid *then and there* they did meet, conſult, and agree, it cannot be underſtood but that the Agreement was at the ſame Time and Place with the Meeting and Conſult.

Sir *B. Shower*. But this can be no Anſwer that Mr. *Cowper* gives now, for propoſing, and conſulting, and treating, and debating, are all of the ſame Signification, for one Man's propoſing to another; and the other's propoſing to him, is conſulting, treating, and debating; but now conſulting and agreeing are different Things.

Mr *Cowper*. So is propoſing and conſulting: One may propoſe, but there muſt be at leaſt Two to conſult: There is that nice Difference between them.

Sir *B. Shower*. Every One muſt agree for himſelf, and that muſt be certainly laid with Time and Place, let the Propoſal and Conſultation be what it will.

L. C. J. Mr *Mompeſſon* puts that Caſe in *Dyer* upon an Indictment of Murder, That on ſuch a Day, and at ſuch a Place, the Party made an Aſſault upon the Perſons ſlain, *& percuſſit*; but does not ſay, *Et ad tunc & ibidem percuſſit*, and for not alledging that the Indictment was held nought.

Mr *Att. Gen.* My Lord, That is a different Caſe from this, becauſe *inſultum fecit*, and the *percuſſit*, are different Crimes; there is a great Difference between an Aſſault and a Stroke: But here it is, That they did propoſe and conſult of the Ways and Means, and agreed upon this particular Way; that is the ſame Thing; it is not an intire Sentence till you come to the End of it, then it is compleat when you ſhew what was the Effect of the Conſultation; what they were agreed upon, and not till then.

Mr *Mompeſſon*. A Man's holding up his Hand is an Aſſault, but he muſt actually Strike, to be guilty of Murder: So a Man may debate, and yet not agree: It is the Agreement that is the Treaſon.

L. C. J. Read the Indictment.

Cl. of Arr. *DEcimo die Februarii anno Regni dicti Domini Regis nunc ſeptimo, & diverſis aliis diebus & vicibus, tam antea quam poſtea, apud Parochiam Sancti* Pauli Covent-Garden, *prædict', in Comitatu prædict' falsè, malitiosè, diabolicè, proditoriè, compaſſaverunt, imaginati & machinati fuerunt, excogitaverunt, deſignaverunt & intendebant dictum Dominum Regem nunc occidere, interficere, & murdrare, & ſtragem miſerabilem inter fideles ſubditos ipſius Domini Regis per totum hoc Regnum Angliæ paſſere, & cauſare & ad eaſdem nefandiſſimas, nequiſſimas & diabolicas proditiones & proditorias compaſſationes, machinationes, & propoſita ſua prædicta perimplend' perficiend' & ad effectum redigend' ipſi iidem* Chriſtophorus Knightley, Robertus Lowick, Ambroſius Rookewood & Carolus Cranburne, *& quam plurimi alii falſi proditores (Furator' prædictis ignoti) poſtea ſcilicet eodem decimo die Februarii anno ſupradicto apud Parochiam prædictam in Com' prædicto, ac diverſis aliis diebus & vicibus, tam antea quam poſtea, ibidem & alibi in eodem com' falsè, malitiosè, adviſatè, clandeſtinè, proditoriè, ac vi & armis conveniebant, propoſuer' tractaver' conſultaver' conſenſer' & aggreaver' ad ipſum Dominum Regem nunc ex inſidiis & dolo percutiend', Anglicè* to aſſaſſinate, *interficiend' & murdrand' & ad execrabilem, horrendam & deteſtabilem*

teſtabilem Aſſaſſination' Anglicè Aſſaſſination, *& Interfectionem ill' citius exequend' & perpetrand' poſtea, ſcilicet eiſdem die & anno ac diverſis aliis diebus & vicibus apud paroch' præd' in Com' prædicto proditoriè tractaver' propoſuer' & conſultaver' de viis, modis & mediis ac tempore & loco ubi, quando, qualiter & quomodo dictum Dominum Regem ſic ex inſidiis facilius interficerent, & conſenſer' aggreaverunt & aſſenſer' quod quadragint' homines Equeſtres aut eo circiter (quor' iidem* Chriſtophorus Knightley, Robertus Lowick, Ambroſius Rookwood & Carolus Cranburne *forent quatuor, & quilibet eor' proditoriè ſuper ſe ſuſcepit eſſe unum) cum Bombardis, ſclopis & ſclopetis, pulvere bombardico, & globulis plumbeis onerat' & cum gladiis, enſibus & aliis Armis armat' inſidiati forent & eſſent in ſubſeſſu, Anglicè* in Ambuſh, *ad eundem Dominum Regem in Rheda ſua, Anglicè* his Coach, *exiſten' quando foris iret iuvadend' Quodque quidem & competens numerus de hominibus illis ſic armat' in ſatellites, Anglicè* the Guards, *ipſius Domini Regis eum tunc attendend' & ſecum exiſten' aggreſſi forent & eos expugnarent & devincerent, dum alii eorundem hominum ſic armat' ipſum Dominum Regem percuterent, interficerent, occiderent & murdrarent.*

Mr *Mompeſſon.* The Conſult is like the Aſſault, and the Agreement is like the Stroke.

L. C. J. *Treby.* It is a nice Caſe as you wou'd have it, but I think it is very natural as the King's Council put it at firſt; they lay the Conſultation of the Ways and Means how it ſhou'd be done, and then they conclude that thus it ſhall be done: All which makes but one intire Thing.

L. C. J. They ſay they met that Day at St. *Paul Covent-Garden*, that's in the Beginning, and did conſult how to kill the King; and they conſented and agreed among themſelves, that it ſhou'd be done in this manner: Does not this refer to both Time and Place in the Beginning? It is a continuing on of the ſame Sentence, and makes all but one and the ſame Act; it is the Reſult of the Conſultation at that Time and Place.

Sir *B. Shower.* But, my Lord, it might be at another Place: They might conſult at one Place, and conclude at another.

Mr *Conyers.* But it is laid to be at the ſame Place, for no other Place does appear, and it is one continued Sentence.

L. C. J. *Treby.* You wou'd make the Repetition ſo frequent and reiterated, that it wou'd become abſurd.

Mr *Att. Gen.* Indeed I do not know what theſe Gentlemen wou'd have.

Sir *B. Shower.* We wou'd have this Indictment as all others are, the Precedents are as we ſay, and we hope this ſhall purſue 'em, or elſe be quaſht.

L. C. J. Look ye here, Sir *Bartholomew Shower*; Suppoſe this Part ſhou'd not be right, that will not vitiate the whole Indictment.

Mr *Mompeſſon.* But your Lordſhip won't ſuffer them to give Evidence of that Part that is vitious.

L. C. J. Yes, yes; it comes within the firſt Words of the Time and Place laid; they may give Evidence of it, becauſe this is but a ſetting forth the Manner agreed upon for the Execution of the Deſign that was before conſulted and treated of; it is comprehended in the former Words; and if they had omitted this out of the Indictment, the Indictment had been never the worſe; there had been a ſufficient Overt-Act alledged to prove the Compaſſing and Imagining the Death of the King; for if People at ſuch a Place and Time meet, and propoſe the Way and Means how to effect it, do you think the Indictment wou'd not be good enough without laying the particular Means agreed upon? Certainly it had been well enough if this had been omitted. Do you think they cannot give in Evidence this as a Proof of the Overt-Act? Certainly they may.

Sir *B. Shower.* The Queſtion will be, my Lord, then upon the whole, Whether the Concluſion of the Indictment, *contra legiantiæ ſuæ Debitum*, ſhall be taken diſtributively to every Fact, and if ſo, then there ought to be Time and Place alledg'd to every Fact.

L. C. J. Suppoſe you lay ſeveral Overt-Acts, and prove but one, yet he is to be found guilty of the High-Treaſon, which is the Imagination, and Compaſſing the Death of the King, which is the Crime laid in the Indictment; then ſuppoſe this was left out of the Indictment, they might give it in Evidence as a Proof of the Overt-Act, that is well laid for Time and Place; and therefore though it be expreſs'd, and not ſo fully and particularly laid, we cannot quaſh the Indictment for it, becauſe the Indictment would have been good, though that had been omitted.

L. C. J. *Treby.* That is certainly true, it is no Cauſe for quaſhing the Indictment.

Mr *Soll. Gen.* The Indictments againſt the Regicides were for Compaſſing the Death of the King, and they gave in Evidence that he was put to Death, though they charg'd in the Indictment only the Compaſſing and Imagining the Death of the King.

L. C. J. Ay ſure, That is an Overt-Act with a Witneſs, the Indictment was not laid for Murdering the King, but for Compaſſing his Death, which is the Treaſon according to the Act of Parliament of 25th, *Ed.* the 3*d*, and as an Overt-Act they gave the Cutting off his Head in Evidence.

Mr *Att. Gen.* The Indictment ſays, they compaſs'd and imagined the King's Death, and they agreed to do it in this manner; if this be not all one intire Sentence I know not what is.

L. C. J. As to your Caſe, Mr *Mompeſſon*, which you quote out of *Dyer*, it is poſſible a Man may make an Aſſault at one Time, and at another Time make an Aſſault and give a Stroke, but this is all one Act, it does but ſpecify what was generally conſulted of and propoſed.

L. C. J. *Treby.* Pray, do you think a Man may demur upon a common Action of Battery, where 'tis ſaid firſt, at ſuch a Time and Place, *Inſultum fecit & verberavit, vulneravit*, becauſe there is not a Place ſet to every Word.

Mr *Mompeſſon.* Indictments ought to be very curiouſly penn'd, and what is good in an Action will not be good in an Indictment, with Submiſſion.

L. C. J. *Treby.* But ſuppoſe you ſhow'd it for Cauſe upon ſpecial Demurr.

Mr *Mompeſſon.* My Lord, I cannot tell what it wou'd amount unto.

L. C. J. You cannot quaſh the Indictment at this Time, that is not poſſible, becauſe the Indictment is good as to the reſt, ſuppoſing this was not ſo well as it might be.

Mr *Mompeſſon.* Then, my Lord, I am in your Lordſhip's Judgment, whether they ſhall be admitted to give in Evidence this particular Thing.

L. C. J. They may certainly give in Evidence, the Agreement to have Forty Men to kill the King, as a Proof of the Conſultation, Agreement and

and Conſent to kill the King; and the Conſenting to have Forty Horſemen is an Evidence of their treating, propoſing and conſulting to kill the King. Then for your Objection of *Quilibet ſuſcepit* to be one, that is well enough, it is all ſtill but one Sentence.

Sir *B. Shower.* One of which is it? for they have not laid in the Indictment what it is, whether it be one of the Four, or one of the Forty.

L. C. J. Whether it be one of the Four, or the Forty, is not material, for cannot one be found guilty and the reſt acquitted? the one is not charg'd with the Act of the other, but they are ſeveral Offences, and each muſt anſwer for himſelf. In all Indictments, Offences are ſeveral. Suppoſe an Indictment of Conſpiracy, and it is laid in the Indictment that Four did conſpire, can't you prove that two conſpired? no Queſtion you may. It is not certainly neceſſary that every one ſhou'd be proved to have conſpired. Suppoſe it were alledged that Four did beat a Man, and does not ſay *Quilibet eorum* beat him, you may give in Evidence that one did beat him.

Sir *B. Shower.* No Queſtion of that in Caſe of a Battery, but in the Caſe of a Conſpiracy there muſt be more than one.

L. C. J. Nay, I will ask you even in an Action of Conſpiracy, where the very Giſt of the Action is Conſpiring together, cannot two be found guilty and the reſt acquitted? In Riots there muſt be Three or more. It may be you'll lay Ten, but it is ſufficient, I hope, if you prove it upon any Three of them.

Mr *Att. Gen.* The Difference is betwixt Contracts and Crimes, for Contracts they are joynt, but Crimes they are in their own Nature ſeveral.

Mr *Soll. Gen.* Beſides, my Lord, though they be out of Time, yet this is not to the Abatement of the Indictment; but to the Evidence; how do they know, but we will give it in Evidence that *Coriſtopher Knightley* was one.

L. C. J. *Treby.* Mr *Mompeſſon* moves it as a Caveat againſt your giving it in Evidence.

Sir *B. Shower.* If in an Outlawry againſt diverſe, they leave out theſe Words, *Nec eorum aliquis comperuit*, that is every Day held to be nought, and for that Reaſon we ſay, the *Quilibet eorum ſuſcepit* is neceſſary too, and without being laid cannot be given in Evidence, and if it be laid, it ought to have Time and Place.

L. C. J. *Treby.* The Default of Appearance muſt be a ſeveral Thing, and when he lays it joyntly *non comperuerunt*, it may be true that all did not appear, if any one made Default; but when you charge Men with a Fact done, though in the plural Number, yet it is a diſtinct ſeparate Charge upon every one.

Cl. of Arr. Robert Lowick, thoſe Men that thou ſhalt hear call'd, and perſonally appear, are to paſs between our Sovereign Lord the King, and you, upon Tryal of your Life and Death; if therefore you will challenge them, or any of them; your Time is to ſpeak to them as they come to the Book to be ſworn, and before they be ſworn. *George Ford.*

Lowick. I do not except againſt him.

Cl. of Arr. Hold the Book to Mr *Ford.*

Cryer. Look upon the Priſoner, you ſhall well and truly try, and true Deliverance make, between our Sovereign Lord the King and the Priſoner at the Bar, whom you ſhall have in Charge, and a true Verdict give according to your Evidence: So help you God.

Cl. of Arr. *Thomas Trench.*

Lowick. I have nothing to ſay againſt him. (*He was ſworn.*)

Cl. of Arr. *John Wolfe.*

Lowick. I do not except againſt him. (*He was ſworn.*)

Cl. of Arr. *James Bodington.*

Lowick. I challenge him.

Cl. of Arr. *John Raymond.*

Lowick. I ſay nothing againſt him. (*He was ſworn.*)

Cl. of Arr. *George Hawes.*

Lowick. I do not except againſt him. (*He was ſworn.*)

Cl. of Arr. *Thomas Glover.*

Lowick. I challenge him.

Cl. of Arr. *Matthew Bateman.*

Lowick. I do not except againſt him. (*He was ſworn.*)

Cl. of Arr. *James Partherith.*

Lowick. I challenge him.

Cl. of Arr. *Joſeph Bliſſet.*

Lowick. I challenge him.

Cl. of Arr. *Alexander Forth.*

Lowick. I challenge him.

Cl. of Arr. *Francis Chapman.*

Lowick. I challenge him.

Cl. of Arr. *Nicholas Roberts.*

Lowick. I challenge him.

Cl. of Arr. *Thomas Playſtead.*

Lowick. I challenge him.

Cl. of Arr. *John Hall.*

Lowick. I challenge him.

Cl. of Arr. *William Partridge.*

Lowick. I challenge him.

Cl. of Arr. *Peter Levigne.*

Lowick. I challenge him.

Cl. of Arr. *Thomas Moody.*

Lowick. I challenge him.

Cl. of Arr. *Thomas Ramage.*

Lowick. I do not except againſt him. (*He was ſworn.*)

Cl. of Arr. *Edward Townſend.*

Lowick. I challenge him.

Cl. of Arr. *William Gunſon.*

Lowick. I challenge him.

Cl. of Arr. *John Wyborne*, he did not appear. *William Strode.*

Lowick. I challenge him.

Cl. of Arr. *William Wild.*

Lowick. I do not except againſt him. (*He was ſworn.*)

Cl. of Arr. *William Pitts.*

Lowick. I do not except againſt him. (*He was ſworn.*)

Cl. of Arr. *William Smith.*

Lowick. I do not except againſt him. (*He was ſworn.*)

Cl. of Arr. *Moſes Cook.*

Lowick. I challenge him.

Cl. of Arr. *Benjamin Boltby.*

Lowick. I do not except againſt him. (*He was ſworn.*)

Cl. of Arr. *Elias Fletcher.*

Lowick. I have nothing to ſay againſt him. (*He was ſworn.*)

Cl. of Arr. *Cryer countez. George Ford.*

Cryer. One, &c.

Cl. of Arr. *Elias Fletcher.*

Cryer. Twelve Good Men and True, ſtand together and hear your Evidence.

L. C. J. Now the reſt of the Jury that have appeared are diſcharged.

Cl. of Arr. Cryer, make Proclamation.

Cryer.

Cryer. Oyez, If any one can inform my Lords the King's Juſtices of *Oyer* and *Terminer*, the King's Serjeant, or the King's Attorney General, before this Inqueſt be taken of the High-Treaſon, whereof the Priſoner at the Bar ſtands indicted, let them come forth, and they ſhall be heard, for now the Priſoner ſtands at the Bar upon his Deliverance, and all others that are bound by Recognizance to give Evidence againſt the Priſoner at the Bar, let them come forth and give their Evidence, or elſe they forfeit their Recognizance.

The Names of the Twelve ſworn are theſe;

George Ford, Eſq;
Thomas Trench, Eſq;
John Wolfe, Eſq;
John Raymond, Eſq;
George Hawes, Eſq;
Matthew Bateman, Eſq;
Thomas Ramage, Gent.
William Wild, Gent.
William Pitts, Gent.
William Smith, Gent.
Benjamin Bolſby, Gent. &
Elias Fletcher, Gent.

Cl. of Arr. Robert Lowick, hold up thy Hand; which he did. You that are ſworn, look upon the Priſoner and hearken to his Cauſe. He ſtands indicted by the Name of *Robert Lowick*, late of the Pariſh of St. *Paul Covent-Garden*, in the County of *Middleſex*, Gentleman; for that he, together with *Chriſtopher Knightley*, late of the ſame Pariſh and County, Gentleman; *Ambroſe Rookwood*, late of the ſame Pariſh and County, Gentleman; and *Charles Cranburne*, late of the ſame Pariſh and County, Yeoman; not having the Fear of God in their Hearts, nor weighing the Duty of their Allegiance, but being moved and ſeduced by the Inſtigation of the Devil, as falſe Traytors againſt the moſt Serene, moſt Illuſtrious, moſt Mild and moſt Excellent Prince, our Sovereign Lord, WILLIAM the III. by the Grace of God, of *England*, *Scotland*, *France*, and *Ireland*, King, Defender of the Faith, *&c.* their Supreme, True and Rightful, Lawful and Undoubted Lord; the Cordial Love and True, and Due Obedience, Fidelity and Allegiance, which every Subject of our ſaid Lord the King, that now is, towards him our ſaid Lord the King, ſhould, and of right, ought to bear, withdrawing and utterly to extinguiſh, Intending and Contriving, and with all their Strength Purpoſing, Deſigning and Conſpiring the Government of this Kingdom of *England*, under him our ſaid Lord the King that now is, our right, duly, happily, and very well eſtabliſhed, altogether to ſubvert, change, and alter; as alſo the ſame our Lord the King to Death and final Deſtruction to put, and bring, and his faithful Subjects, and the Freemen of this Kingdom of *England*, into intollerable and moſt miſerable Slavery to *Lewis* the *French* King, to ſubjugate and inthral, the 10th Day of *February*, in the Seventh Year of the Reign of our Sovereign Lord the King that now is, and diverſe other Days and Times, as well before, as after, at the Pariſh of St. *Paul's Covent Garden* aforeſaid, in the County aforeſaid, falſely, maliciouſly, deviliſhly, and traiterouſly, did compaſs, imagine, and contrive, purpoſe, deſign, intend, our ſaid Lord the King that now is, to kill, ſlay, and murder; and miſerable Slaughter among the faithful Subjects of our ſaid Lord the King throughout this whole Kingdom of *England*, to make, and cauſe, and the ſame their moſt wicked, impious, and deviliſh Treaſons, and traiterous Compaſſings, Contrivances, and Purpoſes aforeſaid, to fulfil, perfect, and bring to effect, they the ſaid *Chriſtopher Knightley*, *Robert Lowick*, *Ambroſe Rookwood*, and *Charles Cranburne*, and very many other falſe Traitors to the Jurors unknown; afterwards, to wit the ſame Tenth Day of *February*, in the Year aboveſaid, at the Pariſh aforeſaid, in the County aforeſaid, and diverſe other Days and Times, as well before, as after; there, and elſewhere, in the ſame County, falſly, maliciouſly, adviſedly, ſecretly, and triterouſly; and with Force and Arms did meet together, propoſe, treat, conſult, conſent, and agree, him our ſaid Sovereign Lord the King, that now is, by lying in Wait and Wild, to aſſaſſinate, kill, and murder, and that execrable, horrid, and deteſtable Aſſaſſination and Killing, the ſooner to execute and perpetrate; afterwards, to wit, the ſame Day and Year, and divers other Days and Times, at the Pariſh aforeſaid, in the County aforeſaid; traiterouſly did treat, propoſe, and conſult, of the Ways, Manner, and Means, and the Time and Place, where, when, how, and in what manner, our ſaid Lord the King, ſo by lying in wait, the more eaſily they might kill; and did conſent, agree, and aſſent, that Forty Horſemen, or thereabouts; of whom the ſaid *Chriſtopher Knightley*, *Robert Lowick*, *Ambroſe Rookwood*, and *Charles Cranburne*, would be four; and every one of them traiterouſly took upon himſelf to be one, with Guns, Muskets, and Piſtols, loaden with Gun-powder, and Leaden Bullets; and, with Swords, Rapiers, and other Arms, armed, ſhould lye in Wait, and be in Ambuſh, the ſame our Lord the King in his Coach being, when he ſhould go abroad to ſet upon, and that a certain and competent Number of thoſe Men ſo armed ſhould ſet upon the Guards of him our ſaid Lord the King then attending on him, and being with him, and ſhould fight with them, and overcome them, whilſt others of the ſame Men ſo arm'd, him, our ſaid Lord the King, to aſſaſſinate, kill, ſlay, and murder: and they the ſaid *Chriſtopher Knightley*, *Robert Lowick*, *Ambroſe Rookwood*, and *Charles Cranburne*, their Treaſons, and all their Traiterous Intentions, Deſigns, and Contrivances aforeſaid, to execute, perpetrate, fulfil, and bring to effect afterwards, to wit, the aforeſaid 10th Day of *February*, in the Seventh Year aboveſaid, at the Pariſh aforeſaid, in the County aforeſaid, divers Horſes, and very many Arms, Guns, Piſtols, Rapiers, and Swords, and other Weapons; Ammunition, and Warlike Things, and military Inſtruments, falſly, maliciouſly, ſecretly, and traiterouſly did obtain, buy, gather together, and procure; and did cauſe to be bought, obtain'd, gather'd together, and procured with that Intent, them, in and about the deteſtable, horrid, and execrable Aſſaſſination, Killing, and Murder of our ſaid Lord the King, that now is, as aforeſaid, to uſe, imploy, and beſtow; and the ſame Premiſſes the more ſafely, and certainly to execute, do, and perpetrate, he the aforeſaid *Chriſtopher Knightley*, with one *Edward King*, lately of High-Treaſon, in Contriving and Conſpiring the Death of our ſaid Lord the King that now is, duly convicted and attainted, by the Conſent and Aſſent of divers of the Traitors and Conſpirators aforeſaid, the ſaid tenth Day of *February*, in the ſeventh Year aboveſaid, traiterouſly did go and come to the Place propoſed, where ſuch intended Aſſaſſination, Killing, and Murder, of our ſaid Lord the King, by lying in Wait, ſhould be done, perpetrated and committed, to view, ſee,

and obſerve, the Conveniency and Fitneſs of the ſame Place for ſuch lying in wait, Aſſaſſination and killing, there to be done, perpetrated and committed; and that Place being ſo viewed and obſerved afterwards, to wit, the ſame Day and Year, his Obſervations thereof to ſeveral of the ſaid Traitors and Conſpirators, did relate and impart, to wit, at the Pariſh aforeſaid, in the County aforeſaid, and the aforeſaid *Charles Cranburne*, the ſame Day and Year there in order, the ſame execrable, horrid, and deteſtable Aſſaſſination, and killing of our ſaid Lord the King, by the Traitors and Conſpirators aforeſaid, the more readily and boldly to execute, perpetrate, and commit, adviſedly, knowingly, and traiterouſly, did bear and carry among divers of thoſe Traitors and Conſpirators forwards and backwards, from ſome to others of them, a Liſt of the Names of diverſe Men of thoſe who were deſign'd and appointed, our ſaid Lord the King, ſo as aforeſaid, by lying in Wait to kill and murder, againſt the Duty of the Allegiance of them the ſaid *Chriſtopher Knightley*, *Robert Lowick*, *Ambroſe Rookwood*, and *Charles Cranburne*; and againſt the Peace of our ſaid Sovereign Lord the King that now is, his Crown and Dignity, as alſo againſt the Form of the Statute in ſuch Caſe made and provided: Upon this Indictment he has been arraigned, and thereunto hath pleaded not Guilty, and for his Tryal hath put himſelf upon God and the Country, which Country you are: Your Charge is to inquire, whether he be guilty of the High-Treaſon whereof he ſtands indicted, or not guilty; if you find him guilty, you are to inquire what Goods or Chattels, Lands or Tenements, he had at the Time of the High-Treaſon committed, or at any Time ſince, to your Knowledge. If you find him not guilty, you are to inquire whether he fled for it, if you find he fled for it, you are to inquire of his Goods and Chattels, as if you had found him guilty; if you find him not guilty, and that he did not fly for it, you are to ſay ſo, and no more; and hear your Evidence.

Mr *Mountague*. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, this is an Indictment of High-Treaſon againſt *Robert Lowick*, Priſoner at the Bar, and the Indictment does charge him with compaſſing and imagaining the Death of the King, and endeavouring to ſubvert the Government, and inſlave this Kingdom of *England*, and bring it under *French* Tyranny and Slavery, and the Indictment ſets forth that *Robert Lowick*, the Priſoner at the Bar, the Tenth of *February*, met ſeveral falſe Traitors, and there conſulted and treated how to aſſaſſinate his Majeſty; and agreed, that forty Horſemen to get together, ſome to attack the Guards, while others were to aſſaſſinate the King in his Coach; and the Indictment charges him likewiſe with getting together Horſes and Arms for this Purpoſe, to this he hath pleaded not guilty. We will call our Evidence, and prove the Fact againſt him, and we do not doubt but you will do your Duty.

Mr *Att. Gen.* May it pleaſe your Lordſhip, and you Gentlemen that are ſworn, this is an Indictment of High-Treaſon, in conſpiring and compaſſing the Death and Deſtruction of the King, the Nature of our Evidence againſt the Priſoner at the Bar is this.

You will hear, Gentlemen, by the Witneſſes, that about *Chriſtmas* laſt a Conſpiracy and Deſign was ſet on foot to aſſaſſinate the King, and accordingly to accompliſh it, there were ſeveral Perſons ſent over from *France* by the late King *James*, who were Part of his Guards, and particularly Sir *George Barclay* was to be the Head of them; he was a Lieutenant of the Guards there, and he was ſent over in *January* laſt, and there were a great many Troopers ſent over, who were to be under his Direction, particularly Mr. *Harris*, who will give you an Account, that he was ſent over by Order of King *James*, and he was told particularly King *James* had a Service for him to do in *England*, and he hop'd it might be an Opportunity to advance him. He was to obſerve the Orders of Sir *George Barclay*, and by what Token he ſhould know him; he was to meet him in *Covent-Garden*, and he was told he might find him there twice a-Week in the Square, about ſix a-Clock, after it was dark; and that he might know him, he told him, he would have his white Handkerchief hanging out of his Pocket; accordingly Mr. *Harris* came over, and Mr. *Hare* came with him, and they came and did meet with Sir *George Barclay*, and they, together with Sir *George Barclay*, and ſeveral others here in *England*, Mr. *Porter*, Mr. *Charnock*, and Sir *William Parkyns*, did enter into conſultation how to effect it: There were ſeveral Meetings about it, and you will find the Priſoner at the Bar was at ſeveral Meetings to that Purpoſe, and they did undertake, among them, to provide ſo many Men as might make about the Number of Forty, which they thought ſufficient for the Execution of this Deſign.

Gentlemen, you will hear that the Priſoner at the Bar did treat with ſeveral Perſons to be ingaged in it; particularly, about the 5th of *February*, he ſent to one *Bertram*, and ask'd him if he would be ingaged in a Deſign for King *James*'s Service that was quickly to be executed, without asking of Queſtions, and afterwards, I think, he undertook he would: So about the 14th of *February* he met him again, and that was the Day before the firſt Time they intended to attack the King, and then being ſo near the Time when it was to be executed, he thought it proper to acquaint him with the Thing he had ingag'd him in; and he did acquaint him, That the next Morning they were to be ready to attack the King and his Guards, and bid him be ſure to get his Boots and other Things ready for that purpoſe, and he gave him a Guinea in order to it. *Bertram*, it ſeems, on the 15th of *February* did not come, and the King it ſeems did not go abroad that Day, ſo they were diſappointed at that Time; but the *Sunday* after *Bertram* met him, and Mr. *Lowick* complained that he had not come upon the *Saturday* according as he had undertaken; and he told him it would have been the ſame Thing, he would have diſappointed them if the King had been in the Field.

Gentlemen, you ſhall find, That as he thus engaged Mr. *Bertram*, ſo he was to provide ſeveral others; and did declare, That at his own Charge he had got two or three, he complain'd of it as a Hardſhip put upon him, That whereas Mr *Harris* had 6 *s.* a-Day Subſiſtence, and was only to take care of himſelf, he, Mr. *Lowick*, had at his own Charges ingaged and provided ſeveral.

You will find, Gentlemen, that Mr. *Rookwood*, who was tried Yeſterday, had ſeveral Meetings about it, with Mr. *Lowick* and Mr. *Harris*; they did think it to be a barbarous Thing: But however, they were reſolved to obey Orders, and the Priſoner in particular ſaid he wou'd obey Orders, tho' he thought it a very wicked Thing.

Gentle-

Gentlemen, you will find by the Evidence how the Matter was carried on; the Priſoner was to be engaged in it, and did not only imbarque himſelf in Perſon, but engaged others, and did treat with them about it. We ſhall call our Witneſſes, who will give you a full Account of it, and then we ſhall leave it with you, who we queſtion not will do Juſtice. Firſt call *George Harris*; who appeared and was ſworn.

Mr *Sol. Gen.* Pray will you give an Account to my Lord and the Jury, what you know of the intended Aſſaſſination, and what Part the Priſoner at the Bar had in it.

Mr *Conyers.* Begin from the Firſt, and tell your whole Knowledge as you did Yeſterday.

Mr. *Harris.* On the 14th of *January*, New Stile, I was ordered to wait on King *James* at Dinner; after Dinner was over, I was called in, where was Coll. *Parker* and Mr. *Hare* at the ſame Time, and King *James* told me he was very ſenſible of the good Service I had done him; and now he had an Opportunity of doing ſomething for me: I was to go into *England*, and there to be ſubſiſted, and I was to follow the Orders of Sir *George Barclay*; the King told me I ſhou'd find Sir *George Barclay* in *Covent-Garden*, with a white Handkerchief hanging out of his Pocket, on *Mondays* and *Thurſdays* between the Hours of ſix and ſeven in the Evening, and that was the Sign I was to know him by, and he ordered me to go to Mr. *Caroll*, that is Secretary to the late Queen, and Coll. *Parker* went along with me, and he ordered me ten *Lewidores*, and Mr. *Hare* as much, which Mr. *Caroll* gave us; and if that were not ſufficient, or if we were Wind-bound at *Calis*, we had Orders to apply to the Preſident of *Calis* to be furniſh'd with what we wanted: Accordingly we went, and the Wind not ſerving when we come to *Calis*, we were forced to ſtay there, and our Charges were paid to our Landlady by the Preſident of *Calis*, according to the Order we received at St. *Germains*; when the Wind ſerved fair we went on Board, and came to *Rumney-marſh*, to one Mr. *Hunt*'s Houſe, and from thence he furniſh'd us with a Couple of Horſes, and we came the Sandy-way to one Mr. *Tucker*'s, and from thence to Mr. *Croſs*'s, and from thence to *Graves-end*, and from thence to *London*: We came up in the Night-tide, and being late when we came to Town, *Sunday*-night, we lay at an Inn at the lower-end of *Gracious-ſtreet*; the next Day we went to look for Sir *George Barclay*, but not finding him in *Covent-Garden*, according to what King *James* told us, I admired at it; but one Mr. *Birkenhead* meeting my Comrade the next Day, ſaid, Sir *George Barclay* deſired to ſee us, and appointed us to meet him, which we did that Night, where Sir *George Barclay* ask'd us how the King and Queen, Prince and Princeſs did; he told us at that Time he had no Money for us, but in a fews Days we ſhou'd have Money; and accordingly he ſent us Money. We had five Guineas, but it was at twice; two Guineas at one Time and three at another, and this was for a Month's ſubſiſtence at five Shillings a Day, Guineas going then at thirty Shillings. And afterwards when Major *Holmes* delivered the Horſe, upon *Saturday* the 15th, we had another Guinea, that made up what we had to be ſix Shillings a Day when we had Horſes, and five Shillings a Day when we had none: And as for Mr. *Lowick*, the firſt *Saturday* which was deſigned for the Aſſaſſination, I happened to be at Mr. *Counter*'s Lodgings in *Holborn*, a Confectioner's; and there I ſee Mr. *Lowick* come in.

Mr. *Conyers.* Who lodg'd there, pray Sir?

Harris. Sir *George Barclay* and Mr. *Counter* had Lodgings there; and Mr. *Lowick* came in there, but I cannot ſay he ſtay'd there any Time, I think he went out preſently afterwards. The next Week I met Mr. *Lowick* in *Red-lyon Fields* and diſcourſed with him there about this Matter, and I told him what a barbarous and inhumane Thing it was that we ſhould be the Murderers of the Prince of *Orange*, and that it would render us odious to the World, and that we ſhould be a continual Reproach to our ſelves; he did agree it was ſo: But in concluſion Mr. *Lowick* ſaid he would obey Orders, and he ſaid Sir *George Barclay* he was ſure wou'd not do it without Orders. That Day when we were walking out, we met Sir *George Barclay* and Major *Holmes* riding in the High-way up towards *Iſlington*, and we ſpoke to him, for Mr. *Lowick* told me the Thing was diſcovered, and his Name was given up, and other Gentlemens, and I think another; and ſo he told me that one *Harriſon* told him of it, and forewarn'd him that Night from lying in his Lodging; and he told him that he believed it wou'd not be ſafe for the Reſt to lie in their Lodgings, or to that effect.

Mr *Att. Gen.* When he ſaid he wou'd obey Orders, What was the Diſcourſe about.

Harris. We were talking of murdering the Prince of *Orange:* And not only that, but I do believe that Mr. *Lowick* is ſo ſenſible that what I ſay is true, and he is a Man of ſo much Conſcience and Honour, that he will not contradict any Thing that I affirm or have ſaid here. On *Saturday* the Two and Twentieth we dined at the *Caſtle*, a Tavern or a Cook's Shop, at the End of *Red-lyon Street*. I was much in a Sweat, and he ask'd me what made me ſo? I told him I had been getting Captain *Rookwood*'s Party ready; and I told him (laughing) that Captain *Rookwood* ſaid I ſhould be his *Aid du Camp*, and ſo I was getting the Men together: Says he to me, you may very well do it, for you have ſix Shillings a Day, and I have nothing. Mr. *Lowick*, you know what I ſay to be true; I know not why you lift up your Hands; but you did tell me I might very well do it, having ſix Shillings a Day, and you had nothing, and yet brought a Couple of Men at your own Charge, and that their Horſes could not be diſcharged unleſs you went. Theſe were his Words, my Lord, or to this effect.

Mr *Att. Gen.* What do you mean by being diſcharged?

Harris. I mean this, that I believe he paid for them; and they were waiting at a Houſe till he came.

Mr *Conyers.* Why were they to be diſcharged that Day?

Harris. The Reaſon why they were to be diſcharged that Day, was, becauſe Captain *Rookwood* had told him before, that the Prince of *Orange* did not go out that Day; and therefore we went together to walk towards *Iſlington*.

L. C. J. What Day was that?

Harris. The ſecond *Saturday* that it was to have been executed. I was not a Spy upon any Man's Actions: I cannot tell what they did any more than I tell you: I do not wrong you any Way in the World, Sir, I am ſure on it.

L. C. J. When was it that you ſpoke with Mr *Lowick* about murdering the King?

Harris. It was *Monday*, *Tueſday*, *Wedneſday*, or *Thurſday*, I cannot be exact to the Day, but it was

one of these Days, after the first *Saturday*; I cannot be positive what the Day was.

L. C. J. Well, it was between the two Days?

Harris. Yes, it was.

L. C. J. How did you know of that Design of murdering the King?

Harris. I was inform'd of it by Captain *Rookwood* the first *Saturday*, and I met Mr. *Lowick* and had this Discourse about it; and afterwards they informed me that Mr. *la Rue* did not lie at his Lodgings, and the Thing was discovered, and they believed that *Rue* had discovered it: And I desire you'll call Mr. *la Rue* as to this Matter; for I believe he will own it.

Mr *Soll. Gen.* How came you to trust him with such a Discourse?

Harris. Because we met there at *Counter*'s Lodgings, and we had several times Discourses of it; there was Major *Bernard* and Captain *Rookwood* besides, and I always declared against it as a barbarous and inhumane Thing, not to be answer'd before God or Man, and that we should be odious to all the World if the Thing were effected, as I believ'd it would not be. I wou'd never shew my Head after such a Thing.

Mr *Soll. Gen.* Do you remember who began the Discourse of this Matter?

Harris. I cannot tell that. I can't come to every Particular.

Sir *B. Shower.* You said just now, you apprehended Mr. *Lowick* to be a Man of Conscience and Honour; Pray what were his Sentiments about it?

Harris. His Sentiment was, That he would obey Sir *George Barclay*'s Orders; and he was sure Sir *George Barclay* would not do it without Orders.

Sir *B. Shower.* Did not he declare it to be a barbarous Design?

Harris. I can't remember every particular Thing that he said; for I am not a Spy upon any Man's Actions.

Lowick. When you were talking of that Design that you speak of, pray did I consent to any such Thing?

Harris. I tell you how far you consented; you said you wou'd obey Sir *George Barclay*'s Orders, and you was sure he wou'd not do it without Orders.

Mr *Mompesson.* Did you see any of Sir *George Barclay*'s Orders?

Harris. No, I did not, I was to follow his Orders; but what Orders he had I cannot tell.

Mr *Sol. Gen.* What did Sir *George Barclay* tell you you were to do?

Harris. Sir *George Barclay* declared, on the first *Saturday*, that we were his Janizaries, and talk'd of attacking and bringing away the Garter: I cannot say this Gentleman was by then; and afterwards Sir *George Barclay* went out and returned, and came in again into the Room, and declared that we were Men of Honour, and that we were to attack the Prince of *Orange*.

Mr *Mompesson.* Did Sir *George Barclay* give the Prisoner at the Bar any Orders?

Harris. I don't tell you he did.

Mr *Mompesson.* You say you met Sir *George Barclay* and Major *Holmes* upon the Road going to *Islington:* How do you know the Prisoner was there?

Harris. Why, was not I with him? I am very sorry to come upon this Account; but you know it is Truth all that I say; and I am sure you are sensible I do you no Wrong: He met Sir *George Barclay* and Major *Holmes*, and he went down and said something to Sir *George Barclay* in the Highway; what it was I don't know; but I stood, and Captain *Rookwood* and Mr. *Bernard* said something to him, which you very well know.

Mr *Att. Gen.* What was it?

Harris. I can't tell, Sir.

Mr *Att. Gen.* We do not desire you to tell what you can't tell: Is this all you know?

Harris. It is all at present that I recollect.

Mr *Soll. Gen.* Then pray swear Mr *Bertram* (which was done.)

Mr *Conyers.* Pray will you give an Account to my Lord and the Jury what you know of this intended Assassination, and how far the Prisoner was concerned in it.

Bertram. My Lord, about the Beginning of *February* last, Major *Lowick* came to me, and ask'd me if I wou'd espouse a Thing with him that might be for my Advantage; I told him that I thought I might espouse any Thing that he thought fit to engage in.

Mr *Mompesson.* Whom did you tell so?

Bertram. Major *Lowick:* And he told me it was well, and desired me to ask no more Questions: I did not; but it went on till the 14th of *February*, when he desired me to be at his Lodgings at twelve a-Clock. I was so about that Time, but he was not within, and I stay'd till he came in, and he took me up into his Chamber, and told me he believed they should ride out in some little Time; and he told me he believed the King was to be seiz'd in his Coach, and he gave me a Guinea to buy me Necessaries.

L. C. J. What Necessaries?

Bertram. I can't say he nam'd any.

Mr *Att. Gen.* But for what Purpose were those Necessaries?

Bertram. I don't know that he named any Thing, indeed.

Mr *Att. Gen.* Well; did he tell you when you were to be ready?

Bertram. If you please to give me leave, I'll tell you: He desired me not to be out of the Way; and the next Morning I was to meet him at the Purl-House in *Hart-street*. I did not meet him; and the next Time I saw him, I am not positive whether it was the next Day after the Fifteenth when I was to meet him at *Hart-street*, but did not so; but the next Time I saw him, he ask'd me why I did not meet him according to his Appointment? I told him, I had some Reason for it; and he answer'd me again, That he believed, if the King had been in the Field, I would have done the same; but I have not seen him since, till I saw him at the Bar.

Mr *Att. Gen.* Had you no Discourse of Horses that you were to provide?

Bertram. I do not remember any particular Thing more than I have told you.

Mr. *Att. Gen.* Did he not tell you what the Design was you were to go about?

Bertram. He did not tell me of any other Design than as I tell you, for he believed I knew of it; I thought so at least: The first time I knew of it was from Mr *Charnock*.

L. C. J. What did he tell you was the Design that you should ingage in for your Advantage upon *Friday* the 14th, when he gave you the Guinea?

Bertram. He told me, he believed they should ride out very suddenly, and that the King was to be seized in his Coach.

L. C. J.

L. C. J. Did he tell you when the King was to be ſeized?

Bertram. No, he did not tell me when, but this was the 14th, the next Morning I was to meet him at *Hart-ſtreet*, but did not.

Mr *Sol. Gen.* Who did he tell you the King was to be ſeiz'd by?

Bertram. He did not nominate any one elſe, for he obliged me not to ask him Queſtions, nor I did not.

Mr *Soll. Gen.* Did he name himſelf to be concerned?

Bertram. He named himſelf ſo far, as that he believed he ſhould ride out very ſuddenly.

Mr *Soll. Gen.* Was it the next Morning, or the next Day?

Bertram. I cannot ſay that he named any particular Time.

Mr *Att. Gen.* Will they ask him any Queſtions?

Sir *B. Shower.* No, I think we ſhall not.

Mr *Mountague.* Pray, Mr *Bertram*, will you anſwer me one Queſtion, What did he ſay to you when he check'd you for not coming according to his Appointment?

Bertram. I took it as a Kind of a Check: He told me, that if the King had been in the Field, he believed I would have done the ſame.

Sir *B. Shower.* There is one Thing we muſt a little examine this Gentleman to: Were not you under a Neceſſity before that Time that he gave you the Guinea? Pray what Condition were you in?

Bertram. Under Neceſſity, Sir! I was never very plentiful of Money of late.

Sir *B. Shower.* Did he never give you a Guinea or two before in Charity, and out of Compaſſion to your Neceſſities?

Bertram. He has given me Money ſeveral Times before; and I believe if I would have ask'd him for any Money, he would have given it me.

Mr *Att. Gen.* Was this Money given you for Charity, or for any other, and what Purpoſe?

Bertram. I did not ask him for any Thing, but he gave it me, and ſaid, There's a Guinea to buy you Neceſſaries.

Mr. *Att. Gen.* What was the Diſcourſe before that?

Bertram. I told you, he ſaid, he believed they were to ride out very ſuddenly, and he believed the King was to be ſeized in his Coach, and he deſired me not to be out of the Way.

Mr *Cowper.* And when he gave you the Guinea to buy you Neceſſaries, was it immediately after this Diſcourſe?

Bertram. Sir, it was at the ſame Time.

Lowick. Did not I give your Wife a Guinea two Months before this?

Bertram. Yes, Sir; I acknowledge I was informed you did, I was not in Town then.

Lowick. Pray let the Court know that.

L. C. J. Did he tell you the King was to be ſeized in his Coach, before he told you they were to ride out very ſuddenly?

Bertram. No, afterwards; and then he gave me the Guinea.

Sir *B. Shower.* His Words are not coupled together, they have no Relation to one another.

L. C. J. No; but he told him they were to ride out very ſuddenly, and the King was to be ſeized in his Coach, and gave him a Guinea to buy him Neceſſaries at the ſame Time.

L. C. J. Treby. There's no doubt he was ingaged in the Deſign with thoſe other Perſons.

Mr *Conyers.* And afterwards he rebuked him becauſe he had not met him; and he ſaid, it would have been the ſame Thing, if the King had been in the Field.

Mr *Mountague.* What Day in the Week was it that you failed him?

Bertram. It was on a *Saturday*.

Juryman. Pray, my Lord, we deſire to know, who he did underſtand by the King that was to be ſeized.

L. C. J. What did he call the King?

Bertram. He ſaid nothing but the King.

L. C. J. Who did you underſtand by that?

Bertram. I leave it to the Court, I am not to interpret Things.

L. C. J. Treby. Did he name the Prince of *Orange*, or King *James*? Did you think King *James* was to be ſeized?

Bertram. My Lord, I tell you what he ſaid, I am not to interpret his Words.

Mr *Att. Gen.* Do you believe he meant King *James*, or this King, that was to be ſeized?

Bertram. I believed it might be the King here.

L. C. J. Take the Words as they are; he ask'd him before, Whether he would ingage in a Deſign that might be for his Advantage? On *Friday* the 14th of *February* he meets him at his Lodging, and tells him, he was to ride out ſuddenly, and that the King was to be ſeized in his Coach, and appointed him to meet him the next Morning, and gave him a Guinea to buy him Neceſſaries.

Mr *Mompeſſon.* Pray, has not Mr. *Lowick* given you Clothes, Linnen and other Things at any other Time?

Bertram. Sir, you have been always ready to ſerve me, I muſt acknowledge, and you have been very kind to me.

Lowick. If you pleaſe to give an Account of my Character, whether ever I was guilty of any bloody Thing.

Bertram. No, Sir.

Sir *B. Shower.* How long have you known Mr *Lowick?*

Bertram. I believe I have known him this 20 Years.

Sir *B. Shower.* What Behaviour has he been of?

Bertram. He has always had very good Behaviour, and the beſt; he has had the beſt Character of all Mankind.

Sir *B. Shower.* Did you ever know him inclined to do a raſh Action?

Bertram. Never in my Life.

Sir *B. Shower.* Did you ever know him do a malicious Action?

Bertram. No, but he had always the Character of a good Man, and was always ready to ſerve any Man in his Neceſſities, and to do Good; he has that general Character abroad.

L. C. J. Where does he live?

Bertram. He lived laſt at *Brownlow ſtreet*, but he has no Wife nor Family, and ſo has no fix'd Being.

L. C. J. What was his Way of Living?

Bertram. He was bred a Soldier, and has been abroad.

L. C. J. Where?

Bertram. In *Ireland*.

L. C. J. In whoſe Service?

Bertram. In the Service of King *James*.

Lowick. He knows particularly, that once I was upon a Party and ſaved five Officers from being killed in cold Blood.

L. C. J. What Countryman is he?

Bertram. Yorkſhire.

Mr *Mom-*

Mr *Mompeſſon.* Was he accounted of a cruel or a bloody Nature?

Bertram. No, of a quite contrary.

Juryman. My Lord, I deſire to know for what Cauſe he gave him or his Wife a Guinea.

Bertram. I know not what that Guinea was for that he gave me the fourteenth of *February*, any otherwiſe than as I have told you.

Mr *Mompeſſon.* What was the Guinea given to your Wife for?

Bertram. For that Guinea given to my Wife, it was out of his own Kindneſs and Goodneſs to my Family and me.

Mr *Att. Gen.* What was the other Guinea for? You are upon your Oath.

Bertram. Indeed, Sir, I cannot tell; he gave it me to buy me Neceſſaries.

Mr *Att. Gen.* Was there nothing elſe mentioned what Neceſſaries thoſe were to be?

Bertram. No, Sir; upon my Oath there was not any Particular mentioned.

Mr *Att. Gen.* What made him ſo kind to you, pray?

Bertram. We were both born in a Town, and I believe we are near related.

Sir *B. Shower.* You ſay you are Towns-People, and have been long acquainted, and you knew him in *Ireland*, pray did you ever know that he ſaved any People's Lives?

Bertram. I was not in that Action my ſelf, but all that were in it gave that Relation, that he was very favourable, and did ſave Peoples Lives, particularly one Captain *Harlow*, and brought him and others Priſoners, and I remember the Thing; it was about a Fortnight before the Buſineſs of the *Boyne*, upon a *Sunday* Morning, that they took thoſe Priſoners, and he did perſwade ſeveral Parties that he commanded, to decline killing, as much as they could: I was not in this Action, but this I heard of all that were in it, and from the Priſoner.

Mr *Soll. Gen.* When he gave you that Guinea, did not he ſpeak any Thing of a Horſe that was to be provided for you?

Bertram. Not a Word: I never did ſee a Horſe upon that Account, nor was I Maſter of a Horſe, nor was I told I ſhould have a Horſe in any reſpect whatſoever.

Juryman. How could you ride out, as you ſay they were to do, without a Horſe, or without knowing any Thing of a Horſe to be provided for you?

Bertram. I did not know of a Horſe.

L. C. J. But he ſaid you were to ride out ſpeedily.

Bertram. No; he ſaid in general, we ſhould ride out ſuddenly.

Mr *Att. Gen.* Who was there beſides your ſelf?

Bertram. No Body.

Mr *Att. Gen.* Then that *we* muſt mean you and him. And how were you to ride out without a Horſe? Pray mind what you ſwear?

Bertram. I was to meet him the next Morning, but did not.

Mr *Att. Gen.* Pray what cou'd you underſtand by that, that you were to ride out ſuddenly, and had no Horſe?

Bertram. That was underſtood, that if I did ride out, I muſt have a Horſe.

Mr *Att. Gen.* Who ſhould you have it from? had you a Horſe of your own?

Bertram. No, I had not.

Mr *Att. Gen.* Did you intend to hire a Horſe?

Bertram. No, I did not.

Mr *Att. Gen.* Did not you ask where you were to have a Horſe?

Bertram. No, I did not ask nor inquire, nor was it promis'd me I ſhould have a Horſe.

Mr *Att. Gen.* Did he tell you where you were to ride?

Bertram. The next Morning I was to meet him.

Mr *Att. Gen.* For what? to ride out was it?

Bertram. I can't really tell whether it was upon that Account or not.

Mr *Att. Gen.* Whether did he tell you where he was to ride?

Bertram. Indeed he did not.

Juryman. It is very ſtrange that you did not ask him where he was to go, nor ask him for a Horſe.

Bertram. I was ſo ſenſeleſs, that I neither did ask him about a Horſe, nor ever knew of any that was to be provided for me.

Juryman. Did you underſtand what was meant by the Riding out ſuddenly?

Bertram. I did take it to be about the Buſineſs, the Seizing of the King.

Juryman. Did he compare it to attacking him in the Field?

Bertram. No, he did not; but he ſaid he believed the King would be ſeized in his Coach; he made no Compariſons.

Mr *Mountague.* Pray Mr. *Bertram*, why did you not meet him? what Reaſons had you for not doing it?

Bertram. I thought it not requiſite to meet him.

Mr *Mountague.* What, had you no Mind to the Thing?

Bertram. No, I had not; becauſe I thought the Thing very unlawful.

Mr *Att. Gen.* Pray what was that Thing you ſpeak of, that you thought was unlawful?

Bertram. I thought it was about ſeizing and killing the King.

L. C. J. Pray mind; there is no Body deſires you ſhould ſpeak more than the Truth; but on the other ſide, being upon your Oath, you are to ſpeak the whole Truth; for if you conceal any Part of the Truth, though you have a Kindneſs for your Countryman Mr. *Lowick*, who has been kind to you, you will forſwear your ſelf, for you make a different Repreſentation of the Matter, and make it appear quite otherwiſe than it is; pray do not ſtrain one Tittle, but let us have all the Truth.

Bertram. I don't believe I ſtrain one Bit.

Mr *Mountague.* Then tell my Lord why you did not meet him.

Bertram. I did believe it was about ſeizing and killing the King, and I did think it to be illegal.

Mr *Mountague.* Why did you think it was about that?

Bertram. Becauſe Mr. *Charnock* had told me of it before.

Mr *Att. Gen.* How did you know that was what *Lowick* ſpoke to you about?

Bertram. I did ſuppoſe it to be the ſame, becauſe he deſired me at firſt to ask no Queſtions, no more did I; but I took it always to be the ſame Thing.

Mr *Att. Gen.* What did he ſay to you?

Bertram. He told me he had a Buſineſs to propoſe to me, if I would ingage in, that would be for

for my Advantage, but I muſt ask no Queſtions; talkt of Riding out ſuddenly, and that the King was to be ſeized in his Coach, and having heard of it from *Charnock*, I thought it was the ſame Buſineſs.

Mr *Att. Gen.* Then my Lord, we have one Witneſs more, call Captain *Fiſher*, (*He did not appear.*) If he does not appear, we ſhall let them go on, and when he comes in, we can examine him afterwards.

L. C. J. Is he a material Witneſs?

Mr *Sol. Gen.* We do apprehend he is a very material Witneſs.

L. C. J. If you think him a material Witneſs, it will not be proper for them to enter upon their Defence, till they have heard the whole Accuſation.

The Court ſtaid for Mr. Fiſher's *coming for near an Hour, and at laſt he came in and was ſworn.*

L. C. J. Who is this?

Mr. *Att. Gen.* This is one Captain *Fiſher*.

Mr *Soll Gen.* Pray Captain *Fiſher*, do you know Mr *Lowick*, the Priſoner at the Bar?

Capt. *Fiſher.* I have not talkt with Mr *Lowick* ſince the 8th of *February*, and then he talk'd that he wou'd be ready to ſerve his Maſter to the uttermoſt of his Power.

L. C. J. What Maſter?

Capt. *Fiſher.* King *James*.

Mr *Att. Gen.* What particular Service?

Capt. *Fiſher.* He named no particular Service, but only that he would be ready to ſerve his Maſter to the uttermoſt of his Power.

Mr *Att. Gen.* Where was this?

Capt. *Fiſher.* At the *Cock* in *Bow-ſtreet*.

Mr *Att. Gen.* Who was in Company?

Capt. *Fiſher.* There was Mr *Harriſon*.

Mr *Att. Gen.* Pray give an Account of what you know of this barbarous bloody Deſign.

Capt. *Fiſher.* I believe there was a Deſign to ſeize the Prince of *Orange*.

Mr *Att. Gen.* What do you know of it? you ſay you believe it.

Capt. *Fiſher.* I believe it by my Knowledge, becauſe I was concerned in it.

Mr *Att. Gen.* By whom was that Deſign carried on?

Capt. *Fiſher.* By Sir *George Barclay* and Mr *Harriſon*.

L. C. J. What was the Deſign?

Capt. *Fiſher.* We were to fall upon the Prince of *Orange*.

L. C. J. You called him ſo, the Prince of *Orange?*

Capt. *Fiſher.* Yes, my Lord.

Mr *Att. Gen.* Well, tell us what happened.

Capt. *Fiſher.* It was to have been done the 15th of *February*, and we met accordingly the 14th, but the King not going Abroad, it was put off.

L. C. J. Who met on the 14th?

Capt. *Fiſher.* I met only Mr *Harriſon* and Sir *George Barclay*, then it was put off till the 22d; upon the 21ſt, we met at the *Three Tuns* in *Holborne*, and from thence we came to the *Sun* Tavern in the *Strand*, and there was no Body but Mr *Harriſon* and I together, and Sir *George Barclay* came to us; I believe there were about 14 or 16 in the Houſe; there Sir *George Barclay* told me, Mr *Lowick* was to meet me and two more at an Inn by St. *Giles*'s Pound, and that we were to go together to ſeize the Prince of *Orange* the 22d.

L. C. J. Did you meet him?

Capt. *Fiſher.* I did not meet him, it being put off by the King's not going abroad.

L. C. J. This does not affect Mr *Lowick* at all.

Mr *Att. Gen.* It does not, we acknowledge, but at that time which you ſpeak of, the 8th of *February*, had you any Knowledge of the Aſſaſſination.

Capt. *Fiſher.* There was no Aſſaſſination at that Time, at leaſt it was not then declared.

Mr *Att. Gen.* What was your Diſcourſe about then?

Capt. *Fiſher.* There was Notice of the King's preparing to come for *England*.

Mr *At. Gen.* You ſay Mr *Harriſon* was there.

Capt. *Fiſher.* Yes, and talkt very little about the Matter, but only that there were Preparations for the King's coming.

Mr *At. Gen.* What did *Lowick* ſay to you?

Capt. *Fiſher.* I have told you all that Mr *Lowick* ſaid to me.

Mr *At. Gen.* Repeat it again.

Capt. *Fiſher.* He ſaid he would be ready to ſerve his Maſter, to the uttermoſt of his Power.

Mr *Cowper.* Had you no Diſcourſe about an Act of Parliament.

Capt. *Fiſher.* Mr *Lowick* ſaid it was not convenient to talk with more than one at any time, for there was an Act of Parliament on Foot, that under two Witneſſes nothing ſhould affect a Man's Life in Treaſon.

Mr *Att. Gen.* The Act of Parliament was then a making.

L. C. J. When Mr *Lowick* ſaid he wou'd ſerve his Maſter, what Diſcourſe had you about it?

Capt. *Fiſher.* Mr *Lowick* ſaid not a Word within, but at the Door he ſaid he wou'd ſerve his Maſter to his Power.

Mr *At. Gen.* What was that, that they wou'd not talk with above one at a time?

Capt. *Fiſher.* Nothing that was thought treaſonable Practices ſhould be diſcourſed of before above one at a time, ſo I underſtood it.

Mr *Soll. Gen.* Then my Lord we have done.

Sir *B. Shower.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury; I am of Council in this Caſe for the Priſoner at the Bar, and we do hope here is not Evidence ſufficient to convict him of High-Treaſon, the Queſtion is not whether there was a Plot or a Conſpiracy to Aſſaſſinate the King, or to prepare for an Invaſion, but all that you are to conſider, Gentlemen, is, whether the Evidence againſt Mr *Lowick*, be ſufficient to convince you, that he did deſign to Seize and Aſſaſſinate the King; there are three Witneſſes produced, but we think this laſt Witneſs, *Fiſher*, his Teſtimony does not hurt him in the leaſt. We know your Lordſhip will declare and direct the Jury, that the Evidence in a Caſe of Treaſon ought to be plain, not only with reſpect to the Fact, that it was done; but alſo of ſuch Facts as are the Evidences of a Man's Intentions, and thoſe are not to be conſtrued by Strains and Intendments, or Implications; unleſs they be ſuch as Evidently, Naturally, and to common Underſtanding expreſs the Intention, it cannot be good Evidence in Treaſon: Now we ſay that

Cap-

Captain *Fisher* has said nothing at all that will affect the Prisoner, for all that he says is, that the Eighth of *February* he said he was ready to serve his Master to the utmost of his Power, and any Words as well as these may be construed to make a Man guilty of Treasonable Intentions; for it might be a Recollection of Favours Received, or it might be a grateful Intent to serve him upon particular Occasions, but that is no Evidence upon this Indictment. Suppose it was to serve him upon the supposed intended Invasion, yet with Submission, that is not Evidence of the Overt-Act laid here; here is no Overt-Act mentioned of preparing Arms, or Encouraging Men, or Seducing the King's Subjects in order to the better restoring of the late King *James*, or the expected Landing of the *French*, or the like. All that's laid to the Prisoner's Charge, is the Compassing the King's Death, and a Design to Assassinate him in his Coach, and in order to the Assassination, he was to buy Arms and Horses; now all that he says is quite of another Nature, of a quite different Strain, and has no Tendency to this Matter, and nothing he says that *Lowick* shou'd say, but is applicable the other Way, and tends more naturally to the Invasion, than to the Assassination. Your Lordship observes there was some notice taken of what Mr *Lowick* shou'd say, concerning the Act of Parliament, that he would not talk with above one at a time; how far when Life is concerned such loose Discourse ought to be inforced before a Jury I must leave to your Lordship; though a Man may be innocent, yet he may be cautious, and the more Innocent, perhaps the more cautious; but that is applicable to the Invasion too, and has no Relation to the Treason in this Indictment more than any other. It shows he was more wary than others were, but it is not applicable to the Fact that he now stands charged with. Then the whole of the Evidence depends upon the Testimony of Mr *Harris* and Mr *Bertram*, and we think they are not two Witnesses to one Thing, and what they say must be strained, and intended, and presumed, to make Evidence of Treason; for what Mr *Harris* says about the Discourses between him and the late King *James*, about receiving Orders from Sir *George Barclay*, and his Passage over from *France*, and the several Stages he and Mr *Hare* travell'd, and the Discourses between Sir *George Barclay* and him; Your Lordship will acquaint the Jury that is no Evidence to affect Mr *Lowick*, nor what *Berkenhead* and *Hare* agreed upon does any way affect Mr *Lowick*, for those Things may be all true and yet Mr *Lowick* innocent of what he stands charged with in this Indictment; he says, that upon the first *Saturday* he saw Mr *Lowick* at the Confectioner's, but he cannot say he staid there at all, there was not a Word spoken by Mr *Lowick* that he remembers then, but what he says that seems to touch, and the only Thing that touches Mr *Lowick*, in all this Evidence is, that upon *Monday*, *Tuesday*, *Wednesday* or *Thursday*, it is a pretty large time, between the Fifteenth and the Twenty Second, he was talking with Mr *Lowick* about the Barbarity of this Business, and that *Lowick* after all, said he would obey Orders; now with Submission, my Lord, to make that to have Relation to the Assassination must be by a forc'd strain'd Intendment, he does not declare what the Orders were, nay, he does not affirm there were any Orders for the Assassination, but only that he would obey Orders; here's no Order by Writing, no Order by Parole that Mr *Lowick* declared he would obey; as to what *Lowick* declared about his Intention of Riding out and Seizing the King in his Coach; that cannot be intended the Order that he was to obey to Assassinate the King, that Order does not appear, there are no Footsteps of it in all the Evidence, so that there is nothing in that Testimony that will hurt Mr *Lowick*: Then upon the Two and Twentieth when they dined together, Mr *Harris* says, that there was a Discourse of two Men, but it does not appear, nor does the Witness give any account what those two Men were to be for; 'tis true two Men he was to get discharged, but that is not Evidence that these Men were to make a Part of those Forty, neither the Words before nor the Words after can have that Construction; nay it does not appear it was for any Purpose at all, now in the Case of Life, where a Man stands at the Bar, we hope such an Evidence shall not be Construed to make a Proof of a Treasonable Intention, that these were to Assassinate the King, or to make Part of the Forty that were to do it, when it does not appear they were there, nor who they were, nor any sort of Notice taken or given upon what Account they were Provided. And then as to Mr *Bertram*'s Evidence, it is palpable that his Evidence and whatsoever he says cannot amount to make one Witness to prove an Overt-Act within this Statute, and that there must be two Witnesses the Law requires; what does Mr *Bertram* say to prove any Man guilty of Treason, but only by Intendment, Thought or Suspicion? It is true, Mr *Bertram*'s Evidence would be good enough to commit a Man upon Suspicion of Treason, but to Convict him it cannot be; he says that in the Beginning of *February* he spoke to him, and told him he would employ him in a Business that would be for his Advantage, but he must ask no Questions; this is very dark, for the Meaning of it does not appear what was intended by it; it might be one Thing as well as another, it might be to imploy him in his Family, or it might be to send him of a Journey, or it might be the taking of a Farm, but to apply that as an Evidence of a Charge of High-Treason, that we think is very hard, and we hope your Lordship will think so too; but then he comes and tells you further of a Discourse upon the Fourteenth, of his riding out suddenly, and that the King was to be seized in his Coach, but he does not say that he was to seize him, nor that he would be concerned in it, nor that he knew of it, nor did declare at what time it was to be done, nor any thing certain whether it was a Prophecy, or a Dream, or a Story that he related again, or what it was; there is no Connection between the Riding out suddenly and the other Words of seizing the King in his Coach; then he says he gave him a Guinea to buy him Necessaries, the Man acknowledges Mr *Lowick* several times had given him in Charity-Money, Cloaths and other Things, and gave his Wife a Guinea, as you observe, in Charity, but he gave him this Guinea on purpose to buy him Necessaries, and it is hard that a Man's Charity to a Countryman, to a Townsman, to an antient Acquaintaince of Twenty Years standing, to a Person that he had been familiar

miliar with formerly, and known to have lived well, ſhould be miſ-interpreted and ſtrain'd, to make it a giving him Money as Subſiſtence, and a Reward for the doing ſuch a Miſchievous Bloody Act; We ſay his Charity to this Man formerly is inconſiſtent with the Suppoſition that he cou'd be privy to ſuch a barbarous Deſign now, and we hope the Jury will conſider the Character that that very Man has given to my Client, for the ſame Witneſs gives you an Account of his Behaviour all along, that he was not given to Raſh and Barbarous Actions, nor guilty of any malicious Thing, nay, that he prevented Miſchief, and the killing of People in cold Blood. We muſt leave it to the Jury's Conſideration, and your Lordſhip's Direction. All theſe things that they ſay may be true, and *Lowick* be not guilty, and the acquitting of Mr *Lowick* will be no Reflection upon the Witneſſes, nor any Diſcredit to the Teſtimony that has been given of this Conſpiracy; but we hope 'tis doing Juſtice to this Man, the Witneſſes not coming up to the Proof of what is laid in the Indictment. We muſt beg your Lordſhip's Patience a little longer, and call ſome Witneſſes to give you an Account how long they have known Mr *Lowick*, and what his real Character is; they will tell you he is a peaceable good Man, and ſhew you that his Temper and Inclination was rather to a ſober quiet Life than to lead him to ſuch Action, and that they cannot think him likely to be tempted to be concerned in ſuch a Deſign; and then we muſt leave it to the Jury. Call Mrs *Yorke*.

Lowick. I believe there is no Body here that knows me but will give me that Character.

Mrs. Yorke *came in and was ſworn.*

Sir *B. Shower*. Pray Mrs *Yorke* how long have you known Mr *Lowick*.

Yorke. About a Dozen or Fourteen Years.

Sir *B. Shower*. What Sort of Diſpoſition is he of?

Yorke. He is a Civil Honeſt Man as ever I ſaw in my Life, or ever knew of; and I never heard otherwiſe from any one that knew him.

Sir *B. Shower*. What was he in his Actions, was he Malicious, or good Natur'd?

Yorke. As good a natured Man as ever I ſaw.

Mr *Mompeſſon*. Has he the Reputation of a Cruel Bloody Minded Man?

Yorke. Quite the contrary. He lodged in my Houſe half a Year, it is not quite a Year ago ſince he lay at my Houſe. He was the moſt obliging Man that ever lay in my Houſe: He was ſo civil to all the Lodgers, that they admired him for his Goodneſs, and made them in love with him.

L. C. J. How came he to lodge at your Houſe?

Yorke. He came from his other Landlady, they could not agree, his other Landlady was a Sort of a Shrew, and therefore he did not care for ſtaying there; and I deſired his Company becauſe I knew him to be ſo obliging and civil a Man.

L. C. J. Where is your Houſe?

Yorke. In *Bloomsbury*.

L. C. J. What is his Way of Living, is he a Man of an Eſtate?

Yorke. I cannot tell, I did not inquire into that.

L. C. J. Had he no Employment to get his Living by.

Yorke. I do not know any thing of that, I never inquired into it; he paid me very honeſtly for my Lodging, and he is a very good Man for any thing I know.

Sir *B. Shower*. Then call Mrs *Moſely*.

She came in and was ſworn.

L. C. J. Well, what do you ask this Gentlewoman.

Sir *B. Shower*. Pray Mrs *Moſely* will you tell my Lord and the Jury: Do you know Mr *Lowick?*

Moſely. Yes, Sir, I do.

Sir *B. Shower*. How long have you known him?

Moſely. Near twenty Years.

Sir *B. Shower*. Pray give an Account upon your Knowledge what Diſpoſition and Temper he is of, whether he is Raſh, Malicious, Bloody, and Ill-natured.

Moſely. He is a peaceable, vertuous, honeſt Man, and a Man that I never heard or ſaw that Creature that could ſpeak any ill Thing of him in my Life; nor I never heard him ſpeak any Thing maliciouſly of any Creature in my Life to do them a Prejudice: So far from that, that he is a Man has a Character, perhaps, above any Man that I could ſpeak or hear of in my Life. I ſpeak it even above my own Relations, they may have ſome Paſſions; but I never ſee that Gentleman in a Paſſion in my Life. He has lain in my Houſe ſeveral times, and he has had Company come to him, but never any that was Scandalous one Way or other. I never ſaw him fuddled; nor ever heard him Swear, nor any one accuſe him of any of thoſe Things.

Mr *Mompeſſon*. Call Dr *William Mew*. *He did not appear.*

Sir *B. Shower*. The Priſoner has ſomething to ſay for himſelf my Lord, but we muſt ſubmit to your Lordſhip's Conſideration, and the Juries, whether there be any Evidence but what is dark and ſavours of Suſpicion only; ſuſpicious it is, but whether there be any Evidence that is plain and direct as the Law requires in Caſes of High-Treaſon, we muſt leave it to your Conſideration, for we apprehend there is none.

Lowick. My Lord, as to this Buſineſs, the Thing that I ſtand accuſed of, the Aſſaſſination, I know nothing in the World of it, nor never did directly or indirectly; and if I am convicted, and could to ſave my life be the Death of the pooreſt Child in the World, I would not ſave my Life to do it.

L. C. J. Look you, I would put you to make Anſwer to ſome Things; you were at Sir *George Barclays*, at the Confectioner's in *Holborn*; and it is ſworn he came over upon ſuch a Deſign. Then you were with Mr *Harris* at *Red Lion Fields*, and there he was ſpeaking to you of the Horridneſs of the Deſign that was to be executed upon the King's Perſon the *Saturday* before, and he told you he did miſlike it; and thereupon you anſwered that you would obey Orders, and that Sir *George Barclay* had Orders for it, otherwiſe he would not do it.

Lowick. Sir *George Barclay* never ſpoke one Word of it to me.

L. C. J. Every Body knows now upon what Design he came over from *France*, and when Mr *Harris* ſhowed Diſſatisfaction with the Thing, you made that Anſwer to his Diſcourſe.

Lowick. He never ſaid one Syllable to me of it. I truſt to your Lordſhip's Judgment, and the Jury's Mercy.

L. C. J. And then I would have you anſwer to another Thing, when you dined together on the *Saturday* the two and twentieth, what were thoſe two Men that could not be diſcharged without you?

Lowick. My Lord, I know nothing in the World of two Men.

L. C. J. You went to diſcharge them, for the King did not go abroad that Day.

Lowick. I know nothing of it.

L. C. J. He ſwears this, and that's as to him; but then as to *Bertram*, what Deſign was that, that you were to engage *Bertram* in for his Advantage, and he was to ask no Queſtions?

Lowick. My Lord, he is a poor Man, and my Countryman, and I have at all Times, from time to time, for this ſeven Years, helped to ſubſiſt him and his Family, that he will not deny, and I have ſeveral Times given him both Cloaths and Money.

L. C. J. Then I would ask you again, When he came to your Lodging on *Friday* the 14th of *February*, and you told him the King was to be ſeized in his Coach, and ſaid that we were to ride out very ſuddenly, and you appointed him to meet the next Morning; and becauſe he did not meet you blamed him, and ſaid, It would have been the ſame Thing, if the King had been in the Field. Look you, I would have you give Anſwer to this if you can.

Lowick. I remember nothing in the World of it, not a Word I aſſure you, and to the beſt of my Remembrance, I did not ſee him in two Days after.

Mr *Att. Gen.* My Lord, I muſt beg leave to anſwer to the Objection that the Council for the Priſoner have made, that there are not two Witneſſes to prove the Overt-Act laid in the Indictment, and ſo the Law is not ſatisfied. In Anſwer to that, I deſire your Lordſhip's Favour to obſerve how the Evidence is, and then we ſhall ſee whether there are not plainly two poſitive Witneſſes of the Overt-Act, by agreeing to aſſaſſinate the King. The firſt Witneſs is Mr *Harris*, your Lordſhip obſerves that Mr *Harris* gives an Account that Mr *Lowick* was at Sir *George Barclay*'s Lodgings the firſt Day that it was to have been executed; and that afterwards between the fifteenth and the two and twentieth, thoſe being the firſt and ſecond Days that this was to be done, when he and *Rookwood*, and the Priſoner *Lowick*, were walking together in *Red Lion Fields*; and there had ſome Diſcourſe about the intended Aſſaſſination, and the Barbarity and Bloodineſs of it, and Mr *Harris* and Mr *Rookwood* were averſe to it. Mr *Lowick* ſaid he would obey Orders, and he was ſure Sir *George Barclay* would not do it unleſs he had direct Orders for it, that was twice repeated by him, as *Harris* ſwears: And afterwards Mr *Harris* tells you that the two and twentieth he dined with Mr *Lowick*, and Mr *Lowick* obſerved that Mr *Harris* came in in a great Sweat, and asked him how it happened, he ſaid he had been about to get ready *Rookwood*'s Party that were to ſeize the King, for he was to have one Party. Says Mr *Lowick* to him, you need not grudge to do it, you have ſix Shillings a Day, I have nothing; and yet I, at my own Charge, am to provide two. This is as poſitive Evidence as well can be of his being privy to the Deſign; and his ingaging People at his own Charge, ſhows a great deal of Forwardneſs and Zeal in the Priſoner to the Buſineſs. My Lord, I think this is poſitive and plain Evidence, and not only made out by Inferences and Conſtructions, as Sir *B. Shower* ſays, but plain poſitive Proof. The firſt Day he was with ſeveral of them, and when they diſcourſed of the Thing afterwards, he declared he would obey Orders; and what could thoſe Orders be but for what they were Diſcourſing of, and nothing was diſcourſed of but this Deſign they were ingaged in, and this was to juſtifie the Thing, and take off the Apprehenſion of the Barbarity of it: This is *Harris*'s Teſtimony. The next Witneſs is *Bertram*, and he tells you that the fifth of *February* the Priſoner ſent for him, and when he came to him, he asked if he would ingage in a Buſineſs that might be for his Advantage, and ask no Queſtions; ſo at that Time he did not acquaint him what the Thing was, but that ſhows it was a Thing that was to be kept ſecret at that Time, in regard he did not think fit to acquaint him at the firſt Inſtance. But the fourteenth of *February*, when he met him again, the Day before the firſt Time that it was to be put in Execution; *Bertram* ſwears he told him that they were to ride out the next Morning, that muſt be *Lowick* and *Bertram*, for there was no Body elſe there; and that the Prince of *Orange* was to be ſeized in his Coach. Was it poſſible the Priſoner could be ignorant of it? When he ingaged him to go upon a Deſign without asking Queſtions; ſent for him the Day before, acquainted him they were to ride out the next Morning, and that the King was to be ſeized in his Coach, and bid him be ready againſt next Morning, and gave him a Guinea at that Time; the Witneſs ſays it was for Neceſſaries, but he does not pretend that it was for Charity, as formerly. And that muſt be for Neceſſaries for that Purpoſe that they were then diſcourſing of, when he deſired him to be ready the next Day, and gives him Money to buy him Neceſſaries: What can that be, but Neceſſaries for what he was to be ready for? And then he did not come the next Day, and he tells you why, becauſe he thought it a very wicked and unlawful Thing, and ſo he diſappointed him; and the next Time *Lowick* chid him, and told him he would have ſerved him ſo if the King had been in the Field. This is plain, though I believe *Bertram* does ſpeak as tenderly as he can, being his Friend and old Acquaintance, and is willing to ſay as little as he can of him; ſo that I believe no Body thinks but what *Bertram* ſays againſt the Priſoner is true, and what he ſwears is plain and poſitive. To ſhow that *Lowick* did engage in the Deſign, he acquainted him with it the fourteenth, by telling him the King was to be ſeized, and they were to ride out, and he was to be ready the next Day.

L. C. J. He does not ſay they were to ride out the next Day.

Sir *B. Shower.* No, the Words were, We are to ride out ſuddenly.

Mr *Att. Gen.* I think he did ſay they were to ride out the next Morning.

L. C. J. No, Call him in again.

Mr *Cowper.* The Words were, We ſhall ride out ſuddenly, and bid him meet him next Morning; and afterwards chid him for not meeting accordingly,

ingly, and told him it had been the ſame Thing if the King had been in the Field.

L. C. J. If you cannot agree upon the Evidence, you muſt call in the Witneſs.

Mr *Mountague*. My Lord, we are agreed upon the Evidence, it was ſuddenly.

L. C. J. Well then, there is no Occaſion, have you done on both Sides.

Council. Yes, my Lord, we ſubmit it to your Lordſhip.

L. C. J. Gentlemen of the Jury, this Priſoner at the Bar, *Robert Lowick*, is Indicted of High-Treaſon, for Compaſſing and Imagining the Death and Deſtruction of the King by an Aſſaſſination; you have heard what Evidence has been given upon this Indictment. And in the firſt Place, It is proved to you that there was a Deſign to aſſaſſinate the King; which was to be carried on under the Conduct and Management of Sir *George Barclay*. The Queſtion that you are now to conſider of, is whether the Priſoner at the Bar was concerned or ingaged in the Proſecution of that Deſign. There have been two Witneſſes produced, who have given their Evidence, and have been very ſtrictly examined, and Obſervations have been made upon the Teſtimony they have given.

The firſt Witneſs is Mr *Harris*, and he gives you ſome Account of the Original of this Deſign. He tells you how he was at St. *Germains*, and introduced to the late King *James*, who did expreſs a great Kindneſs for him, and told him that he had an Opportunity of doing ſomething for him that would be for his Advantage: And that he and one *Hare*, who was preſent at that Time, ſhould go into *England*, (for it ſeems they were both together introduced by Collonel *Parker*) and ſhould be ſubſiſted in *England*, and thereupon Directions were given them what Courſe they were to take; which was to go to *Calice*, and to each of them ten *Lewidores* were given for their Charges, and they were acquainted that if it happened that they ſhould lie there ſo long for Want of a Wind to bring them over hither that their Money was ſpent, Proviſion ſhould be made for their Supply there. They had farther Directions, that when they came into *England* they ſhould apply themſelves to Sir *George Barclay*, and follow his Orders, with Inſtructions how to find him; being told that Sir *George Barclay* would be walking in *Covent-Garden* every *Monday*, and every *Thurſday* Night, about the Hours of ſix or ſeven a Clock, and that they ſhould know him by a white Handkerchief that was to hang out of his Pocket.

Mr *Harris* further tells you, That they did come to *Calice* in Order to embark for *England*, and there they happened to ſtay a conſiderable Time, even ſo long that their Money would not defray their Expences there, and they found it true as it was promiſed them; for the Preſident of *Calice* paid the Reckoning for them at the Place where they lodged; and afterwards they came into *England*, and landed in *Kent*, and came to *Rocheſter*, and from thence to *London*. About the latter End of *January*, *Old Stile* (for it ſhould ſeem it was the 14th *New Stile*, which is the 4th, *Old Stile*, they were at St. *Germains*) he tells you that he did go the firſt *Monday*, after their Arrival, into *Covent-Garden*, to look after Sir *George Barclay*, but then miſt him. But afterwards his Companion, Mr *Hare*, met with one *Berkenhead*, and complaining that they had not met with Sir *George Barclay* according to the Directions they had abroad: Whereupon, by the Means of *Berkenhead*, they were brought to the Speech of Sir *George Barclay*, who gave them Reception, and owned that he had Authority to ſubſiſt them; but ſaid he had not then Money, but ſhortly ſhould, and when he had, they ſhould be ſure to receive their Subſiſtence. He tells you, that after this, Sir *George Barclay* gave them Subſiſtence Money, Paying them at the Rate of five Shillings a Day when they had no Horſes, and when they had, ſix Shillings a Day: So they put themſelves altogether under his Command and Conduct. He has given you an Account what Diſcourſe he had with Mr *Rookwood*, from whom he diſcover'd what the Deſign was in which he was to be ingaged. And the Deſign to aſſaſſinate the King was firſt intended to be put in Execution on *Saturday* the 15th of *February*, at which Day Mr *Harris*, and others, being at Sir *George Barclay*'s Lodgings; Sir *George* ſaid they were his *Janiſaries*, and afterwards careſt them, and ſaid they were Men of Honour, and told them that they were to attack the Prince of *Orange* and his Guards; but it ſeems the King not going abroad that Day, they loſt that Opportunity.

Truly, Then Mr *Harris* began to be a little troubled, and concerned, when he underſtood the Meaning of his being under Sir *George Barclay*'s Conduct. And he ſays that after that firſt *Saturday* the 15th, and before the next *Saturday* the 22d, he met with *Lowick*, *Rookwood*, and *Bernarde*, and he was complaining of his being ingaged in ſuch a Deſign as this was. He called it then the Murder of the Prince of *Orange*, and ſaid it was a barbarous Thing, and he did not like it, nor *Rookwood* neither; but as for Mr *Lowick*, whether he diſliked it, or no, I know not, but he made Anſwer to him, I will obey Orders: Says he, Sir *George Barclay* has Orders for it, or otherwiſe he would not do it.

Then you are told further, that after this, on *Saturday* the 22d, Mr *Harris* dined with *Lowick* at a Cook's at the End of *Red Lion Street*, and being there together, *Harris* being in a Sweat, and was asked the Reaſon by *Lowick*, he ſaid he had been giving of Orders for the getting ſome Men together that were to go under *Rookwood*, and *Lowick* told him he might very well do it, for he had Pay 6 *s.* a Day; but ſays he, I am to ſubſiſt two Men, and have nothing at all. Mr *Harris* wiſhed him to go to Sir *George Barclay*, and complain of it to him, but he ſaid he would not; but it ſeems, it being then underſtood by them that the King did not go abroad that Day, *Lowick* ſaid he muſt go and diſcharge the two Men, and went about it. This is the Sum and Subſtance of Mr *Harris*'s Evidence againſt Mr *Lowick*.

The next Witneſs is *Bertram*, and he tells you that ſometime before the fifteenth of *February*, which was, as I told you, the very firſt Day that they did deſign to aſſaſſinate the King, Mr *Lowick* ſent for him, and told him, that he would put him upon a Buſineſs that ſhould be for his Advantage, if he would undertake it without asking any Queſtions; this was ſometime before, but the certain Day *Bertram* does not remember; but he tells you farther, that on *Friday* the fourteenth of *February*, he was with *Lowick* at his Lodgings, and he ſaid unto him, that the King, he did believe, was to be ſeized in his Coach, and we are to ride out ſuddenly; and then he gave him a Guinea to buy him Neceſſaries, and withal, bid him meet him at the *Purle-Houſe* in *Hart-ſtreet* next

next Morning; and *Bertram* tells you, he had underſtood what this Deſign was, for he had it before from *Charnock*, and did forbear to go the next Morning, becauſe he did diſlike it. After this Mr *Lowick* met him and chid him for diſappointing of him, in not meeting him as he directed, for ſays he, it would have been the ſame Thing if the King had been in the Field. This is the Sum and Subſtance of the Evidence that *Bertram* has given againſt him.

Now *Bertram*, being croſs-examined on the behalf of the Priſoner, ſays he hath known him a great while, and that he is a Man of a peaceable and fair Diſpoſition, very charitable, and that he has given him Money before, and particularly a Guinea to his Wife in his Abſence.

Indeed I might have mentioned the Evidence of *Fiſher* to you, but that is but circumſtantial, and does not come Home to the Caſe, but being given it may be mention'd, and that is, about the Eighth of *February*, *Fiſher* had ſome Diſcourſe with *Lowick*, and it ſeems there was Notice taken of the intended Invaſion, and *Lowick* ſaid he would ſerve his Maſter faithfully; and that the Witneſs thought was meant of the late King; and he ſaid at another Time, that he would not diſcourſe with above one at a Time, becauſe of the late Act of Parliament that was then a paſſing, relating to High Treaſon, that required two Witneſſes. Now, I ſay, this is not any Proof againſt the Priſoner, but it is a Circumſtance that may ſhew his Inclination to the late King.

The Council for the Priſoner have inſiſted upon the Inſufficiency of the Evidence that has been given on behalf of the King, and have ſaid, that the late Act of Parliament requires two Witneſſes, which is true, but not two Witneſſes to any one Overt Act; but if there be two Witneſſes, one to one and another to another Overt Act, that is ſufficient; but they ſay that it is not ſo in this Caſe.

In the firſt Place, they object againſt the Evidence that is given by *Harris*, they ſay it is ſhort, that muſt be left to your Conſideration; whether the Evidence that is given by *Harris*, concerning Mr *Lowick*, does prove to your Satisfaction, that he conſented and agreed to the Aſſaſſination of the King, you are to weigh the Evidence, when it is ſworn that when *Harris*, *Rookwood*, and the Priſoner were walking in *Red Lion Fields*, and talking of this horrid Deſign, and *Harris* complained that it was a barbarous Thing to murther the Prince of *Orange*, as they call'd him, you muſt conſider what Anſwer *Lowick* did make about obeying of Orders; then his ſubſiſting of Men at his own Charge without Pay, and complaining of his having no Pay, and his diſcharging them the laſt Day that the Aſſaſſination was intended, that I muſt leave to you, whether or no this is not an Evidence, if you believe the Witneſs, to ſatisfie you that he was engaged in this Deſign.

Then Gentlemen, he has alſo been deſir'd to give an Anſwer to this Queſtion, and to tell upon what Deſign he was to employ *Bertram* that ſhould be for his Advantage; but he was to ask no Queſtions, and afterwards whether he did tell him the King was to be ſeized in his Coach, and they were to ride out ſuddenly and bid him meet him the next Morning, and when he did not meet him, he ſaid, It would have been the ſame Thing if the King had been in the Field. If this be an Evidence of Mr *Lowick*'s engaging in and agreeing and conſenting to the Deſign, then here will be another Witneſs againſt the Priſoner beſides *Harris*.

Gentlemen, you are to judge of this Matter and of the Evidence. It is true, we are not to put, in the Caſe of a Man's Life, any forced and violent Conſtructions upon any Words or Diſcourſes; but if the Evidence be plain and clear, tho' he did not ſay in expreſs Words, that he did deſign to aſſaſſinate or kill the King; yet, if upon the whole Diſcourſe that paſt between them it appears plainly, clearly, and ſatisfactorily to you that he did conſent and agree to this Deſign, or was engaged in it, here's another Witneſs, I ſay, to prove him guilty, beſides *Harris*; you are to conſider the whole Evidence, the ſubject Matter of Diſcourſe, and if you are ſatisfied, I ſay, that he was engaged in ſuch a Deſign by the Proof of *Bertram*, as well as of *Harris*, then there are two Witneſſes, which is as much as the Law requires.

But, indeed, the Council have called ſeveral Witneſſes to prove that the Priſoner has lived very peaceably and quietly; one Woman ſays, She has known him twelve Years, and that he lodged at her Houſe, and that he was a Man of great Temper and Candour, and not diſorderly, but had a general good Eſteem and Character: And then there is another, Mrs *Moſely*, that proves the like, and ſays, She has known him theſe twenty Years, and ſhe ſays no Man has a better Character: And Mr *Bertram* hath ſaid, that he was not of a raſh or bloody Temper.

Now, Gentlemen, I muſt leave it to you, upon the Evidence that you have heard, there are theſe Witneſſes that have been produced, and there are theſe Circumſtances that appear in the Caſe; if you are ſatisfied upon this Evidence that has been given, that the Priſoner Mr *Lowick*, did conſent to and engage himſelf in that Deſign of Aſſaſſinating the King, then you are to find him guilty; if you are not ſatisfied, you are to find him not guilty; you have heard your Evidence, and had beſt conſider of it.

Then an Officer was ſworn to keep the Jury, who withdrew, and ſtaid out about half an Hour, and then returned.

Cl. of Ar. Gentlemen of the Jury, anſwer to your Names, *George Ford*.

Mr. *Ford.* Here. (*And ſo of the reſt.*)

Cl. of Ar. Are you all agreed of your Verdict?

Jury. Yes.

Cl. of Ar. Who ſhall ſay for you?

Jury. Foreman.

Cl. of Ar. Robert Lowick, hold up thy Hand, (*which he did.*) Look upon the Priſoner; how ſay you, Is he guilty of the High-Treaſon whereof he ſtands indicted, or not guilty?

Foreman. Guilty, my Lord.

Cl. of Ar. What Goods or Chattels, Lands or Tenements, had he at the Time of the Treaſon committed, or at any Time ſince?

Foreman. None, to our Knowledge, we do not find any.

Cl. of Arr. Then hearken to your Verdict, as the Court hath recorded it. You ſay that *Robert Lowick* is guilty of the High-Treaſon whereof he ſtands indicted, but that he had no Goods, Chattels, Lands or Tenements at the Time of the High Treaſon committed, or at any Time ſince to your Knowledge, and ſo you ſay all.

Jury.

Jury. Yes.

L. C. J. Diſcharge the Jury.

Cl. of Arr. Gentlemen of the Jury, the Court diſcharges you, and thanks you for your Service.

L. C. J. Mr Attorney, Will you have the Priſoners ſet to the Bar?

Mr *Att.* Yes, if your Lordſhip pleaſe.

Then the Keeper of Newgate *brought* Rookwood *and* Cranburne, *and all three were ſet to the Bar.*

Mr *Att. Gen.* If your Lordſhip pleaſe to give Judgment againſt the Priſoners that are convicted.

L. C. J. Ask them what they have to ſay for themſelves in Arreſt of Judgment.

Cl. of Arr. Robert Lowick, hold up thy Hand; you ſtand convicted of High Treaſon, in Conſpiring the Death of the King by Aſſaſſination, what can you ſay for your ſelf why the Court ſhould not give Judgment againſt you, to die according to Law.

[*Then the Keeper bid him kneel.*]

L. C J. No, no, he need not kneel; if you have any Thing to ſay, Mr *Lowick*, we will hear you.

Lowick. I throw my ſelf upon the King's Mercy.

Cl. of Arr. Ambroſe Rookwood, hold up thy Hand, *(which he did)* you ſtand convicted of the ſame High Treaſon, for Conſpiring the Death of the King by Aſſaſſination, what can you ſay for your ſelf why the Court ſhould not give you Judgment to die according to Law.

Rookwood. All that can be ſaid has been ſaid already, and ſo I ſhall ſay no more.

Cl. of Arr. Charles Cranburne, hold up thy Hand, thou ſtandeſt convicted of High Treaſon, in Conſpiring the Death of the King by Aſſaſſination, what canſt thou ſay for thy ſelf, why the Court ſhould not give the Judgment to die according to Law?

Cranburne. I have nothing to ſay but what I have ſaid already.

Cl. of Arr. Then Cryer make Proclamation.

Cryer. O, yes, all Manner of Perſons are commanded to keep Silence while Judgment is in giving, upon Pain of Impriſonment.

L. C. J. You the Priſoners at the Bar, *Robert Lowick*, *Ambroſe Rookwood*, and *Charles Cranburne*, you have been indicted, and upon full and clear Evidence have been convicted of High Treaſon; a Treaſon that was advanc'd to the higheſt Degree both of Malice and Miſchief againſt the King and Kingdom; you deſign'd to aſſaſſinate the King with an Intent to ſubvert the State, and by the introducing of a foreign Power to deſtroy the antient Liberty and Conſtitution of *England*.

Our *French* and Popiſh Enemies, by whom you were imployed in this bloody Enterpriſe, did very well know, that the Wiſdom and Courage of his preſent Majeſty has reſcued this Kingdom from that Slavery and Oppreſſion which they often threatened to bring upon us; they knew that under his Government we have been protected in the Enjoyment of our Religion, Laws and Liberty for ſeveral Years, and that his Majeſty is the Head of the Proteſtant Intereſt, and the Protector and Preſerver of the Liberty of *Europe*, and that upon the Preſervation of his Life and the Safety of his Perſon, the Good and Happineſs of Multitudes of People do depend, which the *French* King's Pride and Ambition has been ready to take hold of any Opportunity to enſlave and oppreſs.

Your being engaged in ſuch a horrid Deſign againſt ſo precious a Life, and to be the bloody Inſtruments to give that diſmal Stroke, which would have brought Miſery and Deſolation upon ſo many Men, renders you worthy to undergo a greater and more ſevere Puniſhment than by the Law of *England* can be inflicted; but that there is no greater provided for ſuch Criminals, is to be imputed to the antient Honeſty and Integrity of *Engliſh* Men, who, when they fram'd this Conſtitution of Government, never imagin'd *England* ſhould produce ſuch degenerate Wretches, as would endeavour by Plots and Contrivances to betray their Country to a foreign Yoak, and ſubject themſelves and their Fellow Subjects to the ſlaviſh Dominion of Strangers.

Your Crime being ſo great, it is now high Time for you ſeriouſly to reflect upon it; and tho' you deſerve to ſuffer the greateſt of Puniſhments, yet I have that Compaſſion for your Perſons, that I wiſh heartily you would make Uſe of that Opportunity which is now put into your Hands, to repent. And ſince you are adjudg'd by the Law unworthy to live here, that you will make Preparation to appear at another Tribunal, where you muſt have another Tryal, and, without an hearty and ſincere Repentance, receive a more ſevere Sentence. I hope this Calamity, and the Judgment that is to fall upon you, will be an Admonition to you to take better Advice in the laſt Part of your Time which is left you, than you have done in the whole Courſe of your Lives, and that you will be wiſer than to follow the Direction of thoſe Guides whoſe Principles and Doctrines have ſo far perverted and corrupted you, as to ingage you in ſuch a bloody Deſign. I ſhall leave you to make that Preparation for another World, which is proper for Men in your Condition, and pronounce the Judgment of the Court, which the Law hath appointed and the Court does award;

That all of you be conveyed from hence to the Priſon from whence you came, and from thence every one of you is to be drawn upon a Hurdle to the Place of Execution, where you are to be hanged by your Necks, and to be cut down while you are alive, your Privy Members are to be cut off, and your Bowels to be cut out of your Bodies and burnt in your View, your Heads are to be cut off, and your Bodies to be divided into four Parts, and your Heads and Quarters are to be diſpoſed where his Majeſty ſhall appoint. And I pray God to have Mercy on all your Souls.

Cranburne. I humbly deſire the Liberty of my Wife and Relations to come to me, and ſuch Divines as I ſhall deſire may have free Recourſe to me.

L. C. J. You ſhall have that Liberty that is allowed to all Perſons in your Condition.

Rookwood.

Rookwood. I muſt beg the ſame Favour, to have ſome few Friends and Relations come to ſee me without a Keeper.

L. C. J. *Holt.* You ſhall have a Warrant for your Friends to come to you.

Rookwood. I beg your Lordſhip that you would pleaſe to ſpecifie it in the Warrant, becauſe they would not grant hitherto without a Keeper being by.

L. C. J. You mean, you would have your Brother permitted to come to you.

Rookwood. Yes, and ſome few Relations.

L. C. J. What is uſually done in ſuch Caſes, let it be done.

Lowick. My Lord, I deſire the ſame Thing, that my Siſter may come to me, and that the little Time I have I may be in private with my Friends.

Mr *Att. Gen.* If your Lordſhip pleaſe, they may give the Names of thoſe they would have admitted to them, and then the Keeper will attend your Lordſhip for your Direction.

L. C. J. That the Keeper muſt take care of, leaſt they allow ſuch a Liberty as may endanger an Eſcape; for their being alone may prove a dangerous Thing.

Mr *Att. Gen.* It is reaſonable they ſhould tell who they are, before they be admitted.

L. C. J. You allow them, I ſuppoſe, to have private Diſcourſe in the ſame Room, if a Keeper be by.

Cranburne. No, my Lord, we never had.

Mr *Att. Gen.* Such as your Lordſhip thinks proper to be admitted to them may have Diſcourſe with them in private, if the Keeper be in the Room, but no others but ſuch as your Lordſhip ſhall allow; for we know what has been the Effect of a Liberty of Acceſs to ſome Priſoners.

L. C. J. Let us have a Note of thoſe Names that you would have come to you, and we will give Directions that ſhall be proper in it.

Cl. of Arr. Sheriff of *Middleſex*, you muſt take them into your Cuſtody till Execution is done.

Then the Keeper took away the Priſoners.

The TRYAL of PETER COOK, *Gent.*

Publiſh'd by AUTHORITY.

Die Sabbati Nono Maii Anno Domini, 1696. *Annoque Regni* Gulielmi *Tertii, Octavo.*

At the Seſſions-Houſe in the *Old-Bailey*, *London.*

Dominus Rex Verſus Petrum Cook.

THIS Day being appointed for the Trial of Mr *Peter Cook*, upon an Indictment of High-Treaſon found againſt him by the Grand Jury for the City of *London*, upon the Commiſſion of Goal-Delivery of *Newgate*, holden for the ſaid City, upon which Indictment he had been Arraigned, and upon pleading not guilty, Iſſue had been joined, and the Court having been adjourned unto this Day for the Trial by publick Proclamation in uſual manner, the Court was reſumed, and the Names of the Men returned to ſerve on the Jury, having been called over according to the Pannel, and the Defaulters recorded; the Court proceeded as follows.

Cl. of Ar. Set *Peter Cook*, the Priſoner, to the Bar: (*Which was done.*) You the Priſoner at the Bar, thoſe Men that you ſhall hear called, and perſonally appear, are to paſs between our Sovereign Lord the King and you, upon Trial of your Life and Death; if therefore you will Challenge them, or any of them, your Time is to ſpeak to them as they come to the Book to be ſworn, and before they be ſworn.

Cook. Sir, I deſire you would not name them too faſt, for my Eyes are very bad.

Cl. of Arr. *John Ewer.*

Cook. Who muſt I apply my ſelf to, Sir? I deſire to know whether he is a Freeholder in *London?*

Cl. of Arr. I know nothing to the contrary, Sir, he is returned as ſuch by the Sheriff; you had beſt ask him himſelf, he can beſt tell.

Cook. Are you a Freeholder in *London*, Sir?

Mr *Ewer.* Yes, Sir, I am a Freeholder.

Cook. Sir, I challenge you.

Cl. of Arr. *Henry Sherbrook.*

Cook. Sir, are you a Freeholder in *London?*

Mr *Sherbrook.* Yes, Sir, I am.

Cook. I challenge you. —— No, Sir, I beg your Pardon, I do not challenge you.

Cl. of Arr. Then hold Mr *Sherbrook* the Book: (*Which was done.*) Look upon the Priſoner: You ſhall well and truly try and true Deliverance make between our Sovereign Lord the King, and the Priſoner at the Bar, whom you ſhall have in Charge, according to your Evidence, So help you God.

Cl. of Arr. *Joſeph Billers.*

Cook. Are you a Freeholder, Sir, in *London?*

Mr *Billers.* Yes, I am.

Cook. I challenge you, Sir.

Cl. of Arr. *John Brand.*

Cook.

Cook. Pray, Sir, don't go too faſt; Are you a Freeholder in *London*, Sir?

Mr *Brand.* I am no Freeholder in *London.*

L. C. J. Treby. What ſay you, Mr *Attorney?*

Mr *Att. Gen.* My Lord, I would not have any Body that is not a Freeholder ſerve; ſo he was ſet by.

Cl. of Arr. *William Hull.*

Mr *Hull.* My Lord, I am no Freeholder in *London.*

L. C. J. Treby. Why, what Eſtate have you?

Mr *Hull.* What I have, is in Leaſes.

L. C. J. Treby. What, Leaſes for Years, or Leaſes for Lives?

Mr *Hull.* Leaſes for Years, Sir.

L. C. J. Treby. Then he cannot ſerve upon the Jury.

Cl. of Arr. *Edward Leeds.*

Cook. Hold, Sir, let me ſee; are you a Freeholder in *London*, Sir?

Mr *Leeds.* Yes, Sir.

Cook. Sir, I challenge you then.

Cl. of Arr. *Thomas Clark.*

Cook. Hold, Sir, I pray let me look upon my Paper. I challenge him.

A Stander-by. He does not appear.

Cl. of Arr. *Nathan Green.*

Cook. Where is he, Sir? Are you a Freeholder?

Mr *Green.* Yes, I am, Sir.

Cook. I challenge you.

Cl. of Arr. *Thomas Emes.*

Cook. Are you a Freeholder, Sir?

Mr *Emes.* Yes, I am.

Cook. Were you one of Sir *John Friend*'s Jury?

Mr *Emes.* Yes, I was.

Cook. Then I challenge you for Cauſe, and I give you my Reaſon.

Mr *Serj. Darnall.* I pray, let us hear your Reaſon; give your Reaſon for your Challenge.

Cook. It is for being of Sir *John Friend*'s Jury.

Mr *Serj. Darnall.* Then you challenge him for Cauſe.

Cook. Yes, that he was of Sir *John Friend*'s Jury.

L. C. J. Treby. Well, Brother *Darnall*, how is that a Cauſe of Challenge? You are the Priſoner's Council, let us hear what you ſay to it.

Mr *Serj. Darnall.* My Lord, what we have to ſay to it, is this; Here are ſome Perſons returned upon this Pannel, that were formerly Jurors in a Cauſe that was try'd for the ſame Species of Treaſon that this Gentleman, the Priſoner, is charged with in this Indictment; and I think the Witneſſes at that Trial did mention in their Evidence my Client, as being preſent at thoſe very Conſults, about which they gave their Evidence; theſe Gentlemen gave Credit to thoſe Witneſſes, and found the Verdict againſt the Perſon then accuſed. We humbly ſubmit it to your Lordſhip and the Court, whether we may not for this Cauſe challenge this Perſon as not indifferent, it being for the ſame Cauſe and Conſult, that the other was try'd for.

Mr *Att. Gen.* Sure Mr *Serjeant* is not in earneſt in this Objection.

Mr *Serjeant Darnall.* My Client thinks it a very good Objection, that he is not indifferent, and I deſire he ſhould be ſatisfied in it.

Mr *Att. Gen.* If he thinks ſo, he may except againſt him, but if he inſiſts upon it as a Cauſe of Challenge, we deſire you would put the Caſe, and my Lords the Judges determine it.

Mr *Serjeant Darnall.* I have told you what the Caſe is.

L. C. J. Treby. But you hear the King's Council inſiſt upon it, to have you make it out in Point of Law.

Mr *Serjeant Darnall.* My Lord, I have ſtated the Caſe as my Client deſired, and we ſubmit it to you.

L. C. J. Treby. Well, there is nothing in it.

Mr *Serj. Darnall.* Then my Client, if he will not have him ſerve, muſt challenge him peremptorily; which he did.

Cl. of Arr. *Francis Byer.*

Cook. Sir, Are you a Freeholder?

Mr *Byer.* Yes, I am.

Cook. I challenge you.

Cl. of Arr. *James Denew.*

Mr *Denew.* I am no Freeholder.

Cl. of Arr. *Henry Hunter.*

Cook. Hold, hold, my Lord, I challenge him as being one of Sir *John Friend*'s Jury.

Mr *Baker.* Nay that was not allowed in Mr *Emes*'s Caſe; but you challenged him peremptorily, and ſo you muſt now, if you have a Mind to it.

Cook. I challenge him.

Cl. of Arr. *John Hall.*

Cook. Are you a Freeholder in *London*, Sir?

Mr *Hall.* Yes, I am, Sir.

Cook. I challenge you.

Cl. of Arr. *John Cullum.*

Cook. Sir, Are you a Freeholder in *London?*

Mr *Cullum.* Yes, Sir.

Cook. I challenge you.

Cl. of Arr. *John Cox.*

Mr *Cox.* My Lord, I am no Freeholder in *London.*

Cl. of Arr. *John Hedges.*

Cook. Hold, I pray, Sir, let me look upon my Paper; Sir, Are you a Freeholder in *London?*

Mr *Hedges.* Yes, Sir, I am.

Cook. I challenge you.

Cl. of Arr. *Thomas James.*

Mr *James.* My Lord, my Name is not *Thomas.*

Mr *Sh. Buckingham.* He is returned, it ſeems, by a wrong Name; we did not know it.

Mr *Serj. Darnall.* Then you cannot ſwear him.

Cl. of Arr. *Thomas Poole.*

Cook. Are you a Freeholder in *London*, Sir?

Mr *Poole.* Yes, Sir.

Cook. I challenge him, as being of Sir *John Friend*'s Jury.

Mr *Att. Gen.* That has been over-ruled already.

Cook. I challenge him.

Cl. of Arr. *Peter Parker.*

Cook. Are you a Freeholder in *London?*

Mr *Parker.* Yes, Sir, I am.

Cook. I challenge you, Sir, as being one of Sir *John Friend*'s Jury.

Mr *Baker.* Nay, you can't offer it again.

Cook. I challenge him.

Cl. of Arr. *George Grove.*

Cook. Where is he? Are you a Freeholder in *London*, Sir?

Mr *Grove.* Yes, Sir.

Cook. I challenge you.

Cl. of Arr. *Nathanael Wyerſdell.*

Cook. Are you a Freeholder in *London?*

Mr *Wyerſdell.* Yes, Sir, I am.

Cook. I challenge you, Sir.

Cl. of Arr. *Samuel Blewit.*

Cook. Hold, pray, Are you a Freeholder, Sir?

Mr *Blewit.*

Mr *Blewit*. Yes, I am.

Cook. I challenge him.

Cl. of Arr. *John Wolfe*.

Cook. I challenge him.

Cl. of Arr. *Joſeph Wolfe*. He did not appear, and was ſaid to be no Freeholder.

Cl. of Arr. *William Smith*.

Cook. Are you a Freeholder, Sir?

Mr *Smith*. Yes, I am.

Cook. Sir, I challenge you.

Cl. of Arr. *Edward Fenwick*.

Cook. Are you a Freeholder, Sir?

Mr *Fenwick*. Yes, Sir, I am.

Cook. I do not challenge him.

Cl. of Arr. Then ſwear Mr *Fenwick*. (Which was done.)

Benjamin Hooper.

Cook. Stay, Sir, pray ſtay a little, where is he?

Cl. of Arr. There he is, Sir.

Cook. Which is the Gentleman? Are you a Freeholder in *London*, Sir?

Mr *Hooper*. Yes, Sir.

Cook. I challenge you.

Mr *Hooper*. I thank you, Sir.

Cl. of Arr. *Nathaniel Long*.

Cook. Are you a Freeholder, Sir?

Mr *Long*. Yes, Sir.

Cook. I challenge him, as being of Sir *John Frind*'s Jury.

Cl. of Arr. The Court has adjudged that no Cauſe of Challenge, therefore I take no notice of it, but as a peremptory Challenge.

Cl. of Arr. *Richard Chiſwell*.

Cook. Are you a Freeholder in *London*, Sir?

Mr *Chiſwell*. Yes, Sir.

Cook. I challenge you.

Cl. of Arr. *John Child*.

Cook. Hold, pray, a Moment; I have not croſt theſe laſt in my Paper, but I challenge this Man, being of Sir *John Friend*'s Jury.

Mr *Baker*. You have had that anſwered over and over again, as no Objection; it is nothing but a peremptory Challenge.

Cl. of Arr. *William Walker*.

Mr *Walker*. I was one of Sir *John Friend*'s Jury.

Cook. I challenge him for the ſame Reaſon.

Mr *Att. Gen*. But that is no Reaſon at all.

Cook. Then I challenge him.

Cl. of Arr. *John Wells*.

Cook. Sir, are you a Freeholder?

Mr *Wells*. Yes, Sir, I am.

Cook. Sir I challenge you.

Cl. of Arr. *John Hibbert*.

Cook. Which is he, Sir?

Cl. of Arr. He ſtands upon your left Hand; the Man in the Black Peruke.

Cook. Are you a Freeholder, Sir?

Mr *Hibbert*. Yes, I am, Sir.

Cook. I challenge him.

Cl. of Arr. *Daniel Wray*.

Cook. Stay, Sir, are you Mr *Wray*?

Mr *Wray*, Yes, Sir, my Name is *Wray*.

Cook. Are you a Freeholder in *London*, Sir?

Mr *Wray*. Yes, Sir.

Cook. I challenge you.

Mr *Wray*. I thank you, Sir.

Cl. of Arr. *John Pettit*.

Cook. Which is he?

Mr *Pettit*. I am the Man, Sir.

Cook. Are you a Freeholder in *London*, Sir?

Mr *Pettit*. Yes, Sir.

Cook. I challenge you.

Cl. of Arr. *John Sherbrook*.

Cook. I challenge him, as being one of Sir *John Friend*'s Jury.

Mr *Baker*. But you have heard that denied to be an Exception over and over.

Cook. I challenge him.

Cl. of Arr. *Stephen Blackwell*.

Cook. Are you a Freeholder, Sir?

Mr *Blackwell*. Yes, I am.

Cook. I challenge you.

Cl. of Arr. *William Hatch*.

Cook. Pray give me time to mark them; pray, who is this Man you now call?

Cl. of Arr. *William Hatch*.

Cook. Sir, Are you a Freeholder?

Mr *Hatch*. Yes, I am.

Cook. Sir, I challenge you.

Cl. of Arr. *Henry Beadle*.

Cook. Are you a Freeholder, Sir?

Mr *Beadle*. Yes, I am.

Cook. I do not except againſt him. (*He was ſworn.*)

Cl. of Arr. *John Stredwick*.

Mr *Stredwick*. My Lord, as I apprehend, I am no Freeholder.

L. C. J. Treby. Why do you apprehend ſo?

Mr *Stredwick*. It is my Wife's Eſtate, not mine.

Cl. of Arr. Then your Wife has a Freehold, it ſeems.

Mr *Stredwick*. Yes, ſhe has.

L. C. J. Treby. That is Freehold enough; for you have an Eſtate for your Wife's Life.

Mr *Baker*. And after that too, for it is not given over to any Body elſe, and ſhe wont give it from him.

Cook. Sir, are you a Freeholder in *London* or no?

Mr *Stredwick*. I apprehend, Sir, I am not.

Mr *Baker*. He ſays he has an Eſtate for his Wife's Life.

Cl. of Ar. Then he is a Freeholder, what do you ſay to him?

Cook. Are you poſitive you are a Freeholder in *London* upon your Word?

Mr *Stredwick*. I think not.

Mr *Baker*. Why your Wife's Eſtate is your's for your Life.

Cook. My Lord Chief Juſtice, if your Lordſhip pleaſes, here is a Man that ſays poſitively he thinks he is no Freeholder, I deſire your Lordſhip's Judgment, whether he be a Freeholder or not?

L. C. J. *Treby*. Why, let him put his Caſe, if he make a Doubt of it.

Mr *Stredwick*. I am not poſſeſt of any Eſtate my ſelf.

L. C. J. *Treby*. But is not your Wife an Inheritrix?

Mr *Stredwick*. Yes, my Lord, ſhe is.

L. C. J. *Treby*. Then you are ſeized of a Freehold in her Right; and Mr *Cook*, your own Council will tell you and ſatisfy you, that that is a Freehold ſufficient for this Service.

Mr *Baker*. His Wife's Father ſettled it upon her and her Heirs.

L. C. J. *Treby*. No queſtion, it is a ſufficient Freehold if the Wife be living.

Mr *Baker*. Yes, ſhe is.

Cook. I challenge him.

Cl. of Arr. *William Prince*.

Cook. I challenge him, as being one of Sir *John Friend*'s Jury.

Mr *Prince*.

Mr *Prince*. I thank you, Sir.

Cl. of Arr. *John Simmons*.

Mr *At. Gen.* We challenge him for the King.

Cl. of Arr. *Robert White*.

Cook. Are you a Freeholder, Sir.

Mr *White*. Yes, I think ſo.

Cook. Pray tell me whether you are, or not.

Mr *White*. Indeed I think ſo, Sir.

Cook. I challenge him.

Cl. of Arr. *Edward Brewſter*.

Cook. Where is Mr *Brewſter?* Are you a Freeholder, Sir, in *London?*

Mr *Brewſter*. Yes, Sir.

Cook. I challenge him. Pray Sir, I deſire to know how many I have challenged.

Mr *Baker*. You have challenged Thirty Three.

Cook. How many beſides thoſe that are of Sir *John Freind*'s Jury.

Mr *Baker*. You have but two more to challenge, Sir.

Mr *Serj. Darnall*. I thought you had heard the Opinion of the Court, Mr *Cook*, that it will not hold as a Cauſe of Challenge that he was of Sir *John Freind*'s Jury, therefore thoſe are all reckoned among the peremptory Challenges, and you can challenge but Two more in all.

L. C. J. *Treby*. Not without Cauſe, but as many more as you can have good Cauſe againſt.

Cl. of Arr. *John Reynolds*.

Cook. I except not againſt him. (*He was ſworn.*)

Cl. of Arr. *Joſeph Brookbank*.

Cook. I have nothing to ſay to him. (*He was ſworn.*)

Cl. of Arr. *Adam Bellamy*.

Mr *Bellamy*. My Lord, I am no Freeholder.

L. C. J. *Treby*. Why, what Eſtate have you?

Mr *Baker*. He has Eſtate enough, I know, for Value.

Mr *Bellamy*. I have only a Leaſe.

L. C. J. *Treby*. A Leaſe for Years?

Mr *Bellamy*. Yes, my Lord.

Cl. of Arr. *David Grill*.

Mr *Grill*. I am no Freeholder, my Lord.

Cl. of Arr. *William Rawlins*.

Cook. I accept of him. (*He was ſworn.*)

Cl. of Arr. *Samuel Roycroft*.

Cook. Are you a Freeholder, Sir?

Mr *Roycroft*. Yes, Sir.

Cook. I challenge him.

Cl. of Arr. *Thomas Parker*.

Cook. How many have I to challenge, do you ſay?

Cl. of Ar. But one, Sir; what ſay you to Mr *Parker?*

Cook. I do not except againſt him. (*He was ſworn.*)

Cl. of Arr. *James Robinſon*.

Cook. I have nothing to ſay to him. (*He was ſworn.*)

Cl. of Arr. *Joſeph Morewood*.

Cook. I challenge him.

Mr *Baker*. You have challenged all your Number now.

Cl. of Arr. My Lord, we have gone through the Pannel, we muſt now call the Defaulters again. *Thomas Clark*.

Mr *Clark*. Here.

Sir *B. Shower*. Was he here when he was call'd over?

Mr *At. Gen*. That's nothing, he is here now.

Sir *B. Shower*. But if there be a Default of the Jury, and the King's Council have challenged any one, they ought to ſhew their Cauſe; therefore we deſire that they may ſhew their Cauſe why they challeng'd Mr *Simmons*.

L. C. J. *Treby*. The King has Power to challenge without ſhewing Cauſe till the Pannel be gone through; but if there be a Default of Jurors when the King challenges, the King's Council muſt ſhew Cauſe.

Sir *B. Shower*. Here is a Default of Jurors, my Lord.

L. C. J. *Treby*. No Body is Recorded abſolutely a Defaulter, if he comes in time enough to be ſworn.

Cl. of Arr. Swear Mr *Clark*. (Which was done.)

L. C. J. *Treby*. When there is an apparent Default of Jurors, then they muſt ſhew their Cauſe; but here his Appearance, it ſeems, was recorded, and ſo he was no Defaulter; and you might have challenged him for Cauſe ſtill.

Cl. of Arr. *James Dry*.

Mr *Dry*. My Name is not *James*.

Serj. Darnall. Then you cannot ſwear him: Here are Three miſtaken in their Names.

L. C. J. *Treby*. That is in the Copy in your Brief, Brother, it may be.

Mr *Serj. Darnall*. No, my Lord, the Officers admit it.

Mr *At. Gen*. My Lord, we deſire thoſe Gentlemen, that ſay they are no Freeholders, may be ſworn to that Matter. (Which was accordingly done.) And ſeveral of them that had ſtaid, did deny the having of any Freehold upon Oath, and ſome were gone away.

L. C. J. *Treby*. Pray take care to eſtreat the Iſſues, and return greater Iſſues the next time.

Mr *F. Rokeby*. Truly the Court muſt put ſome great Penalty upon them for trifling with the Court in reſpect of their Duty that they owe to the King and Country, in regard of their Eſtates.

Cl. of Arr. Pray, let the Officers be called who ſummoned this Jury, Mr *Sheriff*.

(Which was done.) And they examined concerning their ſummoning thoſe who made Default, and the Iſſues of thoſe who were recorded as Defaulters were ordered to be eſtreated.

Then the Court not being able to proceed for want of a Jury, they ordered another Pannel to be ready againſt *Wedneſday* next, to which time, at Seven in the Morning, the Court was by Proclamation adjourned.

Die Mercurii Decimo Tertio Maii, Anno Dom. 1696.

The Court being met according to the Adjournment, the Pannel was called over, and the Defaulters Recorded, and ſeveral excuſed for Abſence upon Sickneſs, and being out of Town before the Summons. Then Mr. Serjeant Darnall *deſired before the Jury was called, to move ſomething againſt the Pannel: And made his Motion thus;*

Mr *Serj. Darnall*. IF your Lordſhip pleaſes, I have ſomewhat to offer to you before you go upon this new Pannel; and I confeſs, I think it is my Duty to the Court, as well as to the Priſoner, to ſtate the Caſe as it is, and ſubmit it upon the Reaſon of Law, and the Authorities that I ſhall offer, whether the Proceedings upon this new Pannel will not be erroneons? My Lord, the Queſtion is, Whether as

this Caſe is, the Priſoner has had a Copy of the Pannel of his Jury by which he is to be tried, according as the late Law requires? he had a Copy of the former Pannel, and upon that Pannel Nine were ſworn, and their Names all entered upon Record, and made Parcel of the Record. Therefore now the Queſtion is, whether he can be tried upon a new Pannel? We are in a Caſe that rarely happens; and in a Caſe of Life and Death, I know your Lordſhip will be careful not to vary from the ancient Practice, or to make a new Precedent, becauſe of the Conſequences. It muſt be agreed in this Caſe, that the old Pannel upon which the Priſoner took his Challenges, and of which Nine were ſworn, is Parcel of the Record. Now, my Lord, to add a new Pannel, upon which Twelve more ſhall be ſworn, and all this appear upon Record, and the Priſoner tried upon the laſt Pannel, will not this be Error? I offer this before the Jury be called and ſworn, becauſe we deſire to be fairly tried; and we deſign to reſt upon the Fact in this Caſe. If it ſhould appear, That he is tried upon a Pannel that is unduly made and returned, that will be of Evil Conſequence one way or other. And can this be duly made, if another appear upon Record before it? And can any Body ſay it is quaſht or abated? Or can it be ſo? My Lord, in *Stamford*'s Pleas of the Crown, p. 155. it is ſaid, *If any of the Pannel die after the Return, and before their Appearance, ſo that there are not enough left to make the Jury, yet the Pannel ſhall not be quaſht, nor is it abated, but it is Cauſe to grant a* Tales. And certainly, my Lord, it is a ſtronger Caſe, when by reaſon of Challenges, which the Law gives the Priſoner liberty to make, there are not enough left, that there ſhall not be a new Pannel, but that a *Tales* ſhall be granted; for if a new Pannel might be made, it cannot appear who were challenged, or who were admitted. And if your Lordſhip Pleaſes to conſider the Intention of the Law in giving the Priſoner Power to challenge, is, that he may have an indifferent Jury; but that would be prevented by ſuch a Practice as this; for when it has been diſcovered upon the old Pannel whom the Priſoner choſe, and whom he challenged upon the new Pannel, the Perſons challenged may be ſet firſt, and thoſe that were choſen may be omitted, or ſo poſtponed, that none of them whom he thought equal to try him, can ſerve upon the Jury. And truly, my Lord, if I am rightly informed, that is the Caſe upon this new Pannel, ſome of thoſe that were admitted and ſworn are left out, and moſt of them, I think, are put laſt in the Pannel whom he thought equal Men to try him, and all thoſe whom he challenged peremptorily, are the firſt Men in the Pannel. This, my Lord, is the Caſe before you, and if this be admitted, the Uſe and End of Challenges, which are in benefit and favour of Life wou'd be defeated. And for Authorities in this Caſe, beſides the Reaſon and Ground of the Law, many cannot be expected, becauſe it is a Fact that rarely happens. I find none of the ancient Practicers ever knew it, but I find that a *Tales* ought to be granted, ſo it is ſaid in ſeveral Books, as in *Stamford*, 155, 156. when ever upon the Principal Pannel, all the Jury does not appear, or ſo many of them do not, that there are not enough left to make a Jury, which is our very Caſe; then in ſuch Caſe the Pannel ſhall not be quaſht or abated; but a *Tales* granted, ſo is 14 *H.* 7. 7. there the Queſtion was, Whether there ſhould be a greater Number returned upon the *Tales* than were in the Principal Pannel, and there the Difference was inſiſted upon, aud agreed, That where it is between Party and Party, where Life is not concerned, it ſhall not, but where Life is concerned, and the Priſoner has Power to challenge peremptorily, there the Judge may award as many upon the *Tales* as he pleaſes, that there may be enough to remain after the Challanges; ſo that if this old Pannel be not abated, and cou'd not be quaſht, and a *Tales* might be granted to conſiſt of any Number, I conceive the Priſoner cannot be tried upon this new Pannel, but it will be Erroneous; and I humbly ſubmit to your Lordſhips, whether you will proceed upon it.

Sir *B. Shower.* If your Lordſhip pleaſes to ſpare me a Word of the ſame Side, with Submiſſion, We think there ought to have been an *Habeas Corpora*, with a *Tales*, ſuch as had been before Sworn, being to be Part of the Jury now, and that is the proper Way to bring the Priſoner to his Trial in this Caſe; the King's Council cannot expect we ſhould produce many Precedents, for I believe this is the Second of the Kind that ever happened, at leaſt, within Memory, That a Trial in Treaſon was put off *pro defectu Juratorum*, though I have a Precedent that I think is expreſs in the Caſe; but we inſiſt in the firſt Place, That a *Tales* does lie at Common-Law, in the Caſe of Life; and ſo the Book that Mr *Serjeant* cited in *Stamford*, is expreſs; and then we ſay, that the Anſwer which we expect, that we are now before Juſtices of Goal-Delivery, is not ſufficient, becauſe the Juſtices of Goal-Delivery, though they do not uſually award Proceſs by way of Writ, but before their coming, they command the Sheriff to have his County ready there, and ſo in Fact, it is a Parol Precept; yet when it is returned, then it is entred upon Record, either *Præceptum eſt Vice Comiti quod venire faceret*; or, *Ideo veniat Jurata*; and the Jury are entred upon Record: So that take it to be before Juſtices of Goal-Delivery, yet the Sheriff having returned a Pannel, and that being upon the File, as appears before your Eyes, in Obedience to your Command, and that Copy of the Pannel being delivered to us two Days before *Saturday* laſt, we humbly ſubmit it to your Lordſhip, whether by Force of the Common-Law, and of the late Act of Parliament, we ought not to be tried by that Pannel; we inſiſt upon it, that the Act intends, and expreſsly deſigned, that not only the Priſoner ſhou'd have a Copy of the Pannel that the Sheriff returned at any time after, but that he ſhould be tried by the Pannel that we had a Copy of at firſt; for it is not ſaid a Copy, *toties quoties* the Court ſhall think fit to award a Precept for a new Pannel, but the Words of the Act are a Copy of the Jury duly teturned by the Sheriff; now this we had, and your Lordſhip knows it is not a returned Pannel till it be in Court, and then it becomes part of the Record: My Lord, I do agree the Juſtices in ſome Caſes have quaſht and ſet aſide Pannels and Juries, and ordered new ones, and I confeſs there was an extraordinary Caſe in the Time of King *Charles* the Second, which was upon the Indictment againſt *Whitebread*, where after the Jury Charged, and Evidence given, the Jury was diſcharged, and a new Pannel made the next Seſſions, upon which Mr *Whitebread* was Tryed and

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Convicted; how juſt or regular that was, I will not inſiſt upon now, but I am ſure there were great Complaints of that Practice, and few Precedents can be ſhewn of the like: But beſides, the Parties themſelves waved it there, no Objection being taken againſt it; but we inſiſt upon it in this Caſe, that this being upon Record, is Part of the Record, and ſo appears to the Court: If the Record indeed were to be made up upon a Writ of Error, perhaps it wou'd be no Error, becauſe it may be they wou'd leave it out; but here it appears there was a Pannel of Record before you, and this muſt either be quaſh'd, or altered, or continued on by Proceſs; you have Power to quaſh it, if it be unduly returned by the Sheriff. If there be any evil Practices for procuring the Pannel, either by the Proſecutor, or the Priſoner; if there be no Freeholders return'd, or the ſame happen in any other reſpect not to be legally done according to the Command or Precept of the Court; but becauſe there is a Default of Appearance of Jurors, no Pannel was ever quaſh'd upon that Account. Then ſay we, if it be not quaſh'd, this Pannel muſt continue; for, What ſhall become of it? Why ſhould it not continue? It is not within the Act of Parliament that gives the Juſtices Power to make a new Pannel, as in the Caſe of a Grand Jury when they are guilty of Concealments, or refuſe to find Bills upon great Evidence, but we have no ſuch Caſe before you, nor do I know any ſuch Rule as can reach this; ſo that we take it, there is no Difference between this Caſe, as before Juſtices of Goal-Delivery, and other Juſtices; that Proceſs does lie againſt the Jury that does not appear even in Treaſon and Felony, there is no Diſpute, and it is very properly ſo, if it be before Commiſſioners of *Oyer* and *Terminer*; firſt a *Venire facias*, and then upon Default, a *Habeas Corpora*, that is the proper Way; then take it before Juſtices of Goal-Delivery, there it is entered upon Record, *Præceptum eſt Vice Comiti*, &c. and here is a Pannel returned by virtue of this Precept, and ſome of the Jury do not appear, and ſo there are not enough to Try the Priſoner after a great many Sworn and Challenged, and this entered upon Record. What ſhall become of that Pannel, it cannot be quaſh'd nor abated? My Lord, there is a Caſe that does warrant that Opinion of a *Tales* in a Caſe of Felony; and if there may be a *Tales*, then there may be an *Habeas Corpora*, and there are Directions how the Jurors ſhall be Sworn again, upon their appearance on the *Habeas Corpora*, and that is *Wharton*'s Caſe in *Yelverton* 23.

Mr J. *Powell*, jun. Do not diſpute that, it is plain, that a *Tales* does lie in Felony, upon a Commiſſion of *Oyer* and *Terminer*; but can you ſhew me, Sir *Bartholomew*, any where, that upon a Commiſſion of Goal-Delivery a *Tales* does lie?

Sir *B. Shower*. Sir, I can only ſhew the Reaſon of the Law, and I cannot find that does contradict what we now contend for.

Mr J. *Powell*. I tell you, Sir *Bartholomew*, there is no *Tales* but with a *Habeas Corpora* to bring in the firſt Jurors, and that cannot be upon a parol Precept on a Commiſſion of *Oyer* and *Terminer*, there goes a *Venire facias*, which is a Writ upon which the *Habeas Corpora* may be grounded, but there is no *Venire facias* upon a Commiſſion of Goal-Delivery.

Sir *B. Shower*. Why ſhould there not be a Precept in nature of an *Habeas Corpora* for a Jury return'd, upon a Precept as well as on a Writ?

Mr J. *Powell*. No, it never was done; the Commiſſion of Goal-Delivery is a general Commiſſion that does Authorize the Sheriff to impannel, and have a Jury ready at the Day appointed, for the Delivery of the Goal, to Try the Priſoners; it doth import in it ſelf a general Precept for that Purpoſe, before Iſſue joyned, which the Sheriff cannot do in the Caſe of a Commiſſion of *Oyer* and *Terminer*, but muſt have a Writ of *Venire facias*, after Iſſue joyned.

Mr *Sol. Gen.* In all the Caſes that they cite, there is a Writ of *Venire facias*, upon which the After-proceſs, by Writ, may be grounded; but here is no Foundation for any future Proceſs by Writ, becauſe it is only by Parol-Precept.

Mr *Att. Gen.* Sure theſe Gentlemen don't think what they ſay; the Pannel is not Part of the Record, and there is no Record of it; nothing but the Clerk's Entry in a Paper, or Note, for his own *Memorandum*.

Mr *J. Rokeby*. Brother *Darnal*, have you any Book that ſays, Juſtices of Goal-Delivery muſt award a *Tales* upon Default of the Jurors.

Mr *Serj. Darnal*. No, my Lord, I cannot ſay ſo.

L. C. J. *Treby*. Suppoſe all the Jury had been challenged, or dy'd.

Mr J. *Powell*. There could be no quaſhing of it, but it would fall of it ſelf, for Want of a Jury.

Mr J. *Rokeby*. If, according to your Doctrine, we muſt keep to the firſt Pannel, the Conſequence wou'd be, there would be no Tryal at all.

Sir *B. Shower*. *Stamford* makes no Difference that I can ſee.

Mr *Att. Gen.* But theſe Gentlemen have been told the Difference upon which this Matter is grounded; a *Tales* cannot be without a *Habeas Corpora*, and a *Habeas Corpora* cannot be without a *Venire facias*; but a Commiſſion of Goal-Delivery cannot award a *Venire facias*, becauſe that is not to be awarded till Iſſue joyned.

Mr B. *Powis*. The Return of this Pannel before Juſtices of Goal-Delivery, is an Act of the Sheriff, by virtue of the Commiſſion, and nothing appears of Record till the Jury are Sworn.

Mr J. *Rokeby*. They object that it is upon Record.

L. C. J. *Treby*. By the Record, they mean the Clerk's Note.

Mr *Att. Gen.* If you pleaſe to look upon the Indictment, there is no Entry at all, and that is all the Record before you.

Mr J. *Powell*. Does it appear upon Record, that Nine were Sworn?

Mr *Baker*. No; there is nothing upon the Record.

Cler. of Arr. It does not appear till the Record is made up, and nothing is entered till Twelve are Sworn.

Mr Serj. *Darnal*. There will be a great Inconvenience, if a Pannel may be changed at any Time.

Mr J. *Powell*. This is a Caſe that never happened before, and may be never may again.

Sir *B. Shower*. The Law will hold the ſame, in caſe it does appear upon Record, as well as where it does not: But we ſay, a Pannel return'd in Court is a Record.

Mr J. *Powell*. No, it will not; becauſe, when a Jury does appear, and the Twelve are Sworn, then it becomes Parcel of the Record; and therefore *Whitebread*'s Caſe was quite another Caſe,

and was indeed held to be an extraordinary Caſe, but that comes not up to this, for there a full Jury was Sworn, and Evidence given.

Mr Serj. *Darnal.* It may be the ſame Jury will not be returned.

Mr J. *Powell.* But if you have a Copy of the Jury, you are at no Miſchief.

Mr Serj. *Darnal.* Some that were in the former Pannel are quite left out.

Mr Sher. *Buck.* There are none left out, but what were not Freeholders, that I know of.

Mr B. *Powis.* He ſays the Fact is not true, as you have alledged it.

Mr Sher. *Buck.* And Mr. Serjeant *Darnal* has been pleaſed to reflect upon us, as if we had pack'd this Jury, by altering the Places of the Names, which, my Lord, we do utterly deny, and we only left out thoſe that were not Free-holders.

Mr B. *Powis.* The Sheriff ſays, he has not poſtponed any of them, and only left out thoſe that were not Free-holders.

Mr Serj. *Darnal.* If the Law were as plain with us as the Fact in that Caſe, we ſhould have a very good Caſe of it.

Mr Sher. *Buckingham.* Mr. Serjeant, I have both the Pannels here; they may be compared.

Mr Serj. *Darnal.* I ſaid no harm, Mr. Sheriff, nor meant any Reflection upon you.

Mr Sher. *Buckingham.* Mr. Serjeant was pleaſed to ſay, the excepted Men were put in the Front, and thoſe that were Sworn were put laſt.

L. C. J. *Treby.* There is nothing at all in the Objection.

Mr J. *Powell.* Really, becauſe it was opened as a Reflection, it will be proper for the Sheriff to clear it.

Mr Sher. *Buckingham.* My Lord, the Anſwer I give to it, is, That particularly one that was Sworn laſt Time, is now at the very Beginning of the Pannel; and in general, they are mix'd promiſcuouſly, without any Deſign or Study in the leaſt. He ſays we have left out thoſe that ſerved before: I ſolemnly proteſt, I know not one Man returned upon the laſt Pannel that is left out, unleſs it appeared that he is no Freeholder; and we had no Reaſon to put in them, that we knew could not ſerve.

Mr Serj. *Darnal.* That can't appear to us, that they are not Free-holders.

Mr J. *Rokeby.* But it appears to him, and therefore he did well to leave them out.

Mr Sher. *Buckingham.* What I ſay, I am ready to give upon my Oath.

Mr Serj. *Darnal.* I ſay there is one *Henry Beadle* left out, and he was one that was Sworn.

Mr Sher. *Buckingham.* I will not ſay for a particular Man; I proteſt that I did not know he was left out. If it be ſo, it was by Miſtake; for I know Mr. *Beadle* very well, and I take him to be an honeſt Man, and very well affected to the Government as any Man.

Mr Serj. *Darnal.* We deſire to be tryed by Men that are honeſt and well-affected to the Government.

Mr Sher. *Buckingham.* There you have of them, Sir.

Mr Serj. *Darnal.* Thoſe that were Sworn are put laſt of all, and there is not above one of them that is within poſſibility of coming on again.

Mr Sher. *Buckingham.* It will appear by Mr. *Cook*'s Challenges, and the other Pannel, that they ſtood late before; and *Thomas Clark*, who was Sworn the laſt Time, ſtands tenth Man upon the Pannel.

Mr Serj. *Darnal.* He was Sworn after we had gone through the Pannel, and took all our Challenges, not appearing at firſt.

Mr Sher. *Buckingham.* I tell you they ſtand for the moſt Part as they did, for ought I know.

Mr Serj. *Darnal.* There is but one in Threeſcore and Ten, that can be Sworn now, of them that were Sworn before; and there were Nine of them then Sworn.

Mr *Att. Gen.* That is a Miſtake. Indeed there are a great many added to the Pannel, becauſe there was a Defect the laſt Time, and therefore now they may perhaps ſtand later.

Mr Serj. *Darnal.* I do not ſpeak to reflect upon the Sheriffs: I go according to my Inſtructions.

Mr J. *Powel.* If it had been ſo, it had been well enough, for you muſt be contented, the Court muſt take it as the Sheriff returns it, and you have a Copy of it.

Mr *Att. Gen.* Here are four of them that were Sworn before, that ſtood above ſixty off in the old Pannel.

Mr Sher. *Buckingham.* The firſt Man that was Sworn, Mr. *Sherbrook*, ſtands within the firſt Twelve now, as well as before.

Mr J. *Powell.* If they had been all new, there had been nothing in that.

Mr J. *Rokeby.* Truly, I can't ſee but that the Sheriff hath done like an equal, juſt, fair, and honeſt Officer.

Mr *Att. Gen.* They may challenge as they will.

L. C. J. *Treby.* You are to conſider, that this happens becauſe you run out as far as your utmoſt Number, that Time you challenged Thirty-five peremptorily, and divers others for Cauſe, ſo as not to leave enough for a Jury; and from that alone aroſe a Neceſſity of increaſing the Number of the Pannel.

Mr Serj. *Darnal.* It was our Client that challenged them, we do not adviſe him whom to challenge.

Mr J. *Rokeby.* But you muſt take the Conſequence of it, which cauſes this Addition to the Pannel.

L. C. J. *Treby.* What do you complain of? they that are returned, are put in the ſame Order as they were before; they that were Sworn, were (for the moſt Part) late in the Pannel then, and ſo they are now. I do not find any Thing done to the Prejudice of the Priſoner.

Mr Serj. *Darnal.* If the Chriſtian Names had not been miſtaken, there had been perhaps enough to have been Sworn.

L. C. J. *Treby.* That's a good Argument for a new Pannel, becauſe the Chriſtian Names were miſtaken before.

Mr J. *Powell.* It was by Defect of Jurors, and therefore there was an abſolute Neceſſity of a new Pannel.

L. C. J. *Treby.* I am of the ſame Opinion.

Wharton's Caſe is well known: It was much cited as to another Point in *Buſhel*'s Caſe. It was a Tryal at the *King*'s *Bench* Bar at *Weſtminſter* by a Jury of *Kent*, upon an Indictment of Murther.

And I think you ſay the Caſe of *H.* 7. was between Party and Party in Appeal. And I believe *Stamford*'s Diſcourſe, in the Place cited, relates chiefly to Appeals.

I ſhall not deny that a *Tales* may poſſibly be upon an Indictment before Juſtices of *Oyer* and *Terminer*; though 'tis not uſual, nor do you ſhew, or our experienced Clerks know any ſuch Precedent. I agree, that in the mentioned Caſes a *Tales* was

pro-

proper; for in both Cases (*viz.* of *Appeal and Indictment removed into the* King's Bench) the Process for the Jury was as it ought to be, by Writs of *Venire facias*, &c. upon which a full Jury not appearing, there must be a *Tales*. But in proceeding to Tryal before Justices of *Oyer* and *Terminer* on such Indictment as is here, though I will not say but they may proceed by Writ of *Venire facias*, yet I do say, that the more known Course is by Precept, in nature of a *Venire facias*: And the Usage is, that after (and never before) the Prisoner hath pleaded not Guilty, there goes a Precept to the Sheriff, under the Seals of the said Justices of *Oyer* and *Terminer*, returnable at such Day as they shall adjourn to, for returning a Jury to Try it, (as was done lately, upon Advice, in the Case of *Rookwood*, &c.) and upon the Return of That, if, after Challenges, there are not enough left to make a Jury, whether those Justices shall issue a Precept in nature of a *Habeas Corpora*, or *Distringas* with a *Tales*, or another Precept in the same Form as before, and without taking notice of the former, is a Question *not* in Judgment before us. For, we are about proceeding to a Tryal on an Indictment in this Court of Goal-Delivery, (which is the Court wherein generally all capital Crimes are tryed, as well at this Place as at the Assizes) and, I think, here cannot be a *Tales*; I am sure it is not necessary. For, *First*, Here is never any Writ of *Venire facias*, &c. *Secondly*, Nor ever a Precept for returning a Jury to Try a particular Issue: But this Court takes the Pannels of Juries returned by the Sheriff, without any particular Precept to him.

The Course of proceeding by virtue of a Commission of Goal-Delivery, which is the Law in this Case, is this, *viz.* There is, antecedent to the Coming of the Justices, a general Commandment or Precept made, in Writing, to the Sheriff by the said Justices, to return Juries against their Coming, for the Trying of all and singular Prisoners in their Goal, whether they have pleaded before, or shall after. And for that Purpose it requires the Sheriff to summon, out of all Parts of his Country whence the Prisoners come, a great number of Freeholders, not a-kin to the Prisoners, to be at the Time and Place appointed for holding the Court. The Sheriff, by virtue of this general previous Precept, summoneth many for Jurors, and prepares diverse several Pannels of their Names, either at first, or afterwards, as appears necessary, and returneth and delivereth in one or more of these Pannels from Time to Time, as the Court does need, and call for any: This, we know, in Fact, is frequently done where the Sessions of Goal-Delivery lasts several Days, and there is occasion. Though, in Supposition of Law, all these Pannels are returned, and the Tryals thereupon had the first Day of the Sessions; and, in Law, it is intended to be but that one Day only. The Return of this Precept is thus, *viz.* *Executio istius Præcepti patet in quibusdam Pannellis huic præcepto annexis*, and the Pannels are annexed, and there are often filed here divers Pannels upon the same general Precept, though sometimes but One. These Pannels are thus delivered into Court, and a Jury taken out of them, as there is occasion, only upon a *Parol Award*, that is, barely the Court's calling for the same, without Writ or Precept in Writing, or giving any Day for the Doing it. For, this Proceeding is *immediate*, for the speedy Delivery of Prisoners; and the Entry, after setting forth that the Prisoner being arraigned pleads not Guilty, is, *Ideo immediatè veniat inde Jurata*, or *fiat inde Jurata*: And this Court's being instituted for the speedy Delivery of Prisoners, and Warnings being given long before, of their Coming, are the Causes why it has been always held without doubt, that Justices of Goal-Delivery might inquire and try the same Day.

If it fall out, that by reason of Defaults, Deaths, or Challenges, there cannot be a full Jury had out of a Pannel, (as here there wanted three) which is an Accident that the Court cannot know, till they have gone through the Pannel; I think in this Case, that Pannel goes for nothing, is utterly lost and void, and to be cast away or cancelled: For it does not answer the Award of the Court, which was to have a Jury to Try the Prisoner presently. It is meant an effectual Pannel that should afford a full Jury of Twelve unexceptionable Men; and every Pannel that comes short in this, is to be laid aside as a void Thing; and then the Court takes and makes use of another immediately, which may not be deficient, whereby the Award is observed, and the present Service dispatched.

Objection. It is objected, That the old Pannel is Parcel of the Record in Court, and, upon that, Nine were Sworn, and their Names are all enter'd upon Record; and now to add a new Pannel, upon which Twelve shall be Sworn and Try the Prisoner; all this appearing upon Record, it will be Error.

Answer. This Objection stands upon two Mistakes, both arising from not observing the Difference between Precepts and Pannels, in a Court of Goal Delivery and *Venire facias*'s, or Precepts and Pannels in other Courts.

1. It supposes that here will be two Pannels, which will appear to relate to the Tryal of this Prisoner, Mr. *Cook*.

2. It supposes that both these will become Records, or Parcel of the Record in Court.

If either of these Suppositions prove to be a Mistake, it will destroy the Objection. I think both are Mistakes.

1. Here is not, nor will be, nay, there ought not to be any Pannel purporting to be returned for the Trying of Mr. *Cook*, or any particular Prisoner or Prisoners. For, the Precept in this Case is (not like a *Venire facias*, which always respects a particular Issue between Parties therein named, but) general, requiring the Sheriff to return Jurors enough to Try all the Prisoners, not naming any. And the Return, which is the Answer to it by a Pannel or Pannels, is as General; the Title of every Pannel being *Nomina Jurator' ad Triandum pro Domino Rege*, and no more; or *Nomina Juratorum ad Triandum inter Dom. Regem & Prisonar. ad Barram*, without naming any of the Prisoners, and it were absurd if it should be otherwise: For the Precept goes to the Sheriff before the Sessions, and his Return is supposed to be made at the Beginning of the Sessions, when it is not known who of the Prisoners will be indicted; or, if indicted, who will plead not Guilty, or Guilty, or a Pardon, or other Plea.

When, for the Tryal of a particular Prisoner (or divers Prisoners that are thought fit to be put upon Tryal by the same Jury) a Jury is about to be taken out of any Pannel, the Clerk, as he goes along, may take a Note in Paper of the Name of every one that is sworn; or he may (and usually doth)

doth) write *Jur.* on the ſaid Pannel, againſt the Name of every one Sworn: But this Note or Mark is no Part of the Record; it is not *ex Inſtitutione Legis*, it is but a voluntary *Memorandum*, for the Help of his Memory. If he could ſafely truſt to the Strength of his Memory, he need not write at all on this Occaſion; I mean, not till a full Jury is Sworn, who try the Priſoner. But then, indeed, the Clerk muſt (from his Notes or Memory) write the Names of all the Twelve, entring them on the Record of the Indictment, in this manner, *viz.* juſt after the *Ideo immediatè veniat inde Jurata coram præfatis Juſtic.* &c. adding, *& Juratores Juratæ illius*, &c. *Scil.* A. B. *&c. Dicunt*, &c. And it is by this only, that the Names of thoſe that are Sworn, come to be of Record; and it is this Entry upon the Body of the Indictment alone, that is the Record, that ſhews who were Jurors Sworn, to Try this, or that, or other Priſoner, or Priſoners.

So that if the old Pannel were filed, and were a Record, as the Priſoner's Council would ſuppoſe, yet it would not thereby be made appear, that the ſaid Pannel was returned, or uſed for, or in order to the Tryal of this Priſoner.

2. The old Pannel is not filed among the Records of the Court, nor ought to be. When ſuch a Pannel does not produce a Jury, the Clerks may and uſe to throw it by, as a uſeleſs Thing. But, however they uſe it, we cannot allow it to be a Record. It was received *de bene eſſe*; it is abortive and comes to nothing. And it is not every Thing that paſſeth in Court in order to a Record, that comes to be ſo. A frivolous Plea that is rejected, is not recorded. A Preſentment or Bill of Indictment, before it is found, is not a Record: And if an *Ignoramus* be returned upon a Bill of Indictment, it never can be a Record; and thereupon, the Clerks do ſometimes throw it away, though ſometimes they keep it and put it on the File, only taking care to croſs it; but if they do forget to croſs it, yet it is not a Record.

By all this it is apparent how great the Difference is between a Precept and Pannels in this Court, and a *Venire facias* and a Pannel returned thereupon, which is ever iſſued after Iſſue joyned, and doth always mention the particular Parties and Matter it relates to, and is a Record, and a Ground for an *Habeas Corpora* with a *Tales*, to be returnable at a certain future Day.

But, in this Caſe, in this Court, it is quite otherwiſe.

Sir *B. Shower*. Then, my Lord, ſince there is a new Pannel, we hope we ſtand in the ſame Condition upon the Act of Parliament, to take Exceptions to the Indictment before this Jury Sworn, as we did before the other Jury Sworn, ſince all that is quite ſet aſide.

L. C. J. *Treby*. Yes truly, I think that may be.

Mr *Att. Gen.* But theſe Gentlemen would have done well to have given notice of their Exceptions.

Sir *B. Shower*. My Lord, I ſhall not ſtand upon an Exception which I think I might take to the Word *Turmas* in the Indictment, which whether it be Troops of Men, or Horſes, or what it is does not appear; but, I think, we have an Exception to the chief Overt-Act laid in the Indictment, and that we preſume, if my Brief be right, will be ſufficient to ſet aſide this Indictment: That Mr. *Cook* did agree with other Traytors to ſend Mr. *Charnock* into *France* to the ſaid late King *James*, and King *James* is never mentioned before in all the Indictment, that is one Exception that we have, that there is no late King *James* mentioned in the Indictment before this, if my Copy be right, if it be otherwiſe, I ſuppoſe they will find it: It is laid, That Mr. *Cook* did agree to ſend *Charnock* as a Meſſenger into *France*, *eidem nuper Regi Jacobo*, and no *Rex Jacobus* is mentioned before. Then there is another Exception, and that's this: They come and ſay, That whereas there was a War with *France*, which is only in the Indictment by Way of Recital or Rehearſal of an Hiſtory, *Quod cum per magnum Tempus fuit & modo ſit*, &c. Mr. *Cook* the Premiſſes knowing, did compaſs and imagine the King's Death, and did adhere to the ſaid King's Enemies ſuch a Day. Now, my Lord, I do think that this can never be maintain'd, for that *Cum quoddam Bellum*, &c. being an hiſtorical Narrative, is not poſitive enough: For adhering to the King's Enemies, being one of the Treaſons laid in the Charge, there ought to be a War at the Time of the Adheſion, and of Neceſſity then that ought to be preſented by the Jury; for though your Lordſhips can judicially take notice of War or Peace, yet you cannot take notice of it at ſuch a particular Time, and the Reaſon is from the Notion that is in my Lord *Coke* in his third *Inſtitutes*, cap. *Treaſon*, That Adheſions to Rebels is not Adheſion to the King's Enemies, for a Rebel is not ſaid to be an Enemy; but it muſt be adhering to ſuch an Enemy, as between whom and the King there was War at that Time, and conſequently it ought to be more poſitively averred in the Indictment, than it here is; but as to the Overt-Act of Mr. *Cook*'s conſulting and agreeing to ſend *Charnock* over to the ſaid late King *James* to give him notice of what was agreed upon between them, when King *James* is not named before, that can never be got over, with Submiſſion.

Mr *Baker*. It is a Miſtake of your Copy, Sir *Bartholomew Shower*.

Mr *Att. Gen.* I have looked into the Record, and it is *Jacobo Secundo nuper Regi*, not *Dicto*.

Sir *B. Shower*. Then, with Submiſſion, my Lord, they cannot try us now, for we ought to have a true Copy of the Indictment.

Mr *Baker*. Upon demand. But you never demanded it.

Sir *B. Shower*. Yes, it was demanded.

Mr *Baker*. Who demanded it?

Sir *B. Shower*. Our Sollicitor *Burleigh*.

Mr *Baker*. No, he did not; I gave it him officiouſly.

Mr *Att. Gen.* With Submiſſion, my Lord, it is no Objection at all, that their Copy is wrong. That ſhould have been before the Priſoner had pleaded; for the Words of the Act are, That he ſhall have it ſo many Days before, to enable him to plead, and he cannot be put to plead unleſs he have a Copy of the Indictment ſo long before: And at *Rookwood*'s Tryal it was ſaid by the Court it could not be alledged after Plea pleaded.

Mr *Burleigh*. The Copy was given to me publickly in Court.

Mr *Soll. Gen.* Why did not your Sollicitor compare it with the Indictment?

Mr *Att. Gen.* They might have compared it by the Clerk's reading it to them; but they will not admit the Priſoner's Sollicitor to ſee the Original, becauſe the Act expreſly ſays they ſhall not have a Copy of the Witneſſes Names.

Sir *B. Shower*. The Officer is to deliver a true Copy of the Indictment.

Mr *Att.*

Mr *Att. Gen.* No; the Party is to demand it by himſelf or his Agent, and then he is to have it; and if he be denied, he ought to apply himſelf to the Court, who will order the Delivery of it; but we ſtand upon it that they cannot take this Exception now after they have pleaded, for the Intent of the Copy is to enable him to plead.

L. C. J. *Treby.* The Copy, by the Act of Parliament, is to be delivered to the Priſoner, his Attorney, Agent, or Sollicitor, if they require the ſame, and here it ſeems there was no requiring of it, but it was voluntarily given; and now you have lapſed your Time of making the Exception of wanting a Copy, by having pleaded to the Indictment, whereby you have in effect admitted and declared, either that you had a true Copy of it, or that you did not think fit to require one; for the Uſe of the Copy is to better enable the Priſoner to plead. But when you did plead, you took upon your ſelf to be well able to plead without the Help of a Copy, which you might have had upon the asking for.

Sir *B. Shower.* Then, my Lord, there is another Thing in the Indictment, That in this Overt-Act there is a new Time, and a new Place, and a new Verb, and a new Fact alledged, and no nominative Caſe: It is alledged, That *Peter Cook*, at firſt, with others, did ſo and ſo: and then the firſt of *July* to bring the Treaſons aforeſaid to effect, there *& alibi, &c.* (which is very looſe, for I know not whence the *Venue* muſt come) did traiterouſly with *Charnock, Freind*, &c. conſult to procure *Diverſas Turmas & Legiones*, &c. to join with them in *England*, and then it comes *& ulterius* ſuch a Day, Year, and Place, did traiterouſly agree ſo and ſo, and not ſay who: Now this is neither by expreſs Words, nor Rule of Grammar to be referred to the Priſoner at the Bar, it does not ſay *ipſe idem Petrus Cook*; now, my Lord, that the King's Council thought it neceſſary in every Overt-Act is plain, becauſe thoſe Words are put in every other Clauſe of the Indictment, in thoſe Clauſes that go before, and thoſe Clauſes that come after; then if they will take it, that this Clauſe muſt refer to the next Antecedent, that will not do, for the next precedent nominative Caſe is either *Freind* or *Charnock:* So that this is without a nominative Caſe, and the Precedents in my Lord *Coke*'s *Entries* 361, and all the other Books have the nominative Caſe repeated, where there is a new Time, and a new Place, and a new Fact alledged: Now it might be true, that the Priſoner at the Bar might be preſent, and this ſame Treaſon might be diſcourſed of and agitated, and there might be a Conſult about this Buſineſs, and yet it is not neceſſarily implied that he muſt conſent and agree to ſend *Charnock* into *France*, upon which the great Streſs of the Indictment lies: Therefore we ſay, theſe Words having no nominative Caſe, the Indictment cannot hold.

Mr *Att. Gen.* My Lord, as to this Objection it will receive a very plain Anſwer. Our Indictment begins and ſets forth, that *Peter Cook*, the Priſoner at the Bar, did imagine and compaſs the King's Death, and did adhere to the King's Enemies, and theſe are the Treaſons: And then it ſets forth the Overt-Act, that in Execution of the traiterous Compaſſings, Imaginations, and Adheſions aforeſaid, *Ipſe idem Petrus Cook*, together with Sir *William Parkyns*, Mr. *Charnock*, Sir *John Freind* and others, did propoſe and conſult to procure from the *French* King, Forces to invade this Land; *& ulterius*, he and they did agree to ſend *Charnock* to the late King *James*.

Mr J. *Rookeby.* There's the firſt naming of *James* the Second, late King of *England*, and there is no *eidem Jacobo* I promiſe you.

L. C. J. *Treby.* Well, that Miſtake is over. Pray go on Mr. Attorney General.

Mr *Att. Gen.* My Lord, as to this Objection of Sir *Bartholomew Shower*, he would have *ipſe idem Petrus* repeated over again; and he ſays that we lay a diſtinct Overt-Act with a different Time and Place: Now that is a Miſtake too; it is not a different Time and Place, but the ſame Time and Place: And it mentions that *cum R. Charnock, J. Freind, &c. & cum aliis Proditoribus conveniebat, conſultabat, &c.* which he ſays may refer to Sir *J. Friend* or *Charnock:* But if you look into the Frame of the Sentence, that can never be.

Mr J. *Rookeby. Petrus Cook* is the nominative Caſe that governs all the Verbs.

Mr *Att. Gen.* And there is no other nominative Caſe in all the Indictment, but *Petrus Cook*, except it be in a Parentheſis, and that ſaves the Rule of Grammar, if there were any Thing in it, that it muſt refer to the laſt Antecedent.

Sir *B. Shower.* When it comes to the Clauſe that he did procure Horſe and Arms, there the nominative Caſe is repeated.

L. C. J. *Treby.* It would not have made it worſe, if they had made it ſo here; but the Queſtion is, Whether it be neceſſary?

Sir *B. Shower.* Indictments ought to be preciſely certain; but this we ſay is not ſo.

Mr *Att. Gen.* But here is as much Certainty as to the Perſon, as can be, that he did conſult with ſuch and ſuch about ſuch Things; and further, the ſame Day did agree with the ſame Traytors to do ſo and ſo.

Mr J. *Powell.* Indictments, it is true, ought to be plain and clear; but I do not ſee but here is as much Certainty as can be, that he did ſuch a Day conſult, and further the ſame Day did agree with the ſame Perſons.

Sir *B. Shower.* Who did agree, my Lord?

Mr J. *Powell.* He that did conſult with them before, and that is *Peter Cook*.

Mr *Att. Gen.* You'd have had us to have put it to every Verb, I believe.

Sir *B. Shower.* In Indictments no Preſumption ought to be uſed, but the Facts ought to be directly and poſitively alledged.

Mr J. *Powell.* It's true, there ſhould be no Preſumption, and there is none here, for certainly this is a plain Aſſertion of Fact.

L. C. J. *Treby.* Here are two Things that are ſet forth: *Firſt*, That *Peter Cook* did meet with Sir *John Freind*, Sir *William Parkyns*, and others, and then and there did conſult with them, and conſent to procure an Invaſion, and joyn an Inſurrection thereto. And, *Secondly*, Further with the ſaid Traitors did agree to ſend *Charnock* into *France*. Now, what is the nominative Caſe to this Agreement? Is it Sir *John Friend*, and Sir *William Parkyns?* That's impoſſible: For they could not be ſaid properly to meet and conſult with themſelves, every one of them with his own ſelf and the reſt. And then the Number, if it had referr'd to them, ſhould have been plural, but here it is ſingular, [*agreavit*] and the Senſe is no more than this; That then and there Mr. *Cook* did meet with ſuch Perſons, and did conſult with them about ſuch and ſuch Matters, and further, did agree with them to do thus.

Sir *B.*

Sir *B. Shower.* The Meaning is not to be forced and ſtrained by Inference or Preſumption, but it ought to be expreſs and plain.

L. C. J. *Treby.* Nay, you cannot expreſs it better; you may make a Tautology of it if you will.

Sir *B. Shower.* The Paragraph is long, my Lord, and therefore requires the more Care to have thoſe Repetitions that are neceſſary.

L. C. J. *Treby.* Your Objection to this Paragraph is, that it is too long; but repeating the ſame Nominative Caſe to every Verb, would make it much longer.

Sir *B. Shower.* It cannot be underſtood to mean *Peter Cook* without Preſumption, which ought not to be in an Indictment.

Mr *Att. Gen.* And as to Sir *Bartholomew Shower*'s firſt Objection, his Copy is right too, and he miſtook the Place.

Sir *B. Shower.* You ſhou'd have given me that for an Anſwer.

Mr *Att. Gen.* Nay, you ſhould have taken more Care, and not have made the Objection.

L. C. J. *Treby.* Truly, I think it is hardly poſſible to have made this better if it had been otherwiſe than it is.

Mr Serj. *Darnall.* My Lord, we think we have a good Fact of it, which we rely upon, and therefore do not ſo much inſiſt upon theſe Exceptions, tho', in Duty to our Client, we mention that which we think is neceſſary, and we ſubmit to your Lordſhip.

Cl. of Arr. Set *Peter Cook* to the Bar. [*Which was done.*] You, the Priſoner at the Bar, theſe good Men which you ſhall hear called, and perſonally appear, are to paſs between our Sovereign Lord the King and you, upon Tryal of your Life and Death; if therefore you wou'd challenge them, or any of them, your Time is to ſpeak unto them as they come to the Book to be ſworn, and before they be ſworn.

Cryer. Call Sir *John Sweetapple.*

Sir *John Sweetapple.* Here.

Cook. My Lord Chief Juſtice, if your Lordſhip pleaſe, I am adviſed ———

L. C. J. *Treby.* Pray Sir ſpeak out that we may hear what you ſay: And let the Cryer make Proclamation for Silence. [*Which was done.*]

Cook. My Lord, before the Jury is called, I am adviſed, that if any of the Jury have ſaid already that I am guilty, or they will find me guilty, or I ſhall ſuffer, or be hanged, or the like, they are not fit or proper Men to be of the Jury.

L. C. J. *Treby.* You ſay right, Sir, it is a good Cauſe of Challenge.

Mr J. *Rokeby.* That will be a ſufficient Cauſe, if when they come to the Book, you object that, and be ready to prove it.

Cook. Which is Sir *John Sweetapple?* [*He was ſhewn to him.*]

Cl. of Arr. There he is.

Cook. I challenge him.

Cl. of Arr. William Walker.

Cook. Sir, have you ſaid any ſuch Thing that you believe me guilty?

Mr *Walker.* No, Sir.

Mr *Baker.* My Lord, he is asking of the Juryman the Queſtion.

Mr J. *Rokeby.* That's a Fact the Priſoner ſhould prove upon him.

Mr *Att. Gen.* My Lord, he muſt not ask the Jury that Queſtion, Whether they have declared before, that they will find him guilty; that is to make them guilty of a Miſdemeanor.

Mr Serj. *Darnall.* Is it any Miſdemeanor for me to ſay, I think or believe ſuch a Man is guilty.

Mr *Att. Gen.* If he be ſummon'd to be of a Jury, and declare his Opinion before hand, it is a Miſdemeanor.

Mr Serj. *Darnall.* But ſuppoſe it be before he was ſummon'd?

Mr *Att. Gen.* If you make any ſuch Objection, you muſt prove it, and not out of the Juryman's own Mouth.

Mr Serj. *Darnall.* I think any Man, my Lord, that comes to ſerve upon the Jury, may be ask'd any Queſtion that does not make him guilty of any Offence or Crime, or liable to any Puniſhment: Now if any of theſe Gentlemen that are return'd upon this Pannel, before the Summons have declared their Opinion, that the Priſoner is guilty, or ought to ſuffer, with Submiſſion, the Priſoner may ask ſuch a Queſtion, Whether he have ſaid ſo, yea or no?

Mr J. *Powell.* He cannot upon a *Voyer Dire* be ask'd any ſuch Queſtion.

Mr J. *Rokeby.* It is not denyed to be a material Objection, but it muſt be made out by Proof.

L. C. J. *Treby.* You put it too large, Brother *Darnall*, you may ask upon a *Voyer Dire*, whether he have any Intereſt in the Cauſe; nor ſhall we deny you Liberty to ask whether he be fitly qualified, according to Law, by having a Freehold of ſufficient Value; but that you can ask a Juror or a Witneſs every Queſtion that will not make him criminous, that's too large: Men have been ask'd, Whether they have been convicted and pardon'd for Felony, or whether they have been whipt for Petty Larceny; but they have not been obliged to anſwer; for, tho' their Anſwer in the affirmative will not make them criminal, or ſubject them to Puniſhment, yet they are Matters of Infamy; and if it be an infamous Thing, that's enough to preſerve a Man from being bound to anſwer. A pardon'd Man is not guilty, his Crime is purged; but merely for the Reproach of it, it ſhall not be put upon him to anſwer a Queſtion whereon he will be forced to forſwear or diſgrace himſelf. So Perſons have been excuſed from anſwering whether they have been committed to *Bridewell* as Pilferers or Vagrants, or to *Newgate* for Clipping or Coining, *&c.* Yet to be ſuſpected or committed is only a Misfortune and Shame, no Crime. The like has been obſerved in other Caſes of odious and infamous Matters which were not Crimes indictable. But to keep to our Caſe; 'tis true, a Juror may be challenged being an *Alien*, or being a *Villain*; but where the Matter apparently carries Crime or Shame, it ſhould be proved; the Outlawry ſhould be proved, and ſo ſhould the *being a Villain.* Yet that is no Crime, tho' it be an Ignominy.

Mr Serj. *Darnall.* But, my Lord, I take this to be no manner of Infamy at all, there is nothing of Crime, nor nothing of Reproach, but only a declaring of a Man's Opinion.

L. C. J. *Treby.* Truly, I think otherwiſe; I take it to be at leaſt a ſcandalous Misbehaviour, and deſervedly ill-ſpoken of, for any Man to prejudge, eſpecially in ſuch a heinous Matter. I think it is a very ſhameful Diſcovery of a Man's Weakneſs and Raſhneſs, if not Malice, to judge before he hears the Cauſe, and before the Party that is accuſed could be tryed. But, it ſeems, by what the

Priſoner

Priſoner ſays, that he would ask all the Jurors, whether they have not ſaid, that he was *guilty*, or that they would *find* him guilty, or that he ſhould be *hanged*, or the like: Which (preſuming him innocent) is to ask whether they have not defamed and ſlandered him in the higheſt Degree; and to force them to diſcover that they have a mortal Hatred to him, and come with a malicious Reſolution to convict him: Which, admitting they are not puniſhable by our Law, yet are Things ſo deteſtably wicked and ſo ſcandalous, as are not fit to be required to be diſcloſed by and againſt themſelves.

Mr Serj. *Darnall* Pray, my Lord, what is more common than for a Man to ſay, before he is ſummoned to be upon a Jury, when he hears a Fact reported concerning ſuch a one, to ſay I believe he is guilty, or I am of Opinion he is, and I am ſure he will be hanged, and yet there is no Crime in this.

L. C. J. *Treby*. Truly, Brother *Darnall*, I know not how you may approve of ſuch a Man, but I'll aſſure you I do not. I take the Queſtion *not* to be concerning a Man's diſcourſing *ſuppoſitively*; as, if upon hearing News, or a Report of clear Evidence, a Man ſhould ſay, *Suppoſing this to be true, ſuch a Man is guilty, and I ſhould find him ſo if I were of his Jury*. This might not be ſufficient to ſet aſide a Juror: For this has been a general Diſcourſe among the Subjects upon Occaſion of this Conſpiracy; and it imports that if Evidence ſhould not be *true* and *clear*, he would acquit him. And ſo he is, as he ſhould be, indifferent. But if a Man, qualified for a Juror, affirm *poſitively* that ſuch a Priſoner is guilty, and that he will find him ſo whatever Evidence or Proof be given or made to the contrary, I think that may be a Miſdemeanour puniſhable as an owning and encouraging of Falſhood, Perjury, and Injuſtice, and a Contempt and Scandal to the Juſtice of the Kingdom. Tho' I hope and believe that no Man hath ſo demeaned himſelf.

Mr J. *Powell*. In a Civil Caſe it would be a good Cauſe of Challenge. If a Man have given his Opinion about the Right one way or other, may you not upon a *Voire dire* ask him whether he hath given his Opinion one way or other? I believe it may be askt in a Civil Cauſe, becauſe he may have been a Refferree; but if you make it criminal it cannot be askt, becauſe a Man is not bound to accuſe himſelf; now the Difference lies in the Nature of the Cauſe, it is not Criminal in a Civil Caſe for a Man to ſay he was an Arbitrator in ſuch a Caſe, and, upon what appeared before him, he was of ſuch an Opinion.

Mr *Att. Gen.* But, my Lord, it is a different Caſe to give an Opinion about the Right between Party and Party, where a Man has been an Arbitrator and ſo in the Nature of a Judge, and where a Man is to go upon a Jury in the Caſe of Life and Death, and before the Evidence given, he declares his Opinion without hearing the Cauſe.

Sir *B. Shower*. My Lord, we know ſeveral of the Tryals have been printed, and the Names of ſeveral Perſons mentioned, and upon reading of the Tryals or converſing about them, Men are apt to give their Opinions one way or other.

Mr Serj. *Darnall*. It is only an Objection in Caſe he has done it.

Mr J. *Rookeby*. But, Brother, how can you ask him the Queſtion?

Mr Serj. *Darnall*. If the Court are of Opinion that it is ſuch a Crime that it cannot be askt, as tending to make a Man accuſe himſelf of an infamous Crime, then we ſubmit it to you, and I confeſs we muſt not ask it; but we cannot apprehend that there is either Crime or Infamy in it, tho' we think it is an Objection and a good Cauſe of Challenge.

Mr B. *Powys*. I think, tho' it be not ſuch a Crime as infamous upon which a Man is not to be credited, for that is Infamy in the Eye of the Law, whereby a Man is prejudiced in his Credit; yet however it is a ſhameful Thing for a Man to give his Judgment before he hath heard the Evidence, and therefore I think you ought not to ask him it, to make him accuſe himſelf, if it be an opprobrious Matter upon him.

Mr Serj. *Darnall*. Truly, my Lord, I always took it to be the Rule, if the Thing asked to the Perſon returned be not criminal nor infamous, the Party that is askt ought to anſwer to it.

L. C. J. *Treby*. I would fain know, if you ſhould ask any of the Jury-men this Queſtion, whether he be guilty of all the Crimes that are pardoned by the laſt Act of Grace, he be bound to anſwer it?

Mr Serj. *Darnall*. Undoubtedly we cannot ask any ſuch Queſtion; no, not to any one of the Things therein mentioned.

L. C. J. *Treby*. But yet you will force him to diſcover a Crime (if it be one) that is unpardoned.

Mr J. *Powell*. Certainly you go too far, Brother, for no Man is obliged to charge himſelf with what is Criminal, but whether this be Criminal to ſay, *I believe ſuch a one will be hanged*, is of another Conſideration.

Mr J. *Rookeby*. But I think it muſt be proved upon him if any Objection be made.

Sir *B. Shower*. My Lord, it will be no eaſy Thing to bring Witneſſes to prove this Matter, and therefore we would have it from his own Mouth.

Mr J. *Rookeby*. And it is a very hard Matter for a Man to be put upon proving every Diſcourſe that he has had about the publick Affairs of the Time.

Mr *Recorder*. The Reaſon of your Exception is, that he has declared his Opinion before-hand, that the Party would be hanged or would ſuffer, that's a Reproach and a Reflection upon a Wiſe Man ſo to do; and if they can prove it upon him, let them do it: But whether you ſhould ask him ſuch a Queſtion, Whether he be a Fool or a Knave for the giving an Opinion one way or other, that's the Queſtion before us.

Mr Serj. *Darnall*. My Lord, we do not offer it to the Court as an Objection that he is not a wiſe Man.

Mr *Att. Gen.* But what a Man does utter imprudently, may occaſion a Prejudice againſt him, and therefore ought to be proved, and not he to prove it himſelf.

L. C. J. *Treby*. Eſpecially being a Freeholder of *London*, and taking Notice of what is done in *London*; and if he does take Notice of the Fact, and does previouſly give his Opinion of a Matter which he may be called upon a Jury to try, this is an Indiſcretion and a Reproach to him, and I think a Miſdemeanour.

Mr Serj. *Darnall*. My Lord, I acknowledge it is ill done of him, that is, indiſcreetly and not wiſely,

wiſely, and we would have diſcreet and wiſe Men upon our Jury.

Mr *Cowper*. My Lord, Mr Serj. *Darnall* will make it ſo little a Thing at laſt, that it will amount to no Cauſe of Challenge, if it were even prov'd againſt him, which we inſiſt it ought to be, it being their Objection, and the Party not being bound to prove it againſt himſelf; but truly we think there is more in it than ſo, becauſe it is an unjuſt prejudging of a Man before he is try-ed and heard, and if ſo, it is a Thing that he ought not to accuſe himſelf of, and therefore we oppoſe the asking any ſuch Queſtion.

Mr Serj. *Darnall*. Our Objection is not becauſe it is an Offence to declare a Man's Opinion upon a Fact reported, but becauſe it ſhews he has a ſettled Opinion againſt the Perſon of his Guilt, and ſo he is not ſo equal a Man to try him.

L. C. J. *Treby*. And is that like an honeſt Man and a Freeholder of *London*, (who ought to be indifferent) to come with a ſettled Opinion againſt a Man, when he is to be one of his Jury?

Mr Serj. *Darnall*. Well, my Lord, we have been heard, and ſubmit it to the Judgment of the Court.

L. C. J. *Treby*. Truly, I think it reflects both Diſhoneſty and Diſhonour upon him, and therefore theſe Queſtions ought not to be askt. The Queſtion is *not* whether a Man (if ever ſuch a Man there were) that hath ſo reſolved and declared ſhall be ſworn? No; he is not fit to ſerve upon a Jury. But the Queſtion is, How this ſhall be diſcovered, by his own Oath or by other Proof? I think it ought to be made appear by other Proof, if true. A Man attainted of Felony, Forgery, falſe Verdict, or Perjury, ought not to ſerve on a Jury, yet he ſhall not be examined concerning the ſame on a *Voire dire*. And if there be in Court a Copy of ſuch Judgment carefully examined and kept by himſelf, he ſhall not be forced to anſwer whether it be a true Copy; tho' his Anſwer could not ſubject him to any further Penalty.

Mr Serj. *Darnall*. My Lord, I hope no Gentleman of the Jury has done it.

L. C. J. *Treby*. I hope no Freeholder of *London* is ſo indiſcreet or ſo unjuſt. But if any Man in this Pannel have any particular Diſpleaſure to the Priſoner, or be unindifferent, or have declared himſelf ſo, I do admoniſh and deſire him to diſcover ſo much in general; for, it is not fit, nor for the Honour of the King's Juſtice, that ſuch a Man ſhould ſerve on the Jury.

Mr Serj. *Darnall*. We hope ſo too. We hope that all that are returned upon the Jury are diſcreet and impartial Men.

Cl. of Arr. Well, Sir, what ſay you to this Gentleman Mr *Walker*?

Cook. I challenge you, Sir.

Cl. of Arr. *Nathanael Long*.

Sir *B. Shower*. My Lord, we think he may ask if they have a Freehold or no; becauſe the Law requires that Qualification, and the Priſoner not being able to prove the Negative, it puts the Proof of the Affirmative upon the Perſon himſelf.

Mr *Att. Gen*. What does Sir *Bartholomew* mean? would he have the Jury-men bring their Evidences with them to prove their Freehold?

L. C. J. *Treby*. No ſure, Mr *Attorney*; but to ask the Queſtion was allowed him the laſt Time, and we will not deny him the ſame juſt Favour now.

Cook. Are you a Free-holder, Sir, in *London*, of the Value of 10 *l*. a Year?

Mr *Long*. Yes, Sir.

Cook. Were you of the Grand-Jury when the Bill was found againſt me?

Mr *Long*. No, Sir.

Cook. I challenge you, Sir.

Cl. of Arr. *William Carbonell*.

Mr *Carbonell*. My Lord, I am no Free-holder.

L. C. J. *Treby*. What, does he ſay he has no Free hold?

Cl. of Arr. Yes, my Lord.

L. C. J. *Treby*. Then he muſt be ſet aſide.

Cl. of Arr. *Joſhua Foſt*.

Mr *Foſter*. My Lord, I am no Freeholder in *London* neither.

Mr *Att. Gen*. My Lord, we deſire they may be ſworn whether they have a Freehold or not.

Cl. of Arr. Hold Mr *Carbonell* and Mr *Foſter* the Book. (*Which was done ſeverally.*) *You ſhall true Anſwer make to all ſuch Queſtions as ſhall be askt you by the Court. So help you God.*

Mr *Att. Gen*. Ask him if he hath not a Freehold in *London*?

Mr *Carbonell*. No, I have not.

Cl. of Arr. Have you or any Body in Truſt for you a Freehold in *London* of the Value of 10 *l*. a Year?

Mr *Carbonell*. No, Sir.

Cl. of Arr. *Joſhua Foſter*, have you or any in Truſt for you any Eſtate of Freehold in *London* of the Value of 10 *l*. a Year?

Mr *Foſter*. No, Sir.

Cl. of Arr. *Joſeph Billers*.

Cook. I deſire they may be called in the Order as they are in the Pannel; you have not called *John Ewen*, who is next.

Cl. of Arr. I do call them in Order: As for Mr *Ewen*, one has made Oath that he is ſick, and is not able to come hither. What ſay you to Mr *Billers*? There he ſtands.

Cook. Sir, are you a Freeholder of 10 *l*. a Year, within the City of *London*?

Mr *Billers*. Yes, Sir.

Cook. Was you of the Grand-Jury, Sir, when the Bill was found againſt me?

Mr *Billers*. No, Sir.

Cook. I challenge you.

Cl. of Arr. *John Child*.

Cook. Sir, are you a Freeholder within the City of *London*?

Mr *Child*. Yes, Sir.

Cook. Of 10 *l*. a Year?

Mr *Child*. Yes, Sir.

Cook. Were you of the Grand-Jury, when the Bill was found againſt me?

Mr *Child*. No, Sir.

Cook. I challenge you.

Cl. of Arr. *Edward Leeds*.

Cook. Sir, are you a Freeholder within the City of *London*, of 10 *l*. a Year?

Mr *Leeds*. Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill againſt me?

Mr *Leeds*. No, Sir.

Cook. I challenge you.

L. C. J. *Treby*. What Queſtion was that he ask'd him?

Cl. of Arr. Whether he were one of the Grand Jury that found the Bill.

L. C. J. *Treby*. A very proper Queſtion: For an Indicter ought not to be a Tryer.

Cl. of Arr. *Thomas Clark*.

Cook.

Cook. Sir, are you a Freeholder within the City of *London* of 10 *l.* a Year?

Mr *Clark.* Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill againſt me.

Mr *Clark.* No, Sir.

Cook. I challenge you.

Cl. of Arr. *Nathan Green.*

Cook. Are you a Freeholder, Sir, within the City of *London*, of the Value of 10 *l.* a Year.

Mr *Green.* Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill againſt me?

Mr *Green.* No, Sir.

Cook. I challenge you.

Cl. of Arr. *Henry Sherbroke.*

Cook. I have nothing to ſay againſt him.

Cl. of Arr. Then hold Mr *Sherbroke* the Book. (*Which was done.*) Look upon the Priſoner. *You ſhall well and truly try, and true Deliverance make between our Sovereign Lord the King and the Priſoner at the Bar, (whom you ſhall have in Charge) according to your Evidence. So help you God.*

Then Mr Sherbroke *was put into the Place appointed for the Jury.*

Cl. of Arr. *Henry Dry.*

Cook. Sir, are you a Freeholder in the City of *London*, of the Value of 10 *l.* a Year.

Mr *Dry.* Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill againſt me?

Mr *Dry.* No, Sir.

Cook. Sir, I challenge you.

Cl. of Arr. *Joſeph Morewood.*

Cook. Sir, have you a Freehold in *London*, of the Value of 10 *l.* a Year.

Mr *Morewood.* Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill againſt me?

Mr *Morewood.* No, Sir.

Cook. Sir, I challenge you.

Cl. of Arr. *Richard Greenway.*

Cook. Are you a Freeholder of 10 *l.* a Year in *London?*

Mr *Greenway.* Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill againſt me?

Mr *Greenway.* No, Sir.

Cook. Sir, I challenge you.

Cl. of Arr. *John Sherbrook*

Cook. Sir, are you a Freeholder in the City of *London*, of 10 *l.* a Year?

Mr *Sherbrook.* Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill againſt me?

Mr *Sherbrook.* No, Sir.

Cook. Sir, I challenge you.

Cl. of Arr. *Thomas Emmes.*

Cook. Are you a Freeholder, Sir, within the City of *London* of 10 *l.* a Year?

Mr *Emmes.* Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill againſt me?

Mr *Emmes.* No, Sir.

Cook. I challenge you.

Cl. of Arr. *Samuel Jackſon.*

Cook. Sir, are you a Freeholder within the City of *London* of 10 *l.* a Year?

Mr *Jackſon.* Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill againſt me.

Mr *Jackſon.* No, Sir.

Cook. Sir, I challenge you.

Cl. of Arr. *Henry Hunter.*

Cook. Are you a Freeholder, Sir, in *London* of the Value of 10 *l.* a Year?

Mr *Hunter.* Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill againſt me?

Mr *Hunter.* No, Sir,

Cook. I challenge you.

Cl. of Arr. *John Deacle.*

Cook. Sir, are you a Freeholder within the City of *London*, of the Value of 10 *l.* a Year?

Mr *Deacle.* Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill againſt me?

Mr *Deacle.* No, Sir.

Cook. I challenge you.

Cl. of Arr. *John Cullum.*

Cook. I accept of him. (*He was ſworn.*)

Cl. of Arr. *Thomas Shaw.*

Cook. I accept of him. (*He was ſworn.*)

Cl. of Arr. *George Juyce.*

Cook. Sir, are you a Freeholder within the City of *London* of 10 *l.* a Year?

Mr *Juyce.* Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill againſt me?

Mr *Juyce.* No, Sir.

Cook. I challenge you.

Cl. of Arr. *Richard Young.*

Cook. I have nothing to ſay againſt him. (*He was ſworn.*)

Cl. of Arr. *John Hedges.*

Cook. Sir, are you a Freeholder within the City of *London*, of 10 *l.* a Year?

Mr *Hedges.* Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill againſt me?

Mr *Hedges.* No, Sir.

Cook. I challenge you.

Cl. of Arr. *John James.*

Cook. Sir, are you a Freeholder within the City of *London* of 10 *l.* a Year?

Mr *James.* Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill againſt me?

Mr *James.* No, Sir.

Cook. I challenge you.

Cl. of Arr. *Thomas Poole.*

Cook. Sir, are you a Freeholder within the City of *London* of 10 *l.* a Year?

Mr *Poole.* Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill againſt me?

Mr *Poole.* No, Sir.

Cook. I challenge you.

Cl. of Arr. *Peter Parker.*

Cook. Sir, are you a Freeholder in the City of *London* of 10 *l.* a Year?

Mr *Parker.* Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill againſt me?

Mr *Parker.* No, Sir.

Cook. I challenge you.

Cl. of Arr. *William Wilkinſon.*

Mr *Wilkinſon.* My Lord, I am no Freeholder in *London.*

(*To which he was ſworn.*)

Cl. of Arr. *Henry Mitchell.*

Cook. Hold, Sir, here *Thomas Man* in my Pannel is next.

Cl. of Arr. There is Oath made that he is ſick in Bed. What ſay you to Mr *Mitchell?*

Cook. Sir, have you a Freehold of 10 *l.* a Year in the City of *London?*

Mr *Mitchell.* No, Sir. *(To which he was ſworn.)*

Cl. of Arr. *Richard Ryder.*

Cook. Sir, Have you a Freehold of Ten Pounds a Year in the City of *London?*

Mr *Ryder.* Yes, I have, Sir; but I live in a Pariſh that never ſerve upon any Juries, nor ever did in the Memory of any Man.

Cl. of Arr. But have you a Freehold of 10 *l.* a Year?

Mr. *Ryder.* Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill againſt me?

Mr *Ryder.* No, Sir.

Cook. Sir, I challenge you.

Cl. of Arr. *Richard Temple.*

Mr *Temple.* My Lord, I am no Freeholder. *(To which he was ſworn.)*

Cl. of Arr. *Peter Walker.*

Cook. Sir, are you a Freeholder of the City of *London*, of Ten Pound a Year?

Mr *Walker.* Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill againſt me?

Mr *Walker.* No, Sir.

Cook. I challenge you.

Cl. of Arr. *Thomas Piſtol.*

Mr *Piſtol.* I am no Freeholder. *(To which he was ſworn.)*

Cl. of Arr. *John Hunt.*

Mr *Hunt.* My Lord, my Name is miſtaken; my Name is *William Hunt.*

L. C. J. *Treby.* Then you muſt go on to another.

Cl. of Arr. *John Hardret.*

Mr *Hardret.* I am no Freeholder of Ten Pound a Year. *(To which he was ſworn.)*

Cl. of Arr. *John Hammond.*

Cook. Are you a Freeholder, Sir, of Ten Pound a Year, in *London?*

Mr *Hammond.* Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill againſt me?

Mr *Hammond.* No, Sir.

Cook. I challenge you.

Cl. of Arr. *John Cooper.*

Cook. I accept of him. *(He was ſworn.)*

Cl. of Arr. *Joſſelin Roberts.*

Cook. Sir are you a Freeholder within the City of *London* of Ten Pound a Year?

Mr *Roberts.* Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill againſt me?

Mr *Roberts.* No, Sir.

Cook. I challenge you.

Cl. of Arr. *Jonathan Micklethwait.*

Cook. I have nothing to ſay againſt him. *(He was ſworn.)*

Cl. of Arr. *Richard Chiſwell.*

Cook. Sir, are you a Freeholder within the City of *London* of Ten Pound a Year?

Mr *Chiſwell.* Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill againſt me?

Mr *Chiſwell.* No, Sir.

Cook. I challenge you.

Cl. of Arr. *Joſeph Thompſon.*

Cook. Sir, are you a Freeholder of the City of *London*, of Ten Pound a Year?

Mr *Thompſon.* Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill againſt me?

Mr *Thompſon.* I was returned upon the Grand Jury, but did not ſerve.

Cook. I challenge you.

Cl. of Arr. *Edward Brewſter.*

Cook. Sir, are you a Freeholder of the City of *London*, of Ten Pound a Year?

Mr *Brewſter.* Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill againſt me?

Mr *Brewſter.* No, Sir.

Cook. I challenge you.

Cl. of Arr. *George Gooday.*

Mr *Gooday.* My Lord, I am no Freeholder. *(To which he was ſworn.)*

Cl. of Arr. *Abraham Hickman.*

Cook. Sir, Are you a Freeholder of the City of *London*, of Ten Pound a Year?

Mr *Hickman.* Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill againſt me.

Mr *Hickman.* No, Sir.

Cook. I challenge you.

Cl. of Arr. *George Grove.*

Cook. Sir, Are you a Freeholder of the City of *London*, of Ten Pound a Year?

Mr *Grove.* Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill againſt me?

Mr *Grove.* No, Sir.

Cook. I challenge you.

Cl. of Arr. *Nathanael Wyerſden.*

Cook. Sir, Are you a Freeholder of the City of *London*, of Ten Pounds a Year?

Mr *Wyerſden.* Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill againſt me?

Mr *Wyerſden.* No, Sir.

Cook. I challenge you. My Lord, I deſire to know how many I have excepted againſt.

Cl. of. Arr. One and Thirty.

Mr *Burleigh.* Write, write.

Cl. of Arr. *Samuel Blewitt.*

Cook. Sir, Are you a Freeholder of the City of *London*, of Ten Pound a Year?

Mr *Blewitt.* Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill againſt me?

Mr *Blewitt.* No, Sir.

Cook. I challenge you.

Cl. of Arr. *John Wolfe.*

Cook. I accept of him. *(He was ſworn.)*

Cl. of Arr. *William Smith.*

Cook. Sir, Are you a Freeholder of the City of *London*, of Ten Pound a Year?

Mr *Smith.* Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill againſt me?

Mr *Smith.* No, Sir.

Cook. I challenge you.

Cl. of Arr. *John Bickley.*

Mr *Bickley.* My Lord, I don't look upon my ſelf as a Freeholder.

L. C. J. *Treby.* Why ſo, Sir?

Mr *Bickley.* I have a Leaſe for One and Fifty Years, my Lord, of my Houſe, and there is a very little Piece of Ground adjoining to it that was very convenient for me to lay to my Leaſe; there is no Way to it but through my Houſe; it is a Thing that never was let for any Thing, and it is not worth the Building.

L. C. J.

L. C. J. *Treby.* What Eſtate have you in it? Do you pay a Ground-Rent for it?

Mr *Bickley.* My Lord, I bought that little Piece of Ground for the Conveniency of my Leaſe.

L. C. J. *Treby.* But did you purchaſe it for Term of Years, or to you and to your Heirs?

Mr *Bickley.* Nay, I bought it for ever, my Lord.

L. C. J. *Treby.* Then you have a Freehold in it. What's the Value of it?

Mr *Bickley.* Truly very little, my Lord.

L. C. J. *Treby.* I don't know any Body can judge of the Value of it but your ſelf. Is it worth Ten Pound a Year?

Mr *Bickley.* My Lord, I can't value it at Ten Pound a Year, it never coſt me Forty Pound.

L. C. J. *Treby.* Then for Eſtate you are well enough, but for Value you are a little under.

Cl. of Arr. *Thomas Collins.*

Cook. I accept of him. (*He was ſworn.*)

Cl. of Arr. *John Watſon.*

Cook. I do not challenge him. (*He was ſworn.*)

Cl. of Arr. *Benjamin Hooper.*

Cook. I accept of him. (*He was ſworn.*)

Cl. of Arr. *John Wells.*

Cook. Sir, Are you a Freeholder of the City of *London*, of Ten Pound a Year?

Mr *Wells.* Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill againſt me?

Mr *Wells.* No, Sir.

Cook. I challenge you.

Cl. of Arr. *John Hibbart.*

Cook. Sir, Are you a Freeholder of the City of *London*, of Ten Pound a Year?

Mr *Hibbart.* Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill againſt me?

Mr *Hibbart.* No, Sir.

Cook. I challenge you.

Cl. of Arr. Mr *Cook* you have challenged your full Number. Call *Daniel Wray.* (*He was ſworn.*)

Cl. of Arr. *John Pettit.* (*He was ſworn.*) Cryer Countez.

Henry Sherbrook.

Cryer, One, *&c.*

Cl. of Arr. *John Pettit.*

Cryer. Twelve good Men and true, ſtand together and hear your Evidence.

The Names of the Twelve ſworn are as follow:

Henry Sherbrook	*John Wolfe*,
John Cullum,	*Thomas Collins*,
Thomas Shaw,	*John Watſon*,
Richard Young,	*Benjamin Hooper*,
John Cooper,	*Daniel Wray*, and
Jonath. Micklethwait,	*John Pettit.*

Cl. of Arr. Cryer, Make Proclamation.

Cryer. O Yez, If any one can inform my Lord, the King's Juſtices, the King's Serjeant, the King's Attorney-General, or this Inqueſt now to be taken of the High-Treaſon whereof *Peter Cook*, the Priſoner at the Bar, ſtands indicted, let them come forth and they ſhall be heard, for the Priſoner now ſtands at the Bar upon his Deliverance, and all others that are bound by Recognizance to give Evidence againſt the Priſoner at the Bar, let them come forth, and give their Evidence, or they forfeit their Recognizance.

L. C. J. *Treby.* You muſt make Room for thoſe Twelve Gentlemen that are ſworn, that they may be at eaſe; and for thoſe that are not ſworn, their Attendance may be ſpared.

Cl. of Arr. *Peter Cook.* Hold up thy Hand. (Which he did.) Gentlemen you that are ſworn, look upon the Priſoner, and hearken to his Cauſe. He ſtands indicted in *London*, by the Name of *Peter Cook*, late of *London*, Gentleman; For that whereas an open and notoriouſly publick and moſt ſharp and cruel War, for a great while hath been, and yet is by Land and by Sea, carried on, and proſecuted, by *Lewis* the *French* King, againſt the moſt Serene, moſt Illuſtrious and moſt Excellent Prince, our Sovereign Lord *William* the Third, by the Grace of God, of *England*, *Scotland*, *France*, and *Ireland*, King, Defender of the Faith, *&c.* All which time, the ſaid *Lewis* the *French* King, and his Subjects, were and yet are Foes and Enemies of our ſaid Lord the King that now is, *William* the Third, and his Subjects, he the ſaid *Peter Cook*, a Subject of the ſaid Lord the King that now is, of this his Kingdom of *England*, well knowing the Premiſſes, not having the Fear of God in his Heart, nor weighing the Duty of his Allegiance, but being moved and ſeduced by the Inſtigation of the Devil, as a falſe Traytor againſt the ſaid moſt Serene, moſt Mild and moſt Excellent Prince, our Sovereign Lord *William* the Third, now King of *England*, his Supreme, True, *Rightful*, *Lawful*, and undoubted Lord, the Cordial Love, and true and due Obedience, Fidelity, and Allegiance, which every Subject of the ſaid Lord the King that now is, towards him our ſaid Lord the King, ſhould bear, and of Right is bound to bear, withdrawing, and utterly to extinguiſh, Intending and Contriving, and with all his Strength purpoſing and deſigning the Government of this Kingdom of *England*, under him our ſaid Lord the King that now is of Right duly, happily, and very well eſtabliſhed, altogether to ſubvert, change and alter, and his Faithful Subjects, and the Freemen of this Kingdom of *England*, into intollerable and miſerable Servitude to the aforeſaid *French* King to ſubdue and enthral; the Firſt Day of *July*, in the Seventh Year of the Reign of our ſaid Lord the King that now is, and divers Days and Times, as well before as after, at *London*, in the Pariſh of St. *Peter Cornhil*, in the Ward of *Limeſtreet*, Falſely, Maliciouſly, Deviliſhly, and Traiterouſly did Compaſs, Imagine and Contrive, Purpoſe and Intend, our ſaid Sovereign Lord the King that now is, then his Supreme, True, *Rightful* and *Lawful* Lord, of and from the Regal State, Title, Honour, Power, Crown, Empire, and Government of this Kingdom of *England*, to depoſe, caſt down, and utterly deprive, and the ſame our Lord the King to Death and final Deſtruction to bring, and the aforeſaid *Lewis* the *French* King, by Armies, Soldiers, Legions, and his Subjects, this Kingdom of *England* to invade, fight with, conquer and ſubdue, to move, incite, procure and aſſiſt, and a miſerable Slaughter among the Faithful Subjects of our ſaid Lord King *William*, throughout this whole Kingdom of *England*, to Make and Cauſe. And further, That the ſaid *Peter Cook*, during the War aforeſaid, to wit, the aforeſaid firſt Day of *July*, in the ſeventh Year aboveſaid, and divers other Days and Times before and after, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, to the ſaid Foes and Enemies of the ſame our Lord the King, did adhere, and was aſſiſting: And his aforeſaid moſt wicked and deviliſh Treaſons, and Traiterous Compaſſings,

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Contrivances, Intentions, and Purpoſes aforeſaid, to fulfil, perfect, and bring to Effect, and in Proſecution, Performance, and Execution of that traiterous adhering, he the ſaid *Peter Cook*, as ſuch a falſe Traitor, during the War aforeſaid, to wit, the ſame firſt Day of *July*, in the Year aboveſaid, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, and divers other Days and Times, as well before as after, there and elſewhere in *London* aforeſaid, falſely, maliciouſly, adviſedly, ſecretly, and traiterouſly, and by Force and Arms, with one *Robert Charnock*, Sir *John Freind*, and Sir *William Parkyns*, Knights, (which ſaid *Robert Charnock*, Sir *John Freind*, and Sir *William Parkyns*, were lately ſeverally duly Convicted and Attainted of High-Treaſon, in Contriving and Conſpiring the Death of our ſaid Lord the King that now is) and with divers other falſe Traitors to the Jurors unknown, did meet, propoſe, treat, conſult, conſent, and agree to procure from the aforeſaid *Lewis* the *French* King, of his Subjects, Forces and Soldiers, then and yet Foes and Enemies of our ſaid Sovereign Lord *William*, now King of *England*, *&c.* great Numbers of Soldiers and Armed Men, this Kingdom of *England* to Invade and Fight with, and to Levy, Procure, and Prepare great Numbers of Armed Men, and Troops, and Legions againſt our ſaid Lord the King that now is, to riſe up and be formed, and with thoſe Foes and Enemies, at and upon ſuch their Invaſion and Entry within this Kingdom of *England*, to join and unite, Rebellion and War againſt our ſaid Lord the King that now is, within this Kingdom of *England*, to make, levy, and carry on; the ſame our Lord the King ſo, as aforeſaid, to Depoſe, and him to Kill and Murther: And further, with the ſaid falſe Traitors, the ſame firſt Day of *July*, in the Year aboveſaid, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, traiterouſly did conſult, conſent, and agree to ſend the aforeſaid *Robert Charnock* as a Meſſenger from him the ſaid *Peter Cook*, and the ſame other Traitors, as far as, and into the Kingdom of *France*, in Parts beyond the Seas, unto *James* the Second, late King of *England*, to propoſe to him, and to requeſt him to obtain from the aforeſaid *French* King the aforeſaid Soldiers and Armed Men for the Invaſion aforeſaid to be made, and Intelligence and Notice of ſuch their traiterous Intentions and Adherings, to the ſaid late King *James* the Second, and the ſaid other Foes and Enemies, and their Adherents, to give and ſhew, and them to inform of other Things, Particulars, and Circumſtances thereunto referring, for the Aſſiſtance, Animating, Comforting, and Aid of the ſaid Foes and Enemies of the ſaid Lord the King that now is, in the War aforeſaid: And to ſtir up and procure thoſe Foes and Enemies the readilier, and more boldly, this Kingdom of *England* to invade; the Treaſons, and traiterous Contrivances, Compaſſings, Imaginings, and Purpoſes of the ſaid *Peter Cook* aforeſaid, to perfect and fulfil; alſo the ſame firſt Day of *July*, in the Seventh Year aboveſaid, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, He the ſaid *Peter Cook*, divers Horſes, and very many Arms, Guns, Muskets, Piſtols, Rapiers, and Swords, and other Weapons, Ammunition, and Warlike Matters, and Military Inſtruments, falſely, maliciouſly, ſecretly, and traiterouſly, did obtain, buy, gather together, and procure; and to be bought, gathered together, obtained and procured, did cauſe, and in his Cuſtody had, and detained to that Intent, to uſe the ſame in the ſaid Invaſion, War, and Rebellion againſt our ſaid Lord the King that now is, him our ſaid Lord the King, of and from the Regal State, Crown and Government of this Kingdom of *England*, to depoſe, caſt down, and deprive, and him to kill and murther; and the Deſigns, Intentions, and all the Purpoſes of him the ſaid *Peter Cook* aforeſoid, to fulfil, perfect, and fully to bring to effect, againſt the Duty of his Allegiance, and againſt the Peace of our ſaid Sovereign Lord that now is, his Crown and Dignity, as alſo againſt the Form of the Statute in ſuch Caſe made and provided.

Upon this Indictment he has been arraigned, and thereunto has pleaded not Guilty, and for his Trial hath put himſelf upon God and his Country, which Country you are, your Charge is to inquire whether he be guilty of the High-Treaſon whereof he ſtands Indicted, or not guilty; if you find him guilty, you are to inquire what Goods or Chattels, Lands or Tenements, he had at the Time of the High-Treaſon committed, or at any time ſince; if you find him not guilty, you are to inquire whether he fled for it; if you find that he fled for it, you are to inquire of his Goods and Chattels as if you had found him guilty; if you find him not guilty, nor that he did fly for it, you are to ſay ſo, and no more, and hear your Evidence.

Mr *Mompeſſon*. May it pleaſe your Lordſhip, and you Gentlemen that are ſworn, this is an Indictment for High-Treaſon againſt *Peter Cook*, the Priſoner at the Bar, and the Indictment ſets forth, That whereas there has been an open and cruel War for a long time, and ſtill is between his Majeſty King *William*, and the *French* King, the Priſoner at the Bar not weighing the Duty of his Allegiance, the firſt of *July* in the Seventh Year of the King's Reign, did compaſs and intend to depoſe and deprive the King of the Title, Honour, and Dignity of the Imperial Crown of this Realm, and likewiſe to put the King to Death, and did adhere to the King's Enemies; and to fulfil theſe Treaſons, he did conſult with *Charnock*, and ſeveral other Traytors who were mentioned there, and ſome of whom have been found guilty of Treaſon, and executed for it, to ſend over to the late King *James*, to perſwade the *French* King to ſend over Soldiers and Arms to invade this Kingdom, and to raiſe an Inſurrection and Rebellion in it, and to deprive and put the King to Death, and to compleat theſe Treaſons, it further ſets forth, That the Priſoner at the Bar did provide ſeveral Arms and Horſes, and this is laid to be againſt the Duty of his Allegiance, againſt the King's Peace, Crown and Dignity, and againſt the Form of the Statute in that Caſe made and provided; to this he has pleaded not guilty, and for Trial put himſelf upon the Country, and, Gentlemen, if we prove theſe Facts laid in the Indictment, its your Duty to find him guilty.

Mr *Att. Gen.* May it pleaſe your Lordſhip, and you, Gentlemen of the Jury, the Priſoner at the Bar ſtands indicted for High-Treaſon.

Cook. My Lord Chief Juſtice, if your Lordſhip pleaſes, before the Witneſſes are examined againſt me, I intreat you that they may not be both in Court together, that one may not hear what the other ſwears, tho' I ſuppoſe it is the ſame thing; for they have been together both now and the laſt Day.

L. C. J.

L. C. J. *Treby.* Mr *Cook.* I must tell you it is not necessary to be granted for asking; for we are not to discourage, or cast any Suspicion upon the Witnesses, when there is nothing made out against them; but it is a Favour that the Court may grant, and does grant sometimes, and now does it to you; though it be not of necessity: They shall be examined apart, but at present this is not the Time of Examination; for the King's Council are now to open the Evidence before they examine the Witnesses; but when the Time comes for the Witnesses to be called and examined, the Court will, in favour to you, take care that your Request be complied with.

Mr *Att. Gen.* May it please your Lordship, the Prisoner stands indicted for High-Treason, in compassing and imagining the Death and Destruction of his Majesty, and likewise in adhering to his Majesty's Enemies, these are the Treasons specified in the Indictment: The Overt-Acts that are laid to prove these Treasons are, That he with several other Traitors, named in the Indictment, did meet and consult, and agree to send over *Charnock* into *France*, to invite the *French* King to make an Invasion upon the Kingdom, and did provide Arms for that Purpose.

Gentlemen, the Nature of the Evidence that you will have produced to prove the Prisoner guilty of these Treasons lies thus: It will appear to you that there has been for some time a Conspiracy carried on by several Traitors, and wicked Persons, to subvert the established Government of this Kingdom, and destroy the Constitution of *England*, by a foreign Invasion of the *French*. You will hear that this Conspiracy was laid wide, and consisted of several Parts, one Part was that of *Assassinating* his Majesty's Royal Person, and that was to be done first, as a Preparation and Encouragement to the *French* to invade the Kingdom: the other Part was the inviting the *French* King to invade us, and the Prisoner at the Bar is accused of being concerned in that Part that relates to the Invasion of this Kingdom, by a *French* Power; and though it may be the other Part, that of Assassinating the King, be the blackest Part of the Conspiracy, yet if the Prisoner at the Bar has been ingaged in the inviting a Foreign Power to invade the Kingdom, my Lords, the Judges, will tell you, in Point of Law, that is as much an Overt-Act of the compassing the Destruction of the King and the People of *England*, and the Subversion of our ancient good Constitution, as if he had been concerned immediately in the other Part, the Assassination.

But now, Gentlemen, that the Prisoner was ingaged in inviting the *French* to invade us, you will hear proved by several Witnesses, that there having been a Design last Year, just before his Majesty went to *Flanders*, to expose his own Person for our Protection, and the Protection of the Liberties of *Europe*, there was a Conspiracy to Murder him before he went to *Flanders*, which, it seems, they were not ripe for then; but immediately after he was gone to *Flanders*, you will hear there were formal Meetings of several Gentlemen and Persons of Quality, among whom the Prisoner at the Bar was one: There was a Meeting in *May*, last Year, after the King was gone to *Flanders*; and this was at the *Old King's-Head* in *Leaden-Hall-Street*; and there were present, my Lord of *Aylesbury*, my Lord *Montgomery*, Sir *William Parkyns*, Sir *John Freind*, Mr *Charnock*, (all which Three last have suffered the Punishment of the Law for their Treason already;) and there were also Mr *Cook*, the Prisoner at the Bar, Mr *Porter* and Mr *Goodman*; these Men did meet together, to consider of the best Ways and Means of encouraging and inviting the *French* King with an Armed Force to invade this Kingdom; they considered that that was a proper Opportunity, and did treat of several Arguments that might perswade to it: First, that the King was gone to *Flanders*, and so was not in Person here to defend us; and that the Troops, to make good such Defence, were in a great measure drawn thither, to assist the Allies against the *French* Power; they did think likewise, that at that Time there was a great Discontent and Dissatisfaction in the Nation, though I think in that they were greatly mistaken; and I believe and hope they will always find themselves so, to think that the People of *England* are so little sensible of that which is the Means of their Preservation, as to hearken to any Discontents to incourage a *French* Power to come into *England* to destroy our Religion and Liberties; that indeed they did apprehend, though they were mistaken, and I believe they always will, when they go upon that Ground.

Gentlemen, These Persons thinking this a proper Opportunity, did agree to send a Messenger into *France* upon this Message, To go to the late King *James*, and perswade him to desire and prevail with the *French* King to assist him with Ten Thousand Men, 8000 Foot, 1000 Horse, and 1000 Dragoons; and to incourage him, they promised their Assistance here, as soon as he came over; and undertook, that between them, they could furnish, and would raise 2000 Horse to meet him at his Landing, and join upon such an Invasion.

Gentlemen, At this Meeting this was agreed upon by all that were there, whereof the Prisoner was one; and they did agree to send Mr *Charnock*, (who has since been executed, and a principal Incourager of the Design, and Actor in it;) he was the Messenger that was appointed to go upon this Errand, and Mr *Charnock* was resolved to go, but desired another Meeting of these Gentlemen, to know if they continued in their former Resolution, that he might have all the Assurance that was reasonable to give the *French* King Incouragement to make the Invasion: Accordingly another Meeting was had of most of the same Persons that were at the Meeting before; particularly the Prisoner at the Bar was at that Second Meeting, which was in *Covent-Garden* at one Mrs *Mountjoy's*, who keeps a Tavern next Door to Sir *John Fenwick's* Lodgings; there they met upon the same Design, and upon Consultation had, and the Question ask'd, they did agree to continue in the former Resolution, and upon that immediately Mr *Charnock* went into *France* to sollicit Forces from thence to invade us; but it happened, as it seems, that the *French* King's Forces were otherwise imployed, so that he cou'd not spare so many at that time; and this Return was brought by *Charnock* to the Gentlemen that imployed him; that he had spoke with the late King, who gave him that Answer, That the *French* King cou'd not spare so many Men at that Time, but he thank'd them for their Kindness.

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Gentlemen, This will be the Nature of our Evidence, to ſhow, that the Priſoner at the Bar was concerned in that Part of the Conſpiracy which relates to the *French* Invaſion; and if he be guilty of that, in point of Law, he is as much guilty of the Conſpiracy, to depoſe and murder the King, as if he had been concerned in the other Part of Aſſaſſinating his Royal Perſon; and I believe no Body can think that thoſe that were to act in the Aſſaſſination, wou'd have attempted to ingage in ſuch a deſperate Deſign, if it had not been for the encouragement of the *French* Invaſion that was to ſecond them afterwards if they ſucceeded; ſo that no Body can extenuate the Crime of the Invaſion, becauſe as to the Horridneſs of the Attempt, it is leſs Black than the other; they are both Crimes of a very high Nature, and equally High-Treaſon; and if we prove the Priſoner guilty of this Part, we hope you will find him guily.

Mr *Soll. Gen.* My Lord, we will call our Witneſſes and prove the Matter, as it has been opened. Call Captain *Porter* and Mr *Goodman*.

Mr *Serj. Darnall.* Now, My Lord, we muſt deſire that that may be done which our Client deſired before, and which your Lordſhip was favourably pleaſed to promiſe, that the Witneſſes may be examined a-part.

L. C. J. *Treby.* Let it be ſo: Who do you begin with?

Mr *Soll. Gen.* We begin with Captain *Porter*, my Lord.

L. C. J. *Treby.* Then let Mr *Goodman* withdraw.

Mr *Baker.* Let Mr *Goodman* go up Stairs, and we will call him preſently.

Mr *Soll. Gen.* Swear Captain *Porter*: (which was done.) Captain *Porter*, Do you know Mr *Cook*, the Priſoner at the Bar?

Capt. *Porter.* Yes, my Lord.

Mr *Soll. Gen.* Do you remember a Meeting of ſome Gentlemen at the *King*'s-*Head-Tavern* in *Leaden-Hall-ſtreet*.

Capt. *Porter.* Yes, I do, Sir.

Mr *Soll. Gen.* Then pray give an Account of the Company that were there, the Time when, and what paſs'd.

Capt. *Porter.* My Lord, the laſt Year we had two Meetings; the Firſt was in *May*, the other was the latter End of *May*, or the Beginning of *June*; the Firſt was at the *King*'s-*Head* in *Leaden-Hall-ſtreet*; there were my Lord of *Aylesbury*, my Lord *Montgomery*, Sir *John Fenwick*, Sir *John Freind*, Sir *William Parkyns*, Mr *Charnock*, Mr *Cook* and my ſelf; Mr *Goodman* came in after Dinner; at this Meeting it was conſulted which was the beſt Way and the quickeſt to reſtore King *James*, and haſten his Return into *England*; ſeveral Diſcourſes and Propoſals there were; at laſt it was agreed to ſend Mr *Charnock* to the late King to borrow of the *French* King Ten Thouſand Men, 8000 Foot, 1000 Horſe, and 1000 Dragoons, to be ſent over into *England* to aſſiſt the King's Reſtoration. Says Mr *Charnock* thereupon, this the King can do without your ſending, and I would not go upon a fooliſh Errand. What will you do to aſſiſt in this Matter? The Company deſired him to promiſe King *James*, that if he would ſend Word when he Landed, and where, they wou'd be ſure to meet him at his Landing with a Body of 2000 Horſe.

Mr *Att. Gen.* Was the Priſoner at the Bar in the Company, and preſent at this Reſultion?

Capt. *Porter.* Yes, he was.

Mr *Att. Gen.* Did all the Company agree to it?

Capt. *Porter.* Yes, they did.

Mr *Att. Gen.* What Signs were there of their Agreement? did they ſtand up ſeverally and declare their Agreement, or how?

Capt. *Porter.* My Lord of *Aylesbury* and Sir *John Fenwick* did riſe up, and deſired Captain *Charnock*, that he would go upon this Errand: And when the Queſtion was ask'd ſeverally of all there preſent by Mr *Charnock*, whether he might aſſure the King of what they had told him? Every one ſaid yes, you may; and Mr *Cook* kneel'd indeed upon a Chair, and ſaid, Yes, you may.

Mr *Att. Gen.* Did he give his Conſent to it?

Capt. *Porter.* Yes, he anſwered in thoſe very Words.

Mr *Soll. Gen.* Do you remember any Meeting of any Company at Mrs *Mountjoy*'s?

Capt. *Porter.* Yes, that was a ſecond Meeting.

Mr *Soll. Gen.* Pray tell my Lord and the Jury, how you came to meet there then, what Company were there, and what paſs'd.

Capt. *Porter.* Mr *Charnock* deſired another Meeting, to ſee if the Gentlemen kept to their former Reſolution; and we met at Mrs *Mountjoy*'s eight or ten Days after, and there were moſt of the Company that was at the firſt Meeting, and there all that were preſent did aſſure Mr *Charnock* that they kept to their firſt Reſolution, and wou'd abide to what was agreed upon at the former Meeting.

Mr *Att. Gen.* Who were preſent at the ſecond Meeting?

Capt. *Porter.* The Priſoner at the Bar was there at that ſecond Meeting.

Mr *Att. Gen.* What was that ſecond Meeting for, do you ſay?

Capt. *Porter.* It was to give Mr *Charnock* Aſſurance, that we were agreed to ſtand by the Reſolution taken at the firſt Meeting.

Mr *Att. Gen.* What did Mr *Charnock* do afterwards?

Capt. *Porter.* I went away from them; there was Sir *William Parkyins*, Sir *John Freind* and Captain *Charnock* went to the *Queens-Head* Tavern in *Fleet-ſtreet*, and Captain *Charnock* told me he wou'd go in two or three Days, and I believe did ſo.

Mr *Att. Gen.* When did you ſee him afterwards?

Capt. *Porter.* When I was a Priſoner upon the Account of the Riot in *Drury-Lane*; about two or three Days after I came to *Newgate* he came to ſee me, and ſaid he had been in *France*; and that King *James* thank'd us for our kind Offer, but the *French* King cou'd not ſpare ſo many Men that Year; and he told me he had been with my Lord of *Aylesbury*, and the reſt of the Gentlemen that had employ'd him to go over, and had delivered them the ſeveral Meſſages that he was ordered to do from the King.

L. C. J. *Treby.* Captain *Porter*, who were preſent at that ſecond Meeting, do you ſay?

Capt. *Porter.* My Lord of *Aylesbury*, Sir *John Freind*, Sir *William Parkyns*, Captain *Charnock*, Mr *Cook* and my ſelf; I cannot tell whether my Lord

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Montgomery or Mr *Goodman* were at that ſecond Meeting or no.

Mr *Att. Gen.* Capt. *Porter*, I would ask you another Queſtion: You were concerned in the Aſſaſſination with thoſe other Perſons that ingaged in it; Pray what Safety did you propoſe to your ſelves after the Aſſaſſination was over?

Capt. *Porter.* My Lord, I ask'd Sir *George Barclay* what we ſhou'd do after the Fact was committed: Says he, you need fear nothing, I will go away that Night, I have a Ship ready, and the King will be Landed in five or ſix Days afterwards; if you'll but keep your ſelves cloſe for ſo many Days, all will do well.

Mr *Soll. Gen.* If the Priſoner or the Council will ask him any Queſtions, my Lord, they may do it.

Sir *B. Shower.* Pray Sir, can you recollect what time of Day this was that this Debate and Reſolution were had at the *Old Kings-Head* in *Leaden-Hall-ſtreet*.

Capt. *Porter.* Truly Sir *Bartholomew*, I can't tell.

Sir *B. Shower.* Pray, by what means do you recollect that this was in the Month of *May?*

Capt. *Porter.* Becauſe Capt. *Charnock* was abſent at the *Dog-Tavern* Riot, which was the Tenth of *June*.

Sir *B. Shower.* Was it not in *April*.

Capt. *Porter.* No, Sir; to the beſt of my Remembrance it was in *May*.

Sir *B. Shower.* What makes you think it was in *May* rather than *April?*

Capt. *Porter.* I have told you, Sir, becauſe both Meetings were before the *Dog-Tavern* Riot, the Tenth of *June*, and Mr *Charnock* was not there at that time; but he told me afterwards he had been in *France*, and there were eight or ten Days Difference between the two Meetings.

Mr *Att. Gen.* My Lord, if they have done with him, I wou'd ask him one Queſtion, to ſettle this Matter in point of Time. Capt. *Porter*, Was the King gone to *Flanders* when you had theſe Meetings?

Capt. *Porter.* The King was gone, Sir, before the firſt Meeting.

Mr *Att. Gen.* The King did not go till ſeveral Days in *May*; was Mr *Goodman* there?

Capt. *Porter.* He was at the firſt Meeting, but I can't tell whether he was at the Second or no.

Mr *Serj. Darnall.* Pray what time was Mr *Goodman* there at the firſt Meeting?

Capt. *Porter.* He came up after Dinner at the firſt Meeting.

Mr *Baker.* Then call down Mr *Goodman*, who came in, and was ſworn.

Mr *Soll. Gen.* Mr *Goodman.* Pray will you give my Lord and the Jury an Account what you know of an intended Invaſion upon this Kingdom; what were the Circumſtances of it, and who were concerned in it.

Mr *Goodman.* My Lord about the Middle of *May* laſt, or thereabouts, Captain *Porter* ſent to me, and told me there was a Meeting of ſome Gentlemen of our Acquaintance at the *King's-Head* in *Leaden-Hall-ſtreet*; and he deſired me that I wou'd be there, becauſe it was about Buſineſs: I told him I did not know whether I cou'd be there at Dinner; but however, I wou'd not fail of coming thither after Dinner; and accordingly I came. When I came into the Houſe, I ſent up my Name to Capt. *Porter*, and he came down and brought me up Stairs, and there I ſaw my Lord *Montgomery*, my Lord of *Aylesbury*, Sir *John Fenwick*, Sir *William Parkyns*, Sir *John Freind*, Mr *Charnock*, and that Gentleman at the Bar, Mr *Cook*: When we were there, the Diſcourſe was, that we did think King *James*'s coming was retarded, and we wou'd do any thing to facilitate his Reſtoration.

Cook. My Lord Chief Juſtice.

L. C. J. *Treby.* What ſay you, Mr *Cook*,

Cook. My Lord, If your Lorſhip pleaſes, I deſire the Jury may not be talk'd to by any Body; and I underſtand there are ſome talking with the Jury.

L. C. J. *Treby.* Fie upon it, we will lay any Body by the Heels that do ſo, they muſt neither be diſturbed, nor inſtructed by any Body.

Cook. My Lord, I am informed there was ſomebody talking to them, and telling them this was the ſame Caſe with Sir *John Freind*.

L. C. J. *Treby.* Do you but ſhow us the Man, and we will find another Place for him; we will ſend him to the Goal, I'll aſſure you.

Mr *Burleigh.* This Gentleman, my Lord, did hear ſuch a Diſcourſe to the Jury (pointing to a Gentleman there) who ſtood up.

My Lord, I cannot poſitively ſwear to the Man, but I did hear ſome Diſcourſe that it was the ſame Evidence as in the former Trial.

L. C. J. *Treby.* If you can ſhow us who it was, we will take Care to puniſh him: I ſuppoſe he ſtands Corrected; and if we knew who he was, he ſhou'd ſtand Committed.

Mr *Att. Gen.* Pray, Mr *Goodman*, begin again, and tell what paſs'd at that Meeting, becauſe the Jury were interrupted from hearing by People's buzzing about them.

Mr *Goodman.* My Lord, When Captain *Porter* brought me up into the Room, I told you what Gentlemen I found there; after we were ſet down, there was a Conſultation, that conſidering the *French* King's Wars retarded the Affair of ſending back King *James*, and the Means of reſtoring him to the Crown, it was fit we ſhou'd find out ſome Way or Method to facilitate his Reſtoration, and it was thought convenient to have a Meſſenger to ſend over to King *James* with Propoſals for that Purpoſe; to this effect, as near as I remember, That if King *James* cou'd prevail with the *French* King to furniſh Ten Thouſand Men, whereof 8000 to be Foot, 1000 Horſe, and 1000 Dragoons, we wou'd endeavour to meet him at the Head of as many Horſe as we cou'd raiſe, to ſuſtain thoſe Forces at their Landing: This was debated in order to come to a Reſolution; and much Difficulty there was how many the Number ſhould be; the Man pitched upon to be ſent, was Mr *Charnock*; and after ſome Debate, how many Thouſand Horſe could be raiſed: Says Mr *Charnock*, don't let me go over upon a fooliſh Errand, but let me know what I have to ſay exactly: Thereupon it was concluded by all, that Two Thouſand Horſe ſhould be the Number we cou'd promiſe, and the King might depend upon them; and if we brought more, ſo much the better; and Sir *John Freind* ſaid, I believe he has ſo many Friends here, that if he came himſelf, he might be welcome; but that we did not think fit to truſt to; and no Body wou'd adviſe any ſuch thing; when the Reſolution of the Thing and the Number was thus

fixed, Mr *Charnock* ask'd whether it were with all our Conſents? and that he might aſſure the King, that this was our Reſolution thereupon? We all roſe up, and ſaid to him, *Yes, you may, yes, you may*, every one particularly; and I remember one Thing particularly concerning the Priſoner Mr *Cook*, That he kneel'd upon the Chair when he ſaid, *Yes, you may*; and his Elbows were upon the Table: This is all that I know of that Meeting. There was to be another Meeting, as Captain *Porter* told me; but I had Buſineſs in the City; but whatſoever he promiſed on my Behalf, as to the Quota of Men, I wou'd be ſure to make it good; and I was not at the ſecond Meeting.

Mr *Att. Gen.* Did you ſee Mr *Charnock* afterwards?

Mr *Goodman.* Yes, I did, when he came back; and he told me the Thing was not accepted, for the *French* King cou'd not ſpare Men, and that he had been with the ſeveral Gentlemen to carry them the Complements that he had in Charge from King *James*, who returned them Thanks for their good Affection; and among the reſt, he did me the Honour to return me Thanks too.

Sir *B. Shower.* Pray, Mr *Goodman*, let me ask you a Queſtion: When it was that you ſaw Mr *Charnock* after this?

Mr *Goodman.* It was in *Arundel-ſtreet*, at his Lodgings.

Sir *B. Shower.* But I ask you, Sir, when it was? Was it before or after the Tenth of *June*?

Mr *Goodman.* It was after the Tenth of *June*, Sir.

Sir *B. Shower.* How long after, pray?

Mr *Goodman.* I believe it was a Month after the Tenth of *June*.

Sir *B. Shower.* Did you ſee him here in *England* before Mr *Porter* was diſcharged from the Riot, and came out of *Newgate*?

Mr *Goodman.* I believe I did ſee him before Captain *Porter* was diſcharged, long.

Mr Serj. *Darnall.* Who were the Perſons that were preſent at that Meeting?

Mr *Goodman.* My Lord *Montgomery*, my Lord of *Aylesbury*, Sir *John Fenwick*, Sir *John Freind*, Sir *William Parkyns*, Mr *Charnock*, Captain *Porter*, and the Priſoner at the Barr, Mr *Cook*.

Mr Serj. *Darnall.* Were you at Dinner with them, Sir?

Mr *Goodman.* No, I came in after Dinner.

Mr Serj. *Darnall.* Pray what Houſe was it, do you ſay, this Meeting was at?

Mr *Goodman.* It was at the *Kings-Head* in *Leaden-Hall-ſtreet*.

Sir *B. Shower.* Can you tell what Day of the Week it was?

Mr *Goodman.* No, nor the Day of the Month.

Sir *B. Shower.* Was you ever in the Company of theſe Gentlemen at any other time?

Mr *Goodman.* No, this was the only time that I heard of this Couſultation; I was not at the ſecond Meeting.

Cook. If your Lordſhip pleaſes, may I ask Mr *Goodman* any Queſtions?

L. C. J. *Treby.* Yes, by all Means ask him what you will.

Cook. Mr *Goodman*, You are upon your Oath: but did you ever hear me ſpeak ten Words in your Life? was you ever in my Company in any Houſe, before or ſince?

Mr *Goodman.* Yes, Sir; I was in your Company at the *Cock* in *Bow-ſtreet*, where you came in accidentally.

Cook. Did you ever hear me talk of the Government, or any Thing of that Nature?

Mr *Goodman.* What the Diſcourſe was of, I cannot particularly ſay, but I am certain you was there: And as to the Conſultation that I now ſpeak of, I remember very well you gave your Conſent in that Manner as I have told the Court.

Mr *Att. Gen.* My Lord, we have done at the preſent.

L. C. J. *Treby.* Then, Brother *Darnall*, what ſay you for the Priſoner?

Mr Serj. *Darnall.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury: I am of Counſel, in this Caſe, for the Priſoner at the Bar, Mr *Cook*, who ſtands Indicted of a very great Offence, no leſs, Gentlemen, than High-Treaſon; and if he be Guilty, his Puniſhment will be as great: But becauſe the Puniſhment and the Offence are both very great, the Law requires exact poſitive Proof, and that by two credible Witneſſes. There have been two indeed that have been produced to you; and if you believe both of them, after what we ſhall offer to you againſt them; and if what they ſwear be true, the Priſoner is guilty: But if we ſatisfie you that either of them is not to be credited, ſo that you do not believe both of them, he muſt be acquitted.

There is no doubt, Gentlemen, but there has been a Villainous Horrid Plot; there is no queſtion of it; and it was, as it has been opened, baſely to Aſſaſſinate one of the braveſt Men living; and to make the happieſt People in the World, if they know when they are ſo, the moſt miſerable People upon Earth, by bringing them under *French* Tyranny and Slavery. Many of the Traitors have been brought to juſt Puniſhment for this Treaſon; nay, they have own'd the Fact at their Deaths, ſo that there is no queſtion of the Truth of it; and therefore, Gentlemen, every honeſt Man will endeavour to bring ſuch as are plainly guilty, of ſuch an abominable Conſpiracy, to juſt Puniſhment; but yet they will be as careful not to let an innocent Man ſuffer; that, Gentlemen, every honeſt Man will take care of, and eſpecially ſuch as are upon their Oaths: It concerns a Jury highly to be ſatisfied, that he is not innocent, whom they bring in guilty; for it is better that Twenty guilty Men ſhou'd eſcape, than one innocent Man ſuffer.

But, Gentlemen, if my Brief be true, we ſhall give you ſuch an Accouut of one of theſe Witneſſes; firſt, as to the Man himſelf; that he is not a Man to be credited as a Witneſs; and then beſides that, as to the Evidence he gives in this Caſe; (I ſay, if my Brief be true) it is falſe, and we ſhall prove it ſo; and when you have heard our Evidence, if you are ſatisfied that one of theſe Witneſſes is not to be credited, or that what he ſwears is not true, you are to acquit the Priſoner.

Gentlemen, Here has been one Mr *Goodman* produced as a Witneſs, one that never was produced before at the Trial of any of thoſe that have ſuffered, ſo that the Truth of their Guilt does not at all depend upon his Evidence, nor does it give any Credit to it. This is this Gentleman's firſt Entry upon this Stage; and yet (if my Brief be true) this is not the firſt bloody

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or cruel Part that he has acted; for we have a Record of Conviction againſt him, whereby it will appear to you, that he was indicted (for Endeavouring to poiſon two Great Dukes) for giving forty Guinea's to an *Italian* Empirick, one *Amydei*, and promiſing two Hundred Pounds more when it was effected, to poiſon the late Duke of *Grafton*, and the preſent Duke of *Northumberland*; and we ſhall ſhew you, that he was convicted of it, and fined a Thouſand Pound for the Offence; which, conſidering the Meanneſs of his Circumſtances at that Time, was as much as Twenty thouſand Pounds; for he could as well have paid Twenty as One then; and it appears too, that Mr *Goodman* (nay, it will not be denied by him himſelf) was in this horrid Plot; and he that wou'd be concern'd to poiſon two Dukes in a Family, to which he had ſo many Obligations——

Mr *Goodman*. My Lord, I deſire Leave to ſpeak to this Matter that the Serjeant mentions.

Mr Serj. *Darnall*. Pray, Sir, let me go on; you may talk anon; I have ſeen the Copy of the Record of Conviction, and have it ready to produce.

Mr *Att. Gen*. Mr *Goodman*, be quiet, and ſtay till by and by; you will be defended, no Doubt on it; but in the mean Time let them go on, and don't interrupt them.

Mr Serj. *Darnall*. I ſay, my Lord, he that wou'd be concern'd in ſo vile an Act, as a Contrivance to take away the Lives of two great Dukes, (who were, in effect, his young Maſters) that he ſhou'd go to poiſon them in a Family to which he had been ſo much obliged; and then, he that wou'd be concerned in ſo horrid a Plot as this was, to deſtroy his Country, and take away the Life of the King; ſure it will be no difficult Thing to think that this Man will not ſtick at the little Priſoner's Life at the Bar, eſpecially when he has ſo great a Temptation to it, as to ſave his own Life by it.

But perhaps ſome of you may doubt whether it is to ſave his own Life or no: But I believe there are none of you would give any Credit to him, if you thought ſo: Therefore, to ſatisfy you of that Fact, we ſhall produce you Evidence of his own Opinion of that Matter, beſide the General known Circumſtances he lay under; As, That he was long in Priſon before he charged the Priſoner with any Thing, and the Priſoner was at Liberty, went every Day abroad for a Week after Mr *Charnock*'s Tryal, and never abſconded one Minute, but lived publickly, openly and viſibly to all his Friends, and all Strangers: But beſides, Gentlemen, that Mr *Goodman* knew he muſt dye, and juſtly and deſervedly for this horrid Plot and Treaſon himſelf; and had no other Way left to ſave his Life, but to come in thus as an Evidence and Accuſer, which we think will ſhake his Credit with you.

I ſay, beſides all this, (if my Brief be true) we ſhall prove that he has ſaid himſelf, That either he muſt hang *Peter Cook*, or he muſt be hang'd himſelf. Thus, Gentlemen, he ſwears to ſave his own Life, by taking away another's.

This, Gentlemen, is as to the Man himſelf, that he is not to be credited. But now further, as to the Evidence that he has given; He tells you that he came into the Tavern in *Leaden-Hall-ſtreet*, and that there he found ſuch Company; he owns he came in after Dinner; and that the other Gentleman, Mr *Porter*, owns too; he ſays there were preſent at this Meeting, my Lord *Montgomery*, my Lord of *Aylesbury*, Mr *Cook*, and ſeveral other Gentlemen; but (if my Brief be true) we ſhall prove by three Witneſſes, that he was not there till they were gone; and that will make an End of all the Pretence of his Evidence.

Mr *Att. Gen*. Nay, then we ſhall never have done.

Mr Serj. *Darnall*. I'll aſſure you, Sir, I have the Names of three Witneſſes in my Brief, to prove that my Lord of *Ailesbury*, my Lord *Montgomery*, and Mr *Cook*, were gone before he came in, tho' if any, or either of them were gone, it deſtroys his Teſtimony; and if we prove this to you, I would be loth to be one of the Jury that ſhould take away the Priſoner's Life upon this Evidence; no, if he were the vileſt Man alive, and much leſs the Life of the Priſoner at the Bar; for we ſhall prove (if my Brief be true) he is a Man of Morals, a Man of Virtue, one that has a great Love for his Country; and this we ſhall prove by Evidence undeniable, Perſons of Quality in their Country, ſuch as ſerve their Country in Parliament, as their Repreſentatives; we ſhall ſhew it by ſuch Evidence, that there will be no Room to doubt of it: He is a Man without any Stain or Blot upon him, 'till this Accuſation; he is the eldeſt Son of his Father, and Heir to a great Eſtate; his Father is a great Officer, and a great Getter under this Government, and can it be imagin'd, or believ'd, that ſuch a Man would be guilty of the worſt of Treaſons, to deſtroy the Religion he profeſſes, to overturn the State, to ruin his own Eſtate, himſelf and his Poſterity, which muſt be the Conſequence of it? Nay, if two good Witneſſes cou'd be produc'd to teſtifie it, and if we had not had ſo much to take off the Credit of *Goodman*, I cou'd hardly believe it of any Man that was in his right Senſes; he muſt have been a Mad-man if he had done it, one that ſtood ſo well with the preſent Government, and of a Family never tainted with Diſloyalty.

Certainly, Gentlemen, when we make out this to you againſt Mr *Goodman*, the Priſoner can be in no Danger of his Life, from Mr *Goodman*'s Evidence, tho' he is an unfortunate Man to come under ſuch an Accuſation; but I cannot believe that any Jury, upon ſuch a Man's Evidence, will brand an honeſt Family with the foulеſt, vileſt, blackeſt Treaſon that ever was hatch'd; no, Gentlemen, you are Men of Ability and Underſtanding, and that is it we relie upon; we doubt not but that you will conſider the Evidence, and conſider your Oaths, and not let the Priſoner's Blood lie at your Doors; therefore we ſhall go on and call our Witneſſes to make out what I have open'd.

Sir *B. Shower*. My Lord, we deſire to call our Witneſſes, and I ſhall reſerve my ſelf to make ſome Obſervations after we have given our Evidence: Mr Serj. has open'd as much as we can prove, and we will now produce our Evidence; Firſt we will ſhew the Conviction of *Goodman*: Mr *Burleigh*, where is the Conviction?

Mr *Burleigh*. Here it is, Sir.

Sir *B. Shower*. Where had you it, Sir?

Mr *Burleigh*. Out of the Treaſury at *Weſtminſter*.

Sir *B. Shower*. Is it a true Copy, did you examine it there?

Mr *Burleigh*. Yes, it is a true Copy, I did examine it with the Record.

Sir *B. Shower*. Then read it, Mr *Tanner*.

Cl. of Arr. Reads— *Michaelmas Term: Triceſimo ſecundo Caroli Secundi.*

L. C. J. *Treby.* Read the Record in *Engliſh* to the Jury.

Cl. of Arr. (Reads.) Be it remember'd, that Sir *Robert Sawyer*, Knight, Attorney-General of our Lord the King that now is, who for the ſame our Lord the King in this part ſueth, came here in the Court of our ſaid Lord the King, before the King himſelf at *Weſtminſter*, on *Thurſday* next after three Weeks of St. *Michael*, the ſame Term; and for the ſame our Lord the King, brought here into the Court of our ſaid Lord the King, before the ſaid King, then and there, a certain Information againſt *Cardell Goodman*, late of the Pariſh of St. *Martin in the Fields*, in the County of *Middleſex*, Gentleman, which Information follows in theſe Words, *Scilicet*, *Middleſex ſcilicet*, Be it remember'd that Sir *Robert Sawyer*, Knight, Attorney-General of our ſaid Lord the King that now is, who for the ſame our Lord the King, in this Behalf ſueth, in his own proper Perſon came here into the Court of our ſaid Lord the King, before the King himſelf at *Weſtminſter*, on *Thurſday* next after three Weeks of St. *Michael* that ſame Term, and for the ſame our Lord the King, gives the Court here to underſtand and be inform'd, That *Cardell Goodman*, late of the Pariſh of St. *Martin in the Fields*, in the County of *Middleſex*, Gentleman, being a Perſon of a wicked Mind, and of an ungodly and deviliſh Diſpoſition, and Converſation, and contriving, practiſing, and falſely, maliciouſly and deviliſhly intending Death, and Poiſoning and final Deſtruction unto the Right Noble *Henry*, Duke of *Graſton*, and *George*, Duke of *Northumberland*, and that the aforeſaid *Cardell Goodman*, his moſt wicked, moſt impious, and deviliſh Intentions, Contrivances and Practices aforeſaid, to fulfil, perfect, and bring to Effect, the Thirtieth Day of *September*, in the ſix and Thirtieth Year of the Reign of our Lord *Charles* the Second, now King of *England*, &c. and diverſe other Days, and Times, as well before as after, at the Pariſh of St. *Martin in the Fields*, in the County of *Middleſex*, with Force and Arms, *&c.* falſely, unlawfully, unjuſtly, wickedly, and deviliſhly, by unlawful Ways and Means, did ſolicite, perſwade, and endeavour to procure one *Alexander Amydei*, to prepare and procure two Flasks of *Florence* Wine, to be mix'd with deadly Poiſon, for the Poiſoning of the aforeſaid Right Noble *Henry*, Duke of *Graſton*, and *George*, Duke of *Northumberland*, and his moſt wicked, moſt impious, and deviliſh Contrivances, Practices and Intentions aforeſaid, to fulfil, perfect, and the more to bring to Effect, the aforeſaid *Cardell Goodman*, the Day and Year aboveſaid, at the Pariſh aforeſaid, in the County aforeſaid, falſely, unlawfully, unjuſtly, maliciouſly and deviliſhly, did promiſe and agree, to give unto the aforeſaid *Alexander Amydei*, forty Pieces of Guinea-Gold, of the Value of forty Pound, of lawful Money of *England*, if he the ſaid *Alexander Amydei* wou'd prepare, procure and provide, two Flasks of *Florence* Wine, to be mix'd with deadly Poiſon, for the Poiſoning of the aforeſaid Right Noble *Henry*, Duke of *Graſton*, and *George*, Duke of *Northumberland*; and if the aforeſaid Poiſon with the Wine aforeſaid to be mix'd, ſhou'd effect the Death of the aforeſaid *Henry*, Duke of *Graſton*, and *George*, Duke of *Northumberland*; that then he the ſaid *Cardell Goodman*, wou'd give unto the ſaid *Alexander Amydei*, the Sum of one Hundred Pounds, and that beyond Sea he wou'd maintain the ſaid *Alexander* all the Days of him the ſaid *Alexander*, to the evil and moſt pernicious Example of all others in the like Caſe offending, and againſt the Peace of our ſaid Lord the King that now is, his Crown and Dignity, *&c.*——— Then here is Proceſs pray'd by the Attorney General againſt Mr *Goodman*, who comes, and by his Attorney pleads not Guilty, and here is Iſſue joyn'd.

Sir *B. Shower.* Well, ſee for the Verdict.

Cl. of Arr. There was a Tryal at *Niſi Prius*, and the Jury find that the ſaid *Cardell Goodman* is guilty of the Premiſſes in the Information ſpecify'd as by the Information is ſuppoſed againſt him.

Sir *B. Shower.* Now read the Judgment.

Cl. of Arr. Thereupon it is conſider'd, that the ſaid *Cardell Goodman* do pay to the King, the Sum of One Thouſand Pounds, for his Fine, impos'd upon him for the Occaſion aforeſaid, and that the aforeſaid *Cardell Goodman* be committed to the *Marſhalſea* of this Court, in Execution for his Fine aforeſaid, that he be ſafely kept there, till he pay his Fine aforeſaid; and before that the ſaid *Cardell Goodman* is deliver'd out of the Priſon aforeſaid, he ſhall give Security to behave himſelf well, during his Life, and alſo ſhall give Security for the Peace to be kept towards the ſaid Lord the King, and all his People, and particularly towards the Right Noble *Henry*, Duke of *Graſton*, and *George*, Duke of *Northumberland*.

Mr Serj. *Darnall.* So, you hear the Record of the Information, Conviction and Judgment, for a very horrid, abominable Crime.

Mr *Att. Gen.* But I deſire they may now go on, and read the whole of the Record.

Cl. of Arr. Reads. And afterwards, to wit, on *Friday* next after eight Days of St. *Hilary*, in the thirty ſixth, and thirty ſeventh Years of the Reign of our ſaid Lord the King that now is, before our ſaid Lord the King at *Weſtminſter* came the aforeſaid Sir *Robert Sawyer*, Knight, Attorney-General of our ſaid Lord the King that now is, and acknowledged that the ſaid *Cardell Goodman* has ſatisfy'd to our ſaid Lord the King that now is, of the Judgment aforeſaid againſt him, in Form aforeſaid given, therefore the ſaid *Cardell Goodman* is thereof acquitted; And ſo forth.

Mr Serj. *Darnall.* Call Mr *Charles Edwards*, *William Cock*, *Chriſtopher Crawford*, *Mary Crawford*, and Mr *Huntley*.

Edwards *appear'd upon a* Habeas Corpus, *directed to the Keeper of* Newgate, *where he was a Priſoner.*

Mr *Baker.* Where is the Warrant of his Commitment? What is he committed for?

Tokeſeild. He is committed for Suſpicion of Treaſon, and treaſonable Practices.

Mr *Baker.* Is he not committed for High-Treaſon?

Tokeſeild. No, Sir, he is not.

Mr Serj. *Darnall.* What Diſcourſe had you with Mr *Goodman*, concerning the Priſoner at the Bar, what did you hear him ſay?

Mr *Baker.* He is not ſworn yet, it ſeems this Gentleman was *Dundee*'s Chaplain in *Scotland*.

Mr *Att. Gen.* If he be not ſworn, he can give no Evidence.

Mr Serj. *Darnall.* My Lord, we deſire he may be ſworn.

L. C. J. *Treby.* Swear him. *(Which was done.)*

Mr Serj. *Darnall.*

Mr Serj. *Darnall.* Pray Sir, will you tell the Court, and the Jury, what you know of any Diſcourſe of Mr *Goodman*'s, concerning the Priſoner at the Bar.

Edwards. My Lord, I deſire to know, being ignorant of the Law, whether I am brought here by the common Courſe of Juſtice or not?

Mr Serjeant *Darnall.* Sir, we have Subpœna'd you for the Priſoner at the Bar, to give Evidence of the Truth of your Knowledge here upon Oath.

L. C. J. *Treby.* Would you have us tell you how you came here? We ſuppoſe you came by due Proceſs of Law, as a Witneſs.

Edwards. Then, my Lord, I deſire to ſpeak but one Word; that 'tis a ſtrange Thing to me to conſider, how Words ſhould be carried away that were privately ſpoken; as if it were to expoſe me to the Reproaches of all my Friends; it is a Thing that I did never expect to hear of again: However, ſeeing I am called here, and obliged upon my Oath to declare what I know, I, by God's Grace will, to the uttermoſt of my Power, tell what has paſs'd in this Matter.

L. C. J. *Treby.* Don't make any Apology for telling the Truth: You are obliged by your Oath to do it, and the Court expects it from you.

Edwards. Among other Diſcourſes that paſs'd betwixt Mr *Goodman* and me, I ask'd him when Mr *Cook* was to be arraigned, and when he was to be tryed: Says he, he is to be arraigned upon *Monday*, and he is to be tryed upon *Thurſday*. I ask'd him whether it was for the Aſſaſſination-Plot, and he told me no. For what then? Said I: As being concerned in ſending Mr *Charnock* into *France?* Who are the Evidences againſt him, ſaid I? Said he, Captain *Porter* and my Self. Said I, I believe two Witneſſes will be found Good, or by Way of Demonſtration in Law; and I pity the poor Gentleman's Caſe. Says he, he ſwore againſt me. How comes it then, ſaid I, that he is not come off, and has not a Pardon, and would divulge no Body elſe?

L. C. J. *Treby.* Who had not a Pardon do you mean?

Edwards. Mr *Cook.* I ask'd how he had not a Pardon? Says he, he would give an Account of no Body elſe but me, and that was the Reaſon he had no Pardon. Said I to him, Who are the Evidences againſt him? Says he, Captain *Porter* and my Self. And after this, ſays he, he or I muſt periſh; or, he or I muſt ſuffer; I believe the Word was ſuffer: But, ſays he, 'tis a fooliſh Thing to be hang'd. All that's ſaid of a Man that is hang'd, is, That he hang'd handſomely, or he dy'd bravely. That's all the Diſcourſe that I can remember.

Mr Serjeant *Darnal.* He ſaid it was a fooliſh Thing to be hang'd; and Mr *Goodman*, it ſeems, had no Mind to be hang'd; and I believe ſo too: But he muſt not hang my Client, to ſave his own Life.

Edwards. Now, by the ſame Oath that I have Sworn, I knew nothing of being brought hither, till my Words were carry'd away privately from me, and has been conſulted of, and returned to me back again; and I was far from ſuborning or carrying away a Diſcourſe privately to make any Advantage of it.

Mr Serjeant *Darnall.* Now we will call *Crawford*, and *Huntley*, and *Cock*.

Mr *Att. Gen.* I deſire that Gentleman that was laſt examin'd, may not go away.

[*Crawford*, *Huntley*, and *Cock* were Sworn.]

Sir *B. Shower.* Set up Mr *Crawford* (which was done). Pray, Sir, will you recollect your ſelf: Do you remember when my Lord of *Aylesbury* and Captain *Porter* din'd at the *King*'s *Head.*

Crawford. Yes: It was about a Twelve-month ago.

Mr Serjeant *Darnall.* What Company was there?

Crawford. My Lord of *Aylesbury*, Sir *John Freind*, Sir *John Fenwick*, Sir *William Parkyns*, Captain *Porter*, and Two or Three more, I did not know their Names.

Sir *B. Shower.* How many were there that din'd there?

Crawford. I think about Eight in all.

Sir *B. Shower.* Was the Room ſhut while they were there, or did the Servants and Drawers go up and down commonly?

Crawford. Yes they did go up and down commonly.

Sir *B. Shower.* After Dinner, did any Body come to them while they were there?

Crawford. No, not during my Lord of *Aylesbury*'s Stay, and my Lord *Montgomery* went away with him?

Sir *B. Shower.* About what Time did my Lord of *Aylesbury* go away?

Crawford. I think it was about Four a-Clock.

Sir *B. Shower.* How can you tell it?

Crawford. I did attend upon them the moſt Part of the Time.

Sir *B. Shower.* Did you ſee him go away?

Crawford. Yes, I did.

Sir *B. Shower.* Was that Gentleman, Mr *Goodman*, there, when they went away?

Crawford. I did not ſee him there, to my Remembrance: No Body came in there before they went away, ſaving their own Servants.

Mr Serj. *Darnal.* Do you know Mr *Cook*, the Priſoner at the Bar? Was he one of the Gentlemen that were at your Houſe?

Crawford. Yes: I did not well remember or recollect, till I ſaw him on *Saturday* laſt.

Mr *Att. Gen.* Was he one that went away?

Crawford. I do not remember truly, Sir.

Mr *Att. Gen.* Pray, how long was it after Dinner that they went away?

Crawford. I think it was not an Hour.

Mr *Att. Gen.* Was you there all the Time, from the Time of the Dinner?

Crawford. No, not all the while I was not in the Room, but going to and fro.

Mr Serj. *Darnal.* You ſay Mr *Goodman* did not come up till after they were gone?

Crawford. No, I did not ſee him.

Mr *Att. Gen.* Did you ſee him at all?

Crawford. No, I did not ſee him at all.

Mr *Att. Gen.* Juſt now it was ſaid he did not come till they were gone, and now it ſeems he did not ſee him at all.

Crawford. I do not know that he was there at all.

L. C. J. *Treby.* But, Brother *Darnal*, you open'd it, that Mr *Goodman* came after my Lord of *Aylesbury* was gone, and now you will prove it that he came not at all.

Sir *B. Shower.* My Lord, we do not pretend to falſify his Evidence for any Thing more than is material for the Priſoner: We ſay Mr *Goodman* was not in the Room where they din'd till thoſe Perſons

Perſons went away; if in any Particular we diſprove him, it is ſufficient for us: If we can ſhew that he was not there till three of thoſe that he has nam'd were gone away, that anſwers our End. We are not concerned if he came at four, five, or ſix a-Clock, and diſcours'd with *Charnock* till twelve a-Clock at Night.

Mr *Att. Gen.* Pray reſerve your Remarks, but only obſerve now what he ſays, that Mr *Goodman* came not at all thither, and that is more than you pretended to open.

Mr *Conyers.* How many were there that were there at Dinner?

Crawford. About Eight.

Mr *Conyers.* How many do you name that you know?

Crawford. My Lord of *Aylesbury*, Sir *John Friend*, Sir *John Fenwick*. Sir *William Parkyns*, and Captain *Porter*, there were ſeveral others; two or three more, but I did not know their Names.

Mr *Conyers.* Did you ſee Mr *Goodman* come in at any Part of the Day afterwards?

Crawford. I do not know that Mr *Goodman*.

Mr *Cowper.* Mr *Crawford*, you ſay, that for an Hour after Dinner you were ſometimes in the Room and ſometimes out; when you were out of the Room, were you always in the Paſſage up to the Room?

Crawford. No, I was not.

Mr *Cowper.* Cou'd any Man come in or out without your ſeeing?

Crawford. I ſhould have known him above Stairs when I came in again.

Mr *Cowper.* Why, you ſay, there were two or three above that you did not know.

Crawford. I knew them by Sight, if not their Names.

Mr *Cowper.* Were you always in Sight then?

Crawford. No, Sir, I tell you I was up and down.

Sir *B. Shower.* Was there any Body came in before my Lord of *Aylesbury* went out, that is, any Body beſides thoſe that din'd there?

Crawford. No.

Sir *B. Shower.* My Lord, we are not contending now about a Man's coming up without his Knowledge; but whether any ſuch Man as Mr *Goodman* came up and ſtay'd there, during the Conſultation, and we inſiſt upon it; there was no Body there till my Lord of *Aylesbury*, my Lord *Montgomery*, and Mr *Cook* were gone, but thoſe that din'd there: Now I would ask a Queſtion again of him, Was there any Body but who din'd there, till my Lord of *Aylesbury* went away?

Crawford. No, there was not.

Mr *Att. Gen.* Why do you ſay ſo? How do you know that?

Crawford. I did not ſee any Body.

Mr *Soll. Gen.* Did you attend upon other Rooms, as well as that, at the ſame Time?

Crawford. Yes, I did.

Mr *Soll. Gen.* Then how is it poſſible that he can ſwear that Mr *Goodman* was *not* there?

Sir *B. Shower.* Do you remember when my Lord of *Aylesbury* and they went away?

Crawford. It was about Four a Clock.

Sir *B. Shower.* Were you there in the Room when they went away?

Crawford. I went out with my Lord to the Coach.

Sir *B. Shower.* Did you ſee him come down Stairs; or did you go up Stairs then?

Crawford. I went up Stairs when the Coach was called.

Sir *B. Shower.* Was then any Body there but ſuch as din'd there?

Crawford. I did not ſee any Body there but thoſe that din'd there.

Mr *Cowper.* But, my Lord, he does not know all that din'd there neither.

L. C. J. *Treby.* Mr *Crawford*, you ſay my Lord of *Aylesbury* and others went away about Four a Clock: Pray how long did the Reſt of the Company ſtay there?

Crawford. I cannot remember. They ſtay'd there pretty late: It is a pretty While ago.

L. C. J. *Treby.* About what Hour did they part?

Crawford. I cannot remember what Time the Reſt went away: Our Houſe is fuller at Night than at Noon; and I waited upon other Companies. It was pretty late before they went away, that I am ſure.

L. C. J. *Treby.* But he cannot remember whether it were Five, or Six, or Twelve, that they went away, only he can remember the Hour of Four, that my Lord of *Aylesbury* and they went away.

Mr J. *Rokeby.* Was it Light, or was it Dark when they went away?

Crawford. It was Dark.

L. C. J. *Treby.* Did you attend the Company after my Lord of *Aylesbury* was gone?

Crawford. I went up and down into that Company as I did into others.

L. C. J. *Treby.* Was you there ſeveral Times after my Lord of *Aylesbury* was gone?

Crawford. Yes, I was there once or twice after my Lord of *Aylesbury* was gone, I am ſure.

L. C. J. *Treby.* And did you never ſee Mr *Goodman* there?

Crawford. No, I never ſaw Mr *Goodman* in my Life, before I ſaw him on *Saturday* laſt.

Sir *B. Shower.* Which is Mr *Huntley?*

Huntley. Here I am, Sir.

Sir *B. Shower.* Pray recollect your ſelf, and tell my Lord and the Jury what you remember of any Company that were with Mr *Porter*, at the *King's Head*, and who din'd there.

Huntley. My Lord of *Aylesbury*, my Lord *Montgomery*, Sir *John Fenwick*, Sir *William Parkyns*, Sir *John Freind*, Mr *Porter* and Mr *Charnock*.

Sir *B. Shower.* That was the Company, you ſay, that din'd there: Did Mr *Goodman* dine there?

Huntley. No, Mr *Goodman* did not dine there.

Sir *B. Shower.* Pray, Sir, recollect your ſelf: When did any of this Company part, or go away?

Huntley. My Lord of *Aylesbury* and my Lord *Montgomery* went away about Four a Clock.

Sir *B. Shower.* Sir, how do you know that?

Huntley. I went down Stairs after them; I was above Stairs when they parted from the Reſt of the Company.

Mr Serj. *Darnal.* Pray mind, Sir: Was Mr *Goodman* there at that Time before they went away?

Huntley. No, he was not.

Sir *B. Shower.* Are you ſure of that, upon the Oath you have taken?

Huntley. Yes, I take it upon my Oath, he was not there.

Sir *B. Shower.* Did you attend them at Dinner?

Huntley. Yes, I did attend them at Dinner.

Sir *B. Shower.* Did you attend them all the While they were there?

Huntley. I was call'd frequently, and was in and out of the Room very much after Dinner.

Sir *B*

Sir *B. Shower.* Do you think if a freſh Man had come in after Dinner, you ſhould not have known him?

Huntley. Yes, I ſhould have known him.

Mr *Att. Gen.* Pray, Friend, let me ask you one Queſtion. Was Mr *Goodman* there at all that Day?

Huntley. That I don't know; I did not ſee him at all.

Mr *Soll. Gen.* Did you attend upon any other Rooms that Day?

Huntley. No, I attended only upon that Company.

Mr *Soll. Gen.* Were you in the Room all the Time?

Huntley. No, I went up and down.

Mr *Soll. Gen.* What Time did the laſt of the Company go away?

Huntley. It was about Darkiſh; it was pretty late to the beſt of my remembrance.

Mr *Att. Gen.* Pray, did any Body come to thoſe Gentlemen after Dinner?

Huntley. No, Sir.

Mr *Att. Gen.* Did you ever ſee *Goodman* before now?

Huntley. Never in my Life, to my Knowledge.

Mr J. *Rokeby.* Did all the Company, but my Lord of *Aylesbury*, and my Lord *Montgomery*, ſtay till it was Duskiſh?

Huntley. That I don't know.

Mr J. *Rokeby.* Did you know all the Company that was that Day at Dinner?

Huntley. I knew all but One.

Mr J. *Rokeby.* And who was that?

Huntley. That was Mr *Charnock.*

Mr J. *Rokeby.* And yet you can't tell whether there was any Body elſe that you did not know, how then can you tell that *Goodman* was not there?

Sir *B. Shower.* He did not know him at that Time, but he might remember him afterwards.

Mr *Conyers.* Did not the ſame Company uſe to meet at other Times, at your Houſe?

Huntley. Not to my Remembrance.

Mr *Conyers.* How then came you, if they never had us'd to meet there, to know all theſe People's Names?

Huntley. I have ſeen Sir *John Freind* there, and Sir *William Parkyns.*

Mr *Conyers.* Was Sir *John Freind* there, or no?

Huntley. Yes, he was.

Mr *Conyers.* My Lord, he was the only Man that was not nam'd before: You did not name Sir *John Freind* before, as I heard: But pray, did you ever ſee Mr *Charnock* there, but at that Time?

Huntley. No, I did not.

Mr *Conyers.* How came you to know it was Mr *Charnock?*

Huntley. I knew very few of them before that Time; and I ask'd their Servants the Names of all thoſe Perſons that were there?

Mr *Conyers.* Did you know Mr *Porter*, pray?

Huntley. Not before that Time: I did ſee Mr *Porter*, and I knew him again when I ſaw him, his *Black* told me his Name that Day.

Sir *B. Shower.* You, *Huntley*, I would ask you one Queſtion more; Was the Door ſhut, or no?

Huntley. No, it was not.

Sir *B. Shower.* Did the Servants go up and down as they us'd to do?

Huntley. Yes, Sir.

Mr *Att. Gen.* Sir *Bartholomew* would make it that there was no Conſultation at all.

Sir *B. Shower.* They were very mad Folks if they would conſult at that Rate with the Door open. Pray call Mr *William Cock*, (*who was ſworn.*)

Mr *Att. Gen.* Sir *John Freind* has own'd it, that's dead.

Sir *B. Shower.* Sir *John Freind*'s Confeſſion is nothing to the Priſoner.

Mr *Att. Gen.* Mr Serjeant *Darnall* did open, that the Confeſſion of thoſe that dy'd, was an undeniable Proof of the Conſpiracy: But go on with your Evidence.

Mr Serjeant *Darnall.* Pray, Mr *Cock*, will you recollect your ſelf, about the Time when Captain *Porter*, and ſome other Gentlemen, din'd at your Houſe.

W. Cock. Yes, very well.

Mr Serjeant *Darnall.* Pray, Sir, can you tell who din'd there at that Time?

W. Cock. There were my Lord of *Aylesbury*, my Lord *Montgomery*, Sir *William Parkyns*, Sir *John Fenwick*, Sir *John Freind*, Mr *Charnock*, Captain *Porter*, and Mr *Cook.*

Mr J. *Rokeby.* Was that all the Company?

W. Cock. Yes, it was.

Mr J. *Rokeby.* One of them ſaid there were Eight.

L. C. J. *Treby.* And he has nam'd Eight, Brother.

Mr Serjeant *Darnall.* Can you remember when any of the Company went away, and who went away firſt?

Cock. My Lord of *Aylesbury* and my Lord *Montgomery* went away in a Hackney-Coach; and their Servants were frequently in the Room, and waited afterwards in another Room, after that they had waited at Table at Dinner; and tho' the Door was ſhut, as it uſed to be when any Company is there, yet no Body was forbid to come there at all.

Mr *Att. Gen.* Do you remember when Mr *Goodman* came there?

Cock. I never ſaw Mr *Goodman* in my Life before to Day.

Mr Serjeant *Darnall.* Did any Body come to this Company before my Lord of *Aylesbury* went away that did not Dine there?

Cock. I did not ſee any Body there at all: And my Lord of *Aylesbury* was about buying a Hogſhead of White-wine, but we could not agree about the Price: And when my Lord of *Aylesbury* went away, I went down with my Lord, and waited upon him to the Coach; and I told my Lord, I hoped he would buy the Wine ſtill. But he anſwered, he could not tell whether he ſhould or no.

Mr Serjeant *Darnall.* Who elſe went with my Lord of *Aylesbury?*

Cock. My Lord *Montgomery.* I don't remember any Body elſe.

Mr J. *Rokeby.* Did all the Reſt of the Company go away at once?

Cock. Truly, my Lord, I can't ſay they did.

Mr J. *Rokeby.* By what Time did the Reſt go away?

Cock. I believe it might be Eight or Nine a Clock.

Mr Serjeant *Darnall.* You ſaw my Lord of *Aylesbury* when he parted: Was Mr *Goodman* there then?

Cock. I did not ſee him.

Mr B. *Powis.* Did Mr *Cook* ſtay till the laſt?

Cock.

Cock. That I can't tell truly.

Mr B. *Powis.* I find they all Swear to Four a Clock of my Lord *Aylesbury*'s going, and go no further.

Mr *Att. Gen.* Pray, Sir, let me ask you a Queſtion or two: Did you ever ſee Mr *Goodman* before now?

Cock. No, I do not remember I did.

Mr *Att. Gen.* When you went into the Room after Dinner, did you look about the Room to ſee whether there were any new Company?

Cock. I did look about the Room ſeveral times, and ſo did my Servants, to ſee if there were any Thing wanting.

Mr *Att. Gen.* Can you take it upon your Oath, that he was not there whilſt my Lord of *Aylesbury* ſtay'd?

Cock. I do: And can take it upon my Oath, he was not.

Mr *Att. Gen.* Then if you can, pray diſtinguiſh the Time when he came in.

Cock. I do not remember that ever I ſaw him in my Life before to Day.

Mr *Att. Gen.* Why are you not as poſitive that he was not there at all, as that he was not there before my Lord of *Aylesbury* went away?

Cock. He might come in, and I not ſee him.

Mr *Att. Gen.* Might he not as well come in before they went away, as after, to come in and you not ſee him?

Cock. No, I do not think he cou'd.

Mr *Att. Gen.* Why do you think ſo?

Cock. Becauſe the Servants were all about, and they did not go to Dinner till Two a Clock: And I believe thoſe Gentlemen that I named, came in a Quarter of an Hour's Time to Dinner.

Mr *Att. Gen.* We do not ſay he came there before Dinner: But could he not come in after Dinner, before my Lord of *Aylesbury* and my Lord *Montgomery* went away, without your ſeeing him?

Cock. Yes, Sir.

Sir *B. Shower.* Then heark ye, Sir, I wou'd ask you one Queſtion: Did you ſee him, upon your Oath, or not?

Cock. No, I did not.

Sir *B. Shower.* Might not Mr *Goodman* come in to them without your ſeeing him?

Cock. It is poſſible; but I don't think it was ſo.

Mr J. *Rokeby.* How then can you be poſitive that he was not there till my Lord of *Aylesbury* went?

Mr *Soll. Gen.* You ſay you may be poſitive he was not there before my Lord of *Aylesbury* went: Can you be as poſitive now, that he was not there before Mr *Cook* went?

Cock. I do not know when Mr *Cook* went.

Mr *Soll. Gen.* How can you be then poſitive he was not there before my Lord of *Aylesbury* went?

Cock. There were no more than what dined there when my Lord of *Aylesbury* went away.

Mr *Conyers.* Pray, Sir, let me ask you a Queſtion: Were you in the Room at any Time after Dinner?

Cock. Yes, I was Sir.

Mr *Conyers.* Pray, Sir, How many Times after Dinner, were you there?

Cock. I believe half a dozen Times.

Mr *Soll. Gen.* And yet you do confeſs that Mr *Goodman* might come in after Dinner before my Lord of *Aylesbury* went, and you not ſee him?

Sir *B. Shower.* Ay, but he could not ſtay there without his ſeeing him, if he was ſo often in the Room: You don't take Mr *Cock*'s Evidence right.

Mr *Att. Gen.* You named eight Perſons that dined at your Houſe: Did you know them all perſonally before that Day?

Cock. Yes, my Lord, the moſt of them at leaſt.

Mr *Att. Gen.* Did they uſe to meet at your Houſe?

Cock. Commonly Sir *John Freind* did once a Week. Mr *Charnock* I knew when I was a Drawer, and ſo I did Sir *William Parkyns:* The Reſt I knew by hearing their Names.

Mr *Att. Gen.* Did you know them before that Day, Sir, I ask you?

Cock. I had ſeen Captain *Porter* ſeveral Times before that Day; but I cannot ſay at my own Houſe.

Sir *B. Shower.* Do you remember the Treaty about the Hogſhead of White-wine?

Cock. Yes, Sir, very well.

Sir *B. Shower.* Were you by when my Lord of *Aylesbury* went away, and ſpoke with him about it?

Cock. Yes, I was; and told him, I hoped he would buy the Wine ſtill.

Sir *B. Shower.* Can you be poſitive that any Body was there before my Lord of *Alesbury* went away, that could ſtay there any Time, and did not Dine there?

Cock. I believe not, Sir; for I came in half a dozen Times after Dinner, and I believe if I had heard Mr *Goodman*'s Name, or ſeen him there, I ſhould have remembred it; but I did not ſee any Body but thoſe that dined there.

Mr *Cowper.* Where was you when my Lord of *Aylesbury* went away? Where did you meet him going away?

Cock. Upon the Stairs: Seeing my Lord of *Aylesbury* and my Lord *Montgomery* coming down, I met them.

Mr *Cowper.* Where did you meet them? At the Middle, or the Top of the Stairs?

Cock. My Lord of *Aylesbury* was at the Top of the Stairs.

Mr *Cowper.* Did you meet him juſt coming out of the Room?

Cock. Yes, Sir, I ſaw the Coach that was called for my Lord; and ſo I went up Stairs, and met my Lord at the Top of the Stairs coming down.

Mr *Soll. Gen.* Now how can you be poſitive who was in the Room when he came out of the Room?

Cock. I went up into the Room after my Lord of *Aylesbury* went away.

Mr *Soll. Gen.* How long after my Lord of *Aylesbury* went away?

Cock. It was preſently after.

Mr *Soll. Gen.* How long before my Lord of *Aylesbury* went away, had you been in the Room?

Cock. I had been there juſt before.

Mr Serjeant *Darnall.* Call *Thomas Peachy,* (*who appear'd and was Sworn.*)

Sir *B. Shower.* My Lord, we ſhall prove that after the Plot broke out, and after Mr *Porter* had made his Diſcovery, there was no Diſturbance of Mr *Cook* till a good While after *Charnock*'s Tryal; and Mr *Cook* was ſo far from being ſenſible, or conſcious of any Guilt, that he never abſconded, but continued for three Weeks in his Father's Houſe, where he was taken by a Meſſenger. Pray Mr *Peachy* will you tell my Lord, and the

the Jury, where Mr *Cook* was taken, and when, and by whom?

Peachy. He was taken at his Father's Houſe by a Meſſenger, about Seven a Clock in the Morning.

Sir *B. Shower.* What Day of the Week was it he was taken?

Peachy. Upon a *Sunday* Morning, in his own Room, in his Father's Houſe, at Seven a Clock in the Morning.

Sir *B. Shower.* Did People come to him as they uſed to do?

Peachy. Yes; and he went frequently abroad as he uſed to do, and did never abſcond from his Father's Houſe.

Mr Serjeant *Darnall.* Pray Swear Mr *Treganna.* *(which was done)*

Sir *B. Shower.* Mr *Treganna*, pray do you remember how long after the Plot broke out did you ſee Mr *Cook?*

Treganna. After Mr *Charnock*'s Tryal, a Week, he was at my Chamber; after the Plot broke out, he was concerned in a Tryal at *Wincheſter* Aſſizes, upon an Iſſue out of *Chancery*, Mr *Nicholls* was the Clerk in Court, and went down to manage it at the Aſſizes; and Mr *Cook* came to me a Day or two after *Wincheſter* Aſſizes was over, and ask'd me if I had any News from the Aſſizes? This was long after the Plot broke out: And I remember particularly, that I ſaw him twice after the Plot was diſcovered, at my Chamber.

Sir *B. Shower.* Swear Mr *Nicholls*, *(which was done.)* Sir, Pray will you tell my Lord and the Jury what you know of Mr *Cook*'s appearing abroad after the Plot was diſcovered?

Mr *Nicholls.* I was ſent down to the Tryal: I was preſent, and did attend at two Tryals indeed, and I ſuppoſe Mr Baron *Powis* may remember that I attended at two Tryals at *Wincheſter* Aſſizes.

Mr B. *Powis.* Poſſibly you might, Sir: I can't tell all the Attendance at the Aſſizes.

Mr *Nicholls.* And after my return from *Wincheſter* Aſſizes, Mr *Cook* was with me ſeveral Days, both at my Office and Chamber, and at his Fathers Office: And I remember particularly, that he threatned me that I was in Trouble when I was at *Wincheſter*, and therefore I remember it very well.

Sir *B. Shower.* Mr *Nicholls*, you know Mr *Cook* very well; pray what are his Morals?

Mr *Nicholls.* Upon Occaſion of the Cauſe in *Chancery* that went to Tryal, I have had the Knowledge of Mr *Cook* five or ſix Years; I always believed him to be as temperate a Man as ever I met with: I think in five Years Time I was not above once with him in a Tavern.

Sir *B. Shower.* Did you ever hear him Swear?

Mr *Nicholls.* No, never; nor vent a Curſe: I believe he drank as little as any Man, and was as godly a Man. I never heard him ſpeak a foul Word.

Sir *B. Shower.* How do you know that, Sir, that he was ſo godly a Man?

Mr *Nicholls.* Upon Occaſion of this Cauſe, I was ſeveral Times at Sir *Miles Cook*'s, and at Mr *Cook*'s Lodgings there, and we were to go about Buſineſs, and after he was dreſs'd, he has made me ſtay while he went into his Cloſet and ſaid his Prayers. And he told me further, that he never went out of his Father's Doors without ſaying his Prayers; and I was forc'd to ſtay at the Door while he perform'd his Devotions, as he told me, and I believe he did.

Mr Serjeant *Darnall.* Now, my Lord, we will call ſome other Witneſſes to prove his good Affection to his Country, how he continually deſired Succeſs to the Fleet, and to the Army.

Sir *B. Shower.* So that really he had an Averſion to it.

Swear Mr *Hamond*, *(which was done.)*

Mr Serjeant *Darnall.* Pray, Sir, will you give an Account what you know of the Priſoner, concerning his Judgment, and concerning his Morals?

Hamond. I have been for ſome Time acquainted with Mr *Cook*, the Priſoner at the Bar, and to the Beſt of my Obſervation, I always took him to be a conſcientious Man, and I have heard him declare great Deteſtation of a *French* Force: And three or four Days before he was taken into Cuſtody, I ask'd him what he heard of Intelligence? He ſaid he heard what was in the publick Prints, and heard no more, and knew no more; and he had a great Abhorrence of the Conſpiracy, and thought it a very monſtrous Thing. I never heard him ſpeak a diſreſpectful Word of the King's Perſon or Government in my Life. And I ſay again, I have heard him ſeveral Times declare, in common Converſation, that he had an Averſion to *French* Power, and he had a dread of it.

Mr Serjeant *Darnall.* What have you heard him ſay about our Fleet, or Army?

Hamond. My Lord, I have heard him very much wiſh Proſperity and Succeſs to our Fleet.

Mr J. *Rokeby.* What Fleet, pray Sir?

Hamond. To our Fleet, King *William*'s Fleet againſt the *French*. Things to this Purpoſe he has frequently ſaid.

Mr Serjeant *Darnall.* Then Swear Mrs *Hunt*, *(which was done)* but ſhe was not examined.

Sir *B. Shower.* My Lord, we leave it here. But I muſt beg the Favour, that if they give any new Evidence, and there be Occaſion, we may have liberty to anſwer it. And I have an Obſervation or two to make when the Evidence is over.

Mr *Att. Gen.* My Lord, if they have done with their Evidence, I beg leave to obſerve, that there is ſomething ariſes upon that Evidence, that will give us occaſion to call a Witneſs or two more. My Lord, the firſt Witneſs which they call'd was *Edwards*, and he is in Cuſtody upon Suſpicion of High Treaſon in *Newgate*, and he gives an Account of ſome Diſcourſe that he had with Mr *Goodman*; and for that, it will be neceſſary for us to call Mr *Porter* again and Mr *de la Rue*, to ſhew that this *Edwards*, the Witneſs, as he is committed for Suſpicion of High Treaſon, ſo he was in the Conſpiracy for the Aſſaſſination; he was one in the Liſt that was brought back by *Cranburne* from Mr *Charnock* to Captain *Porter*, as one of *Charnock*'s Men, and he is in Cuſtody for it. Then as to the other Matter, they have called three Witneſſes to prove, That Mr *Goodman* was not in this Place at this Time. The Council indeed opened it, that he was not at the Tavern till after my Lord of *Aylesbury* and my Lord *Montgomery* were gone away; but their Evidence goes further, That he was not there at all: And the Maſter of the Houſe ſays, he was not there to his Knowledge at any Time. So that if their Evidence prove any Thing, they prove that he was not there at all; they do not remember that they ſaw him there: So that the Queſtion will be, whether Mr *Goodman* was there at that Time, and it will be neceſſary to call Mr *Goodman* again, and Mr *Porter*, to confront theſe Witneſſes, who will tell you when he came in: And particularly as to my Lord of *Aylesbury*, that he went with him to the Stairs-

head, and my Lord would not let him go further, but he went back again when my Lord of *Aylesbury* went down Stairs. We will begin with the Witneſſes, as to this *Edwards*.

Swear Mr *de la Rue*, (which was done.)

Mr *Conyers*. Mr *de la Rue*, Pray do you know Mr *Edwards* that was here?

Mr *de la Rue*. He goes by ſeveral Names; I know him by the Name of *Douglas*: And laſt *Monday* I came into the *Preſs-Yard*, and ſaluted him by the Name of *Douglas*, and he ſaid he had taken his own Name again, by which he was known at St. *Germains*, and that was *Edwards* or *Richards*, as I remember, or ſome ſuch Name.

Mr *Conyers*. When was he at St *Germains?*

Mr *de la Rue*. About three or four Years ago.

Mr *Conyers*. Pray look upon him, ſee if you know him.

Mr *de la Rue*. I know him very well, there he ſtands, that is the Perſon in the black Wig; he was reputed at St. *Germains* to be my late Lord *Dundee*'s Chaplain.

Mr *Att. Gen.* What Name did he go by at St. *Germains?*

Mr *de la Rue*. I can't very well tell: But he ſaid he had taken his own Name again; and I think he ſaid it was *Edwards* or *Richards*.

Mr *Conyers*. Did he go formerly by the Name of *Douglas?*

Mr *de la Rue*. Yes, here in *England:* Mr *Porter* knew him to go by that Name.

Mr *Att. Gen.* What elſe do you know of him?

Mr *de la Rue*. The Liſt that Mr *Cranburne* carried from Mr *Porter* to Mr *Charnock*, and which he brought back again from Mr *Charnock* to Mr *Porter*, had in it, among the other Names, the Name of *Douglas*, which I underſtood to be that Gentleman.

Mr *Att. Gen.* Did he go by that Name at that Time?

Mr *de la Rue*. Yes he did.

L. C. J. *Treby*. Pray repeat that again, Sir, that we may underſtand it, and ſee whether it be Evidence.

Mr *de la Rue*. Why, Sir, the Liſt that Mr *Cranburne* brought from Mr *Charnock* to Mr *Porter*, at the Foot of the Liſt which Mr *Porter* had ſent to him, there were other Names written, as I believe, in Mr *Charnock*'s Hand; and among thoſe Names there was the Name of *Douglas*, which I underſtood to be this Mr *Edwards*, as he calls himſelf. And moreover, when Mr *Porter* went out of Town, going to *Doctors Commons*, I called at Mr *Charnock*'s, and he had a great deal of Company with him, four or five Troopers, and among the Reſt this *Edwards* or *Douglas* was there ſitting by him. Here is a Gentleman that I ſee upon the Bench, I think he is a *Scotchman*, that knew him at St. *Germains* as well as I. I think his Name is *Mackdonnel*.

Mr J. *Rokeby*. What Country-man did you take this *Edwards* to be?

Mr *de la Rue*. A *Scotch man*, and Chaplain to my Lord *Dundee* that was killed in *Scotland*.

Mr Serjeant *Darnall*. Did you ſee this Gentleman in *France*, Sir?

Mackdonnel. I never was in *France* in my Life.

Mr *Att. Gen.* You can't ask him the Queſtion: You know it tends to make him either accuſe or excuſe himſelf of a Crime. Pray call Mr *Porter* again. But in the mean Time, till he comes, we'll examine Mr *Goodman*, becauſe he is here. Mr *Goodman*, you were by, and heard what theſe Drawers ſaid concerning your being at the *Old King*'s *Head* in *Leadenhall-ſtreet* that Day. Pray give an Account when you came in, whether you ſaw my Lord of *Aylesbury*, and what paſſed between you at my Lord of *Aylesbury*'s going away?

Mr *Goodman*. Mr *Porter* brought me up; and when I came in they were all ſitting; and after Salutation I ſat down: And when they had conſulted ſome Time, they came to a Reſolution, as I have told you already. The Fellows are ſo far in the Right of it, that my Lord of *Aylesbury* and my Lord *Montgomery* went away firſt; for I took my Leave of them at the Head of the Stairs. Says my Lord of *Aylesbury* to me, Pray avoid Ceremony, we will go away privately as we came, in a Hackney-Coach. And as to the Maſter of the Houſe, who ſays, he does not know me, I have dined ſeveral Times there; four or five Times with Sir *John Freind*: And one particular Day above all the Reſt, I remember I was not well, and I went down Stairs to the Bar, and ſaid, I pray can you get me a little Brandy. He ſaid, yes; he would help me to ſome of the Beſt in *England*. And he brought me up ſome which I liked very well; and thinking he had a Quantity of it, I ask'd him what I ſhould give him a Gallon for a Parcel. But he ſaid, he had but a little: And I am ſure he has ſeen me there five or ſix Times.

Mr *Att. Gen.* Then ſet up that *Maſter* of the Houſe *Cock* again, *(which was done.)*

Come, Sir, You hear what Mr *Goodman* has Sworn, and mind it; you are upon your Oath. You ſaid juſt now, that you never ſaw Mr *Goodman* before.

Cock. No, upon my Word, Sir: I don't know that ever I ſaw him before.

Mr. *Att. Gen.* Do you remember nothing of his being with Sir *John Freind* at your Houſe?

Cock. No, upon my Word, Sir.

Mr *Att. Gen.* Nay, you are upon your Oath. Nor do you know nothing of your giving of him Brandy?

Cock. No, upon my Oath, I do not remember any ſuch Thing.

Mr *Att. Gen.* That is a very ſafe Way of Swearing, I profeſs.

Mr *Conyers*. He remembers the particular Time when he was Sick, and you offer'd to ſell him ſome Brandy.

Mr *Att. Gen.* No, he ask'd him what he ſhould give him for it a Gallon. But, Mr *Cock*, did you ever ſee *Goodman* in your Houſe ſince my Lord of *Aylesbury* and they were there?

Cock. No, upon my Word, Sir, I did not: And I never had but two Gallons of Brandy in my Life at a Time: And I never had any Cask, or any Thing of that Nature, to ſell any out of.

Mr *Att. Gen.* Who uſed to be with Sir *John Freind* at your Houſe?

Cock. There uſed to be Mr *Richardſon*, and Juſtice *Caſh*, and Col. *Caſh*.

Mr *Goodman*. Mr *Richardſon* was there that Day: I could almoſt have remembred the particular Day, but I cannot be poſitive; only we were in the ſame Room where the Conſultation was, at the further Part of the Room.

Mr J. *Rokeby*. You Friend, the Maſter of the Houſe, you hear what Mr *Goodman* ſays: He ſays he was with Sir *John Freind* at your Houſe, and being not well, he ask'd for ſome Brandy, and you told him, you'd give him ſome of the beſt in *England*.

land. And he propounded to you then to ſell him ſome of it; but it ſeems there was no Bargain made. Do you remember any ſuch Thing of one that was with Sir *John Freind*, that ſpoke of buying of Brandy when he was ſick?

Cock. No, upon my Word I do not.

Mr *Att. Gen.* Then ſet up Mr *Porter* (*who ſtood up.*) Pray Mr *Porter*, look upon that Man in the Black Peruke; what Name did he uſe to go by?

Mr *Porter.* He uſed to go by the Name of *Edwards.*

Mr *Att. Gen.* Had he any other Name?

Mr *Porter.* Yes, *Douglas.*

Mr *Att. Gen.* He has ſo many Names, that we don't know which is his true Name. Mr *Porter*, pray what elſe do you know of him touching his being concerned in the Conſpiracy?

Mr *Porter.* I know not any thing of my own Knowledge; but his Name was put down in the Liſt that Mr *Charnock* ſent me of his Men, and Mr *De la Rue* read his Name there.

Mr *Soll. Gen.* Mr *Porter*, you were a Witneſs upon the Trials of Sir *John Freind* and Sir *William Parkyns*; did you give Evidence that Mr *Goodman* was in the Room at the ſame time when the Conſultation was?

Mr *Porter.* Yes, Sir.

Mr *Att. Gen.* Well, you hear that theſe People have ſworn, that Mr *Goodman* did not come till my Lord of *Aylesbury* went away; nay indeed, that he was not there at all.

Mr *Porter.* My Lord, upon my Oath he was there before my Lord *Aylesbury* went away, and Mr *Goodman* bowed, and took leave of my Lord as he went out of Doors.

Mr *Att. Gen.* What time did my Lord of *Aylesbury* go away?

Mr *Porter.* It was about an Hour and a Half, or two Hours after Dinner, and he was in the Room when my Lord went away, for he took his Leave of him at the Door.

Mr *Cowper.* Do you remember the Manner of Mr *Goodman*'s coming in?

Mr *Porter.* Mr *Goodman* ſent up his Name to me, and I told the Company, and promis'd for him, that he was a very honeſt Man, and much in King *James*'s Intereſt; and then with their Conſent I went down and brought him up.

Mr J. *Powell.* How long time do you think there was between Mr *Goodman*'s coming in, and my Lord of *Aylesbury*'s going away?

Mr *Porter.* I cannot tell that, I do not remember exactly how long it was,

Mr J. *Powell.* Was it a quarter of an Hour, or half an Hour?

Mr *Porter.* A great deal longer, for we had diſcourſed of the whole Buſineſs after Mr *Goodman* came into the Room.

Mr *Conyers.* How long were they there after Mr *Goodman* came in?

Mr *Porter.* It was very near two Hours after he came in, before they went away; they did not go away till ſix a Clock, and he came in at Four as near as I can remember.

Mr *Att. Gen.* Then, my Lord, we have done.

Sir *B. Shower.* Then I beg the Favour of a Word or two, my Lord, May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am of Council in this Caſe for the Priſoner at the Bar, and I muſt beg your Lordſhip's Patience, and your Favour, Gentlemen, to make a few Obſervations upon the Evidence that has been given; for we humbly inſiſt upon it in point of Law, that here is not ſufficient Evidence before you to convict the Priſoner. You are, Gentlemen, to have reſpect and regard to your Conſciences and the Oaths which you have now taken, to give a Verdict, and make true Deliverance between the King, and the Priſoner; you are not to go according to your own private Opinions, nor according to publick Fame, nor according to common Report, nor according to the Verdicts in other Caſes, nor according to the Confeſſions or Dying Speeches of Criminals who have been Executed, *whether made by themſelves, or by others for them*, but you are to go by the Teſtimony of Credible Witneſſes, and if you have not the Evidence of two Credible Witneſſes before you, my Lords the Judges will inform you how the Law ſtands. That by the Statute of *Edward* the Sixth, and the new Statute for Trials of Treaſons, there muſt be two Witneſſes to prove the Priſoner guilty of the Overt-Act of the Treaſon that is laid in the Indictment; and whether there have been two Credible Witneſſes produced before you, is the Queſtion that you are to conſider upon your Oath and Conſcience; that is, whether you are ſatisfied here be two ſuch as the Law requires. The Queſtion is not meerly whether Mr *Cook* be guilty, but whether in your Conſciences he be legally proved guilty; whether there be Evidence to ſatisfie your Conſciences, according to the Laws of the Land, that he is guilty; and we inſiſt there is not; and therefore I beg leave to recapitulate what has been ſworn againſt him, that we may ſee how far it reaches, and wherein it is defective.

Gentlemen, Mr *Porter* he ſwears that about the Beginning or middle of *May*, he cannot tell which, there was this Meeting at the *Old Kings-Head* Tavern in *Leaden-Hall-ſtreet*; in which, I wou'd obſerve to you, that he confines himſelf to a certain Month; the Reaſon is very plain, and therefore I ask'd him whether it was not in *April*; for if he had ſaid it had been then, there had been no danger to the Priſoner, becauſe of the Act of Indempnity, therefore he was careful to fix it in *May*; and he would not lay it in *June*, for the Tenth of *June* is a famous Day; and then, or ſoon after *Newgate* had him; he was confined there for a Riot on that Day, and ſo they have reſtrained it to a Month, and the only Month that he is capable of ſwearing to, as to any Act done the laſt Year till they came in *January* to the Aſſaſſination Plot, which the Priſoner is not accuſed to have had any Concern in; but it ſhou'd ſeem he cannot tell what Day of the Week, or of the Month, but about the Beginning or the Middle of *May* Eight Perſons dined at this Place, and then after Dinner Mr *Goodman* came in, and they diſcourſed about this Matter.

Firſt, Gentlemen, we inſiſt upon it, that it is very improbable that *Engliſh* Proteſtants of pious Converſation and good Morals, ſhould agree, as he ſays, to ſend ſuch a Meſſage to the late King, to invite over a *French Popiſh* Force; we may eaſily ſee the horrid and miſchievous Conſequences that wou'd have followed ſuch a Practice, ſuch as muſt affect every *Engliſh*-man with a Concern, ſo that it is improbable a Man of Virtue and Piety cou'd engage in ſuch an Enterprize; and if it be improbable, you will never believe it, unleſs the Conviction or Proof be irreſiſtible: And if you have any

any other Reaſons to diſtruſt this Man's Truth, then we hope you will go upon the Side of Probability; and not let popular Prejudice, Common Fame, or any thing elſe but legal and Undeniable Evidence have the Aſcendant over you. If you are not ſatisfied that Mr *Cook* did aſſent (as from the Character of the Man it is not probable he ſhou'd) to ſend *Charnock* into *France*, to perſwade King *Lewis* and King *James* to ſend Ten Thouſand Men to invade our Country, then he is not guilty.

In the next Place, Gentlemen, he is not guilty we ſay in the Eye of the Law, if they have not two Witneſſes; and for that we ſay you have but one, or but one that is to be believed; and if you have but one that is to be believed, that in Law is but one, and conſequently my Client is not guilty; ſo the King's Council agree, that if there be but one Witneſs, he cannot be convicted, the Law is plain in the Caſe. Now to make it out that here is but one Witneſs at moſt, we have offered you ſeveral Objections, and made them out by Evidence, againſt the Teſtimony of Mr *Goodman*; that he is not a Perſon fit to be believed; and if he be out of the Caſe, then does Mr *Porter*'s ſtand alone, and all will amount but to one Witneſs, ſuppoſe it ſhou'd be granted that his Teſtimony were true.

Firſt, We have read a Record of Conviction againſt him, of a Crime, one of the Greateſt next unto Treaſon, that is known in our or any other Law. That he hired a Man to poiſon two Dukes, Branches of a Noble Family, to which he had ſuch great Obligations, as all Mankind do know, and he himſelf cannot but acknowledge; and if there were not that Aggravation in it, of his Obligations to that Family, yet to lie in wait to Murder and Poiſon, is ſuch an Offence as any Age can ſeldom ſhow the like. And the Objection is not ſo very eaſily anſwered as they would have it; nor can it be ſo ſoon paſſed over as they think, by ſaying He is a Witneſs of a Confederacy with which the Priſoner is accuſed, a Crime greater than the Thing objected. It is true, none can bear Teſtimony in ſuch a Buſineſs, but he that is a Party: But, we ſay, if theſe Perſons who come and ſet up themſelves for Witneſſes, were not *probi Homines*, and did not appear to be Perſons of indifferent Credit between Man and Man, and did not ſtand impartial in the Eye of the World in other reſpects before, then they are not to be believed, as to what they charge themſelves and others to be guilty of. Now, if Mr *Goodman* ſtand convicted of ſuch an Offence as this that is alledged againſt him, tho' he is pardoned by the Act of Parliament, or Satisfaction acknowledged upon the Record, though it be even the very next Term, yet that does not purge him from the Infamy and Diſgrace, or from the Imputation of being concerned in ſo Villainous a Deſign. It is impoſſible that he ſhould be a good Witneſs that wou'd be engaged in ſuch a Matter, eſpecially when we have thoſe various Witneſſes, and ſuch a concurring Teſtimony, that what he has Sworn is abſolutely falſe.

Gentlemen, if there were nothing but his own Teſtimony in the Caſe, there could be no Queſtion at all in it: And as to Captain *Porter*'s Teſtimony about his being there, we have produced three Witneſſes, who, if they be of Credit, then Mr *Goodman* is not to be believed, but is falſified throughout; for, it is not the Queſtion, whether Mr *Cook* went away before the Conſultation and the Reſolution; for, if my Lord of *Aylesbury*, or my Lord *Montgomery* went away, Mr *Goodman* is falſified in that, and conſequently you ought not to believe him in the reſt; for he actually ſwears, that my Lord of *Aylesbury*, my Lord *Montgomery*, and thoſe other Gentlemen, were all preſent, and at the Conſult, and did conſent and agree to the Reſolution, by uſing theſe Words; *Yes, you may*; *Yes, you may*. Now, we ſay, there are three Witneſſes that ſwear, That my Lord of *Aylesbury* was gone before he came there. I do not care whether he came there, or not; that is not material: For if there were no Body there when my Lord of *Aylesbury* was there but thoſe that were at Dinner, then Mr *Goodman* was not there at any ſuch Conſultation, as they would inſinuate was at that Time, in that Place, and that Company.

My Lord, we have proved to you Mr *Cook*'s Abhorrence and Declaration, which, we think, ought to go a great Way in ſatisfaction of his Innocence, at leaſt to induce you to the favourable Side; for, Gentlemen, you are not brought hither to Convict a Man only, but to Try and Examine him; and is is your Duty to Acquit, as well as Convict, according as the Evidence ſtands: It is your Duty to go according to your Conſciences, and to declare whether he be Guilty, or not Guilty, upon the Evidence you have before you: You are to examine the Truth of the Fact in all its Circumſtances, and upon your own Conſciences to declare, whether he is Guilty or not Guilty; now we propoſe it to you, and ſubmit it to your Conſciences, that here are three Witneſſes, that ſpeak upon their Oaths, againſt whom there is no Objection, that ever they were guilty of lying in wait to Poiſon any Body, nor in any Plot for an Aſſaſſination, nor any Conſpiracy for inviting an Invaſion from *France*, nor any other Objection againſt them, but they ſtand upright in the Face of the World, and they three ſwear, That he was not there at that time. The Anſwer that we expect, is, That he might be there, and they not ſee him: And becauſe it was poſſible he might be there, and they not ſee him, therefore it is no Evidence: But, my Lord, becauſe it may be ſo, is no Evidence that it is ſo; that's noObjection; for you will take it as the Nature of the Thing will afford, and the Matter itſelf allow. Now there can be no better Evidence than this; that they went in and out continually; the Drawers, and the Maſter of the Houſe five or ſix times himſelf, were in the Room, and they ſay, there was no ſuch Perſon there. Why then it is very improbable, if not impoſſible, that any ſuch Man ſhould be there. The one ſwears, he came down from my Lord of *Aylesbury* juſt before he went away; and another ſays, he followed him out of the Room; and the Maſter ſays, that he met my Lord of *Aylesbury* at the Stairs-head. All which falſifies Mr *Goodman* in that Particular, that he was with my Lord of *Aylesbury* at the Stairs-head, when he went away. Theſe are incompatible; and if we falſifie him in any one Thing, he is not to be believed in any other.

Then, Gentlemen, we offer to your Conſideration an Anſwer to another Objection: They ſay theſe Witneſſes ſeem to ſwear, that he was not there at all. We are not concerned whether he was there afterwards, or not: If you are ſatisfied, that he was not there, as our Witneſſes ſwear, while my Lord of *Aylesbury* was there, that's enough.

But

But then they make an Objection, how comes the Maſter of the Houſe to remember my Lord of *Aylesbury*'s going away, more than any Body elſe? Gentlemen, you know the Nature of the Thing ſhows, not only that it was more probable the Maſter of the Houſe ſhould make his Obſervations near the time of Dinner, rather than afterwards at Night, when there is more Hurry: But it is more probable he ſhould take notice of it from the Quality of the Perſon, from the Diſcourſe he had with him about the White-wine, which was a good *Medium* to refreſh a *Vintner*'s Memory, it being a Matter in his own Trade, and that might make him call it to Mind.

Therefore, Gentlemen, we think theſe three Witneſſes ſtand free and clear in their Credit; and being ſo, are inconſiſtent with Mr *Goodman*'s Teſtimony; and, we hope, in favour of Life, the Credit inclines on their Side, eſpecially when the Queſtion is, whether a Man ſhall be executed for *Treaſon* who never fled for it, who was never charg'd with any *Treaſon* or *Treaſonable Practices* before; nay, not ſo much as with any particular *Crime* or *Immorality*: And whether three Witneſſes ſhall be believed, againſt whom there is no Objection, rather than Two, againſt One of which there are ſuch Objections.

My Lord, we are not now debating or attacking the Evidence of the *Plot*, or arraigning the former Judgments againſt the *Conſpirators* that have ſuffer'd; but, Gentlemen, we are putting you now upon a ſerious Enquiry, (as God and your own Conſciences ſhall incline you) whether our Client be guilty or not guilty upon this Evidence; that is, whether Mr *Goodman* ſwears true, or not. We hope that we have given you ſufficient Satisfaction, that upon Mr *Goodman*'s Part the Evidence is inſufficient; and we hope you will accordingly find our Client not guilty.

Mr *Att. Gen.* If Mr *Cook* have any thing to ſay himſelf, I deſire he may ſay it now, before we begin.

Sir *B. Shower*. No, pray go on, Sir.

L. C. J. *Treby*. Mr *Cook*, wou'd you ſay any Thing your ſelf, before the King's Council ſum up?

Cook. The little I have to ſay, my Lord, I'll ſpeak now, or by and by, which you pleaſe.

L. C. J. *Treby*. You muſt do it now, becauſe after they have ſumm'd up, there is nothing more to be ſaid by you.

Cook. My Lord, I thank God, I have lived a Life, I hope, as good as any Man, and have often received the Bleſſed Sacrament; I have done it conſtantly, and ſhall do it ſpeedily, by the Grace of God, as ſoon as I can have a Miniſter come to adminiſter it to me. I did offer it to my own Father, when he came to me, and told me, *If I would confeſs this Thing I ſhould not come to Trial:* I told my Father, I would not for Ten Thouſand Worlds take away the Blood of an innocent Man to ſave mine. I thank God, I am in a very good Way to die; I have, for at leaſt this laſt Year, frequently received the Bleſſed Sacrament; and how I have liv'd, every Body in the Court that knows me can tell my Life and Converſation has been as regular as any Man's, and I am as ready to die to morrow, if Occaſion was for it (I thank God) as any one; I will receive the Bleſſed Sacrament upon it; and it is not for Life that I would do any thing that is wrong or unjuſt: I do love my Nation, and I love the Quiet of the Nation; I never was for diſturbing the Government that now is; and I ever was againſt Foreign Forces or an Invaſion, for I never thought of one, or heard of it, but with Abhorrence and Deteſtation: And I do aſſure faithfully, I ſhou'd be ſorry to diſparage Mr *Porter*'s Evidence, becauſe I would have every Body that was concerned in that Horrid and Barbarous Crime to ſuffer; in God's Name, let them all ſuffer. I thank God, I never knew any Thing of it, nor of a *French* Invaſion: And I would ſay more of it, but that I would not hurt Mr *Porter*'s Evidence, whoſe Diſcovery of that bloody Buſineſs has done ſo much Service. As for Mr *Goodman*, as I hope to receive the Bleſſed Sacrament, and may I periſh when I do it, if I ſpeak an Untruth; I would not for any Thing, no, not for the Good of my Country, have innocent Blood ſpilt; I would lay down my Life to ſerve my Country, but I would not have my Blood be lightly loſt; and how little a Man ſoever I am, my Blood will lie as heavy upon the Nation as any the weightieſt Man's can do. I do not doubt your Lordſhip's Juſtice, nor the Jury's, but I pray, my Lord, obſerve; though it is uſual not to own Things at the Bar, yet I do not make this Denial as of Courſe, but out of Truth; and I aſſure you, in the Preſence of the whole Court, if I ſhould ſuffer for this, I muſt at my laſt Moments either confeſs or deny ſomething: And, I ſay, I do aſſure, in the Preſence of the whole Court, and I will take the Bleſſed Sacrament upon it, that I muſt, at my Death, deny this whole Matter, and that ever I did ſee Mr *Goodman* at all there; I do not think I ſaw him; I do not remember I ſaw Mr *Goodman* at all, except once in *Germain-ſtreet*, when the Coach broke, and that muſt be but in paſſing by neither, and he would have hurt or kill'd the Coachman, and we kept him from it; and I walk'd with him half the Length of *Germain-ſtreet*, before I knew who Mr *Goodman* was. If ever a one of thoſe Gentlemen, that are Men of Credit and Honour, can ſay I was any ways ſo inclined, or that they ever ſaw me, or knew me, that I ever bought a Piſtol or a Blunderbuſs, or the like, may God ſink and ſtrike me dead; and the Bleſſed Sacrament, which I intend to receive, be my Curſe and Damnation, if I knew of King *James*'s Coming, till after the whole Town rang of it: I had no Hand in the Invaſion; and, beſides my Abhorrence of introducing foreign Force, I deſire your Lordſhip and the Jury to conſider the Circumſtances of my Caſe, that I had but a very ſmall Allowance from my Father, and therefore it is not probable I ſhou'd take upon me to join with my Lord of *Aylesbury*, and my Lord *Montgomery*, and thoſe other Gentlemen, to ſend Mr *Charnock* into *France*, to invite over a Foreign Force: And I call God to witneſs I had no Hand in it. I beg your Lordſhip's Pardon for all this Trouble; I would not hurt Mr *Porter*'s Evidence, for the Reaſons that I have told you; but this is for my Life, and I don't ſo much value that as I do Truth and Sincerity; and I ſhall receive the Bleſſed Sacrament, if I die, that I never did do ſo. Indeed I never did take the Oaths, nor did I ever refuſe them, becauſe they were never offer'd me; but I wou'd take the Oaths now if they were offer'd me. My Lord, I beg your Pardon for this Trouble.

L. C. J. *Treby*. Have you done, Sir? Have you ſaid all you would ſay?

Cook. Yes, my Lord.

L. C. J. *Treby.* Then, you Gentlemen of the King's Council, will you conclude?

Mr *Soll. Gen.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am of Council in this Caſe for the King, and I could have been very glad that this Gentleman's Defence that he has made had been ſtronger than in Truth it has been: And I ſhould have been very glad too that his Council had been able to have made it better for him; but that he and they may be ſatisfied as much is done as the Caſe will bear; they have had all the Liberty in the World to make his Deſence they could deſire, nay, more than in Strictneſs could be allow'd them.

Gentlemen, our Evidence is very poſitive againſt the Priſoner at the Bar, and for the higheſt Crime that the King's Subjects can be guilty of, by the Confeſſion of the Gentleman himſelf and of his Council. We have, I ſay, two poſitive Witneſſes againſt him; they ſay they are not legal ones: I muſt own, if we have not two Witneſſes, we have never an one; for whatſoever falſifies Mr *Goodman*'s Teſtimony, falſifies whatſoever Mr *Porter* has ſworn. Now, the Evidence that Mr *Porter* has given againſt him, is this: He ſays, There was to be a Meeting at the *King's-head Tavern* in *Leaden-hall-ſtreet*, and there they conſulted of the Methods to bring back King *James* hither; and it was thought the beſt Way to ſend to King *James* to invite the *French* King to ſend 1000 Horſe, 1000 Dragoons, and 8000 Foot, to land here in this Kingdom, where they would meet him with 2000 Horſe. They pitch'd upon a very proper Meſſenger, Mr *Charnock*, a Perſon that has been attainted, and has ſuffer'd for High Treaſon; he was to be ſent into *France* upon this Errand; Mr *Cook*, the Priſoner at the Bar, was one of the Perſons that were there at that Time, and he was conſenting to this Meſſage; and Mr *Porter* gives you a particular Token relating to the Priſoner, for he remembers the Priſoner did kneel upon the Chair, and lean'd his Elbows upon the Table when he conſented.

Mr *Porter* goes further, and tells you, That Mr *Charnock* would have another Meeting, to know and ſee whether all the Company were of the ſame Mind they had been; and, That afterwards they met at Mrs *Mountjoy*'s Houſe, and there the Priſoner at the Bar was preſent, and conſenting to the ſame Thing: Thereupon Mr *Charnock* went into *France*, and came back again, and ſaid, The *French* King could not ſpare ſo much Force. Mr *Goodman* gives the ſame Evidence that Mr *Porter* had given: It's true, he was not at Mrs *Mountjoy*'s Tavern, but he tells you withal, He ſpoke with Mr *Charnock* when he came back from *France*, and *Charnock* return'd him the ſame Anſwer that he did to Mr *Porter*, That the *French* King could not ſpare ſo many Forces. This is the Evidence in ſhort, Gentlemen, that is given againſt the Priſoner; and if this Evidence be true, then is he guilty of the Crime for which he is indicted.

Againſt theſe Witneſſes they have produced, firſt, a Record of Conviction againſt Mr *Goodman*, and that was for Hiring one *Amydia* to poyſon the Duke of *Grafton*, and the Duke of *Northumberland*: They have produc'd the Record, whereby it appears, he was Convicted and Fined 1000 *l.* and was to find Security for his good Behaviour during Life; and he was to lye in Priſon till the Fine paid, and Security given: But it happens, in that very Record it appears there was Satisfaction acknowledg'd upon that, even the very next Term; and that gives a great deal of Suſpicion to believe, that the Evidence that was given was not much credited; for, tho' the Council for the Priſoner has ſaid, that it was the Payment of the 1000 *l.* that was the Satisfaction; no, it is not ſo, it is a Satisfaction of the whole Judgment, for finding Security as well as the Fine. They ſay he was not able to pay the Fine; and there is nothing appears of the other Parts of the Judgment being complied with, but the whole Judgment is ſet aſide.

But all this does not make a Man *no Legal* Witneſs; if they thought this Conviction tended to ſet aſide his Evidence, they would have produc'd it at another Part of the Tryal, than where they did: That is, when Mr *Goodman* was firſt call'd to be ſworn as a Witneſs, then they ſhould have produc'd this Record, and ſaid he had been no Witneſs: But they knew well enough that that was no Exception againſt the Legality of his Evidence, but tends only to his Credit, and nothing elſe. Now, tho' it be a black Crime to endeavour to poyſon another, yet that does not totally deſtroy any Man's Credit; if it did, then the other Gentleman, Mr *Porter*, has confeſs'd himſelf guilty of a greater Crime than that for which Mr *Goodman* is convicted by this Record; for, he owns himſelf one that was in that Deſign of Aſſaſſinating the King. And Mr *Goodman* owns himſelf too guilty of a greater Crime than what's objected to him, which is that of *High Treaſon*; and I hope, if he may be believ'd, when he owns himſelf guilty of *High Treaſon*, which is a greater Crime than Poyſoning a private Subject; or guilty of ſuch a Deſign as the Aſſaſſination of the King, which Mr *Porter* has charg'd himſelf with, and notwithſtanding which, they have not offer'd that as an Exception againſt Mr *Porter*'s Evidence, (for they very well know, his Evidence has been receiv'd and credited:) Mr *Goodman* may be credited, tho' guilty of the Crime objected to him: And the conſtant Practice in all Tryals of this kind hath been, that it does not take away the Witneſſe's Evidence, however it affects his Credit, which in this Caſe is ſupported by the concurrent Teſtimony of Mr *Porter*. And ſo then, I ſay, we have two legal Witneſſes (notwithſtanding all the Exceptions) to prove Mr *Cook* guilty of the Crime for which he is indicted.

Then they go on further, and produce other Witneſſes: Firſt, they produce one *Edwards*, a Perſon that is committed for *High Treaſon* himſelf, and under Suſpicion of his being to be one of thoſe that was to have a Hand in the Aſſaſſination; but his Evidence goes no further, than that Mr *Goodman* told him he was to be a Witneſs againſt Mr *Cook*, and either he the Witneſs, or Mr *Cook* muſt ſuffer; and, That it was a fooliſh thing to be hang'd. My Lord, there is nothing at all in this Matter that takes away Mr *Goodman*'s Evidence: It is very plain Mr *Goodman* had forfeited his Life, and muſt do ſomething to ſave it, and I think he could not do a better Service to entitle himſelf to the King's Mercy, than to diſcover thoſe that were equally guilty with himſelf. 'Twas his Duty to have done it, if he had not been in Danger; and if he hath done no more than what was his Duty, I hope that is no Objection againſt his Teſtimony.

They have produced likewiſe a Drawer of the *King's-head Tavern*, one *Crawford*, and he ſays, he attended in this Room while this Company was there.

there. But then he goes a little further than the Council or the Priſoner would have had him; for they called him to prove, that Mr *Goodman* was not there when my Lord of *Ailesbury*, my Lord *Montgomery*, and Mr *Cook* were there. But when the Drawer comes, he knows nothing of Mr *Goodman*'s being there at all: He ſays, Mr *Cook* was there, but not Mr *Goodman*; and yet he does acknowledge, that Mr *Goodman* might be there, and he not ſee him come up. He acknowledges he attended upon other Company as well as this; ſo that it is plain in the Nature of the Thing, and his own Confeſſion, that *Goodman* might be there. This cannot take off the poſitive Evidence of Mr *Goodman* and Mr *Porter*, who both ſwear, That *Goodman* was there.

But then they produce another Drawer, and that is one *Huntley*; and he gives the ſame Account, only indeed he ſays, He was there all the while they were at Dinner: But that is nothing, becauſe it is acknowledg'd both by Mr *Porter* and Mr *Goodman*, That he was not there at Dinner-Time, but he might be there after Dinner, and yet *Huntley* could not ſee him at Dinner: He tells you likewiſe, he paſs'd up and down in the Room afterwards, and did not ſee Mr *Goodman* there; but yet he might be there, and he not ſee him.

Then they produce the Maſter of the Houſe, and he gives much the ſame Evidence in Effect which his Servants do, That he did not ſee Mr *Goodman* there all the while; but he ſays ſomething that is a little incredible; He can be poſitive that Mr *Goodman* was not there while my Lord of *Ailesbury* was there, but he cannot be poſitive that he was not there afterwards. He tells you, he met my Lord of *Ailesbury* and my Lord *Montgomery* upon the Middle of the Stairs coming down, and he is ſure Mr *Goodman* was not in the Room at that Time. Now, is that poſſible that he could be ſure of that, when he owns, (and cannot but own) That Mr *Goodman* might go into the Room and he not ſee him? So that he has made a Strain in his Evidence that it is very little to be credited, which was not deſigned ſo much for the Advantage of Mr *Cook* as for the Advantage of ſomebody elſe: And, in itſelf, it is almoſt an impoſſible Thing that it ſhould be true, by what he offers as the Reaſon of his Evidence.

But then, Gentlemen, you are to conſider, that all theſe three Witneſſes, if they ſwear true, do falſifie not only Mr *Goodman*, who ſwears, That he was there; but they likewiſe falſifie the Evidence of Mr *Porter*, and for that Reaſon I ask'd Mr *Porter* the Queſtion, Whether he did not give the ſame Evidence againſt Sir *John Freind*? And if what he ſwears now be not true, neither was it true when Sir *John Freind* was try'd, for he was the only Witneſs at that Time againſt Sir *John Freind*, for this Meeting; and therefore theſe Mens Teſtimony tends to overthrow both Witneſſes as well as one: And I muſt tell you, that if Mr *Goodman* be not a legal Witneſs, becauſe he has ſworn a Thing that is not true, then Mr *Porter* is not a good Witneſs, who has ſworn the ſame Thing, *viz.* That Mr *Goodman* was there; and then you ought to acquit the Priſoner, becauſe there is no Witneſs againſt him at Law; for, there is the ſame Evidence againſt Mr *Porter* that there is againſt Mr *Goodman* as to this Matter.

Then, Gentlemen, as for the Character of Mr *Cook*, they ſay he is a good *Engliſh Proteſtant*, I hope he is ſo; but it is plain, that Religion does not vary the Caſe: 'Tis within the reach of every Man's Memory that is here, that the ſame Things have fallen upon other Gentlemen that have had the ſame Character, particularly Sir *John Freind* and Sir *William Parkyns*, who both ſaid the ſame Things, in the ſame Place, That they were *True Proteſtants* of the Church of *England*. But that is no Manner of Evidence that will be Weight againſt poſitive Oaths.

Now, Gentlemen, it is fit likewiſe you ſhould reflect upon another Thing: What is it that ſhould engage Mr *Porter* and Mr *Goodman*, or invite either of thoſe two Gentlemen to give a falſe Evidence againſt the Priſoner at the Bar? It does not appear that there was any Injury done by him to them, to provoke them to it; ſo that it could be for nothing but for the ſake of Truth.

It has been further ſaid on the behalf of Mr *Cook*, That he abhorred the *French*, and any *Invaſion* upon his Country, and the like: It is a Matter that is eaſily ſaid; and it has been ſaid by others that have been in the ſame Place where he now ſtands; That they hated all Plots, and they might puniſh them if ever they caught them But theſe are only Sayings, and nothing elſe. If there can be any Conſtructions made of the Evidence given by theſe two Witneſſes, that does not directly prove the Indictment, then the Priſoner ought to be acquitted: But if there can be no other Conſtruction made, but only, That there was a plain Deſign to ſend *Charnock* into *France*, to King *James*, to perſwade him to prevail with the *French* King, to come and invade us with a Foreign Force: And if our Witneſſes are legal Witneſſes, (as, I doubt not, my Lords the Judges will tell you they are; if there be no Exception to the Credit of *Goodman*, but only that he was in ſuch a Deſign of Poyſoning the two Dukes, which is really no Objection of Diſcredit to his Teſtimony;) then, with Submiſſion, I think there is no Room left for you, Gentlemen of the Jury, to doubt, but that the Priſoner is as guilty of this Crime laid to his Charge, as any others that have been try'd and condemn'd for the ſame. And ſo, Gentlemen, I leave it to you.

L. C. J. *Treby*. Mr. *Conyers*, and Mr *Cowper*, will you ſay any Thing to this Matter.

Mr *Conyers*, and Mr *Cowper*. No, my Lord, we ſubmit it entirely to your Lordſhip's Direction; we have done on all Sides, we think.

L. C. J. *Treby*. Gentlemen of the Jury, the Priſoner at the Bar, Mr *Cook*, ſtands indicted here for *High Treaſon*; there are laid in the Indictment two Sorts of Treaſon; the one is, Compaſſing and Imagining the Death of the King, the other is, adhering to the King's Enemies. The Evidence to prove theſe Treaſons ſeems to be joynt; for, as to that of Compaſſing and Imagining the King's Death, as well as to the other, the Overt Acts are meeting and conſulting about the Treaſon, and then agreeing and reſolving to invite and procure an Invaſion from *France*, and to meet that Invaſion with an Inſurrection here. And the Evidence is apply'd *entirely* to prove theſe *Acts*.

Gentlemen, that theſe are proper *Overt Acts* of Compaſſing the King's Death, I need not inform you, the Law is very well known; and the Priſoner's own Council do acknowledge, that theſe are ſufficient Overt Acts of Compaſſing and Imagining the King's Death: So that all which they

defend

defend him by is, the Improbability of the Teſtimony given againſt him.

Now, Gentlemen, you are to conſider and weigh well the Evidence that has been given. By Law, it is true, as they obſerve, there muſt be *two* Witneſſes. Here is no Defect of Number; that's acknowledg'd too, here are two Witneſſes; but the Queſtion is, whether here be two Witneſſes that deſerve Credit, and upon whoſe Teſtimony you can find that the Priſoner is guilty. The Witneſſes, Gentlemen, are Mr *Porter* and Mr *Goodman*.

Firſt, For the Matter of their Teſtimony, it is poſitive from them both; that you'll do well to obſerve. Mr *Porter* tells you, That in *May* laſt, (which is now juſt a Twelve-month) there was a Meeting of eight Perſons, that is, my Lord of *Ailesbury*, my Lord *Montgomery*, Sir *John Fenwick*, Sir *William Parkyns*, Sir *John Freind*, Mr *Charnock*, Mr *Cook* the Priſoner at the Bar, and the Witneſs himſelf Mr *Porter*; and this was at the *King's-head* Tavern in *Leaden-hall-ſtreet*, and there theſe eight dined, and this was in Order to conſult about an Invaſion, together with an Inſurrection intended to be made for the Reſtoring of the late King. After Dinner comes in Mr *Goodman*, he ſays, and then they purſued this Conſultation, and came to a Reſolution, to ſend Mr *Charnock* into *France*, and the Meſſage was agreed upon which he ſhould carry; and he was to go to the late King, and ſollicite him to obtain 10000 Soldiers from the *French* King, whereof 8000 ſhould be Foot, 1000 Horſe, and 1000 Dragoons. Theſe were to make up the 10000 Men to invade this Kingdom. And they reſolved alſo, when this Force ſhould land, they ſhould meet and aſſiſt this Invaſion with a joynt Force, that ſhould conſiſt of 2000 Horſe. And to acquaint and aſſure him of this, was the Meſſage. But, he ſays, That Mr *Charnock* was very cautious in it, and would not preſently go upon this Errand, but he would have further Aſſurance that they were in Earneſt, and would make good what they did ſend him to propoſe, therefore he would have a ſecond Meeting; and a ſecond Meeting was had, and that was at Mrs *Mountjoy*'s Tavern, and there they did renew the ſame Reſolution, and there were preſent my Lord of *Ailesbury*, Sir *William Parkyns*, Sir *John Fenwick*, Sir *John Freind*, Mr *Charnock*, the Priſoner at the Bar, and himſelf; he does not know or remember whether my Lord *Montgomery*, or Mr *Goodman* was there. He ſays, Mr *Charnock* did accordingly go into *France*, and he did return and bring back King *James*'s Thanks to them, but their Deſire could not be comply'd with; and he had his Share of the Complements.

Now comes Mr *Goodman*, and he ſays, That about the ſame Time, *viz. Mid-May*, Mr *Porter* acquainted him, there would be a Meeting of ſome of King *James*'s Friends, at this Tavern in *Leaden-hall-ſtreet*. He ſays, That he did tell Mr *Porter*, he doubted he ſhould not be there at Dinner, but he would come as ſoon as he could after Dinner; and according to Appointment, he did come after Dinner, and there was this Conſultation and Reſolution that Mr *Porter* ſpeaks of, and ſays, That Mr *Charnock* afterwards told him, he had been in *France* with the late King, and brought back the ſame Anſwer that Mr *Porter* ſpeaks of; and he had the Honour of Thanks from the late King too.

Gentlemen, I muſt obſerve one Thing to you, which does go very much towards the Confirming what theſe Witneſſes ſay, and that is the Agreement in their Teſtimonies, tho' they were examin'd *apart* at the Deſire of the Priſoner: You will find they agree in theſe ſeveral Circumſtances, in the Time, that it was this Time twelve-months; in the Place, that it was at this Tavern; in the Number of Perſons that were there, which was Eight before Mr *Goodman* came in; in the Number of Horſe, Foot, and Dragoons that were to be brought from *France*, and in thoſe Horſe that were to meet them here; and beſides, in thoſe Words of Diſcourſe upon the Conſultation and the Reſolution. And there is one Circumſtance more in which they do agree, and which is very particular; That when they came to deliver their Conſent to this Meſſage that Mr *Charnock* was to carry, the reſt ſate, and Mr *Cook* the Priſoner did kneel upon the Chair, and lean'd upon the Table. And this both of them do agree in. And after all the many Queſtions ask'd in their ſeparate Examination, I do not find they diſagree in any Part of their Evidence. So that, Gentlemen, there can remain no Queſtion now, but Whether theſe two Witneſſes are Men of Credit; or, whether there has been oppoſed to them any ſuch Evidence as will make you believe, that (if not both) at leaſt one of them has forſworn himſelf. They do produce nothing againſt Mr *Porter*, whatſoever may have been produc'd at former Tryals againſt his Credit: Perhaps what has been before, has ſatisfied the Objectors, and there is nothing appears againſt his Credit; but he is not only a *competent* but a very clear, good, credible, and undoubted Witneſs.

But againſt Mr *Goodman* they offer ſeveral Things which they ſay amount to a violent Preſumption, that he is not to be look'd upon as a credible Witneſs: And firſt, they produce a Record of a Conviction upon an Information againſt him, for attempting to poiſon two Noble Dukes: This he was convicted of, and fin'd 1000 *l.* and ordered to find Sureties for his good Behaviour during his Life. But, to this it is anſwered, that it appears in the ſame Record, that Satisfaction was acknowledged of the 1000 *l.* and all the reſt of the Judgment the very next Term, and he was forthwith diſcharged, and that without Paying the Money, which ('twas obſerv'd) the Priſoner's Council ſaid Mr *Goodman* was not able to pay at that Time, no more than he could 20000 *l.* and thereupon the King's Council ſay, that the Government was convinc'd that he was wrong'd by a cauſeleſs Proſecution, and the Evidence againſt him was found not to be credible. And beſides, Mr *Goodman* ſtands pardoned by ſeveral Acts of Pardons, as well as other Subjects.

Then they produce one *Edwards*, who is a Priſoner here, and committed for Suſpicion of High-Treaſon, and for Treaſonable Practices: He is, no doubt of it, a Witneſs for all that: For that is but an Accuſation upon him, and does not take away his Credit. He tells you of a Diſcourſe that he had with Mr *Goodman*, and that *Goodman* ask'd him when the Priſoner was to be try'd; and he told him he wou'd be try'd ſuch a Day; and when it was ask'd what it was for, it was anſwer'd, not for the Aſſaſſination, but for ſending Mr *Charnock* into *France*. He ask'd then who were the Witneſſes againſt him? Mr *Goodman* ſaid, Mr *Porter* and himſelf. And further ſaid, that he underſtood that Mr *Cook* had ſworn againſt him (though he would give an Account of no Body elſe) and had no Pardon, and either he muſt

muſt hang, or himſelf. And then he talk'd lightly of the Buſineſs of Hanging, and ſaid it was a fooliſh Thing to be hang'd, for all that People wou'd ſay, was, that ſuch an one hang'd *handſomely* or dyed *bravely*. This indeed is a Sort of Diſcourſe as if Mr *Goodman* did apprehend himſelf in Danger from Mr *Cook*'s Evidence; and yet I cannot ſee that it does at all falſifie the Evidence of Mr *Goodman*: He may be a true Witneſs, and yet he might ſay he was to give Evidence againſt Mr *Cook*, and it was in Mr *Cook*'s Power to give Evidence againſt him, and that truly; and if both were in the Guilt, they were in Danger of one another. But for a further Anſwer, the King's Council have produced Mr *De la Rue*, who ſays, that he knew Mr *Edwards*, and that he was a *Scotch* Man, and reputed Chaplain to the Viſcount of *Dundee*, that he went formerly by the Name of *Dowglas*, and by that Name he was ſet down and deſcribed in the Liſt that Mr *Charnock* ſent to Captain *Porter*; and to that Name he anſwer'd in the *Preſs-Yard* lately. Now it is certain, that Mr *Charnock*'s putting of his Name in that Liſt, is no Evidence of his being guilty in Mr *Charnock*'s Treaſon. But his going by two Names doth juſtly lay him under ſome Suſpicion. But the Evidence that the Priſoner ſeems to rely upon moſt, is what Evidence has been produc'd againſt Mr *Goodman* in that Point of Fact, by the Maſter and the two Drawers; the firſt of the Drawers Name was *Crawford*, and he does tell you, that about twelve Months ago there was this Company at Dinner there: My Lord of *Aylesbury*, my Lord *Montgomery*, Sir *John Freind*, Sir *John Fenwick*, Sir *William Parkyns*, Captain *Porter*, Mr *Charnock*, and the Priſoner, though he did not then know his Name, or the Name of one or two more of them. I obſerve by the Way, that his Teſtimony ſo far does verifie theirs, that there were eight of them there, but he ſays he did not ſee Mr *Goodman* there, nor any but thoſe that dined there. And my Lord of *Aylesbury* went away, as he thinks, about Four a Clock. He cannot ſay that the Priſoner was there, or was gone at that Time before Mr *Goodman* came in; for he did not ſee Mr *Goodman* there at all, he was not in the Room all the Time, but he was to and fro attending till my Lord of *Aylesbury* and my Lord *Montgomery* went away in a Coach that was called, and when they were gone, the reſt of the Company ſtaid there a good while; being urged to tell how long, at laſt he ſaid it was dark, and that agrees with Mr *Porter*, who ſays, it was about nine a-Clock when they went away. He ſays he was there once or twice after my Lord of *Aylesbury* went away, but he never ſaw Mr *Goodman* that he remembers at all, till laſt *Saturday*, in all his Life. As to this, the King's Council ſay, that it is only a *negative* Evidence, and in which a Man cannot be abſolutely *poſitive*, but can only ſpeak according to his Obſervation and Memory, which might not be perfect, and Mr *Goodman* might be there in the mean Time of his going in and out: That is poſſible; and ſo it muſt be left to you to conſider of it.

Then there is *Huntley* the other Drawer, and he ſays my Lord of *Aylesbury* went away about that Time, and that he did not ſee Mr *Goodman* there at all, nor ever in his Life till now; neither does he remember that any Body came to them after Dinuer, and if any freſh Man had then come in, he thinks he ſhould (going often in to them) have known him; and ſays, that he attended this Company only: And he had ſeen Sir *John Freind* and Sir *William Parkyns* there before.

Then Mr *Cock*, the Maſter of the Houſe, was produced, and he names all the eight Perſons that did dine there, and ſo far he confirms the King's Evidence: He thinks that my Lord of *Aylesbury* and my Lord *Montgomery* went away privately (as it ſeems they had come) in a Hackney Coach, and that it was about 4 a-Clock; and he ſays, he did not ſee Mr *Goodman* there, and he does not know that he ever ſaw him till now: But when he was croſs-examined by the King's Council, he does acknowledge that he might poſſibly come in after Dinner, and before my Lord of *Aylesbury* went away, and he not ſee him, becauſe he was not there all the Time; he ſays, Sir *John Freind* uſed to dine at his Houſe, and came to his Houſe once a Week; and he had ſeen ſome of the reſt, but they did not frequent his Houſe as Sir *John Freind* did: He ſays, the Company din'd about Two a-Clock, and the laſt of them ſtaid till about Eight or Nine, and that the Door was ſhut as is uſual when Company is in a Room, but no Body was forbid to come there.

But to eſtabliſh the Credit of the Evidence on the King's Part, they did produce Mr *Goodman* and Mr. *Porter* again: Mr *Goodman* does acknowledge ſo far to be true, that my Lord of *Aylesbury* went away firſt; but ſays, that himſelf was not wholly a Stranger to this Houſe, for he had dined there four or five Times with Sir *John Freind*, and particularly one Time, he being ſick, and asking for ſome Brandy, the Maſter of the Houſe ſaid he would help him to ſome of the beſt in *England*, and Mr *Goodman* would have bought ſome of him. But the Maſter ſeems not to own that, and ſays, he does not remember any Thing of it.

But then comes Mr *Porter* again, and he ſays poſitively, that Mr *Goodman* was there, and that he did ſpeak with the Company, and complemented my Lord of *Aylesbury* when he went away, and went Part of the Way towards the Stairs with him; and he does well remember it by this Token, that when Mr *Porter* was told Mr *Goodman* was below, he mentioned him in the Company as a truſty Man, that was fit for the Converſation; and then Mr *Porter* went and fetch'd him up, and Mr *Goodman* was there near two Hours, and they diſcours'd all this Matter in that Time in the Preſence of the Priſoner and the reſt; and he ſays it was about ſix a-Clock before my Lord of *Aylesbury* and my Lord *Montgomery* went away, and then there was Opportunity enough for this Diſcourſe, and Conſult that they ſpeak of.

The Priſoner has offered another Sort of Evidence: Firſt, the Confidence of his own Innocence, that he was abroad three Weeks after this Conſpiracy was diſcovered; and they have produced Mr *Treganna*, Mr *Peachy*, and Mr *Nichols*, who prove that he never abſconded, but was abroad and appeared openly (for three Weeks after) till ſuch Time as he was taken. This the King's Council ſay is no Proof that he is not Guilty, and their Evidence untrue. They ſay he might have a Confidence, and the rather becauſe he is not charged with the Aſſaſſination; for, at that Time theſe Witneſſes ſpeak of nothing was diſcovered and publick but the Aſſaſſination; for it was before Sir *John Freind*'s Tryal; and then was the great Diſcovery of the Secret of the Invaſion.

Then he ſhews further as to his Converſation, that he is a Man of a very ſober Life, never was

known to ſwear, that he drinks but little, and is a *Godly* Man, and often ſays his Prayers. As to that, the King's Council on the other Side tell you, that has been pretended to by other People too; and the Queſtion is not about *Religion*, but *this Fact* that you are now to try. Whether he be ſo Religious or no as he pretends, or whether he be ſincere in his Devotion, that is not ſo much the Matter now, but the Queſtion is, whether he has offended in this Kind as he ſtands accuſed. They produce a Gentleman, one Mr *Hammond*, and he ſays that he is a very Conſciencious Man, and particularly is a great Lover of his Country; and he has often heard him declare a Deteſtation of an Invaſion by a *French* Force, and wiſh Succeſs to the Fleet; but *that* which he remembers chiefly, was about the Time of the Diſcovery of this Plot, The King's Council anſwer to this, that a Man may uſe ſuch kind of Expreſſions, perhaps to cover his Guilt; and in the Reply to Sir *Barth. Shower*'s Obſervations, it was taken Notice of by Mr *Sollicitor*, (what we all cannot but remember) that the like Evidence was given as to Sir *John Freind*, that he did deteſt an Invaſion, and was preſent at the Common-Prayer when King *William* was pray'd for, and declared againſt Plots; and that if they catched him in the Corn they might put him in the Pound. Theſe Things a Man might ſay, and it is the lighteſt Evidence that can be given, being Diſcourſes out of Mens own Mouths, who will never proclaim their own Guilt; and therefore it is the weakeſt Defence that can be offered. But, Gentlemen, you are to conſider the other Evidence that has been produc'd by the Priſoner, given by ſeveral Witneſſes, and who are upon their Oaths now as well as the King's Witneſſes. And his Council ſay their Witneſſes, but particularly the three upon whom they chiefly rely, have no Objection made out againſt them; and no Man's Teſtimony ought to be *preſumed* to be falſe. And it muſt be taken Notice of, that they can ſpeak only according to their Belief, grounded on their Obſervation and Memory, that they did not, ſo far as they obſerved or remember, ſee Mr *Goodman* there, as 'twas moſt probable they ſhould if he had been. But 'tis poſſible they might overlook or forget; the rather for that they were not of the Company, but in and out, up and down; and Mr *Goodman* was not there at Dinner when their Attendance was fixt and conſtant.

It ought to be conſidered alſo, that here are ſeveral Circumſtances, ſome of which ſeem very pregnant. It is agreed on all Hands, that the Priſoner dined there with thoſe other ſeven Perſons, concerning Four of whom we muſt conclude nothing; but concerning three of them we in this Court may take Notice, they are Attainted of High Treaſon, and ſo it is evident that the Priſoner was for a long Time a Companion of three Traytors, and had a Converſation with them. I do not find that he had any Occaſion to be there; nor any of the reſt of the Company. Concerning my Lord of *Aylesbury*, indeed it is ſaid he propoſed to treat about a Hogſhead of White Wine. But that ſeems to be caſual, and not the End of his Coming and Dining with this Company there. But, be that how it will, that relates to his Lordſhip alone. But, for the others, I do not find they do pretend any Occaſion of Meeting there; and therefore it leaves it the more ſuſpicious: And 'tis the more ſo, becauſe it was managed ſo privately and cautelouſly. They were not attended according to their Qualities. The Lords went away together in a Hackney Coach that was called, as they had come thither in another. The reſt thought fit to ſtay there till it was dark; and as ſoon as it was ſo, went away. There was ſome extraordinary Cauſe for all this. It did import the Priſoner to ſhew, that it was for ſome good Cauſe and Purpoſe.

And further, it is obſervable that this Houſe was a Place which, as the Maſter ſays, none of this Company did uſe to reſort to, except Sir *John Freind*; which makes it probable (this being a Houſe that Sir *John Freind* frequented and none of the others) that *He* beſpoke this Place, and brought the reſt thither: And if it were ſo, that makes it more probable that there was ſuch a Treaſon there to be hatch'd, as is evidenced by the King's Witneſſes; for you may remember, and it appears by the Record in this Court, that Sir *John Freind* was indicted and attainted (not for the Aſſaſſination, but) for the Treaſon for which the Priſoner is now a Trying, an Invaſion that was to be ſupported with an Inſurrection. Now if Sir *John Freind* was chiefly acquainted with this Houſe, and brought this Company together, it is very probable it was about this Buſineſs which Sir *John Freind* was ſo concerned in. And that he is Attainted for it, appears upon the Record before us; which ſhould be read, but that the Priſoner's Council admit it, and are ſo far ſatisfied in it, that they won't Arraign the Verdict; nay, they did acknowledge that there was a Plot; and there was no Doubt of it, there was *ſuch* a Plot.

Now then, Gentlemen, here it is certainly proved by theſe two Witneſſes, (and not gainſaid by the Priſoner's own Witneſſes) that there was ſuch a Meeting, and that the Priſoner was there; and they both have poſitively ſworn that this Treaſon was committed there. You have heard what has been objected to their Credit; they have delivered their Teſtimony upon their Oaths; and ſo, Gentlemen, are you upon your Oaths: If you are ſatisfied, and can take it upon your Conſciences, that theſe two Witneſſes are, or any one of them is, forſworn (if ſuch Diſtinction can poſſibly be made in this Caſe) then you are to acquit the Priſoner; but if you are ſatisfied, and think they have ſworn true, you are to find him Guilty.

Mr J. *Rokeby*. Nay, if one be forſworn, both are; for the Evidence is entirely in all Parts the ſame; and if Mr *Goodman* be perjured, Mr *Porter* is ſo too.

Sir *B. Shower*. Forſworn and Perjured are hard Words; we only ſay miſtaken.

Mr J. *Rokeby*. Well, that Objection goes to one as well as t'other.

L. C. J. *Treby*. It muſt be ſo, ſince they ſpeak of the ſame joint Matter, *viz.* their being together in Company. If Mr *Porter* ſays true, when he ſwears that Mr *Goodman* was there with him and the reſt, Mr *Goodman* muſt ſay true when he ſwears that he was there with Mr *Porter* and the reſt. There was one Thing that I forgot: Sir *B. Shower* obſerved, that it might be an Invention of Captain *Porter*, becauſe he fixeth it in Point of Time to the Month of *May*, that he does not ſay it was in *April*; for that then it would be within the Pardon, which extends to *April* 29. laſt Year; nor would he lay it in *June*, for then he was in *Newgate*, and others of them

were

were diſpers'd by reaſon of a Riot committed in *Drury lane*; and this Sir *B. Shower* alledges, was a Piece of Skill and Contrivance: But, really, this is a Piece of Ingenuity in himſelf: For, beſides that the King's Witneſſes affirm poſitively that it was in *May*, and remember it by a certain Token, *viz.* That it was within a very few Days after the King went beyond Sea, one or two of the Priſoner's Witneſſes (*Crawford* I am ſure) did ſay that this Meeting was this Time Twelve-month, and you know we are now near mid-*May*.

Mr Serjeant *Darnall*. If you believe our Drawers for Part, you muſt believe them for all.

Mr *Att. Gen.* No, not ſo: My Lord ſpeaks only where they concur with our Evidence. It were ſtrange to expect we ſhould disbelieve or doubt what the Witneſſes on both Sides affirm to be true: But, I do not think it would be to the Advantage of the Priſoner, if what his Council propoſeth were agreed to, *viz.* That the Drawers (and their Maſter too) ſhould be believed for all they ſay, provided equally that the King's Witneſſes ſhould, in like manner, be believ'd for what they ſay. For, the main Thing controverted, is, Whether Mr. *Goodman* were at this Meeting. Theſe Witneſſes for the Priſoner ſay, they did not ſee him there; at leaſt they do not remember it. Mr. *Porter*, and Mr. *Goodman* himſelf ſays, he was there. Now, theſe Things agreed, and admitted, would make a very conſiſtent clear Evidence, that Mr. *Goodman* was there, though the Maſter and Drawers did not obſerve, or do not remember his being there.

Then an Officer was Sworn to keep the Jury, who withdrew to conſider of their Verdict, and about three Quarters of an Hour after, returned into Court.

Cl. of Arr. Gentlemen, anſwer to your Names. *Henry Sherbrook.*

Mr *Sherbrook*. Here. And ſo of the Reſt, *&c.*

Cl. of Arr. Are you all agreed of your Verdict?

Jury. Yes.

Cl. of Arr. Who ſhall ſay for you?

Jury. Our Foreman.

Cl. of Arr. Set *Peter Cook* to the Bar, (*which was done.*) *Peter Cook* hold up thy Hand, (*which he did.*) Look upon the Priſoner; how ſay you, Is he guilty of the High-Treaſon whereof he ſtands Indicted, or not guilty?

Foreman. Guilty.

Cl. of Arr. What Goods or Chattels, Lands or Tenements had he at the Time of the Treaſon committed, or at any Time ſince?

Foreman. None to our Knowledge.

Cl. of Arr. Then hearken to your Verdict as the Court has recorded it: You ſay that *Peter Cook* is guilty of the High-Treaſon whereof he ſtands indicted, but that he had no Goods or Chattels, Lands or Tenements at the Time of the High-Treaſon committed, or at any Time ſince to your Knowledge, and ſo you ſay all.

Jury. Yes.

Cl. of Arr. Gentlemen, the Court diſmiſſes you, and thanks you for your Service.

Then the Court adjourned till five a Clock in the Evening.

Post Meridiem.

About ſix a Clock, the Court being, by Proclamation, reſum'd, the Priſoner, convicted, was brought to the Bar, in order to Judgment.

Cl. of Arr. Peter Cook, hold up thy Hand (*which he did*), thou ſtand'ſt convicted of High-Treaſon, for compaſſing and imagining the Death of his Majeſty King *William* the Third, and for adhering to the King's Enemies: What can'ſt thou ſay for thy ſelf, why the Court ſhould not give thee Judgment to die according to the Law?

Cook. My Lord Mayor, my Eyes are very bad, therefore I deſire your Lordſhip would be pleaſed to take this Paper, and that it may be read.

Cl. of Arr. Have you any Thing to ſay in Arreſt of Judgment?

Cook. I deſire my Paper may be read.

[*It was handed up to the Court, and then delivered down to Mr* Attorney General *and the King's Council, but not openly read.*]

Mr *Recorder*. Mr *Cook*, the Court have read your Paper you ſent up, and have communicated it to the King's Council; if you have any Thing to move in Arreſt of Judgment, this is your Time, and we will hear you; but as for any Repreſentation of your Caſe to any others, that muſt be conſidered of afterwards, you are now called to your Judgment.

Cook. I did not know that I might offer any Thing afterwards, but if your Lordſhips think fit to communicate that to my Lords Juſtices, I ſubmit it to you.

Mr *Recorder*. Mr *Cook*, there is nothing appears upon this Paper that is Matter of Law, and ſo not ſerviceable to you now, and therefore what you deſire in it, the Court will conſider of afterwards.

Cook. I do not underſtand the Law, my Lord, but I have heard the Court ought to be of Council for the Priſoner, and I deſire I may not ſuffer by my Ignorance.

Mr *Recorder*. I declare it, for my Part, I know nothing that you can have any Advantage of, in Arreſt of Judgment; if I did, you ſhould not loſe the Benefit of it, and you have had your Council aſſigned, who have pleaded for you without reſtraint; and if there had been any Matter of Law that would have availed you in Arreſt of Judgment, no doubt, they would have laid hold of that Advantage for you.

Cook. I can't tell, my Lord, what is Matter of Law.

Mr *Att. Gen.* Your Lordſhip obſerves, they took all the Objections that they could to the Indictment, but there was none that they could fix.

Cl. of Arr. Then Cryer make Proclamation, (*which was done on both Sides of the Court.*)

Cryer. Oyez. All Manner of Perſons are commanded to keep Silence while Judgment is in giving, upon Pain of Impriſonment.

Cook. My Lord, may I have my Paper again?

Mr *Recorder*. If you think it may be of any Service to you to leave it with the Court, you may do ſo; or if you deſire it, you ſhall have it again.

Cook. I deſire your Lordſhip to keep it.

Mr *Recorder*. I will receive it, and it ſhall not be buried, I aſſure you.

Cook. I don't hear what the Court ſays.

Mr *Recorder*. You ſay you did not hear what was ſaid to you: If you deſire to have your Paper

again, you ſhall have it; but if you deſire to have it communicated Above, the Court will conſider it, and take care of that too.

Cook. I deſire your Lordſhip would do it.

Then the Recorder *proceeded to give Judgment.*

Mr *Cook*, I think it uſeful to the Publick, and alſo at this Time to you, to obſerve, That the Reign of the late King *James*, was, throughout, one intire Deſign and Project form'd, in conjunction with the *French* King, totally to ſubvert our Religion, Laws, and Liberties, which grew ſo apparent to the Subjects of theſe Nations, in ſo many Inſtances of fatal Conſequence, manag'd in ſuch a Method, and advanc'd ſo far, that the People of theſe Kingdoms, of all Qualities, Ranks, and Degrees, did find it abſolutely neceſſary for the Preſervation of themſelves and the neighbour Nations now in Alliance with us, to pray in Aid of the then Prince of *Orange*, as a Perſon not only nearly allied to this Crown, but alſo intirely in the Intereſt of theſe Kingdoms, and thoſe neighbouring Princes, and Countries that lay expoſed to the Violence and ambitious Inſults of *France*. And the Love which that noble Prince did bear, not only to us, but to our Neighbours alſo, diſpoſed him to embrace that Invitation, upon whoſe Arrival here, that Predeceſſor, from Motives that were inviſible, declin'd the Kingdom and the Government, and left the People to themſelves; whereupon his preſent Majeſty was neceſſarily and rightfully placed upon that Throne he ſo well deſerved: And this is now that King, for whoſe Preſervation all good People have aſſociated, and ſpare neither Lives nor Treaſure to ſupport and to continue in the Government; and this is that King whom you have traiterouſly conſpired, not only to dethrone, but alſo to deſtroy; and this is that People that you would have to ſwim in Blood, and loſe their Religion, Liberty, and Property. Theſe Matters need a Hiſtory to relate at large, I only touch them ſhortly, to move good Men to rejoyce in their Deliverance, and to move you ſeriouſly to reflect upon the Heinouſneſs of your Crime.

Mr *Cook*, you are an *Engliſh* Man, and muſt needs know, that in this Place we frequently condemn to Death, Clippers, Coiners, Thieves, and Robbers, and other ſuch like Criminals, and that juſtly and neceſſarily too, for the Preſervation of the Innocent, and for the common Good. Of what Condemnation muſt you, and ſuch as you, be worthy then, who have ſo horridly endeavour'd and deſign'd the fatal Ruin and Deſtruction of your own native Country, and to render your Fellow-Subjects a miſerable Prey, and at the Beſt to become Slaves and Vaſſals to a foreign Prince?

Let me alſo mind you, That nothing is more ſure, than that after this, you muſt receive a Judgment in another World; and if that paſs againſt you too, that Sentence will be moſt Terrible, and your Sufferings without End: And therefore I do adviſe you to imploy the few Days you have yet to live, in Preparation for your future Happineſs, which cannot be duly done without a full Confeſſion of this, as well as other Crimes you have been guilty of: I therefore charge it to you, as your Duty, and leave it with you at your utmoſt Peril, that you honeſtly and faithfully diſcover all you know of this inhumane and traiterous Conſpiracy, and all the Perſons that you do know to be guilty of it: This will be the greateſt Service you can do in this World, and will be the beſt preparatory Step that you can take towards a better.

And, Sir,

There now remains no more for me to ſay, but to pronounce that Sentence on you which the Law directs: And that is this,

That you, Peter Cook, *be taken hence to the Place from whence you came, and thence be drawn upon a Hurdle to the Place of Execution, where you are to be hang'd by the Neck, and cut down before you be dead; that your Bowels be taken out, and your Privy Members cut from your Body, and both burnt in your Sight; that your Head be cut off, and your Body divided into four Quarters, which Head and Quarters are to be at the King's Diſpoſal; and God Almighty have Mercy upon your Soul.*

Cook. I beg, if your Lordſhip pleaſe, that I may have my Relations and Friends come to ſee me, and ſome Divines, the better to prepare me for another World.

Mr *Recorder.* Mr *Cook*, if you'll give the Names of thoſe that you would have come to you, to the Officer, Care ſhall be taken in it; and you will not be denied any reaſonable Helps that may be had for your Preparation for Eternity.

Mr *Att. Gen.* It is not fit he ſhould be deny'd any reaſonable Help; but in the mean Time there is Reaſon for the Government to be cautious, upon the Account of what has notoriouſly paſt in the Caſe of ſome others.

Mr *Recorder.* If he give in the Names, it will be conſidered of, and Care taken that nothing be done, but what is reaſonable and ſafe.

Then the Priſoner was taken from the Bar, and the Court proceeded to what was remaining of the Buſineſs of the Seſſions.

The TRYAL of ALEXANDER KNIGHTLEY

Publiſh'd by AUTHORITY.

De Termino Paſche Anno Regni Regis Gulielmi *Tertii Octavo.*

In Banco Regis.

Die Jovis Tricesimo Aprilis, *Anno Domini* 1696.

THIS Day the Keeper of *Newgate* brought to the Bar of the Court of *Kings Bench*, *Alexander Knightley*, by Virtue of a Writ of *Habeas Corpus*, Iſſuing out of that Court for that Purpoſe, to be Arraigned upon an Indictment of High Treaſon, found againſt him at the Seſſions of *Oyer* and *Terminer*, holden for the County of *Middleſex*; which Indictment by Writ of *Certiorari* was removed into the *Kings Bench*. The Return of the *Habeas Corpus* was delivered, and then the Priſoner was Arraigned thus.

Cl. of Ar. *Alexander Knightley* hold up thy Hand (which he did.) Thou ſtandeſt Indicted by the Name of *Alexander Knightley*, late of the Pariſh of St. *Paul Covent Garden* in the County of *Middleſex*, Gent. For that you not having the Fear of God in your Heart, nor weighing the Duty of your Allegiance, but being moved and ſeduced by the Inſtigation of the Devil, as a falſe Traytor againſt the moſt Serene, moſt Illuſtrious, and moſt Excellent Prince, our Sovereign Lord *William* the Third, by the Grace of God of *England*, *Scotland*, *France* and *Ireland*, King, Defender of the Faith, *&c.* Your ſupreme, true, rightful, lawful, and undoubted Sovereign Lord, the cordial Love and true and due Obedience, Fidelity, and Allegiance, which every Subject of our ſaid Lord the King that now is, towards him our ſaid Lord the King ſhould bear, and of right ought to bear, withdrawing, and utterly to extinguiſh, intending and contriving, and with all your Force purpoſing and deſigning the Government of this Kingdom of *England*, under him our ſaid Lord the King that now is, of right duly, happily, and very well-eſtabliſhed, altogether to ſubvert, change, and alter, as alſo the ſame our Lord the King to Death, and final Deſtruction to put and bring, and his faithful Subjects, and the Freemen of this Kingdom of *England*, into intolerable and moſt miſerable Slavery to *Lewis* the *French* King to ſubdue and inthral, the tenth Day of *February*, in the ſeventh Year of the Reign of our ſaid Sovereign Lord the King that now is, and divers other Days and Times, as well before as after, at the Pariſh of St. *Paul Covent-Garden*, aforeſaid, in the County aforeſaid, falſely, maliciouſly, deviliſhly, and Traiterouſly you did compaſs, imagine, and contrive, purpoſe, deſign, and intend, our ſaid Sovereign Lord the King that now is, to ſlay, kill, and murther, and a miſerable Slaughter among the faithful Subjects of our ſaid Lord the King, throughout this whole Kingdom of *England*, to make and cauſe; and your ſaid moſt wicked, moſt impious, and deviliſh Treaſons, and traiterous compaſſings, contrivances and purpoſes aforeſaid, to fulfil, perfect, and bring to effect, you the ſaid *Alexander Knightley* afterwards, to wit, the ſame tenth Day of *February*, in the Year aboveſaid, at the Pariſh aforeſaid, in the County aforeſaid, and divers other Days and Times, as well before as after, there and elſewhere in the ſame County, falſely, maliciouſly, adviſedly, ſecretly, traiterouſly, and with Force and Arms, with very many other Traitors to the Jurors unknown, did meet, propoſe, treat, conſult, conſent, and agree, him our ſaid Lord the King that now is, by lying in wait and deceit, to aſſaſſinate, kill, and murther, and that execrable, horrid, and deteſtable Aſſaſſination and killing, the ſooner to execute and perpetrate, afterwards, to wit, the ſame Day and Year, and divers other Days and Times at the Pariſh aforeſaid, in the County aforeſaid, traiterouſly you did treat, propoſe, and conſult with thoſe Traytors, of the Ways, Manner, and Means, and the Time and Place where, when, how, and in what Manner, our ſaid Sovereign Lord the King, ſo by lying in wait, might be ſlain and killed, and that you did conſent, agree, and aſſent with the ſame Traytors, that forty Men on Horſeback, or thereabouts, of whom you the ſaid *Alexander Knightley* were to be one, with Guns, Muskets, and Piſtols, charg'd with Gunpowder and leaden Bullets, and with Swords, Rapiers, and other Arms, armed, ſhould lie in wait and be in ambuſh, the ſame our Lord the King in his Coach being when he ſhould go abroad to attack, and that a certain and competent Number of thoſe Men ſo arm'd, upon the Guards of our ſaid Lord the King, him then attending, and being with him ſhould ſet upon, and ſhould fight with them and ſubdue them, whilſt others of the ſame Men ſo armed, him our ſaid Lord the King ſhould aſſaſſinate, kill, ſlay, and murther; and you the ſaid *Alexander Knightley*, your Treaſons and all your traiterous Intentions, Deſigns, and Contrivances aforeſaid, to execute, perform, fulfil, and bring to effect, afterwards, to wit, the aforeſaid tenth Day of *February*, in the ſeventh Year aboveſaid, at the Pariſh aforeſaid, in the County aforeſaid, diverſe Horſes, and very many Arms, Guns, Muskets, Rapiers and Swords, and other Weapons, Ammunition, and warlike Things, and military Inſtruments, falſely, maliciouſly, ſecretly, and traiterouſly you did obtain, buy, gather together, and procure, and to

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be bought, obtain'd, gathered together, and procured, did cauſe with that Intent to uſe, employ, and beſtow them in and about the deteſtable, horrid, and execrable Aſſaſſination, Killing, and Murther, of our ſaid Lord the King that now is, as aforeſaid; and the ſame Premiſſes, the more ſafely, and ſurely to execute, do, and perform, you the ſaid *Alexander Knightley*, with one *Edward King* late for High-Treaſon, in contriving and conſpiring the Death of our ſaid Lord the King that now is, duly convicted and attainted, by the Conſent and Aſſent of divers of the Traitors and Conſpirators aforeſaid, in the ſaid tenth Day of *February* in the ſeventh Year aboveſaid, traiterouſly did go and come to the Place propos'd, where ſuch intended Aſſaſſination, Killing, and Murther of our ſaid Lord the King, by lying in wait ſhould be done, performed, and committed, to view, ſearch, and obſerve, the Conveniency and Fitneſs of the ſame Place for ſuch lying in wait, aſſaſſination, and killing, there to be made, performed and committed, and that Place ſo being ſeen and obſerved, afterwards, to wit, the ſame Day and Year, your Obſervations thereof to ſome of the ſaid Traitors and Conſpirators, you did relate and impart, to wit, at the Pariſh aforeſaid, in the County aforeſaid, againſt the Duty of your Allegiance, and againſt the Peace of our ſaid Sovereign Lord the King that now is, his Crown and Dignity, and againſt the Form of the Statute in this Caſe made and provided. How ſayſt thou, *Alexander Knightley*, art thou guilty of the High-Treaſon whereof thou ſtands indicted, or not guilty?

Knightley. Not guilty.

Cl. of Arr. Culprit, How will you be Try'd?

Knightley. By God and my Country.

Cl. of Arr. God ſend you a good Deliverance.

Knightley. With Submiſſion to your Lordſhip, I did not expect, in this weak Condition that I am in, to be brought at this Time to the Bar; That having taken me off extremely from the Application that I ſhould have otherwiſe made of my ſelf to my Defence; but ſeeing there is no Mercy to be had here, I will endeavour to have Patience, and undergo my Fate as well as I can.

L. C. J. *Holt.* Mr *Knightley*, you have no Reaſon to find fault; for when I was acquainted you were ill, and deſired a Phyſician, I ordered one to be ſent to you; and Yeſterday in the Afternoon you ſent Word you were ſo ſick, that you could not be brought hither to Day; but your Doctor was with me laſt Night, and upon Diſcourſe with him, I did apprehend you were not ſo ill, but that, eſpecially conſidering the Weather, you might very ſafely be brought to the Bar to Day.

Knightley. The Gentleman that brought me the Copy of the Indictment found me very ill, and I have been ill ever ſince this Day ſevennight.

L. C. J. *Holt.* Well, now let us ſee what Time we ſhall appoint for the Tryal.

Mr *Att. Gen.* When your Lordſhip pleaſes to appoint.

L. C. J. *Holt.* I think you cannot Try it till *Wedneſday* fortnight.

Mr *Clark.* That Day is free, my Lord.

L. C. J. *Holt.* It being upon a *Certiorari*, the *Venire facias* muſt be returnable upon a common Day; and there muſt be fifteen Days between the *Teſte* and the Return.

Mr *Att. Gen.* May it not be *Tueſday* then, that the Jury appear?

L. C. J. *Holt.* You cannot have it before *Wedneſday*, for that is the Return-day.

Mr *Clark. Tueſday* fortnight is appointed for the Tryal between *Pride* and the Earl of *Bath*.

Mr *Att. Gen.* Then it muſt be upon *Wedneſday*, for there muſt be fifteen Days between the *Teſte* and the Return.

L. C. J. *Holt.* Well, take back your Priſoner; and bring him here again on *Wedneſday* fortnight, you ſhall have a Rule for it.

Then the Priſoner was carried back.

Die Mercurii Viceſimo Maij, 1696. *In Banco Regis.* Dominus Rex *verſus* Knightley.

THis Day being appointed for the Tryal of the Priſoner, he was brought to *Weſtminſter-Hall*, and the Jury were call'd over as ſoon as the Court appeared in the Hall, and the Defaulters recorded; and about Eleven of the Clock the Priſoner was brought to the Bar.

Clerk of the Crown. Alexander Knightley, hold up thy Hand, *(which he did.)* Thoſe good Men that thou ſhalt hear called, and perſonally appear, are to paſs between our Sovereign Lord the King and thee, upon the Tryal of thy Life and Death: If therefore thou would'ſt challenge them, or any of them, thy Time is to ſpeak unto them as they come to the Book to be Sworn, before they be Sworn.

L. C. J. *Holt.* Mr. *Knightley*, I perceive you have a Deſire to ſpeak ſomething; let us hear what you have to ſay.

Knightley. I humbly beg your Lordſhip's Leave, that I may ſpeak before the Jury be called. What I have to ſay, I beg I may have your Leave to read, becauſe I have a bad Memory.

(Reads.) MY Lord, I hope to ſave the Jury and the Witneſſes againſt me a great deal of Trouble, and deſign to take up very little of your Lordſhip's Time: But in the firſt Place I think my ſelf obliged to thank your Lordſhip for your great Indulgence, in granting me ſo much Time between my Arraignment and Trial; the greateſt Part of which I have employed to appear before the great Tribunal of Heaven.

I ſpeak in the Face of the World here, That I am convinced I cannot hope to be happy hereafter, without a juſt Abhorrence of, and a ſincere Repentance for that Crime for which I here ſtand Indicted.

And ſince Confeſſion is an eſſential Part of Repentance, I do acknowledge I was to have been concern'd in ſome Part of the barbarous Aſſaſſination, and was unhappily ſurprized into a Conſent to act in it, though in my Heart I did abominate the Fact as much as any Man living; but under ſome honourable and fair Pretences I was drawn in at firſt, and then of a ſudden became ſo far engaged, that by a miſtaken Notion of Honour, I thought I could not retreat without the Infamy of Cowardiſe.

My Lord, I humbly crave your Lordſhip's Permiſſion, to acquaint you, how that ſome time ſince I was brought before ſome of the Lords of his Majeſty's moſt Honourable Privy Council, where I do aſſure your Lordſhip I did freely own and fully diſcover my being concerned in that horrid Deſign; and I here openly confeſs the ſame with

with that Sorrow and Repentance as becomes a Man of Honour and Conſcience.

My Lord, there is one Circumſtance particular in my Caſe, I moſt humbly beg leave to inſiſt upon, and urge to your Lordſhip in my behalf, which is, that it was upon my Confeſſion (as I conceive) that Mr *Harris*, now a principal Evidence againſt me, was firſt diſcovered; ſo that my own Confeſſion has been a great Means to take away my Life.

I expect after a few Words now in this ſolemn Court to receive from your Lordſhip the Sentence due upon the Conviction, from my own Mouth, of a Crime for which I cannot in modeſty hope, ſo much above my Deſerts, the King's moſt Gracious Pardon; yet the Greatneſs of my Offence does not rob me of all Thoughts of Mercy, whilſt I throw my ſelf abſolutely and entirely at his Majeſty's Feet for it; and I humbly beg of your Lordſhip as a Privy-Councellor, that you would repreſent my unfortunate Caſe to their Excellencies the Lords Juſtices of *England*, as an Object of his Majeſty's Favour.

And now, my Lord, I ſhall not detain your Lordſhip and the Court any longer, but my next Words Convict and lay me under the juſt Sentence of Death: So to my Indictment I beg Leave to plead guilty, and throw my ſelf entirely upon the King's Mercy, and do deſire my former Plea to my Indictment may be withdrawn.

Cl. of the Crown. Thou haſt been Indicted and Arraigned of High-Treaſon, in compaſſing and imagining the Death and Deſtruction of the King; how ſay'ſt thou *Alexander Knightley*, art thou guilty of the High-Treaſon whereof thou ſtand'ſt indicted, or not guilty?

Knightley. Guilty, my Lord.

Cl. of the Crown. Art thou content to withdraw thy Plea Not guilty?

Knightley. Yes, Sir.

Cl. of the Crown. Do you plead to the Indictment guilty or not guilty?

Knightley. I am guilty.

Mr *Att. Gen.* Then my Lord we deſire, ſince he relinquiſhes his Plea of Not guilty, that you will record his Confeſſion; and ſince he has confeſt the Indictment, we have nothing more to do but wait the Judgment of the Court.

L. C. J. *Holt.* We ſhall not give Judgment now.

Mr *Att. Gen.* If the Priſoner have any thing to ſay for himſelf, your Lordſhips I ſuppoſe will hear him to it.

L. C. J. *Holt.* But I ſay we cannot by the Courſe of the Court give Judgment now, for after a Perſon is convicted here, whether by Confeſſion or Verdict, he ought to have four Days from the Time of ſuch Confeſſion or Verdict, to move in Arreſt of Judgment, if there be ſo many Days of the Term remaining, if not, then the longeſt Time that can be had in the Term is allow'd: In *Stanley*'s Caſe it was otherwiſe practiſed, Judgment was given the ſame Day, that was in the time of the Popiſh Plot, and is a Caſe not to be imitated, becauſe not juſtified by any Precedent before that time or ſince, but it has been always obſerv'd to have four Juridical Days for moving in Arreſt of Judgment, if ſo many remain of the Term.

Die Lunæ Viceſimo Quinto Die Maii An. Dom. 1696.

Being the laſt Day of the Term, the Priſoner was brought from Newgate *to the* King's Bench-Bar.

Mr *Att. Gen.* If your Lordſhip pleaſe, I deſire the Judgment of the Court to be pronounced upon Mr *Knightley* upon his Conviction.

Cl. of the Crown. Alexander Knightley hold up thy Hand; (*which he did.*) thou haſt been Indicted and Arraigned for High-Treaſon in compaſſing and imagining the Death of the King, and adhering to the King's Enemies; what canſt thou ſay for thy ſelf, why Judgment ſhould not be given againſt thee to die according to the Law?

Knightley. I have nothing more to ſay, my Lord, than what I have ſaid.

Cl. of the Crown. Cryer, make Proclamation for Silence. *Which was done on both Sidis the Court.*

Cryer. O Yez: Our Sovereign Lord the King ſtraitly charges and commands all manner of Perſons to keep ſilence while Judgment is in giving, upon pain of Impriſonment.

L. C. J. *Holt.* Mr *Knightley*, You are by your own Confeſſion convicted of High-Treaſon in deſigning the Murder of the King and the Subverſion of the whole State of *England*, in promoting an Invaſion from the *French*, its moſt antient and inveterate Enemies.

It hath appeared before your Arraignment, not only by the Evidence that hath been given at former Trials; but even by the Signs of the Times and the Manner of ſome Mens Actings, that there hath been for ſome Years laſt paſt a Train of Plots and Conſpiracies againſt this Government, and when the various Means which the Conſpirators did project among themſelves for its Ruin proved ineffectual, it was at laſt reſolved among ſome of the Conſpirators to aſſaſſinate the King, as the moſt certain Way of accompliſhing their End.

In which Deſign you were deeply engaged and was an active Inſtrument in the carrying it on, being ſent to view the Ground on both Sides the Water, and with others that were ſent with you reported your Opinion, which was the moſt convenient Place to attack the King and his Guards.

And though you did the laſt time you were at the Bar, urge by way of Extenuation of your Crime, that you being engaged in the Intereſt of the late King, and thereby ſupported, you was ſurprized into this barbarous Deſign, which being propoſed to you, you thought your ſelf obliged in Honour to engage in it; which is ſo far from an Extenuation, that it is an high Aggravation: For Men of honourable Principles, tho' moſt zealouſly diſpoſed to the Advancement of any particular Intereſt, yet always deteſt the Uſe of baſe and vile Means. Therefore when the Aſſaſſination of the King was propoſed, you had an Opportunity to have retreated with Honour, and might have refuſed to be further concerned; but you rather purſued this wicked Enterprize with great Zeal.

And tho' you are by your Profeſſion a *Roman Catholick*, and may for that Reaſon think that your Crime is mitigated, becauſe you acted in the behalf of a Prince of your own Religion, which you hoped thereby to introduce: Notwithſtanding all which, your Offence is highly aggravated in reſpect of the Ingratitude and Folly with which it is attended. For there is no *Engliſh* Papiſt that is Maſter of any Property, but he is intereſted in the Preſervation of this Government, to which the whole Party of them hath been, and ſtill are continually obliged for its Moderation and Juſtice; for inſtead of being expoſed to the Severity of thoſe Laws to which they are obnoxious, they have had the ſame Indulgence in the Enjoyment of their Religion, and the ſame Protection, and as much Benefit in the Diſtribution of the Common Juſtice of the Realm, as any other of the King's Subjects; therefore none of them could ever expect to mend their Condition under a *French* Domination. But the contrary is foreſeen by all conſidering Men; for the *Engliſh* Papiſt, as well as Proteſtant, would have been reduced to a moſt diſmal State if you had obtained your End.

For it is againſt all the Rules of Reaſon, and the Experience of all Ages, to imagine, that the *French* King would ſpare *Engliſh* Papiſts more than Proteſtants; for it is not Zeal to Religion, or Affection to the Intereſt of the late King, that hath excited him to invade *England*, but it's his Pride and Ambition to conquer the three Kingdoms, and to reduce this to be a Province to *France*: Indeed the Pretence of reſtoring the late King, and introducing the *Popiſh* Religion may ſerve to delude ſome warm and unwary Zealots to engage in his Aſſiſtance, who do not conſider, that if they ſhould be ſucceſsful they would be as certainly deſtroyed as others, but with more Diſadvantage to themſelves. For after they ſhall have ſurvived the Liberty of their Country, have embrued their own Hands in their Countrymen's Blood, they will be at the Mercy of their Conqueror, who can never think it his Intereſt to truſt them, but will deſpiſe them for being ſuch villainous Traitors to their own Country. Nay, rather, theſe *Engliſhmen*, who by their Courage and Reſolution ſhall endeavour to defend their Country, though they ſhould be unfortunately vanquiſhed, will meet with a much better Reception, for they will have given Aſſurances that they may be confided in, when the others have by ſuch a wicked Treaſon given a Demonſtration to the contrary.

There being then nothing to be ſaid that can palliate ſuch a Crime as that of which you are convicted; but you having taken a different Courſe the laſt time you were at the Bar from what you took at firſt, you have relinquiſhed your Plea of Not guilty, and have confeſſed the Indictment; I wiſh out of Charity to your Perſon it was as ſincere as (I think it) it was prudent in you; for after ſeveral Convictions of others that were your Accomplices, you could not be a Stranger to the Evidence upon which they were grounded, you muſt therefore in all probability have expected to have undergone the ſame Fate. If your Confeſſion be a real Effect of your Repentance, you will reap the Advantage of it in the next World, but what Conſequence it will have in this I cannot ſay, *For the Heart of the King is in the Hand of the Almighty, which as the Rivers of Water, he turneth whitherſoever he will.* Live therefore for the time to come in expectation of a ſpeedy Death, and prepare your ſelf to appear before another Judgment-Seat; to the making of which important Preparation I ſhall diſmiſs you, firſt diſcharging the Court of the Duty now incumbent upon it, in giving that Judgment which the Law hath appointed. And the Court doth award,

That you be conveyed from hence to Newgate, *the Priſon from whence you came, and from thence you are to be drawn upon a Hurdle to* Tyburn; *where you are to be hanged by the Neck, and while you are alive to be cut down, your Privy Members are to be cut off, and your Bowels to be cut out of your Body and burnt in your View; your Head is to be cut off, and your Body is to be divided into four Parts, and your Head and your Quarters are to be diſpoſed where his Majeſty ſhall appoint, And I pray God to have Mercy upon your Soul.*

Knightley. My Lord, I am truly ſorry for what I have done, and I humbly thank your Lordſhip, and the reſt of the Judges for your Favour to me.

Then the Priſoner was carried back to Newgate.

The

The TRYALS *of* Joſeph Dawſon, Edward Forſeith, William May, William Biſhop, James Lewis, *and* John Sparkes: *For ſeveral Piracies and Robberies.*

Admir. Angl. ſſ.

The Seſſions of Oyer *and* Terminer, *and Goal-Delivery, held for our Sovereign Lord the King, for the Juriſdiction of the Admiralty of* England, *at Juſtice-Hall in the* Old-Baily, *in the Suburbs of the City of* London, *on* Monday *the* 19*th Day of* October, *in the Eighth Year of the Reign of our ſaid Sovereign Lord King* William *the Third, over* England, *&c. before the Right Honourable* Edward Ruſſel, *Eſq*; Henry Prieſtman, *Eſq*; *Sir* Robert Rich, *Knight and Baronet*; *Sir* George Rooke, *Kt. Sir* John Houblon, *Kt. and* James Kendall, *Eſq*; *Commiſſioners for Executing and Exerciſing the Office and Place of Lord High Admiral of* England, *reſpectively aſſigned and deputed*; *the Right Worſhipful Sir* Charles Hedges, *Kt. Doctor of Law, Lieutenant in the High-Court of Admiralty of* England, *Commiſſary-General of Our Sovereign Lord the King, and Preſident and Judge of the ſaid Court*; *the Right Honourable Sir* John Holt, *Kt. Lord Chief Juſtice of the* King's-Bench; *Sir* George Treby, *Kt. Lord Chief Juſtice of the* Common-Pleas; *Sir* Edward Ward, *Kt. Lord Chief Baron of the* Exchequer; *Sir* Tho. Rokeby, *Kt. and one of the Juſtices of the* King's-Bench; *Sir* Samuel Eyre, *Kt. another of the Juſtices of the* King's-Bench; *Sir* John Turton, *Kt. another of the Juſtices of the* King's-bench; *Sir* John Powell, *Kt. one of the Juſtices of the* Common-Pleas; *Sir* Littleton Powis, *Kt. one of the Barons of the* Exchequer; William Bridgeman *and* Joſias Burchet, *Eſqs*; *Secretaries of the Admiralty of* England; Thomas Lane, William King, *and* John Cooke, *reſpectively Doctors of Laws*; *and others His Majeſty's Juſtices named in the ſaid Commiſſion.*

THIS Majeſty's Commiſſioners being then and there met, the Commiſſion was read, and Proclamation made for Attendance: After which, the Gentlemen of the Grand Jury were called and ſworn, and received their Charge from Sir *Charles Hedges*, Knight, Judge of the High Court of Admiralty, who ſet forth unto them the Nature of the Commiſſion, the Extent of the Juriſdiction of the Court, and the ſubject Matter of their Enquiries.

Then the Witneſſes for the King being ſworn, the Grand Jury withdrew, and after a little Time returned, finding *Billa vera* againſt *Henry Every*, not yet taken, *Joſeph Dawſon*, *Edw. Foreſeith*, *William May*, *William Biſhop*, *James Lewis*, and *John Sparkes*, Priſoners, for Feloniouſly and Piratically taking, and carrying away, from Perſons unknown, a certain Ship called the *Gunſway*, with her Tackle, Apparel, and Furniture, to the Value of 1000 *l.* and of Goods to the Value of 110 *l.* together with 100000 Pieces of Eight, and 100000 Chequins, upon the High Seas, ten Leagues from the Cape *St. Johns* near *Surat* in the *Eaſt-Indies*. Then *Dawſon*, *Foreſeith*, *May*, *Biſhop*, *Lewes*, and *Sparkes*, were brought to the Bar, and their Indictment was read.

Joſeph Dawſon confeſſed that he was Guilty, but the reſt pleaded Not Guilty, and put themſelves upon their Trials; and thereupon the Petty-Jury was called, and the Perſons, whoſe Names follow, were Sworn.

William Walker,	*Benjamin Dry*,
John Child,	*John Sherbrooke*,
Edward Leeds,	*Samuel Jackſon*,
Thomas Clarke,	*Thomas Emms*,
Nathan Green,	*Henry Hunter*,
Henry Sherbrooke,	*John Hall.*

Then the King's Learned Council opened the Indictment, *&c.* and Dr *Newton* made a Speech; which is as follows:

My Lord, and Gentlemen of the Jury,

THE Priſoners are Indicted for Piracy, in Robbing and Plundering the Ship Gunſway, *belonging to the* Great Mogul, *and his Subjects, in the* Indian *Seas, to a very great Value.*

And the End was ſuitable to their Beginning, they firſt practiſed theſe Crimes upon their own Country-men, the Engliſh, *and then continued them on to Strangers and Foreigners: For the Ship in which this Piracy was committed, was an* Engliſh *Veſſel, called* The Charles the Second, *belonging to ſeveral Merchants of this City, deſigned for other Ends, and a far different Voyage, which by theſe Criminals, with the Aſſiſtance of one* Every, *their Captain, in all theſe Villanies, was ſeized near the* Groyn *in* Spain, *in* May 1694, *from which Place, having firſt, by Force, ſet Captain* Gibſon *the Commander on Shoar, they carried off the Ship, and with it committed many and great Pyracies, for ſeveral Years (as will appear in the Courſe of the Evidence) in moſt of the Parts of the known World, with-*

out Diſtinction upon all Nations, and Perſons of all Religions.

Their laſt Piracy was this in the Indies, *the greateſt in it ſelf, and like to be the moſt pernicious in its Conſequences, eſpecially as to Trade, conſidering the Power of the* Great Mogul, *and the natural Inclination of the* Indians *to revenge: But they are now brought hither on their Tryal, and if the Matters they are charged with, ſhall be proved, to receive that Judgment from you, their Crime deſerves; and that is Piracy, which by ſo much exceeds Theft or Robbery at Land; as the Intereſt and Concerns of Kingdoms and Nations, are above thoſe of private Families, or particular Perſons: For ſuffer Pirates, and the Commerce of the World muſt ceaſe, which this Nation has deſervedly ſo great a Share in, and reaps ſuch mighty Advantage by: And if they ſhall go away unpuniſhed, when it is known whoſe Subjects they are, the Conſequence may be, to involve the Nations concerned, in War and Blood, to the Deſtruction of the innocent* Engliſh *in thoſe Countries, the total Loſs of the* Indian *Trade, and thereby, the Impoveriſhment of this Kingdom.*

The Witneſſes for the King, *viz. John Dan*, and *Philip Middleton*, were then called and ſworn, and in the Opinion of the Court gave a full Evidence againſt the Priſoners, which was very clearly ſumm'd up by the Lord Chief Juſtice *Holt*; the Tenour whereof is particularly ſet forth in the following Trials: But the Jury, contrary to the Expectation of the Court, brought in all the Priſoners Not Guilty, whereupon the Seſſions was adjourned to *Saturday* the 31ſt of *October* following, and the Priſoners were committed upon a new Warrant for ſeveral other Piracies.

Die Sabbati, triceſimo primo Octobris, Annoq; Regni Regis Willielmi *Tertii Octavo, Annoq; Domini,* 1696.

THE Court being ſat (at which were preſent Sir *Charles Hedges* Judge of the High Court of Admiralty, the Lord Chief Juſtice *Holt*, the Lord Chief Juſtice *Treby*, the Lord Chief Baron *Ward*, Mr Juſtice *Rookby*, Mr Juſtice *Turton*, Mr Juſtice *Eyres*, and Mr Baron *Powis*, Dr *Lane*, Dr *King*, and Dr *Cook*) the Court proceeded in this Manner.

Cl. of Arr. Cryer, make Proclamation.

Cryer. O yes, O yes, O yes. All Manner of Perſons that have any Thing more to do at this Seſſions, draw near and give your Attendance: And you Sheriffs of the City of *London*, return the ſeveral Precepts directed to you, and returnable here this Day, upon Pain and Peril that ſhall follow thereon.

[*Then the Grand Jury were called over, and the Appearances mark'd.*]

Cl. of Arr. Make Proclamation.

Cryer. O yes, *&c.* The Lords the King's Juſtices charge and command all Perſons to keep Silence, while the Charge is giving.

The Judge of the Admiralty's Charge to the Grand Jury upon this Occaſion.

Sir *Charles Hedges.* Gentlemen of the Grand Jury,

THE Opinion which this Court had of the good Intentions, Abilities, and Integrity of the laſt Grand Jury, was ſo fully anſwered at our late Meeting in this Place; that I am confident all good *Engliſh* men, who were Witneſſes of their Proceedings, will concur in giving them publick Thanks, for the good Services which they then performed: I wiſh that all others, who were concerned in the Diſpatch of that Day's Buſineſs, had the like Pretence to have the ſame; the Publick Juſtice of the Nation, would not then have lain under any Manner of Reproach, neither would you have had this farther Trouble. But ſeeing that it hath ſo happen'd, it is become abſolutely neceſſary that a farther, and a ſtrict Enquiry ſhould be made after thoſe Crimes which threaten, and tend to the Deſtruction of our Navigation and Trade, and therefore I am aſſured of your Patience, whilſt I ſhew you briefly,

1. What the Crimes are, which you are to enquire after.

2. How far the Juriſdiction, and your Power in making theſe Enquiries doth extend.

3. What is the Duty incumbent on you in this Behalf.

1. As to the Crimes, I ſhall not repeat what was mentioned touching all the Particulars thereof, at the Opening of this Seſſions; but confine my Diſcourſe to thoſe, which I find by the Calendar will, at this Time, neceſſarily fall under your Examination, and thoſe are Piracies.

Now Piracy is only a Sea-Term for Robbery, Piracy being a Robbery committed *within* the Juriſdiction of the Admiralty; if any Man be aſſaulted within that Juriſdiction, and his Ship or Goods violently taken away without a legal Authority, this is Robbery and Piracy. If the Mariners of any Ship ſhall violently diſpoſſeſs the Maſter, and afterwards carry away the Ship it ſelf, or any of the Goods or Tackle, Apparel, or Furniture, with a felonious Intention, in any Place where the Lord Admiral hath, or pretends to have Juriſdiction; this is alſo Robbery and Piracy; the Intention will, in theſe Caſes, appear, by conſidering the End for which the Fact was committed, and the End will be known, if the Evidence ſhall ſhew you what hath been done.

2. Now the Juriſdiction of the Admiralty is declared, and deſcribed in the Statute, and Commiſſion, by Vertue of which we here meet, and is extended throughout all Seas, and the Ports, Havens, Creeks, and Rivers beneath the firſt Bridges next the Sea, even unto the higher Water-mark.

The King of *England* hath not only an Empire and Sovereignty over the *Britiſh* Seas; but alſo an undoubted Juriſdiction, and Power, in Concurrency with other Princes, and States, for the Puniſhment of all Piracies and Robberies at Sea, in the moſt remote Parts of the World, ſo that if any Perſon whatſoever, Native or Foreigner, Chriſtian, or Infidel, Turk or Pagan, with whoſe Country we have no War, with whom we hold Trade and Correſpondence, and are in Amity, ſhall be robbed or ſpoiled, in the narrow Seas, the Mediterranean, Atlantick, Southern, or any other Seas, or the Branches thereof, either on this, or the other Side of the Line, it is Piracy within the Limits of your Enquiry, and the Cognizance of this Court.

3. Concerning the Duty incumbent upon you in making your Enquiries, and Preſentments, you may

may conſider that there is a great Truſt and Authority committed to you, and therefore it will be expected that a ſuitable Care ſhould be had, and your Power executed according to a well regulated Diſcretion: As you are, on the one Hand, to take Care that the Court be not troubled, nor any Man put in Hazard of his Life, through any frivolous, or malicious Proſecution; ſo, on the other Side, and more eſpecially in the Caſes of great, and publick Offences, you are to uſe your utmoſt Endeavours, that Juſtice, the Support of Government, be not obſtructed by any partial Proceedings.

You are not obliged in all Caſes to require a clear and full Evidence, but only to examine till you find, and are ſatisfied in your Conſciences, that there is ſufficient and juſt Cauſe to put the Party accuſed upon his Tryal. You cannot convict, but may in Effect acquit the greateſt Criminals, and therefore if you do but find Proofs enough to create a Preſumption againſt the Party accuſed, when the Caſe ſeems odious, and is of great Conſequence and Importance, your ſafeſt Way is to put it in a proper Method for the Petty Jury, who are to receive full Satisfaction from the Evidence that ſhall be given in the Preſence of the Party; and according to that Evidence, have Power to determine whether guilty, or not guilty, condemn, as well as acquit.

And upon this Occaſion, ſeeing many who are upon that Service are preſent, it ſeems fit that they ſhould alſo know that they have no Power to do more or leſs than what is agreeable to the Evidence: They are not to interpoſe in Points of Law, or to be ſwayed by any Conſideration whatſoever, but what ſhall ariſe from the Proofs judicially made; they are indeed Judges of the Fact, but they are not Arbitrary; they are as much reſtrained by the Dictates of Conſcience informed and convinced by reaſonable Proofs, as the Judges on the Bench are by the Rules of Law.

No Man can believe juſt as he liſts, and therefore a Determination, or Judgment at Will and Pleaſure will never be thought to deſerve the Name of a Verdict: For whatever may be pretended, the World will not be perſwaded that a Jury hath purſued the Dictates of Conſcience, unleſs ſome reaſonable Grounds for its Proceedings ſhall appear, and therefore, whenever it ſhall happen that notorious Malefactors eſcape unpuniſhed, notwithſtanding, that in the Opinion of moſt good Men, there was a full and ſufficient Evidence for their Conviction, it is to be wiſhed, and indeed it ſeems to me to be neceſſary, in Caſes that relate to the Laws of Nations, that the Reaſons which induced ſuch a Determination, ſhould be given for the publick Satisfaction, otherwiſe, ſince Foreigners look upon the Decrees of our Courts of Juſtice as the Senſe and Judgment of the whole Nation, our Enemies will be glad to find an Occaſion to ſay, that ſuch Miſcreants as are out of the Protection of all Laws, and Civil Governments, are abetted by thoſe who contend for the Sovereignty of the Seas. The barbarous Nations will reproach us as being a Harbour, Receptacle, and a Neſt of Pirates, and our Friends will wonder to hear that the Enemies of Merchants and of Mankind, ſhould find a Sanctuary in this ancient Place of Trade. Nay, we ourſelves cannot but confeſs, that all Kingdoms and Countries who have ſuffered by *Engliſh* Pirates, may, for Want of Redreſs in the ordinary Courſe, have the Pretence of Juſtice, and the Colour of the Laws of Nations to juſtifie their making Reprizals upon our Merchants whereſoever they ſhall meet them upon the Seas. If a Jury happens in theſe Caſes to be too ſevere, there is Room for Mercy, and I am confident, that upon a juſt Repreſentation, the Innocent never failed of obtaining it; but for a Fault, Neglect, or Errour on the other Hand, there is no Relief for injured Foreigners, but by their Carrying out, as we may be ſure they will, for themſelves, ſuch a Satisfaction, upon our Merchants as they ſhall think fit, whenever they ſhall have an Opportunity; and ſo our whole Nation muſt unavoidably ſuffer both in Reputation and Intereſt, and all as it were through our own Default.

I hope what hath been ſaid upon this unexpected Occaſion, will not be looked upon as intended to influence any Jury; I am ſure it is far from being ſo deſigned; Religion, Conſcience, Honour, common Honeſty, Humanity, and all Laws forbid ſuch Methods: There is no Doubt but the Judge as well as the Jury-man then beſt diſcharges his Duty, when he proceeds without Favour or Affection, Hatred or Ill-will, or any partial Reſpect whatſoever.

Every Man ought to be extreamly tender of ſuch a Perſon as he has Reaſon to believe is innocent; but it ſhould be conſidered likewiſe on the other Side, that he who brings a notorious Pirate, or common Malefactor to Juſtice, contributes to the Safety, and Preſervation of the Lives of many, both bad and good, of the good by Means of the Aſſurance of Protection, and of the bad too by the Terrour of Juſtice. It was upon this Conſideration that the *Roman* Emperours in their Edicts made this Piece of Service for the publick Good, as meritorious as any Act of Piety, or Religious Worſhip.

Our own Laws demonſtrate how much our Legiſlators, and particularly how highly that Great Prince King *Henry* the 5th, and his Parliament thought this Nation concerned in providing for the Security of Traders, and ſcowring the Seas of Rovers and Free-booters. Certainly there never was any Age wherein our Anceſtors were not extraordinary zealous in that Affair, looking upon it, as it is, and ever will be, the chief Support of the Navigation, Trade, Wealth, Strength, Reputation and Glory of this Nation.

Gentlemen, our Concern, as our Trade is, ought in Reaſon to be rather greater than that of our Fore-fathers; we want no Manner of Inducements, no Motives to ſtir us up, whether we conſider our Intereſt or Honour, we have not only the ſacred Word, but alſo the glorious Acts of the beſt of Kings, which ſufficiently manifeſt to us, that the Good and Safety of this Nation, is the greateſt Care of his Life; let every Man therefore who pretends to any Thing of a true *Engliſh* Spirit, readily, chearfully follow ſo good, ſo great, ſo excellent an Example, by aſſiſting and contributing to the utmoſt of his Power and Capacity at all Times towards the carrying on his noble and generous Deſigns for the common Good, and particularly at this Time, by doing all that he can, to the End that by the Adminiſtration of equal Juſtice, the Diſcipline of the Seas, on which the Good and Safety of this Nation entirely depends, may be ſupported and maintained.

Then the Witneſſes being ſworn in Court, the Grand Jury withdrew to hear their Evidence. And in the mean Time T. Vaughan *and* J. Murphey, Tim. Brenain, *were Arraigned, whom the Keeper of* Newgate, *by Order, brought to the Bar.*

Cl. of Arr. T. Vaughan, Hold up thy Hand; *(whice he did.)* Thou ſtandeſt Indicted, *&c.*

Art thou Guilty of this High Treaſon whereof thou ſtandeſt Indicted, or not Guilty?

T. Vaughan. Not Guilty.

Cl. of Arr. Culprit, how wilt thou be tried?

T. Vaughan. By God and this Country.

Cl. of Arr. God ſend thee a good Deliverance.

Cl. of Arr. J. Murphey, Hold up thy Hand, *(which he did.)* Thou ſtandeſt Indicted, *&c.*

How ſayeſt thou, *Jo. Murphey*, Art thou Guilty of the High Treaſon whereof thou ſtandeſt Indicted, or not Guilty?

J. Murphey. Not Guilty.

Cl. of Arr. How wilt thou be tried?

J. Murphey. By God and the King.

Officer. You muſt ſay, by God and my Country.

Cl. of Arr. God ſend thee a good Deliverance.

Cl. of Arr. Bring *Tim. Brenain* to the Bar, *(who was brought accordingly.)*

Cl. of Arr. Tim. Brenain, have you any Copy of your Indictment?

Tim. Brenain. Yes.

Cl. of Arr. When had you it?

Tim. Brenain. This Day ſe'ennight.

Cl. of Arr. Tim. Brenain, hold up thy Hand, *(which he did.)* Thou ſtandeſt Indicted, *&c.*

How ſayeſt thou? Art thou Guilty of the High Treaſon whereof thou ſtandeſt Indicted, or not Guilty?

Tim. Brenain. Not Guilty.

Cl. of Arr. How wilt thou be tried?

T. Brenain. By God and my Country.

Cl. of Arr. God ſend thee a good Deliverance.

Mr *Mompeſſon.* Will your Lordſhips pleaſe that he may be tried now?

L. C. J. *Treby.* Does he deſire to be tried now?

Mr *Mompeſſon.* Yes, my Lord, there is no Evidence againſt him, and he is ſick.

Mr *Soll. Gen.* We are not now prepared for the Trial.

L. C. J. *Treby.* If the King's Council and the Priſoner be agreed, with all my Heart.

L. C. J. *Holt.* He may be tried with the reſt.

Then T. Vaughan, *and* J. Murphey, *and* T. Brenain, *had Notice to prepare for their Tryals on* Friday *next, at Two of the Clock in the Afternoon.*

Then the Grand Jury came into Court.

Cl. of Arr. Gentlemen of the Grand Jury, are you agreed in your Bills?

Grand Jury. Yes.

Cl. of Arr. Billa vera againſt *Joſeph Dawſon, Ed. Foreſeth, W. May, W. Biſhop, James Lewis*, and *J. Sparks*, for Piracy and Robbery.

Cl. of Arr. Keeper of *Newgate*, Set *Joſeph Dawſon, Ed. Foreſeth, Will. May, Will. Biſhop, Will. Lewis*, and *Jo. Sparks*, to the Bar. *(Which was done accordingly.)*

Cl. of Arr. Joſeph Dawſon, hold up thy Hand. *(Which he did.)*

Ed. Foreſeth, hold up thy Hand. *(Which he did.)*

W. May, hold up thy Hand. *(Which he did.)*

W. Biſhop, hold up thy Hand. *(Which he did.)*

James Lewis, hold up thy Hand. *(Which he did.)*

Jo. Sparks, hold up thy Hand. *(Which he did.)*

Then the Indictment was read, and ſet forth,

That Henry Every, *alias* Bridgman, Joſeph Dawſon, Edward Foreſeth, William May, William Biſhop, James Lewis, *and* John Sparks, *late of* London, *Mariners, on the 30th of* May, *in the 6th Year of the Reign of our Sovereign Lord King* William, *and the late Queen, did, againſt the Peace of God, and our ſaid Sovereign Lord the King that now is, and the late Queen, by Force of Arms, upon the high and open Seas, in a certain Place, about three Leagues from the* Groyn, *and within the Juriſdiction of the Admiralty of* England, *Piratically and Feloniouſly ſet upon one* Charles Gibſon, *a Subject of our ſaid Sovereign Lord the King, that now is, and of the late Queen, being then and there Commander of a certain Merchant-ſhip, called, The* Charles the Second, *carrying Forty Pieces of Ordnance, belonging to certain Subjects of the ſaid King and the late Queen, (to the Jurors as yet unknown.) And then and there put the ſaid* Charles Gibſon *in bodily Fear of his Life. And then and there, within the Juriſdiction aforeſaid, Feloniouſly and Piratically did ſteal, take and carry away from the ſaid* Charles Gibſon, *the ſaid Ship, called, The* Charles the Second, *her Tackle, Apparel, and Furniture, of the Value of One Thouſand Pounds, Forty Pieces of Ordnance, of the Value of Five Hundred Pounds; One Hundred Fuſees, of the Value of One Hundred Pounds; Fifteen* Tun *of Bread, of the Value of One Hundred and Fifty Pounds; and two Hundred Pair of Woollen Stockings, of the Value of Ten Pounds, in the Poſſeſſion of the ſaid* Charles Gibſon *then being; the Ship, Goods, and Chattels of the Subjects of our ſaid Sovereign Lord the King, and the late Queen, (to the Jurors unknown) againſt the Peace of our ſaid Sovereign Lord the King, and the late Queen, their Crown, and Dignities*, &c.

How ſay'ſt thou, *Joſeph Dawſon*, art thou Guilty of this Piracy and Robbery, or not Guilty?

Joſ. Dawſon. I am ignorant of the Proceedings.

Officer. He pleads Ignorance.

Cl. of Arr. You muſt plead Guilty, or not Guilty.

Joſ. Dawſon. Guilty.

Cl. of Arr. How ſay'ſt thou, *Ed. Foreſeth*, art thou Guilty, or not Guilty?

Ed. Foreſeth. Not Guilty.

Cl. of Arr. How wilt thou be try'd?

E. Foreſeth. By God and my Country.

Cl. of Arr.

Cl. of Arr. How ſay'ſt thou, *Will. May*, art thou guilty, or not guilty?

W. May. Not guilty.

Cl. of Arr. How ſay'ſt thou, *W. Biſhop*, art thou guilty, or not guilty?

W. Biſhop. I deſire to hear the whole Indictment read again.

L. C. J. *Holt.* You have heard it juſt now, and may hear it again if you deſire it.

W. Biſhop. The former Indictment.

L. C. J. *Holt.* No, there is no Occaſion for that, this is an Indictment for a Fact diſtinct from that.

Cl. of Arr. This is a new Indictment, not the old One. Art thou guilty of this Piracy and Robbery, or not guilty?

W. Biſhop. Not guilty.

Cl. of Arr. How ſay'ſt thou, *James Lewis*, art thou guilty, or not guilty?

Ja. Lewis. Not guilty.

Cl. of Arr. How ſay'ſt thou, *J. Sparks*, art thou guilty, or not guilty?

J. Sparks. Not guilty.

Cl. of Arr. How wilt thou be Try'd? *(As of the Reſt.)*

J. Sparks. By God and my Country.

Cl. of Arr. God ſend thee a good Deliverance.

Cryer. O Yes, *&c.* You good Men of the City of *London* ſummoned to appear here this Day, to try between our Sovereign Lord the King, and Priſoners at the Bar, anſwer to your Names as you are called, and ſave your Iſſues.

Cl. of Arr. *Jo. Degrave*, *Benjamin Hatly*, *Jo. Ayres*, &c.

L. C. J. *Holt.* Have you any of the former Jury in this Pannel?

Cl. of Arr. Yes, my Lord.

Councellor *Coniers.* We ſhall except againſt them for the King.

L. C. J. *Holt.* If you have return'd any of the former Jury, you have not done well; for that Verdict was a Diſhonour to the Juſtice of the Nation.

Cl. of Arr. You, the Priſoners at the Bar, theſe Men you hear called, are to paſs between our Sovereign Lord the King, and you; if therefore you will challenge any of them, you are to challenge them as they come to the Book to be Sworn, and before they are Sworn.

Then they were called over, and ſome being challenged for the King, and ſome by the Priſoners, the Perſons Sworn in this Jury were theſe.

J. Degrave,		*Alex. Pollinton.*
J. Ayres,		*J. Glover.*
G. Broom,		*Nath. Carpenter.*
T. Hicks,	><	*Jo. Bickley.*
R. Meakins,		*Nath. Troughton.*
J. Shelſwell.		*Hum. South.*

Cl. of Arr. Make Proclamation.

Cryer. O yes, If any one can inform my Lords, the King's Juſtices, the King's Serjeant, the King's Attorney General, or his Majeſty's Advocate in his High Court of Admiralty, before this Inqueſt be taken, of the Piracy and Robbery whereof the Priſoners at the Bar ſtand indicted, let them come forth and they ſhall be heard, for the Priſoners ſtand at the Bar upon their Deliverance; and all others may depart.

Then the Grand Jury came into Court again, having found two other Bills againſt the Priſoners at the Bar, one for Piratically taking away a *Mooriſh* Ship, and another for committing Piracy on two Ships belonging to *Denmark*.

And then the Grand Jury was adjourned to *Friday* next, at two a Clock in the Afternoon.

Cl. of Arr. Ed. Foreſeth, hold up thy Hand, (and ſo of the reſt): You that are Sworn look upon the Priſoners, and hearken to their Cauſe, they ſtand indicted, *&c.*

Mr *Whitaker.* May it pleaſe your Lordſhips, and you Gentlemen of Jury, The Priſoners at the Bar ſtand indicted for Felony and Piracy, for that they, about the 30th of *May*, in the 6th Year of the Reign of his preſent Majeſty King *William*, did make an Aſſault on Captain *Gibſon*, commander of the Ship *Charles* the Second, and put him in fear of his Life, and Piratically ſtole away the Ship and all the Furniture; and this is laid to be againſt their Duty and Allegiance, and againſt the Peace of our Sovereign Lord the King, his Crown and Dignity, to which Indictment they have pleaded not guilty. We ſhall go on to call our Witneſſes, and prove the Charge againſt the Priſoners at the Bar, and doubt not but you will do your Duty.

Then Dr. *Littleton*, Advocate-General to his Majeſty, in his High Court of Admiralty, ſpake as follows.

Gentlemen of the Jury,

YOU have heard the Indictment opened, and we ſhall now call our Witneſſes, who will relate to you what enormous and horrid Crimes the Priſoners at the Bar have committed in the Proſecution of the Fact laid in the Indictment: Crimes, that the bare Intention, had they not taken Effect, would have merited the higheſt Puniſhment: But this is not their Caſe, for they were not diſappointed of their wicked Luſts and Deſires, for as their Crimes are great, ſo have they been conſummate as well as voluntary and malicious. I may well ſay, that their Wickedneſs has been as boundleſs and as mercileſs as the Element upon which their Crimes have been committed; nor is there any Part of the World that hath not been ſenſible of their Rage and Barbarity.

Therefore, Gentlemen, as you are Lovers of Chriſtianity, as you are Lovers of Honeſty, nay, as you are Lovers of your ſelves, who bear the Character of honeſt Men, if we prove this Charge againſt the Priſoners, you muſt and ought to find them guilty, remembring that the doing Juſtice upon wicked and profligate Men, is the greateſt Mercy and Protection to the Good and Honeſt. We ſhall therefore proceed to call our Witneſſes, not doubting but that you will act like honeſt Men, for the Honour and Welfare of your Country, without having any reſpect to the diſhonourable Proceedings of the former Jury.

Mr *Whitaker.* Call *Jo. Gravet.* *(He appeared and was Sworn.)* Let him ſtand up.

Mr *Soll. Gen.* Mr *Gravet*, pray will you give my Lords and the Jury an Account what you know of the Priſoners running away with the Ship *Charles* the Second.

J. Gravet. I was ſecond Mate in the Ship at that Time. There was violent Hands laid on me, and I was ſeized, and a Piſtol clap'd to my Breaſt, and carry'd away.

Mr *Soll.*

Mr *Soll. Gen.* Who did it? Begin before.

J. Gravet. I was ſeized by the Carpenter of the Ship, he took me by the Throat, and clap'd a Piſtil to my Breaſt.

L. C J. *Treby.* Begin where the Ship was lying.

L. C. J. *Holt.* You was a Mate in this Ship: Now pray give an Account of the whole Matter.

J. Gravet. I was upon my Watch upon the Deck.

Priſoners. Pray ſpeak up.

J. Gravet. And there was a Boat came from the *James Galley*, with People in her: And as ſoon as the Boat came, the Carpenter ſeized me, and took me by the Throat, and clap'd a Piſtol to me, and ſaid, if I reſiſted I was a dead Man. They took me, one by one Arm, and another by the other, and led me to my Cabin; and one with a Piſtol ſtood at my Cabin-door, till they were got two Leagues without the *Groin*. Then *Every* came to ſpeak to Captain *Gibſon*, who was then ſick, and was guarded on both Sides; and when he had done ſpeaking with him, and was returned from Captain *Gibſon*, he came to me again, and ſaid, I ſuppoſe you do not intend to go with us: I ſaid, I would not. Then I, and the Reſt that would not go with them, had Liberty to go aſhore; and I would have gone to my Coffer and taken my Cloaths, but they would not let me; and told me I ſhould carry no more than my Cloaths on my Back.

Mr *Soll. Gen.* Did any of the Priſoners at the Bar ſay ſo?

J. Gravet. That I cannot tell.

Mr *Coniers.* Then go on.

J. Gravet. Then I went to *Every*, and I had ſome of my Cloaths, he was ſo kind to give me them; he gave me a Coat and Waſtcoat, and his Commiſſion that he left behind him; and *W. May* took me by the Hand and wiſhed me well home, and bid me remember him to his Wife.

Mr *Coniers.* Was there Liberty for any of them that would, to go aſhore?

J. Gravet. Captain *Gibſon* told me ſo, and there were about ſeventeen went off.

Mr *Coniers.* No Matter what Captain *Gibſon* told you, you ſay you went off: Might any one that would, go?

J. Gravet. That I cannot tell.

Mr *Coniers.* You ſay there was about Seventeen went off; would the Boat hold more?

J. Gravet. Yes, Sir.

Mr *Cowper.* Did you ſee any hindered that would have gone off? Were any of the Priſoners at the Bar there?

J. Gravet. No.

Mr *Soll. Gen.* Do you know *Ed. Foreſeth*, &c.

J. Gravet. I know ſome of them.

Mr *Coniers.* Name the Men that you ſay you know.

J. Gravet. Joſeph Dawſon, *W. May*, *J. Sparks*.

Mr *Soll. Gen.* They belonged to what Ship?

J. Gravet. To the *Charles*.

Mr *Coniers.* Was there not a Boat came from the Ship *James*, before you went away? Was there any of the Priſoners at the Bar that came in that Boat?

J. Gravet. There were about Twenty ſix that we had Account of.

Mr *Coniers.* From what Ship did they come?

J. Gravet. From the *James*.

Mr *Coniers.* Were any of the Priſoners at the Bar any of them?

J. Gravet. Indeed, Sir, I cannot tell.

Cl. of Arr. Call *T. Druit*, *(who appear'd, and was Sworn.)*

Mr *Soll. Gen.* Mr *Druit*, was you aboard the Ship called the *Charles* the Second, when ſhe was carried away?

T. Druit. No, Sir.

Mr *Soll. Gen.* Do you know any Thing of the carrying of that Ship away?

T. Druit. I was not in that Ship: I was Mate of the *James*. And about Nine came One from aboard the *Charles* the Second, and ask'd me for the drunken Boatſwain? and I reply'd ſhort; and he went away again, and ſaid the Ship was going to be run away withal. Whereupon I went with ten Men to recover the Ship; and after I had adviſed with the Commander, I ordered the Pinnace to be Mann'd; and when I came, the Laſt that went into the Boat was *Pike*; and I bid them put back, and they would not, but went away to the Ship *Charles*.

Mr *Coniers.* How many were there that went away in that Boat?

T. Druit. About Five and Twenty.

Mr *Coniers.* Did you know all the Men? Were any of the Priſoners at the Bar there? Look on them.

T. Druit. Yes, my Lord, there was *Ed. Foreſeth*, *W. Biſhop*, and *Ja. Lewis*.

L. C. J. *Holt.* What Boat did they go away with, the *James* Boat?

T. Druit. Yes, my Lord.

L. C. J. *Holt.* Then they came from the *James* to the *Charles* the Second. Name their Names again.

T. Druit. Ed. Foreſeth, *Ja. Lewis*, and *W. Biſhop*.

Mr *Soll. Gen.* You ſaw them go off, did you not?

T. Druit. It was ſo dark that we could not ſee them.

Mr *Cowper.* Were theſe three Men ſent?

T. Druit. They were ſent.

Mr *Cowper.* Or did they go of their own Head?

T. Druit. No, I do not ſay ſo. But I went to command them back again, and they refuſed.

Mr *Cowper.* Did they make any Anſwer?

T. Druit. No, they only went away damning and ſinking.

Mr *Coniers.* Were there any Guns ſent after them?

T. Druit. Yes.

Mr *Coniers.* What was it for?

T. Druit. It was to bring them back again.

Mr. *Cowper.* And they would not come back?

T. Druit. They did not come.

Mr *Cowper.* Then they would not come?

Cl. of Arr. Call *David Creagh (who was Sworn.)*

Priſoner. This Man is a Priſoner for Piracy, my Lord.

L. C. J. *Holt.* What if he be?

Priſoner. I do not underſtand Law; I hope your Lordſhip will adviſe us.

L. C. J. *Holt.* I will do you all Right. If he be ſo, that is no Objection againſt him; he may be a good Witneſs for all that.

Cl. of Arr. He is not a Priſoner for Piracy, but for Treaſon.

L. C. J. *Holt.* Tho' he be a Priſoner for Treaſon, he is not Attainted. What is his Name?

Cl. of Arr. *David Creagh.*

Mr *Soll. Gen.* What do you know about the Priſoners running away with the Ship *Charles*?

D. Creagh.

D. Creagh. Upon the 7th of *May* 1694. I came to the *Groin*, in company with the Boatſwain and ſeveral others, on board the *Charles*; and when I was going in to the Captain of the *Charles*, Captain *Gibſon*, I found Mr *Every*, the Carpenter, and ſome others, drinking a Bowl of Punch: And after I was come from the Captain, I came and ſate down with them; and Mr *May* drank an Health to the Captain, and Proſperity to their Voyage: And we not knowing their Deſign then, thought it was to our lawful Captain, and Proſperity to the Voyage he was deſigned for.

L. C. J. *Holt.* What was your Voyage?

D. Creagh. It was to the *Spaniſh Indies.* And afterwards the Company broke up, and retired, and went to their Cabins. And when we were in our Cabins, we heard a great Noiſe above Deck; and Captain *Humphreys*, that commanded the Gally, called to us, to tell us his Men were run away with the Boat, and were gone to Captain *Gibſon*. To which *Every* anſwered, That he knew that well enough: So the Men came aboard: And as I was coming out of my Cabin, to ſee what the Matter was, I was met by *Every*, the Carpenter, and two *Dutchmen*; and they obliged me to retire again to my Cabin. And Captain *Humphreys* fired two Guns at us. But we preſently got out of reach of the Guns, and proceeded on the Deſign. And I came out of my Cabin, and went on the Quarter-deck, where I met *Every* and the Carpenter together; *Every* was conning the Ship.

L. C. J. *Holt.* What is the Meaning of that?

D. Creagh. That is, to direct in the Steering of her. So *Every* took me by the Hand, and ask'd me if I would go with him? And I anſwer'd, I did not know his Deſign. He ſaid, there were but few that knew it. Says I, tell me who do know it, that if you will not tell me your ſelf, I may ask them that can tell me. But he ſaid, we ſhould all know by to morrow Morning eight a Clock. I told him, that would be too late to repent of the Deſign? The Carpenter ſtood by him, and ſaid, Do you not ſee this, Cock? Yes, ſays I, I do. Says he, this Man, and old *May*, and *Knight*, I can truſt with any Thing; they are true Cocks of the Game, and old Sports men. Then ſaid I, I ſuppoſe they know your Deſign. Yes, ſays he, they do; and if it were a Thing of ten Times the Conſequence, they ſhould know it. Upon this, the Carpenter came to me, and ſaid, If you do not go down, I will knock you on the Head. And as I was going down, I met with *W. May*, the Priſoner at the Bar. What do you do here? ſays he. I made him no Anſwer, but went down to my Cabin; and he ſaid, God damn you, you deſerve to be ſhot through the Head, and he then held a Piſtol to my Head. Then I went to my Cabin, and preſently came Orders from *Every*, that thoſe that would go aſhore, ſhould prepare to be gone. And when the Captain was got out of Bed, who was then very ill of a Fever, *Every* came and ſaid, I am a Man of Fortune, and muſt ſeek my Fortune. Says Captain *Gibſon*, I am ſorry this happens at this Time. Says he, if you will go in the Ship, you ſhall ſtill command her. No, ſays Captain *Gibſon*, I never thought you would have ſerved me ſo, who have been kind to all of you; and to go on a Deſign againſt my Owners Orders, I will not do it. Then, ſays *Every*, prepare to go aſhore. Upon which, the Captain, and ſeveral others of us, went into the Boat. When we were by the Ship's Side, I heard them order the Doctor to be ſecured; but if there was any more would go into the Boat they might: And we came into the Boat to the Number of Sixteen: And they gave us four Oars in the Pinnace, and ſet us adrift.

L. C. J. *Holt.* Where did he ſet you?

D. Creagh. He ſet us aboard the *James*, my Lord.

L. C. J. *Holt.* That is, you were turned off from this Expedition.

D. Creagh. Yes, my Lord.

Mr *Coniers.* Was there any Room for more in the Boat?

D. Creagh. Yes there was.

L. C. J. *Holt.* Was there Liberty for any more to go?

D. Creagh. Yes, my Lord.

Mr *Soll. Gen.* What do you know of the Priſoners at the Bar?

D. Creagh. I know only *W. May.*

Mr *Cowper.* What Time paſt from the Coming of the Boat, to the Time of your going off?

D. Creagh. About two Hours, Sir.

Mr *Cowper.* Was there any Guns fired in that Time?

D. Creagh. Yes, Sir, one or two from the *James* by Captain *Humphreys.*

Mr *Cowper.* Was this done in the Ship with Silence? Or was there any Uproar, or Oppoſition?

D. Creagh. No: There could be no Oppoſition. For the Men came from the whole Squadron, and came upon us and ſurprized us, being aſſiſted by thoſe that belonged to the *Charles.*

Mr *Cowper.* But did no Body make Oppoſition to their going? Did not Captain *Gibſon?*

D. Creagh. No, Captain *Gibſon* could not, being Sick.

L. C. J. *Holt.* But he went aſhore?

D. Creagh. Yes, my Lord.

L. C. J. *Holt.* Was any Body ſtop'd that would go?

D. Creagh. No, my Lord, none but the Doctor.

Mr *Soll. Gen.* Now call *Jo. Dan, (who appeared and was Sworn.)*

Mr *Coniers.* What Ship were you aboard of at the *Groin?*

J. Dan. The *Charles* the Second.

Mr *Coniers.* Now, pray give my Lord and the Jury an Account what you know of the Taking away of the Ship *Charles* the Second, and what paſt there.

J. Dan. Yes, Sir: We came to the *Groin*, and had been there about three or four Months, and we had been about eight Months out of *England*, and we lay for our Wages, and there was no Wages to be got. But inaſmuch as we wanted Wages, *Every*, and ſeveral others, contrived to carry this Ship away. So that Night, which was *Sunday*, they went aſhore; and when they came aboard again, made ſome Men privy to it, whom I know not. And the *Monday* following, I think, the Packet went out in the Morning, and the Night being fair, was ordered to give Notice: And they came to the *Dove*, and about Nine or Ten her Boat broke off, and ſhe haled us: For they told Captain *Humphreys* they were coming to run away with our Ship. So he hales the *James*. And preſently ſome of the Officers came and ordered their Pinnace to be man'd, and it was ſo. And when they gave this Order, there was *Every* and Twenty five or Twenty ſix Men. And as they came aboard, our Cables were cut, and ready to go. And coming under the Caſtle, we cut all the Boats

but

but two, and ſtood out to Sea about two or three Leagues. And there *Every* went to Cap. *Gibſon*, and as they ſaid, to ask him if he would go with them, or not? He ſaid, no. Then he ſaid, he muſt prepare to go aſhore; and he did ſo, and ſeveral others with him. And the Word was given about, that they that would go aſhore might go; but whether theſe Men heard it or no, I cannot tell; and no Man's Name was mentioned to be ſtopt, but the Doctor. And when they went away, they cry'd, there was Water in the Boat, and they deſired a Bucket of us, to heave it over, and we gave them one; and away they went, I think, about 15 of them, and no more did offer to go as I ſaw, nor did I ſee any hinder any that would go: And afterwards, they that went off, went about their Buſineſs, and we about our Buſineſs. And we came to the Iſle of *May*, and Victual'd our ſelves there. And there we met with three *Engliſh* Ships, out of which we took ſome Neceſſaries for our ſelves, and among the reſt ſeveral Men, nine Men we took out of them.

Mr *Soll. Gen.* Were the Priſoners at the Bar in the Ship, when they went away?

J. Dan. Yes.

Mr *Soll. Gen.* Name them.

J. Dan. Ed. Foreſeth, W. May, J. *Lewis, Jo. Sparks, W. Biſhop.*

Mr *Coniers.* Which of them was aboard the *Charles*, that belong'd to her?

Jo. Dan. W. May, and J. *Sparks*, and *Ed. Foreſeth*, *Ja. Lewis*, and *W. Biſhop*, came from the *James*.

Mr *Cowper.* Was it not generally underſtood, that they were going to run away with the Ship, when they came to Cap. *Gibſon?*

J. *Dan.* Yes, Sir, they knew to be ſure.

Mr *Soll. Gen.* Did you know that they aſſented to it?

J. *Dan.* No, Sir, I did not hear them ſay ſo.

Mr J. *Eyers.* Did they deſire to go aſhore with the reſt?

J. *Dan.* I ſaw none hindered.

L. C. J. *Holt.* Was *Ed. Foreſeth* in the Ship then?

J. *Dan. Ed. Foreſeth* was in the Ship then.

L. C. J. *Holt.* Was he at the *Iſle* of *May*, taking in Neceſſaries with you?

J. *Dan.* Yes, Sir.

L. C. J. *Holt.* What did he do in the Company?

J. *Dan.* He was in the Ship, and came from the *James*.

L. C. J. *Holt.* And ſo did *Biſhop*, and ſo did *Lewis*.

J. *Dan.* Yes, my Lord, theſe three, and the other two belong'd to the *Charles*.

Mr *Whitaker.* Did any of the Ship's Crew go aſhore at the *Iſle* of *May?*

J. *Dan.* Yes, Sir, I think ſo.

Mr *Soll. Gen.* But I think, yon ſay, that the Word was given about, that any might go that would.

Mr *Coniers.* Go on with the Proceedings after you were at the *Iſle* of *May*.

J. *Dan.* After we had victual'd we took in ſome Men.

Priſoners. We have been tryed for that already, my Lord.

L. C. J. *Holt.* Go on.

J. *Dan.* After we had been there, and took in what we had Occaſion for; our Quarter-Maſter ſaid, he would give them Bills for what he took of them. Then we went to the Coaſt of *Guinea*, and took ſeveral *Negroes*, and carried them away with us. And afterward we went to the *Iſland* of *Princes*, where lay two *Danes*, and we fought them, and took them; and after we had taken them, ſome of the Men went aſhore at the *Iſland* of *Princes*, and others went along with us; and we brought the Ships to *Vandepo*, and burnt one, and carried one with us. Then we came to Cape *Lopes*.

L. C. J. *Holt.* Where is that?

J. Dan. Under the Equinoctial Line. And there we fired a Shot through the little one to ſink her, for the Men could not agree, and ſo we could not carry her with us. We went about the Cape, and touch'd at *Madagaſcar*.

Dr *Littleton.* Had not theſe Men their Part and Share of the Plunder?

L. C. J. *Holt.* You go too faſt, Sir.

Mr *Coniers.* What was the next Ship you met with, after you had rounded the Cape?

J. Dan. The next was a ſmall Veſſel, about 30 or 40 Tun, and we put her aſhore, and took a ſmall Matter out of her, and let her lie. And there we put this Gentleman, Mr *May*, aſhore. And we ſeeing three *Engliſh* Ships a coming, we left him there, and went to the *Equinoctial Line*: And afterwards, for Want of Bread and Water, we came again, and took another ſmall Veſſel, and ſome Rice and Pody out of her, and ſunk her, and then went to the Cape again, and took in *W. May* again; and met another Veſſel, and took Rice and Meal out of her, and ſunk her too. And then we went to the *Red Sea*, to a Town called *Meat*, and the People would not trade with us, and we burnt it. And thence we went up to the *Red Sea*, as far as we could. And going up the Cape *Adin*, we met with two *Engliſh* Privateers more, and they came and joyned with us.

L. C. J. *Holt.* You call them Privateers, but were they ſuch Privateers as you were?

J. Dan. Yes, my Lord. I ſuppoſe they had Commiſſions at firſt, but I ſuppoſe they did not run ſo far as that.

Mr *Coniers.* Did you go all on the ſame Deſign?

J. Dan. Yes, they ſailed on with us, and we made the beſt of our Way, and came up into the *Red Sea* in a little Time, and came to an Anchor at *Bobs Key*, and had lain there but a Night and a Day, and there came up three *Engliſh*-men more from *America*, and they likewiſe conſorted with us; and we lay there about five Weeks; and in that Time we expected the Fleet to come down.

Mr *Coniers.* What Fleet?

J. Dan. The *Mooriſh* Fleet, that came from *Mocha*. They paſt us on *Saturday* Night unſeen, and we took a Veſſel which gave us an Account that they were gone. And then we followed them, and about three Days after we made Land, we came up with one of them of about 2 or 300 Tuns, and we fired a Broad-ſide at her, and ſmall Shot, and took her, which, after we had taken her, we plundered, and took out ſome Gold and Silver.

Mr *Coniers.* And what did you do with it?

J. Dan. We brought it aboard our Ship.

Mr *Coniers.* Did you ſhare it?

J. Dan. Not then, but after we took the other Ship.

Mr *Coniers.* What was that other Ship?

J. Dan. After we had taken her, we put ſome Men aboard to keep her with us; and about two Days after, we were lying at Anchor at St *Johns*, and there was a great Ship called the *Gunſway*; and

and we weigh'd Anchor, and fought her about two Hours, and took her, and put ſome Men aboard her, and plunder'd her. And after we had done as much as we thought convenient, we ſent her to *Surat* with the People in her. And then we ſtood further to the *Indian* Coaſt, and ſhared our Money about a Week after.

L. C. J. *Holt*. That was a brave Prize, was it not, the beſt you had all the Voyage?

J. *Dan*. Yes, my Lord.

L. C. J. *Holt*. Did you all ſhare?

J. *Dan*. Yes, all that were in the Ship.

L. C. J. *Holt*. You have given a good Account of this Matter. Was *Ed. Foreſeth* there?

J. *Dan*. Yes, my Lord.

L. C. J. *Holt*. What did he do? Was he active?

J. *Dan*. I did not ſee him act.

L. C. J. *Holt*. Had he a Share?

J. *Dan*. Yes, my Lord, he had.

L. C. J. *Holt*. Was *W. May* there?

J. *Dan*. Yes, my Lord.

L. C. J. *Holt*. What did he do there?

J. *Dan*. He could do but little then; he had his Share.

L. C. J. *Holt*. And when you took him in again, what did he do? Did he do his Buſineſs as a Seaman?

J. *Dan*. Yes, my Lord, till he was ſick.

L. C. J. *Holt* Was *W. Biſhop* there?

J. *Dan*. Yes, my Lord, he was among the reſt.

L. C. J. *Holt*. What did he do? Did he conſent and agree to what was done?

J. *Dan*. He had Share of the Money.

L. C. J. *Holt*. Did *Ja. Lewis* ſhare too?

J. *Dan*. He had a Share, as far as was allowed by the Company.

L. C. J. *Holt*. Did J. *Sparks* ſhare with you too?

J. *Dan*. Yes, my Lord, as far as the Company thought fit to give him.

Mr *Cowper*. When you ſay, *as the Company thought fit*, what do you mean? How did they ſhare it?

J. *Dan*. Some had 1000 *l*. ſome 500, others 3000.

Mr *Cowper*. Had all the Priſoners ſome Share?

J. *Dan*. Yes, Sir, all had ſome Share.

Mr *Whitaker*. What did you do with the *Charles the Second*, after the Voyage?

J. *Dan*. We left her at *Providence*.

L. C. J. *Holt*. If any of you Priſoners at the Bar will ask him any Queſtions, you may.

Mr Juſtice *Turton*. What Proviſions were aboard the *Charles* when ſhe was taken away?

J. *Dan*. I cannot tell.

Mr Juſtice *Turton*. What Quantity of Bread was there?

J. *Dan*. A pretty deal, I cannot tell the Quantity.

Mr Juſtice *Turton*. And were there any Guns aboard her, and ſmall Arms?

J. *Dan*. Yes, my Lord, there were.

W. May. My Lord, may I ſpeak for my ſelf?

L. C. J. *Holt*. If you will ask him any Queſtions you may; You ſhall be heard again to ſpeak for your ſelf by and by.

W. May. I deſire he may be askt where I was taken ſick?

L. C. J *Holt*. He asks you where he was taken ſick?

J. *Dan*. I cannot juſtly tell that, I think it was at *Allibore*, at the Coaſt of *Guinea*.

W. May. I did not lie down with it?

J. *Dan*. No, you did not, but your firſt being taken ſick was at *Allibore*.

W. May. My Lord, I deſire you will ask him, whether he thinks I had any Knowledge of the going away of the Ship?

L. C. J. *Holt*. You hear what he ſays, What do you ſay?

J. *Dan*. I know nothing of that.

L. C. J. *Holt*. You were there, and you had a Share of the Prize; you drank an Health to the Succeſs of your Voyage.

W. May. I hope, my Lord, you will not be angry for asking Queſtions.

L. C. J. *Holt*. No, no body is angry, you may ask what Queſtions you will.

Then Philip Middleton *was called and ſworn.*

Mr *Coniers*. Pray tell what you know of taking away the Ship *Charles the Second?*

P. Middleton. I cannot ſay any Thing of running away with the Ship; for I was aſleep then: but afterwards, in the Morning, they called up all Hands; and the Captain ſaid, every Man ſhould ſhare alike, only he would have two Shares.

L. C. J. *Holt*. Who ſaid ſo?

P. Middleton. Cap. *Every*. From thence they went to *Bonyvis*, and took in ſome Salt; and from *Bonyvis* they went to the *Iſle of May*, and there they took three *Engliſh* Ships, and plundered them; and they took the Governour aboard their own Ship till they had done (for then they could demand what Victuals they had a Mind to) and then they ſent him away again: And from the *Iſle of May* they went to the Coaſt of *Guinea*, where they put out *Engliſh* Colours, to make the Natives come aboard to trade, and when they came aboard, they ſurprized them, and took their Gold from them, and tied them with Chains, and put them into the Hold; and when they came to a Place called *the Iſland of Princes*, they gave ſeven of them away for Slaves: And then they went to *Vandepoe*, where they clean'd their Ship; and from *Vandepoe* they went to Cape *Lopes*, and from Cape *Lopes* to *Annibo*, and from *Annibo* about the Cape; and at *Madagaſcar* they watered their Ship, and got Proviſions, and Cows to ſalt up; and from thence they went to *Joanna*, and from *Joanna* they went to take a Junk, and took Rice out of her, and ſunk her; and from thence they went to the *Equinoctial Line*, and becauſe they were ſhort of Water and Rice, they went back again to *Joanna*: And the Wind being contrary, they went to *Commeroe*; and there they met a ſmall *French* Veſſel, and they took her, and ſunk her; and then went to *Joanna* again, and there took in Mr *May* again: And then went to *Meat*; and becauſe the Natives would not trade with them, they burnt their Town: And then they went to *Bobs Key*, by the Mouth of the *Red Sea*: But before that, they met with an *Engliſh* Veſſel, that was on the ſame Account that we were, and we rode there a Night or two; and they ſaw there another Sail a coming, which proved to be another *Engliſh* Veſſel: And in the Morning they ſaw two more, *May*, *Farrel*, and *Wake*, were the Captains: And on *Saturday* Night all the *Mocho* Fleet paſſed by: And on *Sunday* Morning they took another Veſſel, that told them the ſaid Fleet was gone by; and ſo they conſulted whether they ſhould follow them, or ſtay there. And then they went after them and overtook them, and took one that was about three or four Hundred Tun, and took Gold and Silver out of her,

and ſent Men aboard her to plunder and keep her. And next Day they ſpied another Sail, and got up their Anchor, and ſtood to her, and took her; ſhe was called the *Gunſway*; they killed ſeveral Men aboard, and when they had taken and plundered the Ship, they left the Men aboard to go to *Surat* again. And then they went to *Rachipool* in the *Eaſt-Indies*, and got Water and Neceſſaries; and from thence to *Degorees*, and watered again; and then to *Daſcaran*, where they ſet about 25 *French* Men aſhore, and 14 *Danes*, and ſome *Engliſh*: For they were afraid, if they came to *England*, and were caught, they ſhould be hang'd, and they thought themſelves there ſecure. From that Place they went to *Aſcenſion*, and then to the Iſland *Providence* in the *Weſt-Indies*: And then they wrote a Letter to the Governour, to know if he would let them come in, and ſaid they would preſent the Governour with 20 Pieces of Eight, and two Pieces of Gold, if he would let them come in; and the Captain, becauſe he had a double Share, he offered 40 Pieces of Eight, and four of Gold; and with that they ſent ſome Men down, *Adams* and others, with the Letter: And they came again, with a Letter, from the Iſland, that they ſhould be welcome, and come and go again when they pleaſed.

Mr *Coniers*. Look on the Priſoners at the Bar, were they all there?

L. C. J. *Holt*. Do you know *Ed. Foreſeth?* Was he there? Did he belong to the *Charles the Second?*

P. Middleton. He came from the *James*.

L. C. J. *Holt*. Was *W. May* there?

Ph. Middleton. He was aboard the *Charles*.

L. C. J. *Holt*. Was *W. Biſhop* there?

Ph. Middleton. *W. Biſhop* came from the *James*.

L. C. J. *Holt*. Was J. *Lewis* there?

Ph. Middleton. Yes, he came from the *James*.

L. C. J. *Holt*. Was Jo. *Sparks* there?

P. Middleton. Yes, he was aboard the *Charles*.

L. C. J. *Holt*. Had all the Men their Shares?

Ph. Middleton. Yes, ſuch as the Company thought fit to allow them, all of them.

L. C. J. *Holt*. Had theſe Men their Shares of the ſeveral Prizes they took?

Ph. Middleton. Yes, they had.

L. C. J. *Holt*. Were they active in the taking of the Prize?

Ph. Middleton. They were, as far as I ſaw.

L. C. J. *Holt*. Were not divers others ſet aſhore, beſides Cap. *Gibſon?*

Ph. Middleton. I never heard any repine, or wiſh they had been aſhore, or that they had never come along with the Ship.

L. C. J. *Holt*. But do you know of any others that were ſet aſhore?

Ph. Middleton. Yes, a great many, Mr *Gravet* and ſeveral others.

Mr *Cowper*. I think, you ſaid, ſome *French* and *Engliſh* were ſet aſhore in the *Indies*.

Ph. Middleton. Yes, Sir.

Mr *Cowper*. Were they ſet aſhore willingly?

Ph. Middleton. They deſired to be ſet aſhore.

Jury-man. He ſays, in the Morning Cap. *Every* called them above Deck, and gave Leave to any to go aſhore, that were not willing to go with them; we deſire to know whether any of the Priſoners were there at that Time?

Ph. Middleton. I know not that, all Hands were called up.

Mr Juſtice *Turton*. What Number of Perſons were aboard, when the Dividend was made?

Ph. Middleton. About a Hundred and Sixty.

Mr Juſtice *Turton*. What might the Shares be?

Ph. Middleton. Some a Thouſand Pound, ſome Six Hundred, ſome Five Hundred, and ſome leſs, according as the Company thought they deſerved.

Mr Juſtice *Turton*. Had not you a Share?

Ph. Middleton. Yes, what the Company thought fit, and they told me that would ſerve to put me out an Apprentice, and that I ſhould never go near my Friends.

Mr Juſtice *Turton*. How much was that you had?

Ph. Middleton. Above an Hundred Pound.

Mr *Conyers*. What became of it?

Ph. Middleton. Jo. *Sparks* robb'd me of it.

L. C. J. *Holt*. The King's Council have done with the Evidence, and therefore now is your Time for to ſpeak, if you have any Thing to ſay for your ſelves. *Ed. Foreſeth*, What have you to ſay?

Ed. Foreſeth. My Lord, I deſire you would call Mr *Druit*, and ask him whether I was one of the Pinnaces Crew.

L. C. J. *Holt*. You hear what he ſays?

T. Druit. Yes you were, and I commanded you to come back, and you refuſed.

E. Foreſeth. Did not you command me to go?

T. Druit. Yes, and I afterwards commanded you to come back, and you refuſed.

E. Foreſeth. You did not command me back.

T. Druit. Yes I did, and fired at you, and ſhot through the Boat.

E. Foreſeth. I held Water with my Oar, that was all I could do.

L. C. J. *Holt*. What did you command him to do?

T. Druit. To reſcue the Ship.

L. C. J. *Holt*. Inſtead of reſcuing the Ship, you run away with her. He commanded you back, and you refuſed to come back.

E. Foreſeth. I could not bring her back my ſelf, nor come back, unleſs I ſhould leap over Board.

L. C. J. *Holt*. Have you any more to ſay?

E. Foreſeth. My Lord, when I was in the Boat, I knew not who was in it, nor how many. When I came aboard the *Charles*, the Sails were looſe, and I was in a very ſorry Condition; they cut the Boat off, and put her a-drift, I could not get into her, ſhe was gone in a Minute's Time, I did not know which Way or what Men there were in her, nor heard nothing till two a-Clock the next Day. And I hope, my Lord, as we are but poor Sea-faring Men, and do not underſtand the Law, you will take it into Conſideration.

L. C. J. *Holt*. But all you Sea-men underſtand that Law, that it is not lawful to commit Piracy, and he that doth deſerves to be hang'd.

E. Foreſeth. My Lord, I never did.

L. C. J. *Holt*. Did you think it no Piracy to rob?

E. Foreſeth. I was forc'd to do what I did.

Mr J. *Eyres*. You all compell'd one another.

E. Foreſeth. My Lord, I was ſent of an Errand. I hope as we are poor Men in this Condition, you will take it into Conſideration.

L. C. J. *Holt*. We ſhall. Have you any more to ſay?

E. Foreſeth. No, my Lord.

L. C. J. *Holt*. *W. May*, What do you ſay?

W. May. Here is one of the King's Evidence, that teſtifies that I knew nothing of the Ship's going away, and I believe very few knew it, I believe not above nine or ten.

L. C. J.

L. C. J. *Holt*. None of them say you were at the Consult. But one says that you said, *God damn you, you deserve to be shot through the Head*; and held a Pistol to him.

W. May. I never was any higher than the under Deck, I was coming up the Hatch-Way, and Captain *Every* was standing, and Commanding the Ship.

L. C. J. *Holt*. *Every* was no Officer, he had nothing to do to command; he was under Captain *Gibson*, and took the Ship from *Gibson*.

W. May. My Lord, I know nothing of the Ship's going away.

L. C. J. *Holt*. You should have stuck to Captain *Gibson*, and endeavoured to suppress the Insolence of *Every*. Captain *Gibson* was the Commander, you ought to have obeyed him; and if any had resisted him, or gone to put a Force upon him, you should have stood by him.

W. May. I was surprized.

L. C. J. *Holt*. How?

W. May. By Cap. *Every*, and knew nothing of it.

L. C. J. *Holt*. You were zealous from the Beginning, and said to one, *Damn you, you deserve to be shot through the Head.*

Mr J. *Turton*. And one says you drank a Health to your good Voyage.

W. May. Presently after I heard this Rumour, I came up the Hatch-way, and Cap. *Every* says, *You*, May, *I believe you do not love this Way, pray get down to your Cabin.* So I went to my Cabin, which one that is now at *Virginia* could testifie; which I hope will be considered, that I cannot have my Witnesses for me.

L. C. J. *Holt*. What have you more to say? Have you any Witnesses to call?

W. May. I stay'd in the Cabin a considerable Time. I was thinking, I must leave my old Captain without seeing him; and I begg'd them to give me Leave to come to him; and there was two Men stood with naked Cutlaces, and would not let me come to him. We had some Confabulation together, and I begg'd the Favour to come in, and at last they permitted me; and the Doctor was Anointing the Commander's Temples. And as I was coming along, I had my Hand cut; and I went to the Doctor, to desire him to bind up my Hand. When I came out again, they began to hurry the Men away. Here was Mr *Gravet*, the second Mate, who is now one of the King's Evidence; and I told him he should remember me to my Wife, I am not like to see her; for none could go, but who they pleased: For when those Men were in the Boat, they cryed to have a Bucket, or else they should sink, they having three Leagues to go: And I do not know how they could go so far with more, when their Boat was like to sink with those that were in her, as some of the King's Evidence have testified.

L. C. J. *Holt*. Who will you call?

W. May. Mr *Dan*. (*Who appear'd.*)

L. C. J. *Holt*. Mr *Dan*, answer the Question, Whether there was calling for a Bucket several Times by the Men that were in the Boat.

J. *Dan*. They did call, and a Bucket was given them to pump with.

L. C. J. *Holt*. You were willing to be rid of them.

W. May. I have more to say. Afterwards, if I should have denied to go with them, I might have been kill'd by them; and I knew not whether it be better to be accessary to my own Death, or to suffer by the Law of the Nation.

Sir *Ch. Hedges*. You seem to say that you were under a Constraint and Terrour. Did you make any Complaint or Discovery so soon as you had Liberty, or at your first coming into the King's Dominions?

W. May. Yes, at *Virginia*.

S. *C. H.* Where did you first arrive in *England?*

W. M. At *Bristol*.

S. *C. H.* When you came to *Bristol*, did you discover it to any Magistrate?

W. M. When I came to *Bristol*, I had a Design to discover it to the Lords of the Admiralty.

L. C. J. *H.* Did you go to a Magistrate?

W. M. I was several Days in the King's Collectors House, and did discover the whole to him; and at *Providence*.

L. C. J. *H.* You speak now of *Providence*, but in *England* who did you discover it to?

W. M. I was taken sick, and could not go abroad.

L. C. J. *H.* You might have sent to the Mayor of *Bristol*.

W. M. I knew nothing of it, I intended to declare it to none but the Lords of the Admiralty. I knew no Man there, but two Men that were Fellow-Tradesmen in *Virginia*. I came from *Virginia* by the first Ship; and if that Ship had come away before the Fleet, I had been at Home long before. I lay sick at *Bristol* four or five Days, and the fifth Day I got Passage for *London* in the Coach; and was taken three Miles off *Bath* by the King's Messenger, by one who betrayed me, and I was carried back to *Bath* again. And there was the Duke of *Devonshire*; and there they examined the whole Matter, in every particular, as I have now declared to the Court. And my Lord desired the Messenger should take me away again, and see me safe to *London*, which was all he said to me. I have more to say, as to my being put ashore at *Joanna*. I had no Place to go to, but lay in a lamentable Condition, I could not put Water to my Mouth without Help, and remained useless of Hands or Feet, despairing of my Life. I desired to go ashore, to see if the Air would do me any good; and I went ashore at *Joanna*, with another Man, *Gunring*, and others for Refreshment. So the second Day we went in, there appears three Ships, which were *East-India* Men. Captain *Every* being surprized by these Ships, hastened his Men and Water aboard to get out to Sea, that he might not be surprized in the Road without his Men on Board, who were come ashore for the Sick. And I told them, I will not go with you, I will rather trust to the Mercy of my Country-men, or the Mercy of the *Negroes*; I should endanger my Life, if I go aboard; if I stay, no Question my Country men will have Compassion on me; and if I have committed any Thing worthy of Death, they have Authority to put me to Death according to the Law of the Nation. And I applied my self to Mr *Edgcomb*, when he came ashore, and he gave me scurrilous Language. But I replied, I am a weak Man, for me to stay behind is Death; I had rather suffer Death by the Laws of my Country, than to be left to the Mercy of these *Negroes*. Mr *Edgcomb* says, I will take you down with me, and will hang you there too.

L. C. J. *H.* Where?

W. May. At *Bombay*, where he ſaid I ſhould be tried. His Mate, and ſeveral other *Engliſh*-men came to ſee me, and brought me one thing or other to refreſh me. And at laſt, at Night he ſent his Doctor and Purſer to me, who ſaid, the Captain is juſt now ſending his Boat for you. I replied, I am ready, here is all I have in the World, and he goes away about two a Clock in the Morning. And I remained ſeven or eight Weeks at the Mercy of thoſe *Negroes*, and had periſhed, but that a *Negroe* hearing an *Engliſh*-man was there came to me; he lived at *Bednal-Green*, and ſpoke *Engliſh* very well. He went from *England* in the Ship *Rocheſter*, taken at *Guinea* ſome time before. The Captain commanded this *Negroe* to go for the Long-boat, and turn her adrift; which he does, but goes away with her himſelf; and in the Fight, ſays, the Ship blew up by an accidental Fire, and ſeveral were loſt. This *Negroe* I got to look after me, and he did really feed me, and got me all Neceſſaries belonging to me: And by that means I ſaved my Life. Now when Captain *Every* came in again, I could not go nor ſtir.

L. C. J. *Holt.* Do not call him Captain, he was a Pirate.

W. May. He commanded me, I was forced to obey him.

L. C. J. *Holt.* For that Matter call *Gravet* again, becauſe you and he were very kind together; you ſhook Hands with him, and bid him farewel, and remember you to your Wife. Mr *Gravet*, Do you remember when you went into the Boat? Did *W. May* take his leave of you, or was he unwilling to be left behind?

J. Gravet. When we had liberty to go out of this Ship, this Man, *W. May*, took me by the Hand and wiſhed me well home, and bid me remember him to his Wife, and was very merry and jocund, and knew whether they were going.

Mr *J. Turton.* Did he expreſs any Inclination to go with you?

J. *Gravet.* No, my Lord, not at all.

L. C. J. *Holt.* Have you any more to ſay?

W. May. Yes, my Lord, I remained in this Condition till I came to *Providence*; and the King's Evidence can teſtifie what I ſay. I only beg Mercy of this Honourable Bench, to conſider my weak State and Condition that I have been in.

L. C. J. *Holt.* Have you done?

W. May. Yes, my Lord.

L. C. J. *Holt.* Then the next. *W. Biſhop*, What have you to ſay?

W. Biſhop. I belonged to the Ship *James*, and at the *Groyn* the Men began to complain about Wages, and that was the firſt Beginning of the Diſturbance about this Plotting. We were ſhipt out of *England*, in Sir *James Hubland*'s Service, to the *Spaniſh Weſt-Indies*. Upon this Mutiny among the Men for their Wages, ſeveral Men went aboard the King's Ships, and deſired to be entertained on Board any of them to go for *England*; and we all went away again to the Ship becauſe we could not be entertained. But this Deſign of *Every*'s I did not know of. On the 17th Day Captain *Humphreys* calls, and ſays, my Men are gone aboard the *Charles*, I think. And he calls out, ſays he, Mr *Druit*, Man the Pinnace. I being then on the Deck, at Night, the Men all quiet, as I thought, I went into the Pinnace, and I was no ſooner in, but in comes 15 or 16 more that knew of the Deſign; but I was then ſent, and knew it not. And they put off the Boat, and overpower'd us; and ſeveral of us would have gone aboard again, and they would not ſuffer us. And when we came aboard the Ship *Charles*, they had cut the Cables, and the Sails were looſe, and ſeveral Men went from the *Charles* to the *James* in a Boat; and they commanded the Innocent to do what they pleaſed, with Piſtols and Cutlaces; and they commanded me to go into the Hold, to do what they pleaſed. And I not knowing of this Matter, the Men that were in the Boat called, hand the Buckets, or we ſhall ſink. And I heard afterwards, that none went aſhore, but whom they pleaſed, that is, *Every* and his Crew. And I not knowing of it, could not go; and if I had known it, I had not been admitted to go. Then we were carried two Leagues without the *Groyn*.

L. C. J. *Holt.* Have you any Witneſſes to call?

W. Biſhop. The King's Evidence is my Witneſs; he commanded me to go into the Boat.

L. C. J. *Holt.* Will you ask him any Queſtions?

W. Biſhop. No, my Lord.

L. C. J. *Holt. James Lewis* What have you to ſay?

J. Lewis. I had been in *France*, a little before the Ship came to the *Groyn*, a Priſoner there; but I knew nothing of *Every*'s Deſign. By the Command of our Officer I went aboard the Boat, and as ſoon as we were in her, we were overpower'd, and carried away; they took the Oars out of our Hands, and carried us to the Ship *Charles*. And when we came aboard, they put the Boat a drift, and then they commanded me into the Fore-Caſtle; they had Arms but we had none, and ſo were forced to obey them. When the Boat was going off, I heard a Noiſe of crying out for a Bucket. And when we were gone from the *Groyn*, we were forced to do what they would have us; it was againſt my Conſent, and againſt my Will.

L. C. J. *Holt. Jo. Sparks*, What ſay you?

J. Sparks. When Captain *Humphreys* called to them that were gone into the Boat, I was aſleep; but with the Noiſe of *Gravet*'s crying out, He is coming, I awaked; and all put the Candles out for fear I ſhould ſee them. And when the Men were come aboard, I went on the Deck, and they trow'd the Hammocks and knock'd me down.

L. C. J. *Holt.* Who did it?

Jo. Sparks. The Hammocks they brought from the other Ships. I durſt not do any otherwiſe than they bid me; I was innocent of the Thing. I ask'd what they were going to do, and they ſaid they were going for *England*.

L. C. J. *Holt.* Who told you ſo?

J. Sparks. John Dan.

L. C. J. *Holt. J. Dan*, Did you tell *J. Sparks* the Ship was going for *England*?

J. Dan. I do not remember I ſaw him all the Night.

L. C. J. *Holt.* I would ask you if he had no Share of the Plunder.

J. Sparks. I was forced to take it.

L. C. J. *Holt. Phil. Middleton*, You had ſome Share, had you not?

Phil. Midleton. Yes, my Lord.

L. C. J. *Holt.*

L. C. J. *Holt*. What became of it?

Phil. Middleton. They took it away from me.

L. C. J. *Holt*. Who took it from you?

Phil. Middleton. *J. Sparks* robb'd me of it by Night.

L. C. J. *Holt*. Did he take all away?

Phil. Middleton. Yes, all that I had there, Two Hundred Seventy odd Pieces of Gold; it was in a Belt.

J. Sparks. He took out his Money and ſhewed it to the Troopers, and they made him drunk and got it from him; and the next Morning he ſaid they took it from him.

Phil. Middleton. I was forc'd to ſay ſo, becauſe if I had ſaid he had it, he would have made no more but to cut my Throat.

L. C. J. *Holt*. Have you any more to ſay?

J. Sparks. No, my Lord.

Mr *Soll. Gen.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am of Council in this Caſe for the King againſt the Priſoners at the Bar. They are arraign'd for a very high Crime, a Robbery upon the Seas. It was not a leſs Crime becauſe committed on the Sea, but rather the more. Theſe Men had a Truſt repoſed in them to aſſiſt their Captain in his Voyage; but inſtead of that, they reſiſt their Captain, turn him out, and run away with the Ship. They could not find Shelter in any other Part of the World, and I hope you will make it appear ſuch Crimes ſhall not find Shelter here, more than in other Parts of the World. Theſe are Crimes againſt the Laws of Nations, and worſe than Robbery on the Land: For in Caſe of a Robbery on the Land, we know who is to pay it; but in a Robbery by Sea, it often happens that innocent Perſons bear the Loſs of what theſe Men do. It has been very plainly proved againſt the Priſoners, That the Ship *Charles* was run away with from the *Groyn*. And it is as plain by two Witneſſes, That all the Priſoners at the Bar were in this Ship; by three that *W. May* in particular was one of them; and by one that *W. May* was ſo far concerned, that becauſe *J. Gravet* ſeem'd to diſlike it, he ſaid he deſerved to be ſhot through the Head: So that he that would make himſelf the moſt innocent of the Five, is moſt Guilty.

Now they have only this to ſay for themſelves, that they were forced to do what they did. But it has been proved to you that they were not forced; it was ſaid, All might go that would. And it is not proved on their Side, that any one of the Priſoners did ſeem to diſſent from their going away. It is proved that they all made uſe of this Ship to very bad Purpoſes; that they took and plundered ſeveral Ships, and ſhared the Booty. We do not produce this to prove them guilty, but to ſhew that they made uſe of this Ship to this very Purpoſe. Now if you allow what they ſay, that they were forced to go away; then you muſt never convict, at any time, one or two Highway-men that robs in the Company of four or five; for they may ſay too that they were over-power'd, and forced by their Company. It is ſo, not only in Caſe of Robbery, but in all other Crimes alſo. They have ſaid a great deal indeed, but without any manner of Probability of Truth. They have produced no Witneſſes for themſelves, to prove any thing they have ſaid. And the Witneſſes for the King have given Teſtimony without any Exception. And, I hope, you will vindicate the Credit of the Nation, and find them guilty as the Evidence has proved them.

L. C. J. *Holt*. Gentlemen of the Jury, Theſe five Priſoners, *E. Forſeth*, *W. May*, *W. Biſhop*, *Ja. Lewis*, and *J. Sparks*, are indicted for a Piracy and Robbery committed on the High Seas, ſome diſtance from the *Groyn*, in taking and carrying away a Ship, and ſeveral Goods therein contained; ſhe was call'd the *Charles* the Second. This was done in *May* laſt was two Years, 1694. You have heard what Evidence has been given on this Indictment againſt the Priſoners.

It has appeared that this Ship was bound in a Voyage to the *Weſt-Indies*. Two of the Priſoners, *W. May*, and *J. Sparks*, were Seamen then on board this Ship, and ingaged in the Voyage; the other three were not Mariners in that, but in another Ship, called the *James*, that lay, at that time, near the *Groyn*; but they came aboard the Ship *Charles* before, and continued on board her when ſhe was carried away.

That there was a Piracy committed on the Ship *Charles*, is moſt apparent by the Evidence that hath been given; that is, a Force was put on the Maſter and ſome others of the Seamen on board her, who becauſe they would not agree to go on a piratical Expedition, had Liberty to depart, and be ſet aſhore. But the Ship was taken from the Captain, who was poſſeſſed of her for the Uſe of the Owners, and was carried away by *Every* and others of his Crew that remained on board her; and others came from the *James*, which taking was a Piracy that is manifeſted by the Uſe they did put her to, for they did afterwards commit ſeveral other Piracies with her, and took ſeveral *Engliſh* and *Daniſh* Ships, and then went to ſeveral Iſlands, Countries and Places, as to the Iſles of *May* and *Princes*, to *Madagaſcar*, and then to *Joanna*, and afterwards to *Meat*, and then to the *Red-Sea*; and at the entrance of the *Red-Sea* committed more Piracies, in the manner as you have heard, and has been very particularly deſcribed to you. So that I muſt tell you, beyond all Contradiction, the Force put on the Captain, and taking away this Ship, called the *Charles* the Second, was a Piracy; and for that particular Fact theſe Priſoners are now charged.

The Matter you are now to enquire after, is, whether all the Priſoners were guilty of this Piracy, or which of them.

As for *Ed. Foreſeth*, *Biſhop* and *Lewis*, it hath appeared to you, that they, with others, were aboard the Ship *James*; and that there was a Report ſpread about of a Plot againſt the Captain of the *Charles* the Second, and a Deſign to carry that Ship away. To prevent which, there were ſome of theſe Men ſent out in a Boat, by the Captain of the *James*, to this Ship to aſſiſt Captain *Gibſon*, but inſtead of preventing this Piracy, they ſtayed behind and went along with theſe Men that carried away the Ship.

As to *W. May* and *J. Sparks*, that were of this Ship's Crew, they continued on Board, and were Parties in all thoſe Piracies.

There was a Conſult, it ſeems, by ſome particular Perſons, of which *Every* was the Ring-leader, how to effect this Deſign, Captain *Every* as they call him; though he was no Captain, but was under the Command of Captain *Gibſon* that had the Conduct of this Ship.

It's

It's true, it is not proved to you that these Men were at that Consult; for, it seems, they were too many, for they were about 160 that remained on board when the Ship was carried off.

Now for *W. May*, *Jo. Gravet*, second Mate, that was aboard, and though he had a Pistol clapt to him to prevent any Resistance, yet had liberty to depart; and upon his going off discoursed with *May*, who shook Hands with him and bid him farewel, and remember him to his Wife. And therefore it is evident that *W. May* was under no Force to stay; he stay'd with his good Will, and did consent to the Piracy. And then another Witness is *D. Creagh*, who says, that *May* was so zealous in the Matter, that he said to him, *God damn him, he deserves to be shot through the Head.*

Sparks was on Board the Ship and had a design'd End, and no Compulsion was used towards him, but since had Liberty to depart; but the staying behind by the rest, is a great Evidence to induce you to believe they were Parties in the Design; for why else should not they go ashore as well as others, since there doth not appear any restraint upon them to stay, especially when a general Word was given, that those who would go on Shoar should go on the Deck, and a Boat was ready to carry them off.

They say, they wanted a Bucket in the Boat, and they gave them one to lave out the Water; that is a plain Evidence they were willing to be rid of those that were not willing to engage with them; and if they had not approved of the Design, they were not hindered from going in the Boat. As for those that came from the *James*, there was no manner of Force on them, but they were sent from the Captain to assist the Captain of the *Charles*; for those two Ships having lain near together at the *Groyn*, there was some Intelligence of such a Design in agitation, and these three forsook their own Ship; *Every* declared his Design to some: And he told them what Shares they should have; and because he was their Captain and Commander, he thought himself intituled to a double Share.

And then you have heard what was done in the whole Progress of this wicked Design, every one of these Men had their Share, even this *W. May*, though he was sick for some time, and was set ashore at *Joanna*, and at the Ship's return taken in again, yet he had his share of all the Prizes. *W. Bishop* had his share, *James Lewis* had his share, and *John Sparks* had his share; and, says this young Man *Philip Middleton*, I had my share, which was above an hundred Pound, which was thought by them to be a good Share for a Boy; and *Sparks* took him at a Disadvantage, and having an Opportunity, took it from him.

Now if there be a Piracy committed, though contrived but by one Man, yet if others do concur in it they are equally guilty.

Now tho' these Prisoners tell you, there was a Force upon them, it is a meer Suggestion, without any manner of Evidence; but there is Evidence of their consenting and confederating in this wicked Enterprise.

Indeed there hath been a Trial before, which you have all heard of; for the City and Nation have discoursed of it; consider therefore the Evidence. You have a great Trust reposed in you, for you are not to act arbitrarily, but you are accountable to God Almighty, to whom you are sworn, and to the Government for the Verdict you give. If you are not satisfied in your Consciences that the Evidence is sufficient to find these Men guilty, in God's Name, acquit them.

But if you are satisfied in the Sufficiency of the Evidence to convict them, you must find them guilty.

Cl. of Arr. Cryer, swear an Officer to keep the Jury; which was done, and the Jury went out to consider of their Verdict. And in the mean time, the six Prisoners were again arraigned upon two several Indictments, the one for piratically taking away a *Mooriſh* Ship, and the other for committing Piracy upon two *Daniſh* Ships. To both which Indictments *Joſeph Dawſon* pleaded guilty; the other five pleaded not guilty, and put themselves upon their Trials.

Then the Jury having been withdrawn a little while returned into Court.

Foreman. If there be any Evidence to prove that *John Sparks* consented to the running away of the Ship, we desire it may be heard again.

L. C. J. *Holt.* He was with them at the carrying off the Ship, and at the taking of the several Prizes, and had his share afterwards. What is Consent? Can Men otherwise demonstrate their Consent, than by their Actions?

Juryman. But we understand, my Lord, that he was tried upon his consenting to carry away the Ship.

L. C. J. *Holt.* What do you mean by consenting? If a Ship be carried away with Force from the Captain, divers Piracies are committed with her, one continues aboard and receives a Share of the Profit of the several Piracies; is not that an Evidence of Consent to the piratical Design? Was it not proved that many went out of the Ship, that were not willing to go on that Design? And that was with the Leave of the rest that remain'd.

Mr *J. Eyres.* And one stood on the Deck, and said with a loud Voice, That they that will not go may have Liberty to go Ashore.

Mr *Conyers.* No Man was hindred but the Doctor, being a useful Man.

L. C. J. *Holt.* When a Ship is run away with, and People are aboard that Ship so run away with, that proves their Consent, unless they can produce Evidence to the contrary.

Mr *J. Turton.* The Captain was in his Bed sick of a Fever at that time, and was not willing to go with them, and they sent him away from them.

Mr *J. Eyres.* And every Man had his Share.

Then the Jury consulting together a very little time, agreed on their Verdict.

Cl. of Arr. Gentlemen of the Jury, Answer to your Names, *Jo. Degrave.*

J. Degrave. Here (and so of the rest.)

Cl. of Arr. Gentlemen, Are you all agreed of your Verdict?

Jury. Yes.

Cl. of Arr. Who shall say for you?

Jury. Our Foreman.

Cl. of Arr. Set *Ed. Foreſeth* to the Bar. *Ed. Foreſeth*, hold up thy Hand (*which he did.*) Look upon the Prisoner; Is *Edward Foreſeth* Guilty of the Piracy

Piracy and Robbery whereof he ſtands indicted, or not Guilty.

Foreman. Guilty.

Cl. of Arr. Look to him Keeper. What Goods and Chattels, &c.

Foreman. None that we know of.

Cl. of Arr. W. May, hold up thy Hand *(which he did.)* Is *W. May* Guilty, &c. or not Guilty?

Foreman. Guilty.

Cl. of Arr. Look to him Keeper, &c. *W. Biſhop*, hold up thy Hand *(which he did.)* Is *W. Biſhop* Guilty, &c. or not Guilty?

Foreman. Guilty.

Cl. of Arr. Look to him Keeper, &c. *J. Lewis*, hold up thy Hand *(which he did.)* Is *Ja. Lewis* Guilty, &c. or not Guilty?

Foreman. Guilty.

Cl. of Arr. Look to him Keeper, &c. *Jo Sparks*, hold up thy Hand *(which he did.)* Is *Jo. Sparks* Guilty, &c. or not Guilty?

Foreman. Guilty.

Cl. of Arr. Look to him Keeper, &c.

L. C. J. *Holt.* Gentlemen, You have done extreamly well, and you have done very much to regain the Honour of the Nation, and the City.

Then the Court adjourned to Friday *next the 6th of* November *two of the Clock in the Afternoon. On which Day* Ed. Foreſeth, &c. *were tried upon two other Indictments for ſeveral Piracies.*

An Abſtract of the Tryal of Ed. Foreſeth, James Lewis, William May, William Biſhop, John Sparks, (Joſeph Dawſon *having pleaded Guilty upon his Araignment) at the* Seſſions Houſe *in the* Old-Baily, Friday, Novemb. *the 6th* 1696, *where were preſent Sir* Charles Hedges, *Judge of the High-Court of Admiralty, the Lord Chief Juſtice* Holt, *Lord Chief Juſtice* Treby, *with ſeveral others of his Majeſties Judges and Commiſſioners.*

After ſeveral Challenges made by the Priſoners, of the Perſons returned upon the Jury, theſe Twelve Gentlemen were ſworn, viz.

Roger Mott	*John Watſon*
John James	*Benjamin Hooper*
Richard Rider	*John Hibbert*
William Hunt	*Richard Chiſwell*
John Hammond	*Daniel Ray*
Abraham Hickman	*William Hatch.*

THEN the Clerk read the Two Indictments upon which they were tried, *viz.* One for Seiſing, Robbing and Carrying away Two Ships belonging to *Denmark*, on the 30th of *Auguſt*, 1694. The other for that they, on the 28th of *September*, 1695. in a Place 40 Leagues diſtant from *Surat*, did Forcibly and Piratically ſet upon a *Mooriſh* Ship, and take away her Tackle and Goods, to a great Value.

Then Dr. Newton, *one of his Majeſties Advocates, ſpoke to the Jury, as followeth.*

My Lord, and Gentlemen of the Jury,

The Crime the Priſoners at the Bar ſtand charged with, and which has been opened to you, upon the Indictments, is Piracy; which is the worſt Sort of Robbery, both in its Nature and its Effects, ſince it diſturbs the Commerce and Friendſhip betwixt different Nations; and if left unpuniſhed, involves them in War and Blood: For ſovereign Powers and Nations have no Courts of Juſtice afterwards to reſort to, as the Subjects of Princes have, in their own Countries, for Redreſs or Puniſhment; but they can only have recourſe to Arms and War, which how expenſive, and how dangerous they are, and what Calamities and Ruin they carry along with them, no Perſon can be a Stranger to. So that thoſe who bring not ſuch Criminals to Judgment, when it lies in their Power, and is their Duty to do ſo, are anſwerable, in a great Meaſure before God and Man, for all the fatal Conſequences of ſuch Acquittals, which bring a Scandal on the publick Juſtice, and are often attended with publick Calamities.

It is not therefore, Gentlemen, to be ſuppoſed, that wiſe or honeſt Men, (and there are none who would be thought to be otherwiſe) who love their Country, and wiſh its Peace and Proſperity, would be guilty in that kind.

Gentlemen, This Piracy was begun in *Europe*, carried on through *Africa*, and ended in the remoteſt *Indies*; ſo that, in a manner, all the World is concerned in this Trial, and expects and demands Juſtice of them, if they are guilty, at your Hands.

Then the Witneſſes were produced to prove the Facts charged upon the Priſoners, *viz. Jo. Dan, David Cray, Phil. Middleton*, and others; who fully proved againſt them, That the Priſoners, with ſeveral other wicked Perſons, not yet taken, did forcibly take away the Ship *Charles* the Second from the lawful Commander, Captain *Gibſon*, with a piratical Deſign. And in the ſaid Ship did afterwards commit ſeveral Piracies; at the Iſle of *May* they took three *Engliſh* Ships. From thence they went to the Coaſt of *Guinea*, and when ſome of the Natives came on board with their Gold, to trade with them, they took away their Gold, and carried them away for Slaves. And then went to the Iſle of *Princes* and took two *Daniſh* Ships, and took out what was in them, *viz.* 40 Pound Weight of Gold-duſt, and other Merchandiſe; and they offered to reſtore one of the Ships to the Maſter after they had robbed her, but the Maſter he ſaid ſhe was inſured, and he would not take her again. And afterwards they burnt one of the Ships, and carried away the other. Then they went to *Bobs* Key, at the Mouth of the *Red-Sea*, waiting for the *Mocho* Fleet, which one Night paſt by them unſeen; but were informed the next Day that they were gone. And then calling a Council they agreed to follow them; and accordingly went after them, and came up with one of them, which was about 250 Tun, and with ſmall reſiſtance took her, and put ſome Men on board her, and took out Gold and Silver out of her to the Value of 30 or 40000 *l.* with other Merchandiſe. And afterwards met with the Ship called the *Gunſway*, and robbed her likewiſe of all her Furniture, to

a very

a very great Value. And about a Week after they ſhared all the Prizes they had taken; and ſome had a thouſand Pound, ſome had eight Hundred, ſome ſeven Hundred, ſome five Hundred, every Man in the Ship his Share, as they thought they deſerved. And it was particularly proved by the Evidence againſt the Priſoners that they had their Shares. *The more particular Relation of which is already Printed at large, in the foregoing Trial.*

When the King's Evidence had done, the Priſoners were permitted to ſay what they could in their Defence; but the ſame appearing to be very weak, the L. C. J. *Holt* ſumm'd up the Evidence; and the Jury going out to conſider their Verdict, after a ſhort ſtay, brought them in all Guilty.

Then the Court adjourned to the 10*th of* November *following.*

After the Tryal of John Murphey *was over, the Pirates were brought to the Bar.*

Cl. of Arr. *Joſeph Dawſon*, you by your own Confeſſion are convicted of Piracy and Robbery. What have you to ſay why Sentence of Death ſhall not be paſſed upon you according to Law?

Joſ. Dawſon. I ſubmit my ſelf to the King and the honourable Bench.

Cl. of Arr. *Edward Foreſeth*, What have you to ſay, *&c.*

Foreſeth. I am an innocent Man; and went on to juſtifie himſelf, *&c.*

Judge of the Admiralty. You and the reſt of the Priſoners at the Bar have had a very fair Trial, and been fully heard upon your Defence; but the Jury your Country-men, upon whom you put your ſelves to be tried, have found you guilty. So that the inſiſting upon your Juſtification cannot now avail you any thing, the Verdict being given; but if you have any thing to offer in Arreſt of Judgment, or can ſhew any Cauſe why the Court ſhould not proceed to give Judgment according as the Law directs, againſt Perſons convicted of Piracy, you ſhall have Liberty to ſpeak, and will be heard.

Foreſeth. I deſire to be ſent into *India* to ſuffer there.

Cl. of Arr. *William May*, What have you to ſay, *&c.*

William May. My Lord, I being a very ſickly Man, never acted in all the Voyage. I have ſerved my King and Country this thirty Years, and am very willing to ſerve the *Eaſt-India* Company where they pleaſe to command me; and deſire the honourable Bench to conſider my Caſe, and if I muſt ſuffer, I deſire to be ſent into *India* to ſuffer there.

Cl. of Arr. *William Biſhop*, What have you to ſay, *&c.*

William Biſhop. I was forced away; and when I went was but 18 Years old, and am now but 21, and deſire Mercy of the King and the Court.

James Lewis. I am an ignorant Perſon, and leave my ſelf to the King's Mercy.

John Sparks. I leave my ſelf to the King's Mercy, and to the honourable Court.

Judge of the Admiralty. *Joſeph Dawſon*, you ſtand convicted upon four Indictments, by your own Confeſſion, for Piracy and Robbery. And you *Edward Foreſeth*, *William May*, *William Biſhop*, *James Lewis* and *John Sparks*, having put your ſelves upon your Trials according to the Cuſtoms and Laws of your own Country, have been found guilty upon three ſeveral Indictments, for the ſame deteſtable Crimes committed upon the Ships and Goods of *Indians*, of *Danes*, and your own Fellow-Subjects.

The Law for the Heinouſneſs of your Crime hath appointed a ſevere Puniſhment, by an ignominious Death; and the Judgment which the Law awards, is this, That you and every one of you be taken from hence to the Place from whence you came, and from thence to the Place of Execution, and that there you, and every one of you be Hanged by the Necks, until you, and every one of you be Dead: And the Lord have Mercy upon you.

According to this Sentence, Edward Foreſeth *and the reſt were Executed, on* Wedneſday, November *the* 25*th* 1696, *at* Execution-Dock, *that being the uſual Place for the Execution of Pirates.*

The TRYAL of Sir JOHN FENWICK, *Bar.*

Veneris 6. *die Novembris*, 1696.

ADmiral *Ruſſel* acquainted the Houſe of Commons, That his Majeſty had given leave to lay before the Houſe ſeveral Papers in the Nature of Informations of Sir *John Fenwick*, in which he and ſeveral other Perſons of Quality were named; and deſired that they might be brought up to the Table and Read, and that he might have an Opportunity to juſtify himſelf, or if he did not, that he might fall under the Cenſure of the Houſe. And Mr Secretary *Trumbal* being preſent did ſay, That he had his Majeſty's Leave to lay thoſe Papers before the Houſe, and if the Houſe pleaſed he would bring them up to the Table.

And accordingly (the Houſe ſhewing a general Inclination for it) they were brought up to the Table and read, (being the Account he gave of the laſt Plot under his own Hand, and his Examination taken by Mr *Vernon*, afterwards upon

on his Trial produced ;) and after the ſame was Read, the Houſe ordered, That Sir *John Fenwick* ſhould be brought immediately before them, and that no Perſon ſhould in the mean time ſpeak with him, or give or receive any Paper from him. And the Houſe further ordered, That the Lord *Cutts*, Sir *Henry Hobart*, and Mr *Norris*, Three of their Members, ſhould ſee their Order executed.

And in the mean time adjourned to the Afternoon.

About Five a Clock in the Afternoon Sir *John Fenwick* was brought with a ſtrong Guard (which the Lord *Cutts* had taken care for) to the Houſe, and being brought to the Bar, Mr Speaker ſpake to him thus.

Mr *Speaker*. Sir *John Fenwick*, the Houſe underſtand that you have ſhewed ſome Inclinations to make a Diſcovery of the Deſigns and Practices of the Enemies of the Government ; you have now an Opportunity to do it, and the Houſe require it from you, That you make a full and ample Diſcovery of all you know of that Matter.

Sir *John Fenwick*. Mr Speaker, I ſuppoſe the Houſe is not ignorant of my Circumſtances ; I am Indicted of High-Treaſon, and have been arraigned : What I have done to ſerve the King and Nation his Majeſty knows, it hath been communicated to him by his Privy-Council. I do not know but what I ſay may hurt my ſelf ; and therefore I deſire that I may have ſome Security for my ſelf, and I am willing to tell the full of all I know.

Mr *Speaker*. Sir, if you pleaſe to withdraw for the preſent the Houſe will ſend you their Pleaſure.

Sir John Fenwick *withdrew. Was called in again.*

Mr *Speaker*. Sir *John Fenwick*, ſince you withdrew, the Houſe have conſidered of what you ſaid at the Bar. They do not think what you ſaid is an Anſwer to what they require ; they do expect a full and candid Confeſſion from you of what you know, and they think that the beſt Way for you to obtain the Favour of the Houſe is to deal ingenuouſly with them.

Sir *John Fenwick*. Sir, I am in the Hands of the Law, and I would not do any thing that his Majeſty might be angry with me, for I do not know it is with his Majeſty's Conſent : I have acquainted him fully with all I know of the Matter ; this is all the Account I can give you at this time. 'Tis a dangerous Point that I am under ; I know not but I may come to my Trial in a few Days, and what I may ſay may riſe up againſt me in a Court of Judicature : I humbly propoſe it to the Houſe, if they do not think it a hard Caſe for me to make any Confeſſion here, when his Majeſty hath all that I know. I ſhall be very ready to do what this honourable Houſe pleaſes to command me, but I deſire this Houſe will conſider my Circumſtances ; I would not offend the King, nor offend this Houſe.

Thereupon Mr Speaker again ſpake to him to withdraw. And being withdrawn, the Houſe debated, whether they ſhould acquaint him with their having thoſe Papers of Information. But they did not think fit to do it for this Reaſon, becauſe they thought thoſe Papers were a Contrivance, and made by others for him ; and that the beſt way to get the Truth out of him would be for him to tell his own Story. Beſides, if the Houſe ſhould let him know they had thoſe Papers, he would only refer to thoſe Papers, as he had lately done, when he was examined by the King and Council.

'Twas alſo debated, whether there ſhould be any threatning Words uſed towards him, but they thought that not proper ; for his Confeſſion ought to be free and natural. It was alſo debated, Whether they ſhould take notice of his Majeſty's Conſent ; but that was not thought fit, being thought derogatory to the Privileges of the Houſe : So the Houſe ordered him to be called in again, and Mr *Speaker* delivered the Senſe of the Houſe to him in theſe Words.

Sir John Fenwick *at the Bar.*

Mr *Speaker*. Sir *John Fenwick*, The Houſe has conſidered of what you have ſaid, to excuſe your making a Diſcovery of your Knowledge of the Deſigns and Practices of the Enemies of the Government, and they think what you ſtand upon is only an Excuſe ; they think you have no Reaſon to apprehend the King ſhould be angry with you for making any Diſcovery to this Houſe, this being the proper Place to enquire of all things that do relate to the King and Government, eſpecially his Majeſty's Safety ; and you ought to diſcover to them what you know : As to what you ſtand upon, that you ſhould not be prejudiced by what you diſcover here, I am commanded to tell you, they do take notice by what you have ſaid here, that you have already, notwithſtanding what you ſay, diſcovered it to the King and Council ; and they command me to tell you, that you have no Reaſon at all to apprehend, that you ſhall ſuffer any thing if you make a full and free Diſcovery here, no Man that ever did ſo, and dealt candidly with this Houſe, ever did : 'Tis in your Power to deſerve the Favour of the Houſe ; 'tis required by the Houſe, that you make a Diſcovery, and this is the laſt time that you are like to be asked to do it.

Sir *John Fenw*. Mr *Speaker*, I know not what Anſwer to make to this Houſe, I would not willingly offend it ; what I have informed the King of is a great deal, and a Man would have ſome little time to recollect himſelf ; and I have been kept a very cloſe Priſoner, and had no conveniency of Pen, Ink, and Paper ; 'tis hard to remember juſt of a ſudden, and I would willingly be ſecure his Majeſty will not be angry with me ; I was in hopes that his Majeſty would have informed the Houſe himſelf, he hath all that I know ; my Circumſtances are hard, I am in danger every Day to be Tried, and I deſire to be ſecured, that what I ſay ſhall not riſe up in Judgment againſt me ; 'tis hard to make me to accuſe my ſelf under theſe Circumſtances, and very hard to put me on it now.

Mr *Speaker*. As to what you ſay relating to the fear of his Majeſty's Diſpleaſure, and the other Excuſe, you have had your Anſwer already ; as to what you ſay relating to time, if you will now declare what you know and remember, the Houſe will take it into Conſideration, whether they will give you farther time to make up the reſt.

Sir *John Fenw*. Sir, his Majeſty hath all exactly, 'tis impoſſible for me to inform you of it without accuſing my ſelf ; I do not really know what to ask but a little time, if they would pleaſe to give it me.

Mr. *Speaker*. Sir, you know already what the Houſe require of you.

Sir *J. Fenwick*. I do: But 'tis no Excuſe that I have made: What I have told is Truth, to the beſt of my Knowledge: I am not very good at Speaking, and if I might have a little Time, I ſhall do what they pleaſe to command me.

Mr. *Speaker*. If that be all you have to ſay, if you pleaſe to withdraw, you ſhall know the Pleaſure of the Houſe.

Sir John Fenwick *withdraws. Is called in again.*

Mr *Speaker*. Sir *John Fenwick*, this Houſe have conſidered what you ſtood upon when you were here laſt, that your Memory was bad, and that you deſired Time, but the Houſe think it a Matter of great Moment to the King and whole Nation, That thoſe that are their Enemies ſhould be diſcovered as ſoon as poſſible; and this being a Matter within your Knowledge, the Houſe do not think fit to give you Time; but if they find by your Diſcovery, that you deal candidly and ingenuouſly with them, and have told them as much as you know upon your Memory, they will conſider of your Requeſt of giving you Time for the Reſt.

Sir *J. Fenw.* When firſt I ſpake to the Privy-Counſellor, I propoſed it to him, Whether I might have a Pardon without being an Evidence againſt any Man, and in that Caſe I would ſerve the King ſo as to tell him all that I knew. It was upon Honour that I did it to him, and he took the Words in Writing from me, and ſent them to the King in *Flanders:* The King's Anſwer was, That he made no Objection as to my being an Evidence, nor his giving me a Pardon; but that I could expect no Pardon till he knew what I could ſay; upon that, I was incouraged to do what I did for his Majeſty's Service: And I have found in all my Buſineſs ſince, whatever I do or ſay, the Anſwer is, 'Tis not Satisfactory, and I am where I was. When this was done, there was a Meſſage ſent to me from the Lords Juſtices, That this was not Satisfactory, and I muſt tell all I know: Now when a Man hath told all he knows, and this muſt ſtill be the Anſwer, 'tis very hard. The King's Anſwer was, That I ſhould more fully make good what I had ſaid. Sir, I did afterwards explain what I had informed that honourable Perſon, and ſtill it was not Satisfactory. I hope I ſhall not find this from this Honourable Houſe; I am upon my Life, and I hope this Houſe will conſider of it: I know this Houſe is good Security if I had it, but till I have it I am under theſe Circumſtances, and I may at laſt be told all is not Satisfactory: I deſire the Houſe will pleaſe to conſider of it.

Mr *Speaker*. Sir, you know the Pleaſure of the Houſe, you know what they require of you.

Sir *J. Fenw.* I am very unwilling to offend the Houſe; but theſe are very hard Circumſtances, to be told, when I have done all I can, 'Tis not Satisfactory.

Mr *Speaker*. Sir, you know what the Houſe does expect; you muſt either give them Satisfaction in it, or withdraw.

Accordingly he withdrew.

And a Motion was made for Leave to bring in a Bill to Attaint Sir *John Fenwick* of High-Treaſon, and after a Debate thereupon, the Houſe divided.

Yeas —— 179. Noes —— 61.

So it paſſed in the Affirmative.

Lunæ 9. die Novembris, 1696.

The Bill for Attainting Sir *John Fenwick* of High-Treaſon was preſented to the Houſe, and after a long Debate of ſeveral Hours, the Queſtion was put for the ſecond Reading of it; whereupon the Houſe divided.

Yeas —— 196. Noes —— 104.

So it paſſed in the Affirmative, and *Friday* Morning was appointed for it.

The ſame Day the Houſe Ordered, That Sir *John Fenwick* ſhould have a Copy of the Order for reading the Bill the ſecond Time, and a Copy of the Bill, and that he ſhould be allow'd Pen, Ink, and Paper.

And further Ordered, That Mr. Attorney General, and Mr Sollicitor General, ſhould prepare and produce the Evidence againſt him on *Friday* Morning.

And Mr Speaker this Day acquainted the Houſe that he had received a Letter from Mr. *Fuller*, which he thought fit to acquaint the Houſe with; but upon a Queſtion for reading of it, it paſſed by a very great Majority in the Negative; ſo that there was no Diviſion upon that Matter, but the Letter was writ in the Words following.

SIR,

I *Preſume that no Perſon whatever, in the Intereſt of the preſent Government, hath been more actually engaged with Sir* John Fenwick *than my ſelf, it being my Fortune ſeveral Times to bring Letters to him from the late King and Queen at St.* Germains, *and to carry his Anſwers: I have alſo been with him at private Conſults of the late King's Adherents, as my Informations aſſert; ſo that if I may be Serviceable to the detecting his Treaſons, I ſhall be very ready to ſerve the Government, and to demonſtrate my Integrity, I am,*

Sir,

Your Honour's moſt humble
and devoted Servant,
W. Fuller.

Martis 10. die Novembris, 1696.

Sir *John Fenwick* ſent the Speaker a Letter in theſe Words.

SIR, Newgate, Nov. 10.

I *Would have addreſſed my ſelf in the humbleſt Manner I could to the Honourable Houſe of Commons, from whom I received a Copy of a Bill againſt me with their Order; but my Keeper will not carry any Paper from me but to your ſelf, to whom I durſt not preſume to ſend a Petition to deliver for me. Therefore I beg the Favour you will pleaſe to acquaint the Houſe, that it is my humble Petition to them, That they would give Leave for my Council Sir* Francis Pemberton, *Sir* Tho. Powys, *and Sir* Barthol. Shower, *to come to me, with my Sollicitor,* Chriſtopher Dighton, *to adviſe with alone. The Keeper will not ſo much as let me ſend the Copy of the Bill and Order to my Sollicitor, ſo it is of no*

Uſe

Uſe to me: I humbly beg they will pleaſe to give Order, that I may have all Aſſiſtance that is neceſſary for me, and that you will pardon this Trouble from, Sir,

Your moſt humble Servant,

JOHN FENWICK.

Upon this Letter they did readily order that he ſhould be allowed two Council to make his Defence, and that they might be alone with him; and after ſome Debate, did give Leave that he might have the Sollicitor he deſired, tho' it was ſaid, his Sollicitor was a very great Jacobite; and it was inſinuated, That he was ſuſpected to be concerned in the Eſcape of *Goodman*; but it was alſo ſaid, That he had been made uſe of as his Sollicitor to prepare for his Tryal, and before that, in other Matters, and ſo that it might not be thought that there was any Hardſhip upon him, in that reſpect the Houſe thought fit to allow Mr. *Dighton* to be his Sollicitor.

Jovis 12. *die Novembris*, 1696.

A Petition was preſented from Sir *John Fenwick*, as follows.

To the Honourable the Knights, Citizens, and Burgeſſes in Parliament aſſembled,

The humble Petition of Sir *John Fenwick*, Bar.

Sheweth,

THat there being a Bill of Attainder brought into this Houſe for the Attainting of your Petitioner of High Treaſon, and your Petitioner is adviſed, That there are many weighty Reaſons to be offered againſt the ſaid Bill;

Your Petitioner therefore moſt humbly prays, That your Honours will be pleaſed to hear him by his Council againſt the Paſſing of the ſaid Bill at the Bar of this Honourable Houſe; and to appoint ſuch Time for the ſame, as to your Honours ſhall ſeem meet. And your Petitioner ſhall ever pray, &c.

J. FENWICK.

Which Prayer of his Petition was granted.

Veneris 13. *die Novembris*, 1696.

Sir *John Fenwick* was brought to the Houſe (by Order) from the Priſon of *Newgate*; and there being a very great Company of Strangers, both in the *Lobby* and *Speaker*'s *Chamber*; and the Houſe being full of Members, to prevent the Inconvenience that ſuch a Number of People crouding in might occaſion, the *Lobby* was Ordered to be cleared of all Perſons that were not concerned, and alſo the *Speaker*'s *Chambers*, and that the Back-door of the ſame ſhould be lock'd, and the Key laid upon the Table: But it having been ſaid, That the Lords did admit the Members of this Houſe to hear their Debates; there was private Intimation given the Serjeant to let them remain in the *Speaker*'s *Chambers*, when others were removed.

Then Sir *John Fenwick* was Ordered to be brought to the Bar: But it being a Proceeding of that Nature, that none of the antienteſt Members could give a Precedent, it was neceſſary to ſettle ſome Preliminaries; and the firſt Queſtion that was moved, was, Whether the Mace ought to lie upon the Table when Sir *John Fenwick* was in the Houſe, or whether the Serjeant ought not to ſtand by him with it at the Bar?

Mr *Smith*. Sir *John Fenwick* being a Priſoner, the Mace ought to be at the Bar, and then no Member can ſpeak.

Mr *Boyle*. This Hearing, of any Thing I can think of, is moſt like the Hearing of an Election, and then the Mace is upon the Table, and every one has Liberty to ſpeak and ask Queſtions.

Mr Chanc. of Excheq. The Mace ought not to be upon the Table, becauſe he is a Priſoner: The Sheriffs of *London* can't have him in Cuſtody here, and ſo they deliver him into Cuſtody of the Serjeant.

Mr *F. Howe*. That Argument would be good, if he could not be in Cuſtody of the Serjeant unleſs he had the Mace in his Hand.

Mr *Brotherton*. The Mace ought to be upon the Table, becauſe the Bill is to be read.

Mr *Chr. Muſgrave*. The Mace ought to be upon the Table. Never any Bill was read but the Mace was upon the Table.

Col. *Granvile*. If the Mace be not upon the Table, it would be a great Hardſhip to the Members that they cannot ſpeak, and a great Hardſhip upon the Priſoner that he can't ask any Queſtions. My Lord *Torrington* was brought Priſoner from the *Tower*, and upon Account of his Quality the Houſe did not let him go to the Bar: But while he was in the Houſe the Mace was upon the Table, and he gave an Account of the whole Campaign, and every Body was at Liberty to ask what Queſtions they pleaſed.

Mr *Att. Gen.* The Matter is very new; and I think 'tis neceſſary you reſolve upon the Method before you call in the Council, that you may acquaint the Council with it: I think it not proper that the Mace ſhould be upon the Table, becauſe he is a Priſoner, though it may not be neceſſary that the Serjeant ſhould have it upon his Shoulders all the Time, but he may eaſe himſelf. I believe you will ask Sir *John Fenwick* what he has to ſay, but no Queſtions to make him accuſe himſelf: And I humbly propoſe it to you, That after the Council is called in, they may open the Nature of the Evidence againſt Sir *John Fenwick*; and then, Whether you will permit them to go on, or they ſhall withdraw, and the Houſe will conſider what Queſtions ſhall be asked.

Col. *Mordant*. I hope the Queſtions will be taken down upon a Paper by the Speaker, and then read to us, that we may ſee if they be right, and ſo asked by the Speaker.

Sir *Will. Williams*. If the Mace is not upon the Table our Mouths are muzzled; we are in the Nature of Judges, and ſhall we paſs a Vote that the Judges ſhall not ask any Queſtions?

Sir *Tho. Dyke*. I can't be informed without asking of Queſtions: I know not whether you are a Houſe without it, without having the Mace upon the Table. And will you act in your higheſt Capacity without being a Houſe? I do not know how it was when the Lord *Torrington* was here, but when the Duke of *Leeds* was here the Mace was upon the Table.

Mr *Boyle*. I wiſh you had appointed a Committee to have ſettled the Preliminaries, and that the Bill had not been brought in at all; what they labour as a Matter to avoid delay may occaſion more. For though when you carry the Mace to the Table no Member ſhould have the Liberty to ſpeak, yet any Member hath Liberty to deſire that the Council

may withdraw, and then they must withdraw, and the Mace must be brought upon the Table.

Mr Chanc. of *Exchequer*. That Gentleman is certainly in the right: But I think the Mace must not be upon the Table 'till when the Prisoner is here; and I think the Questions must be asked by the Chair.

The longest Examinations that I remember was of the Admiralty, and then the Questions were asked by the Chair. For the Instance of my Lord *Torrington*, 'tis true, he had not the Mace with him, but he came at his own Request, he came to give you an Account of his Proceedings; and in that Case not a Question was asked by any Member; any Member hath Liberty to propose any Question, but it must be asked by the Chair.

Afterwards the Question was put, and it passed, That Sir *John Fenwick* should stand with the Mace at the Bar.

Then a Question arose about reading of the Bill: Some Gentlemen said, it could not be read when the Council was present, for the Mace would be off the Table; (and they seemed to be under a Difficulty by having passed the last Question;) others said, It was not necessary to read it whilst Sir *John Fenwick* was present, he having had a Copy of it; but at last it was thought reasonable, it being in the Nature of a Charge upon him, that it should be read to him when present with his Council; and 'twas said, it was done so in the Case of Indictments, tho' Copies were delivered to them: But it should be read only as a Matter of Form, as a Charge to which he was to answer; but it could not be reckoned a second Reading, according to the Rules of the House, the Mace being off the Table, and therefore it should be read again when the Council and he was withdrawn.

And it was said, That the Journals did take notice that in some Cases, as in the Case of an adjourned Debate, that some Bills had been read four Times, and so it was agreed, and that Difficulty was solved.

And the Serjeant took the Mace, and brought Sir *John Fenwick* to the Bar; and Council was admitted for him, and for the Bill, *viz.*

Mr. Serjeant Gould, *King's Serjeant, and Mr. Recorder* Lovel *likewise King's Serjeant. And Sir* Thomas Powys *and Sir* Bartholomew Shower, *for Sir* John Fenwick.

And Mr *Speaker* opened the Matter thus.

Mr *Speaker*. Sir *John Fenwick*, the House have received Information that you have been in a horrid Conspiracy against the Life of his Majesty, and for bringing in a *French* Force to invade this Kingdom, that you have been indicted thereof; and they have considered the Nature of the Crime with which you stand charged, and how destructive it would have been (if it had succeeded) to the very Being of this Kingdom; and therefore that you may not go unpunished, if you are guilty, have ordered a Bill to be brought into this House to attaint you for High Treason, which hath been once read, and will be now read to you at the Bar; and then you will hear the Evidence against you, and have Liberty to make your Defence: And though you cannot claim any Right thereto, this House (to shew how ready they are to favour you, in giving you any reasonable Help to make your Defence) do allow you Council to assist you therein; and having granted you this their Favour, they do expect that you will make a good Use of it. I am likewise to acquaint those that are your Council, That this House do reckon their own Prudence will so guide them, as not to give any just Offence to this House; and that they will not be allowed to question the Power of Parliaments to pass Bills of Attainder when they judge it requisite, of which this House is more proper to judge than any private Person, and therefore they will not allow you to debate that Point.

Let the Bill be read.

Clerk of the House of Commons reads.

WHereas Sir John Fenwick, Bart. was, upon the Oaths of George Porter, Esq; and Cordel Goodman, Gent. at the Sessions of Oyer and Terminer held for the City of London, on the 28th Day of May, 1696. indicted of High Treason, in compassing and imagining the Death and Destruction of his Majesty, and adhering to his Enemies, by consulting and agreeing with several Persons (whereof some have been already Attainted, and others not yet brought to their Tryal for the said Treason) at several Meetings, to send Robert Charnock, since attainted and executed for High Treason, in conspiring to assassinate his Majesty's Sacred Person (whom God long preserve) to the late King James in France, to invite and incourage the French King to invade this Kingdom with an armed Force, by promising to joyn with and assist him with Men and Arms upon such Invasion. And whereas the said Sir John Fenwick did obtain his Majesty's Favour to have his Tryal delayed from Time to Time, upon his repeated Promises of making an ingenuous and full Confession of his Knowledge of any Design or Conspiracy against his Majesty's Person or Government, and of the Persons therein concerned. And whereas he has so far abused his Majesty's great Clemency and Indulgence therein, That instead of making such Confession he hath contrived and formed false and scandalous Papers as his Informations, reflecting on the Fidelity of several noble Peers, divers Members of the House of Commons, and others, only by Hearsay; and contriving thereby to undermine the Government, and create Jealousies between the King and his Subjects, and to stifle the real Conspiracy. And whereas Cordel Goodman, one of the Witnesses against the said Sir John Fenwick to prove the said Treason, lately and since the several Times appointed for the Tryal of the said Sir John Fenwick, at one of which Times the said Sir John Fenwick had been accordingly tryed, had it not been for the Expectation of the said Discoveries so often promised,

is

is withdrawn; so that the said Cordel Goodman cannot be had to give Evidence upon any Tryal. Be it Enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in this parliament assembled, and by the Authority of the same, That the said Sir John Fenwick is hereby Convicted and Attainted of High Treason, and shall suffer the Pains of Death, and incur all Forfeitures as a Person Attainted of High Treason.

Mr *Speaker*. Mr Serjeant *Gould*, the House expects from you, and Mr Serjeant *Lovel*, that you open the Evidence you have to prove the Suggestions of the Bill.

Mr Serjeant *Gould*. Mr Speaker, we are here in Obedience to your Commands to give an Account of the Charge, and likewise of the Evidence of the Fact, that is against this Gentleman, Sir *John Fenwick*. The Charge against Sir *John Fenwick* is for High Treason, and High Treason of the highest Degree; 'tis no less than a Design of deposing the King, and subverting the Government, and subjecting it to a *French*, arbitrary, and slavish Power. It further charges, That in prosecution of this Conspiracy he hath met together, with several others, who have consulted, consented, and agreed together, to bring in a *French* Army upon us; and in order to that, as a particular Overt-Act, it is charged, That they contrived to send one to the late King *James* to bring in a *French* Power upon us. It is charged likewise, That he conspired to levy War upon us, and for that Purpose did provide Pistols, and other warlike Arms. This I take to be the Substance of the Charge as laid in the Indictment.

Now, may it please you Mr. *Speaker*, as for the Evidence of the Fact charged and alledged in this Indictment: It is no Secret certainly to any at this Time of Day (after so many Tryals, so many Convictions, so many Attainders) that for some Years last past there hath been a wicked Conspiracy to bring in a *French* Power upon us, to subject this good Government, and to depose the King; but God Almighty, by special Providence, hath always prevented and disappointed them. We know ever since the Business of *la Hogue* (in which even by a Miracle, God disappointed them) they have been still restless, and have been industrious to set up again this Design; and for this have plotted to bring in a *French* Power, and have not had any regard to the King's Mercy shewed to them, and that in passing several Acts of Parliament, but have still persisted in the same Designs.

As to the Charge upon this Gentleman at the Bar, we shall shew you that in Time: In the Year 1694, for several Months there was a Conspiracy carried on, but did not take Effect; afterwards, in Time, I think the Beginning of *June*, or latter End of *May*, there were several Consults, or Meetings, at the *King*'s *Head Tavern* at the upper End of *Leadenhall-street*, where this Gentleman that now stands charged at the Bar was present; there was several Gentlemen, and among the Rest (as it hath and will appear upon Evidence) there was Sir *John Fenwick*, my Lord *Montgomery*, and several others, whereof Captain *Porter* and *Goodman* were there likewise present: It was then proposed, That one *Charnock* (since executed, and agreed upon by all to be present) should go over into *France* to the late King *James*, to communicate to him their Resolution and Sincerity in being serviceable to him in levying War here to depose the King, and subvert the Government; who was to interceed with the *French* King, so that there might be Forces sent from *France*. But after this *Charnock* (present still this Gentleman) comes and proposes this Thing again, and tryed whether they were sincere and real in their former Resolutions: To which they all replied, and did agree and assent, That it should be done, and they were very zealous in the Matter, and the Forces were at that Time proposed. And what was that? Why truly, no less than 8000 Foot, and 2000 Dragoons of *French*, with an Assurance of 2000 Horse from this Country. *Charnock* did go into *France*, and did communicate this Matter; and after he had communicated this Matter he came back, and brought Answer, That King *James* had endeavoured to answer their Expectations, but at that Time the *French* King could not spare his Forces, but however returned his Thanks to them.

This passed on till towards *Christmas* last; then comes over Sir *George Barclay* upon this Expedition, and there was a Commission prepared for that Purpose: And as to one Part, he brought along with him a Detachment of some of King *James*'s Guards, who was to assassinate the King. The next Part was for raising a Rebellion; now that fell to Sir *John Fenwick*'s Part: As to the assassinating Part, you have had several Examples made already: This we have Evidence to prove, and if we prove this Matter as we have opened it, then I think there is no Person whatsoever, but will agree that this is High Treason in the highest Degree. Now, Sir, here stands our Matter: Here was an Indictment found according to the Law you made last Sessions of Parliament, by two Witnesses, to one Species of Treason against Sir *John Fenwick*; we have one of these Witnesses here *viva voce*: But Sir *John Fenwick* hath protracted his Tryal by frequent Assurances of making a Discovery, which hath terminated in what you have already mentioned in your Bill; by Means of which, Sir *John Fenwick* hath not been Try'd; whereas he had been Try'd in course, without these Applications, and found guilty: But now he hath had all this Time, that *Goodman* is withdrawn is plain, and we think (but that we must leave to the Judgment of this Honourable House) may be reasonably supposed, by Contrivance, to take off this Prosecution of Sir *John Fenwick*. For why? The Inference is from a Fact that we shall prove to this Honourable House: There hath been the like Attempt upon Captain *Porter*, but Captain *Porter* hath been more stedfast; he hath been so resolved, that he stood his Ground; and, to speak the Truth, notwithstanding he hath been highly attempted: For we shall prove to you, that one *Clancy* comes to Captain *Porter*, and tempts him to withdraw into *France*, with Assurance of a Pardon, and he hath Three Hundred Pounds paid him in Hand, and Three Hundred more he was to be paid when he should come into *France*, to be remitted by Bills of Exchange: Besides, he was to have 300 *l.* a Year; 100 *l.* from my Lord *Aylesbury*, 100 *l.* from my Lord *Montgomery*, and the other 100 *l.* a Year from Sir *John Fenwick*, and this to be an Annuity during his Life; and thus far we suspect Sir *John Fenwick* may be concerned; for his

Lady

Lady came (he did not come Perſonally, but his Lady did) and gave her Honour and Aſſurance, that it ſhould be all performed, and much more, if he would withdraw himſelf.

Captain *Porter* preſently made a Diſcovery of this, and takes the 300 *l.* which was paid down; upon this it hath been ſo far proceeded, that *Clancy* hath been Indicted for it, and Convicted, and hath received Judgment, and I ſuppoſe there hath been Execution: We have the Record of all theſe Proceedings.

We have this Circumſtance farther in the Caſe (which it is my Duty to open to this Houſe) to ſhew what Labour there hath been to ſtifle the Truth of the Fact, upon taking off Sir *John Fenwick*: There was one *Webber* taken with him, and he ſlid a Letter into one *Fowl*'s Hand, and this was to be ſent to my Lady *Fenwick*; and what is the Import of this Letter? The Import of it is (they could not prevail with *Porter*, as I opened juſt now, therefore) you muſt influence the Jury, get two or three ſtout Jury-men to ſtarve the Reſt, for we have nothing elſe to depend upon: Theſe Things we ſhall humbly offer to prove according to our Duty, and according to the Order of this Houſe, and then leave Sir *John Fenwick* to make his Defence.

Mr. *Recorder*. Sir, In what I ſay, I ſhall endeavour, as I ought to do, to purſue the Method of this Bill: And firſt, I will take notice, That it is the Pleaſure and Direction of this Houſe, that we ſhould attend this Houſe this Day, to produce the Evidence againſt Sir *John Fenwick*.

The Crime for which he ſtands indicted is High Treaſon: I preſume the learned Gentlemen on the other Side will not deny, but that the Compaſſing and Conſpiring the Death and Deſtruction of the King, is High Treaſon; and that to endeavour it, or ſhew it by an Overt-Act, to cauſe a foreign Power to invade the Realm, or to hold Correſpondence, or adhere to the King's Enemies, is likewiſe High Treaſon; and therefore I ſhall not trouble the Houſe to ſay any Thing to it one Way or another, becauſe I believe they will not deny it.

In the next Place the Bill does take notice, That Sir *John Fenwick* hath been Indicted at the *Old Baily* in *May* 1696. Sir, by the Law of this Houſe of Parliament made laſt Seſſions, no Man ought to be Indicted of High Treaſon without two Witneſſes; purſuant to that Law, Sir *John Fenwick* hath been Indicted upon the Oaths of two Witneſſes, Captain *Porter* (whom we have here) and *Goodman* (whom we then had) and he did Swear; and upon the Evidence of theſe two Witneſſes the Jury found the Bill.

We have this farther Matter: For before the Time the Bill was preſented to the Grand Jury, there was an Examination taken both of *Porter* and *Goodman* in Writing, and I think it was before a worthy Member of this Houſe, to whom I appeal in this Caſe, and in thoſe Informations (if I miſtake not) the ſame Informations they gave againſt Sir *John Fenwick*, as they gave againſt Mr. *Cook*; and upon the Tryal of *Cook* they were Sworn, and did juſtify and verify the Informations they gave before: And then, if you pleaſe, we ſhall call Witneſſes to prove, That upon the Tryal of *Cook*, *Porter* and *Goodman* gave that Evidence that did equally affect Sir *John Fenwick* (for he was then withdrawn, and could not be taken) and the Evidence was, that *Cook*, Sir *John Fenwick*, with my Lord *Aylesbury*, my Lord *Montgomery*, Sir *William Perkins*, Sir *John Friend*, *Charnock*, *Goodman* and *Porter*, were all together at a Conſult eſpecially appointed for the carrying on theſe traiterous Purpoſes; they gave the Court a great deal of Trouble, whether *Goodman* was there at that Time, and they did call ſome Servants of the Houſe that did prevaricate, but the Court was throughly ſatisfied, and it hath appeared more plainly ſince, that they did abuſe the Juſtice of the Court, for that *Goodman* was undoubtedly there. Sir, *Cook* upon the Tryal was convicted, and had Judgment of Death. And, Sir, he is Attainted, but it does not become me to ſay, Why he is not Executed? His Majeſty, no doubt, hath great Reaſon for it. But this I may ſay, being preſent at the Tryal, nothing was made more plain; and Sir *John Fenwick* appeared to be equally concerned.

To ſhew Sir *John Fenwick* is guilty, I crave leave to add this, he did withdraw himſelf, and fled, and was enquired after with Diligence; and at laſt he was found.

We ſhall make good all we have with, by Evidence (we hope) to the Satisfaction of this Houſe.

Mr. *Speaker*, if you pleaſe, Mr. *Baker*, that is Sollicitor for the King in this Caſe, does attend at the Door with all the Papers; we deſire that he may be let in.

Mr. *Speaker*. Serjeant, call in Mr. *Baker*, (*which was done.*)

Mr. *Speaker*. What do you call Mr. *Baker* for?

Mr. Serjeant *Gould*. To give an Account of this Indictment, for we have a true Copy from the Record.

Sir *Thomas Powys*. Mr. Speaker, ſince I am here aſſigned Council for the Priſoner, by the Allowance of this Honourable Houſe, upon his Application, without my Privity, I crave leave humbly to acquaint you, in behalf of my Client; I take it for granted, that he is, I am ſure we that are Council for him are, a little ſurpriſed in what the King's Council are going about; for in Truth, we were not aware, nor do we find that any Notice was given to the Gentleman at the Bar, that there would be any Proceeding againſt him by examining of Witneſſes, or giving of Evidence; he had (it ſeems) the Vote of the Houſe ſent to him, and likewiſe a Copy of the Bill; but I could not underſtand that the Houſe had given Notice that he ſhould be prepared by Witneſſes, if he had any, or be at Liberty to produce them. Nor was there the leaſt Notice to him, that there would be a Proceeding againſt him by Way of giving Evidence. He did, as I find, humbly apply himſelf, by Petition, That he might be heard by Council, againſt the Paſſing of the Bill, and I ſhall very carefully obſerve thoſe Directions you gave us, which I hope we ſhould not have ſtood in need of, but have behaved our ſelves as becomes us, and not have drawn in Queſtion the Power of Parliaments: I never had a Thought to do ſuch a Thing; but this I humbly lay before you for your Conſideration, Whether, without any Sort of Notice, that I perceive, he had from this Houſe to make his Defence to any Evidence, and conſequently there could be no need of Witneſſes on his Behalf, whether you will ſo proceed, unleſs he had had Forewarning to provide himſelf otherwiſe than by the printed Votes, which (I ſuppoſe) he had no Opportunity of ſeeing? And, Whether, within the Words you are pleaſed to acquaint us with, we may be heard, as to the Reaſonableneſs

ſonableneſs of this Proceeding, that by and by we muſt crave leave to ſpeak unto.

Mr *Speak.* Sir *John Fenwick* did Petition, it is true, That he might be heard by Council at the Bar againſt Paſſing the Bill; but he likewiſe Petitioned for Council and a Sollicitor, and the Anſwer from the Houſe was, That he ſhould be allowed Council to make his Defence.

Sir *Tho. Powys.* Yes, Sir, I have ſeen the Order of the Houſe; and truly there did not any Thing occur from it to me, That it ſhould be expected that he ſhould produce Witneſſes, for he Praying that he might be heard againſt Paſſing of the Bill, and the Order of the Houſe being that he might have Council for making of his Defence, I did not apprehend that it impowered us ſo to be prepared as to bring Witneſſes, eſpecially there being no Notice given to him to bring Witneſſes, nor no Way for him to compel them to come here.

Sir *Bart. Shower.* Mr Speaker, we do acknowledge that we are ſo far ready as to offer ſome Conſiderations againſt the Reaſonableneſs of the Bill, not againſt ſuch a Bill in general, but againſt Sir *John Fenwick* in particular, and upon thoſe Suggeſtions in the Bill; but in Reſpect of his making his Defence againſt Matter of Fact, and to anſwer the Charge of the Bar, we are not ready. The firſt Time we had Notice that Sir *John Fenwick* ſhould attend, or be brought to the Bar, was laſt Night at Nine or Ten a Clock at Night; 'tis true, the Order ſaid the King's Council ſhould produce Evidence for the Bill upon this Day; but it was not Ordered that there ſhould be Evidence produced for Sir *John Fenwick*, or at that Time that he ſhould be Perſonally preſent: We are ready, with Submiſſion, to offer what we have to ſay againſt the Paſſing of this Bill, upon the Suggeſtions made in the Bill, as Sir *John Fenwick*'s Caſe is there repreſented; but to anſwer them in Reſpect of Truth or Falſehood, that we are not prepared to do; whether you will hear them to that, before you have heard us, in the other Particular, that we ſubmit to you.

Note, This Order was made the Day before at the riſing of the Houſe.

Mr *Speaker.* Sir, you had Notice on *Wedneſday* laſt, that Sir *John Fenwick* ſhould have Liberty to make his Defence by Council; and if you had doubted whether he ſhould be admitted to do it by Witneſſes, you might have applied to have known the Pleaſure of the Houſe: But if that be what you ſtand upon, if you will withdraw, you ſhall know the Pleaſure of the Houſe.

Mr Serj. *Gould.* I muſt confeſs we depended on it, and expected no other Thing than the Bar Evidence. This was our Order, and I apprehended that the Petition meant the ſame Thing; For, as I remember, it was an Order likewiſe that the King's Council ſhould produce the King's Evidence: What Reaſon was there for that Evidence, unleſs Sir *John* was to apply himſelf to anſwer it?

Mr *Recorder.* I beg your Leave to obſerve with what Reaſon the Council on the other Side make this Objection; when 'tis the Import of this Bill, That Sir *John Fenwick* is guilty of High Treaſon: And your Order ſays, They are to be heard againſt the Bill, that is to ſay, They are to be heard againſt the High Treaſon charged upon him by this Bill. Therefore the Houſe did direct us to produce the Evidence againſt Sir *John Fenwick*, to verify the Suggeſtions of this Bill: And ſo I cannot apprehend what can be more proper at this Time, but to prove the Fact againſt Sir *John Fenwick*; and 'tis their Buſineſs to defend it as well as they can.

Sir *Tho. Powys.* What was ſaid by the Learned Gentleman on the other Side, I hope, will be ſome Reaſon why we might be of Opinion, that we ſhould not have Occaſion to produce Witneſſes: And the Truth is, This Bill does no where ſo much as ſay, Sir *John Fenwick* is guilty of High Treaſon; and therefore Mr Recorder was under ſome Miſtake, when he ſaid the Bill charged that he was guilty. The Bill does not any where make ſuch an Allegation; there is nothing but a Recital that he was Indicted for ſuch a Treaſon; and then it recites, That whereas he had protracted his Tryal by ſuch Means, and *Goodman* had withdrawn himſelf, (but it does not ſay with his Privity;) and then follows the Enacting Part, *Be it Enacted*, &c. So that there is no ſuch Thing as any Allegation that he is guilty. Whereby we could imagine that that was the Fact or Queſtion between us. We now offer theſe Things humbly to you, and ſhall readily ſubmit to what you think fit to do in it.

Mr *Recorder.* Sir *Tho. Powys* ſays, That Sir *John Fenwick* is not charged with his doing any Act, or being guilty of High Treaſon; but the Bill takes Notice that he ſtands Indicted for it: Then it will be enough for us to prove, that he ſtands Indicted, unleſs the Houſe think fit to let us go into the Evidence of his being guilty.

Sir *B. Shower.* We do not oppoſe the producing Evidence to prove the Suggeſtions of the Bill, and the Recitals of the Bill ſpecified: But if they attempt to prove him actually guilty, by living Witneſſes, as they have opened it here, that we humbly beg Leave to oppoſe. But if they think fit to prove the Suggeſtions of the Bill, That there was an Indictment, that there were Witneſſes ſworn, and one is withdrawn, and the Promiſes of making Confeſſion, and his Prevaricating in that Matter, we are ready to make our Defence to that.

Mr *Speaker.* Gentlemen, you muſt withdraw before you have the Directions of the Houſe.

Accordingly Sir John Fenwick, *and the Council of both Sides, withdrew.*

And being withdrawn.

Mr *Speaker.* Gentlemen, you have heard what is ſtood upon by the Council for Sir *John Fenwick*: They ſay, if you call only Evidence to prove the Suggeſtions of the Bill, they are ready to anſwer them; but if you call any Evidence to prove Sir *John Fenwick* guilty of a Conſpiracy, by living Witneſſes, they pretend they are not ready, and ſay, They did not know they ſhould be allowed Liberty to produce any Witneſſes.

Sir *Tho. Littleton.* Mr Speaker, the Council could not think that the Bill ſhould ſet forth that Sir *John Fenwick* was Indicted, but that the Houſe would know by what Means; and that *Goodman* was gone away, and we ſhould not enquire by what Means. What are the Objections by the Council againſt the Bill? Say they, We are ready to give Reaſons againſt the Bill; they do not ſay down-right againſt your Juriſdiction: But, ſay they, we are ready to ſhew 'tis not reaſonable in this

this Caſe, as ſtands Circumſtances, to paſs this Bill: Sir *John*'s Petition was to be heard downright againſt the Bill. If that was your Intention to hear him to that, and to that only, I conceive you would not have worded your Anſwer as you did: You ordered him Council to make his Defence, and at the ſame Time ordered the King's Council to produce the Evidence; How could they underſtand it, but to make Defence to the Evidence; It may be they have a Mind to have another Fee; whether you will think fit, in the Circumſtances you ſtand, to give them further Time I do not know: But the Circumſtances of the Kingdom, and King's Life, muſt be conſidered as well as Sir *John Fenwick*. What is the Meaning that they are not prepared? I ſuppoſe it is to have further Time; but I think your Order is ſo plainly worded that they could not ignorantly miſtake it.

Lord *Norryes*. I riſe up to the Matter of Fact; that Gentleman tells you your Order is plainly worded; 'tis ſo, if they had timely Notice of it: But the Council at the Bar tell you, they had no Notice of this Order till Ten a-Clock laſt Night.

Mr *Speaker*. That noble Lord does miſtake; for that which they ſay they had no Notice of till laſt Night, was, That Sir *John Fenwick* ſhould be brought hither; but the Notice that he ſhould be heard by his Council for his Defence was ſent him the Day before.

Lord *Norryes*. This very Order, for his Majeſty's Council to produce the Evidence, was made but upon *Thurſday*.

Mr *Speaker*. Then I miſtake. But the Order that was made upon his Petition I ſent away immediately: But the Order they mean, I ſuppoſe, is that for bringing him hither.

Mr *Cooper*. Say the Council for Sir *John Fenwick*, We come prepared to make Defence to every Thing charged in the Preamble of the Bill, but what is not charged, we do not come prepared to make Defence to. Now they conceive the Fact of High Treaſon is not charged upon him by the Bill, and if true, it is of great Weight; but as it is, 'tis none: For firſt, 'tis plain, the Preamble recites that he was Indicted for High Treaſon by the Grand Jury, That is a Charge of High Treaſon within the Bill; for it ſays, he was Charged by the Oaths of his Country upon the Oaths of two Witneſſes, and there is the very Overt-Act recited in the Preamble of the Bill. Now, allowing this its due Weight, Can any one think that ſits here as a private Judge, That the High Treaſon thus recited, as found by the Grand Jury, was no Part of his Charge? The very Nature of the Bill ſpeaks; for could any one think, That you would ground a Bill of Attainder upon a Suggeſtion, that he being Indicted of High Treaſon had ſpirited away one of the King's Evidence, or for giving falſe Information? So that this is Trifling with the Houſe, with Submiſſion.

Sir *Rich. Temple*. Can any Body ſay any Thing of the Intention of the Houſe, when 'tis reduced into a Bill? Is it not the Bill that he is to make his Defence to? And the Gentleman that ſpake, ſays, That no Body could think otherwiſe: Why, Sir, no Body is to think otherwiſe than the Bill ſtates it.

Now the Thing before you is, Whether upon the Suggeſtions of this Bill 'tis fit for you to paſs it? The Caſe of *Mortimer* was, That he had made his Eſcape, being under an Indictment of High Treaſon, and it came before the Houſe, Whether upon the Statute of 25 *E.* 3. it was High Treaſon: But they did not debate the Fact.

Now you have brought a Bill here, and all the Ground is, That he was Indicted for High Treaſon, had thus and thus prevaricated and delay'd his Tryal, upon Promiſes of Confeſſion, and in Concluſion one of the Witneſſes is withdrawn: Sir, no Man is to make his Defence but to what is in the Bill; nor can you examine to any Thing but what is ſuggeſted in the Bill. If you had put the Iſſue upon the Guilt of Sir *John Fenwick*, he muſt have a fair Tryal in ſome Place, and that he can't have here upon Oath; for upon all Bills of Attainders they have had a fair Tryal above.

Mr *Smith*. I always thought when a Bill of Attainder was to paſs through this Houſe, That every Man was concerned to hear what Evidence he could, to make it appear whether the Perſon was guilty of the Facts that were alledged againſt him to condemn him for; and, I take it, the principal Thing to be conſidered is, Whether he be guilty of ſuch a Crime as deſerves ſuch a Puniſhment. So that, I take it, the Queſtion now is, Whether Sir *John Fenwick* hath had that Notice to produce his Evidence as is convenient? For I think we ſhould loſe Time to let Council ramble upon the Reaſonableneſs of our Proceedings; the Queſtion is, Whether he is guilty of the Fact? Sir, I can never think the Council could underſtand your Order, when it ſays to make his Defence, but it muſt be to the Fact upon which he is to be condemned. You have already determined that Point, as to his Prevaricating, but that is not the Matter that ſhall make me find him guilty; but the Evidence that will weigh with me is the Evidence of High Treaſon, and how far they can anſwer it.

Mr *Hooper*. The Queſtion is, Whether or no there be a ſufficient Guilt laid to this Man's Charge? For in all Courts of Judicature this is a certain Rule, You muſt proceed *Secundum Allegata & Probata*; and you ſhall not go about to prove a Thing unleſs it be alledged. Now the Queſtion is, Whether this Thing be alledged in the whole Bill, That Sir *John Fenwick* is guilty of High Treaſon? And if not, you will go about to prove what is not alledged. 'Tis true, it hath been alledged that a Bill hath been found; but ſeveral have been Indicted who have been acquitted. It is poſſible the Priſoner at the Bar may be guilty; but I think we muſt obſerve that Method here, that is obſerved every where elſe, and that is not to go about to prove any Thing that is not alledged.

Mr *Clerk*. The Learned Gentleman hath made an Objection that perhaps would hold very well in *Weſtminſter* Hall: But I ſuppoſe he may remember this Bill muſt have a ſecond Reading before you, as a Houſe; and then perhaps the Allegations may be different from what they are now. But the principal Matter before you is, Whether this Gentleman be guilty of High Treaſon, or no? And if they did not prepare to that Part, I think they were negligent to their Client; for it appears to be that Part that is moſt ſenſibly like to affect him.

Mr *Howe*. The more I hear the Matter debated, the more it ſeems ſtrange to me. I have heard the Bill read, and took Notice of the Heads of it: I always underſtood the Preamble of

of the Bill to be the Inducement to the End of it; I was mightily ſurprized to hear the King's Council attempt to make good —— I think they did not ſpeak materially to one Point of the Allegations in the Bill, ſo that the Allegations do ſignify nothing: Or elſe, if they intended theſe Allegations ſhould ſignify any Thing, we muſt have theſe Allegations proved before we paſs our Judgments upon the Bill. Whereas the Council, inſtead of endeavouring to prove that he was Indicted for High Treaſon, (though hinted at) would prove him guilty of High Treaſon; inſtead of proving that he had prevaricated, they ſay not one Word of it; inſtead of proving that he has forged Papers, in Order to alienate the Minds of the King's Subjects, they ſay nothing to it, tho' in the Bill it is alledged as High Treaſon.

We muſt not go here upon private Fancies and Opinions; no Man that heard my Lord *Delamare*'s Tryal but believed him to be guilty of the Fact, yet he was acquitted, becauſe there was not Evidence ſufficient againſt him. I think you muſt ſtick to one of theſe Points; if you ſtick to this, to prove him guilty of High Treaſon, you muſt alter the Bill; and then that muſt be proved out of the Mouths of two Witneſſes. If you pleaſe to ſtick to the Bill, then I hope the King's Council will go on to prove the Allegations of it, or let us know why they do not: I ſhall no more give my Vote to hang him, becauſe he is Indicted of High Treaſon, than I ſhall becauſe he hath been in *Newgate*.

Mr *Sloane*. I think a great deal of your Time in Debating this Matter may be ſaved; though I will allow the Bill might have been drawn better, and that a Bar Indictment is not a ſufficient Ground of it ſelf for a final Deciſion of this Matter: But when at the Time of the finding the Indictment there was two Witneſſes, and one of them is withdrawn, and as is ſuppoſed by his Means; if the Bill ſeems imperfect, for any Thing before you now, you will not ſtay all the Proceedings upon it; but if you ſee it imperfect, and it may be amended, you will amend it at the Committee. I think the Favour you have given is abuſed, and that 'tis perfect trifling from the Bar. In one Breath they ſay, They could not get ready, for they had no Notice till laſt Night; and in the next Place they ſay, They will go on to every Thing but his being guilty; and I believe they never will be prepared for that.

Mr *Att. Gen.* Sir, I am very unwilling to ſpeak any Thing in this Matter; becauſe, Sir, by the Place I have the Honour to ſerve his Majeſty in, as one of his Council, if it was in the Courts below, I muſt proſecute on behalf of the King: But I am very ſenſible, while I am in this Houſe, I am in another Capacity; I am to vote here as a Judge, and not as a Party.

That which I do now trouble you about, is in Relation to the Matter that hath been objected; That the Bill does not expreſly affirm, that Sir *John Fenwick* was guilty of High Treaſon, but only that he was Indicted for it: Truly I thought, and do ſtill, with humble Submiſſion to the Houſe, That that Matter of affirming him to be guilty of High Treaſon was not to be inſerted in the Bill; for that will be the Conſequence of your Judgment, and Opinion, upon hearing of the Evidence. That worthy Member that ſpake laſt ſaid, the Bill might be better drawn; I am ſorry we had not his Aſſiſtance in it: But with Submiſſion to his Underſtanding, I think that had been too much Preſumption, 'till you are ſatisfied whether he was guilty or no. We could only go ſo far as to ſet forth the Faults that we knew; as that he was Indicted that we can verify, and can't take this to be like the Caſe of an Indictment; for there you muſt affirm ſuch and ſuch Things that cannot be altered afterwards: But a Bill in Parliament hath many Steps, you read it ſeveral Times, and commit it; ſo that you alter the Suggeſtions of the Bill as the Caſe appears to you to be verify'd; and if you be of Opinion that he is not guilty, you will not condemn him becauſe he is Indicted: However that is not unmaterial, but proper to be ſet forth for a Ground of your Proceedings, That there was a Probability of his being guilty from that Accuſation. Therefore, Sir, I confeſs, I can't think that thoſe Gentlemen that are Council for Sir *John Fenwick* could think, that you did intend to proceed otherwiſe than to hear Council as to the Fact; they could not think that upon Proof of his being Indicted, that that would be Ground enough for you to proceed to paſs the Bill: For how could any Body think, but you would come to examine the Fact? I can't ſee how they ſhould come to miſtake, unleſs 'twas wilfully.

Mr *Price*. The Matter now debated, is, What Method ſhall be followed, or what Evidence ſhall be given upon this Bill, or whether Evidence ſhall be given of any other Matter than is ſuggeſted in the Bill; I muſt confeſs, making a falſe Step at firſt ſetting out, hath put us out of the Way hitherto: For in the Caſe of my Lord *Strafford* Witneſſes were examined, and Adjudication that he was guilty, before any Order for a Bill of Attainder; but ſince you are in this Way, conſider whether the Council againſt the Bill have gone according to their Order: The Order was, That Council ſhould be heard to prove the Suggeſtions of the Bill, and the Council for Sir *John Fenwick* do not oppoſe that, but the Council for the Bill open more Things than are comprehended in the Suggeſtions of the Bill; for the Suggeſtion is only a Recital, and hath no poſitive Averment. And though the Bill and an Indictment is not the ſame, yet they muſt be the ſame in this, to put a Charge upon the Perſon; if the Preamble is not to any Purpoſe, What need they have made any? but have ſaid only, Let him be attainted: To what Purpoſe does Sir *John Fenwick* come to the Bar? If it is to any Purpoſe, 'tis to anſwer the Charge of the Bill. That learned Perſon ſays, to ſuggeſt that he is guilty till the Matter is proved, then there muſt be an Amendment in that Point, and that will make it a new Bill, and then he muſt have another Day to anſwer the new Charge: But they might as well have ſaid he was guilty of High Treaſon, as to ſay in the Enacting Part, that he ſhould be attainted. Therefore if the Gentlemen for the Bill, will proceed and prove the Preamble of the Bill, let them; otherwiſe let there be another Day for Sir *John Fenwick* to attend, and let them do all together.

Sir *Chriſtopher Muſgrave*. I think as to that learned Perſon, nothing is to be laid to his Charge, for I think they have drawn the Bill purſuant to the Directions; and I am ſure if they had drawn it otherwiſe, before they had known the Senſe of the Houſe, I think they had been guilty of a Crime.

That which ſeems to be before you, is what was opened by the King's Council, and that was to prove the Treaſon. Now, Sir, I would be glad to know of any Perſon, Whether any Thing is to be admitted to be proved at your Bar but what is in your Bill? For let us have a little Regard to the Proceeding in *Weſtminſter-Hall*. Can any Perſon upon an Indictment of High Treaſon, offer Evidence of any Treaſon but what is expreſs'd in the Indictment? And I think this is the ſame in Effect; for here you draw a Bill of Attainder againſt Sir *John Fenwick*, and in Juſtice you ſend him a Copy of it, and with great Favour too, you allow him Council to defend himſelf to that, as to the Suggeſtions that are in the Bill; otherwiſe to what End did you ſend him the Copy of the Bill? Now if you will admit of any Thing to be proved but what is in your Bill, I know not of what dangerous Conſequence it may be, for 'tis impoſſible to be prepared to it.

Mr *Sol. Gen.* If the Council againſt the Bill could be any Way miſtaken, or think the Bill defective, I am for giving them longer Time to make their beſt Defence, but think neither one nor the other of them true; but your Order was to draw a Bill for Attainting Sir *John Fenwick* of High Treaſon, and I think if the Bill had gone no farther, but Enacted that he ſhould be Attainted of High Treaſon, we had ſtrictly purſued your Order, for the Preamble is no neceſſary Part of the Bill.

A Bill and an Indictment are of quite different Natures; there is a Form for an Indictment, but no Precedent for an Act of Parliament.

As to the Preamble, the Debate when it was Ordered went no farther than that he was accuſed of High Treaſon, and was like to have been brought to his Tryal, and to delay it he pretended to make an ingenuous Confeſſion, and inſtead of that, there was produced a Paper which you have cenſured (as you thought fit,) and upon that you voted a Bill to be brought in to Attaint him of High Treaſon; what then could be expected more for the Inducement, but the Debate upon which it was Ordered.

If this Houſe had thought fit to examine Witneſſes before, (as now) no Doubt but the Bill would have ſuggeſted that he was guilty of High Treaſon; but 'tis Time enough for you to ſuggeſt that, after you have heard what Witneſſes there are; if the Council did not know this, notwithſtanding all that I have ſaid I am for giving them Time, but (with Submiſſion) it was impoſſible for them to miſtake it; if the Bill had went no farther than, Be it Enacted, That he ſhould be Attainted of High Treaſon; then they had ſome Colour to ſay there were different Species of High Treaſon, and they could not tell to what particular Facts they muſt apply themſelves: But when the Indictment is recited, which charges him with particular Facts, and tells him by what Witneſſes the Bill was found, it was impoſſible not to know that this was the High Treaſon you did intend to Enact that he ſhould be Attainted for; but when they ſay they are not ready, truly there may be ſome Reaſon for it, for I believe they never will be ready; ſometimes Men will be wilfully miſtaken, and ſometimes 'tis their Misfortune to be ſo. They ſay they are miſtaken, which of theſe are true I know not, but we have ſeen already the Time when he hath trifled with the Courts of Juſtice, he hath delay'd his Tryal till one Witneſs is withdrawn; if you give him longer Time, he may have the good Fortune to have the other gone too; I ſee no Reaſon for you to forbear hearing of the Evidence.

Mr *John Mountague*. I am not ſurprized to hear Sir *John Fenwick* deſire Time, for giving him Time is giving him Life; nor for his Council to tell you his Witneſſes are not ready; 'tis a common Excuſe. I hardly ever knew a Perſon brought upon his Tryal, but that was his Excuſe; and yet I have ſeldom known it allow'd as a good Excuſe: But 'tis objected, you muſt go *ſecundum allegat' & probat'*, and nothing being in this Bill like what the Council for the Bill did open, 'tis not fit to hear them call Witneſſes to what is not alledged in the Bill. I grant that; and yet I think they ought to be allowed to call Witneſſes to prove every Thing they have opened to you: 'Tis agreed they ought not to have brought in a Bill to ſay in point blank Terms, he is guilty of High Treaſon; but, they ſay, you ſhould have charged with what Treaſon he is accuſed of, and then they ſhould have been admitted to prove it. With Submiſſion, the Bill does that Thing; for the Bill does recite, That he is Indicted of High Treaſon in Compaſſing, *&c.* This is the Treaſon that is charged upon him by this very Bill: Now ſure you will permit them to prove what is alledged in the Bill; What did the Council for the Bill open? That at ſeveral Meetings they met to conſult of the Matter that this Bill takes Notice of: Did not he tell you when *Charnock* came firſt there for that Purpoſe, and when *Charnock* met them again for their Aſſurance? Now this being ſo plainly ſet forth in the Bill here, which recites that this Matter was proved by two Witneſſes, upon the Credit of whoſe Teſtimony this Matter was found, and that one of them is gone away; and ſay they now, we are ready to prove the Matter then ſworn: Is not that proper to ſatisfie Gentlemens Conſciences that won't convict this Man without Evidence?

Sir *Franc. Winnington*. Mr *Speaker*, I humbly conceive the Queſtion is not now, Whether Sir *John Fenwick* is guilty or no? But, Whether the Objections the Council for him have made, be ſo ſtrong as you will grant what they move to you? They tell you, if Council will proceed upon nothing but what is ſuggeſted in the Bill, according to your Order, we are ready to make our Defence. It was ſaid the King's Council was Ordered to give their Evidence, that can have no Interpretation but as to the Matters in the Bill.

Says the King's Council, We will prove him guilty; ſays the Council on the other Side, I hope the Houſe will give us Time to encounter them in that; for you have no ſuch Thing in the Bill; the ſending them the Copy of the Bill was as much as to ſay, you need not prove any Thing but what is therein aſſerted. 'Twas ſaid by the learned Gentlemen there, that there might have been an Act of Parliament which might have ſaid only, *Be it Enacted*, That ſuch a Man be Attainted, without giving any Reaſon. I cannot deny but it might be ſo without any Reaſon, but I don't believe it will be ſo. And another learned Perſon was for Mending of the Bill; ſays he, When you have the Matter of Fact proved before you, it may lead you to the amending of the Bill, and Inſerting what you pleaſe, and Enacting of it; but does that anſwer what the Council ſaid on the other Side? Would you have us anſwer what we did not know that you would ſtand upon? The Queſtion

is

is not, whether he be guilty or no? But whether the Objections that are made be good to give them time?

Coll. Granvill. Sir, the Council (by what I obſerved from them) have ſtarted two Difficulties, and really (to me) both ſeem very material; the firſt is, Whether the King's Council ſhall be at liberty to prove any thing that is not ſuggeſted in the Bill: The other is, whether Sir *J. Fenwick* had due notice to make his Defence.

The firſt is a Matter of very great Moment; you are proceeding upon a Bill where not only the Life of Sir *John Fenwick*, but the Life of every Man in *England* is in ſome meaſure concerned; when a Precedent is made in this Caſe, no Body knows who may be affected or hurt by it, and therefore I deſire you will ſettle that Matter, and have the Judgment of the Houſe, whether they will admit the Council to prove any thing that is not ſuggeſted in the Bill; if you will, I do not ſee how any Man that ſtands at the Bar of your Houſe, can be prepared to make his Defence. For there ſhall be one Crime alledged in the Bill, and when he comes to the Bar, the Council that are to proſecute, ſhall go quite off from that which is laid in the Bill, and produce you Evidence to a new Crime; and he ſtares and looks round him, and you had as good allow him no Council, or Copy of the Bill. This you thought ſo neceſſary for every Man that was to come upon his Tryal for his Life for Treaſon, that you altered that Tryal, and declared no Man ſhould have any Treaſon proved againſt him that is not alledged againſt him in the Indictment.

We have had great Complaints of *Weſtminſter-Hall*, and if the Parliament ſhould proceed in this manner, may have the ſame again. If they are too raſh in their Proceedings, they will be countenanced mightily in them, if you ſhould proceed againſt a Man, and condemn him for one thing when he is accuſed of another; I deſire to know, how we can proceed in a Bill upon which Sir *J. Fenwick* is to be proved guilty, and he hath no Opportunity to anſwer it? I take it, as this Bill is drawn, Sir *John Fenwick*'s Guilt is no way concerned in it: For whereas the worthy Gentlemen tell you the Treaſon is ſpecify'd, there is no Treaſon ſpecify'd, otherwiſe than he is Indicted for it.

Mr *George Rodney Bridges.* Sir, I think the proper Queſtion before you is, whether you will allow Sir *J. Fenwick* time to produce ſuch Witneſſes as he ſhall deſire for his Juſtification? 'Tis a little ſtrange to me, that the Gentlemen that are of Sir *J. Fenwick*'s Council, ſhould inſiſt upon thoſe things, to deſire farther time for his Preparation; when (I think) 'tis very plain, they were told what they were to prepare for by the Bill, which was, they were to juſtifie Sir *J. Fenwick* againſt thoſe things he ſtands indicted for; and the Matter of the Indictment is the Thing to be proved before you, and the Witneſſes to make it good, are likewiſe mentioned; one of them is gone, but his Teſtimony remains upon Oath, not only to the Grand Jury, but in another place, that I am told of; I do not think you will think it reaſonable, after the King's Council have made out their Evidence, to give him time to make their Obſervations upon the Charge; ſo you will conſider before you hear the King's Council, whether you will allow him farther time, or no.

Sir *Joſ. Williamſon.* Mr Speaker, the Gentleman that ſpoke laſt, ſtates the Caſe to be, Whether you will think it reaſonable to allow Sir *J. Fenwick* farther time to produce his Witneſſes? You may, Sir, make that the Queſtion; but that will depend upon another, which is, Whether you think that Sir *J. Fenwick* had not notice enough to prepare to defend himſelf againſt the Charge contained in the Preamble of the Bill? And I add this further, Whether the Manner and Way of expreſſing that particular Charge in the Bill, is not ſo Worded, ſo Charged, as here expreſsly to become a Charge that he is to anſwer for; and not only as a Matter of Fact Hiſtorically related, not to come in Proof here: For if it proves to be well Charged in the Preamble, 'tis a particular Fact of Treaſon he is to anſwer for in this Houſe, and then he hath had time enough; ſo that now you are to judge of your own Way of expreſſing your ſelves. I believe every Gentleman knows it was the Senſe and Meaning of the Houſe, that thoſe are the particular Treaſons mentioned in the Indictment with which he ſhould be charged at the Bar, and have time and liberty to defend himſelf; and not only to the Allegations that he had been Indicted, *&c.* Now, Sir, if you ſhall allow theſe Gentlemen to except againſt your Way of expreſſing your ſelves, that I ſubmit to you: But 'tis clear to me, that this was a very good and proper Way of expreſſing your ſelves, to charge him with theſe Facts, and to give him Liberty to diſprove it. If he and his Council underſtood it otherwiſe, the Queſtion is, Whether their differing with you in the Way of expreſſing it ſhall be allowed to them, without taking a reaſonable Exception to it? You are ty'd here to the ſtrict Rules of Juſtice, but as to the Forms of Proceeding below, I don't think you are. Our Meaning was moſt certain (though he was indicted, that was nothing to us) that they ſhould bring their Proof to our Bar to prove him guilty; and if you ſhould give him two or three Days time, you muſt mend your Bill to their Way of Expreſſion, and to their Senſe.

Mr *Brotherton.* I take the Queſtion to be now, Whether the King's Council ſhould give Evidence of any other Matter than what is alledged in the Bill? As to that I muſt obſerve to you, that this Bill does not ſet forth any particular Charge againſt him; it does not ſay, that he ſuch a Day did ſuch a Fact, whereby he can make his Defence, 'tis only the Recital of an Indictment; and it does not ſay the particular Time and Place where the Fact was done. Now as to what that Gentleman ſays, if it had been ſaid generally, that he ſhould be attainted, it had been ſufficient. 22 *H.* 8. The Statute for attainting one for putting Poiſon into a Pot, *&c.* there is the Day and Year when the Fact was committed, and ſo he might make his Defence. Then the King's Council offer to prove, that this *Goodman* was conveyed away by Sir *J. Fenwick*, and there is no ſuch Charge in the Bill; for the Bill only ſays, that he is withdrawn; and I am of Opinion they ought to give Evidence of nothing but what is in the Bill.

Mr *Whitaker.* As to the Exceptions made by the Council to the Inſufficiency of the Bill, by which they pretend Sir *J. Fenwick* was lead into an Er-

ror, ſo that he had no due Notice, I muſt needs ſay, if they were in *Weſtminſter-Hall* they would be in the Right: but this Houſe is not bound to thoſe Forms; for I believe the Enacting Clauſe would do the Buſineſs of Sir *J. Fenwick* well enough, if all the reſt were laid aſide; and I will conſider it with as much Tenderneſs and Conſcience for the Priſoner at the Bar, as any that brings Arguments from *Weſtminſter-Hall*. I would conſider, Whether ſuch a Defence as they have made, that from the Bill (as to what is laid in it) he had not Notice enough to prepare to make his Anſwer: They ſay, a Recital is no direct Affirmation in Civil Matters; It is an Aſſimation. For to ſay, *Whereas ſuch a one is Bound*, is good in a Declaration upon a Bond. Now I would know, Whether this be not enough to ſay, that he is Indicted, without an Allegation that he is guilty? Had the Bill no recital at all, it had been an Objection; but it may be it had been ſuch an Objection, that they ought to have done ſomething of their Parts, as to have deſired the Opinion of the Houſe to what they ſhould have anſwered: For ſuppoſe there had been no Recital at all, (and you may make what Recital you think fit) what ſhould Sir *J. Fenwick* have done? There are ſome Inſtances at Common Law; A Man is indicted for being a common Barrater, and there are no Inſtances given in the Indictment; why then he comes and prays the Court, that they may declare what Inſtances they will give, and that they may give no other Words in Evidence: Therefore I queſtion not but that ſhou'd have come on his Part, he is to be heard as to the enacting Part of the Bill; and under Favour you could do no otherwiſe. Now if they do offer to give Evidence of any Treaſon that is not ſpecified in the Recital of the Bill, and the Council make an Objection to it, I ſhall agree with them.

Becauſe many Lords in the Gallery.

Sir *Ed. Seymour*. My Lords, and you Mr Speaker, what hath been ſaid to you by that worthy Perſon that ſpake laſt, no doubt is true; That if there had been no more than the enacting Clauſe, it would have done Sir *J. Fenwick*'s Buſineſs with a Witneſs, or rather without a Witneſs: But that is not the Queſtion we are diſputing here; but the Queſtion is, whether you will give Sir J. *Fenwick* longer time to make his Defence to that Part he inſiſts on, that is not contained in the Bill. You are well ſatisfied that you can't go through with the Suggeſtions to Night, and the Debates, and what relates to it; and I find no Perſon againſt putting it off, but becauſe it would be a delay. and if it be no delay that Reaſon is out of Doors.

Paſt 3 a Clock.

They tell you the Council could not but take Notice of the Matters ſuggeſted in the Indictment: I cannot think that is reaſonably argued; becauſe they do know the Practice and Method is ſuch, That they can take Notice of nothing but what is ſpecified and contained in the Bill. And therefore there being no Guilt charged upon Sir *J. Fenwick* in the Bill, Is it reaſonable they ſhould come and accuſe themſelves here, or make a Defence to what is not Charged? No; but, ſay they, it is implied. This is an untrodden Path, and you ought to walk as ſecurely in it as you can. 'Tis extraordinary that you bring Sir *J. Fenwick* here to anſwer for Treaſon, when 'tis allowed in the Suggeſtions of the Bill; you have but one Witneſs to that Treaſon, and when you take theſe extraordinary Steps, you ſhould comply with him as much as you can in the Forms. For if Treaſon be not Treaſon unleſs it be proved by two Witneſſes, and you will give him Liberty to make his Defence, I think it no loſs of Time; for you can't go through the Bill to Night, to ſee whether Sir *J. Fenwick* be guilty of what is contained in the Indictment. And I will give you one Reaſon why he could not be prepared to make his Defence in ſo ſhort a Time, for he could not produce his Evidence if he had any; and if you give him longer time, I ſuppoſe you will think fit that Sir *J. Fenwick* ſhould give an Account of what Witneſſes he ſhall make uſe of for his Defence, and you will give an Order for thoſe Witneſſes.

Mr *Harcourt*. If Sir *J. Fenwick*'s Buſineſs muſt be done, I hope we ſhall do it like rational Men, and what we Enact be able to give a reaſonable Account of it in the Preamble of the Bill.

As to the Queſtion propoſed, your Debates have run ſeveral Ways: The firſt is, Whether Sir *J. Fenwick* ſhall be allowed further Time? And in this Caſe, whoever I differ with, 'tis of that Nature that I muſt deſire the Liberty of ſpeaking my Mind. I muſt confeſs I ſee no Room for inlarging the Time, and I ſhall humbly ſubmit my Opinion to other Gentlemen, whether he ſhould have further Time to prepare his Witneſſes: And for that, pray conſider the Nature of the Matter before you.

Sir, there is nothing certain that is alledg'd in the Bill; and ſhould you allow him further time, to anſwer that which is not alledged, I can't imagine what Effect you would have of it. 'Tis ſaid indeed, he ſtands Indicted; but 'tis no where ſuggeſted, that he is guilty of that Indictment. This general Charge ſeems a great Hardſhip: There is no one Thing that ſo many have been unjuſtly taken off by, as the Uncertainty of alledging general Facts in Indictments of High-Treaſon; nor has any Thing been complained of in ſuch Trials for a greater Grievance. What have you done in the Bill for regulating of Trials in Caſes of High-Treaſon? In that Bill you have reformed that Abuſe, and taken care, That whatever Treaſon a Man might be guilty of, yet he ſhall never upon his Indictment anſwer to any Fact, unleſs the particular Overt-Act be expreſsly laid and affirmed in his Indictment.

That which ſeems moſt reaſonable in this Caſe to be done, is not to inlarge the time; but when you think fitting to proceed, proceed upon what is before you. Here are ſome Matters expreſsly alledged; let them go over the Recital, ſee whether they can prove that; but I can't imagine to what purpoſe you ſhould give the Priſoner further time to anſwer nothing, for that which is not Charged is ſo.

Mr *Finch*. Mr Speaker, Sir, this is a Queſtion in my Opinion of very great Conſequence: You are very well told from below, that this is an untrodden Path, and I am the more confirmed 'tis ſo from this Debate.

We are told, That Sir *J. Fenwick*, or his Council, could not be ignorant of what they were to prepare themſelves for. For this was our Meaning, ſays one Gentleman, though I find the Path is ſo untrod we are very unfortunate in expreſſing of it; for we have not ſaid it at all in this Bill; we have ſaid, Sir *J. Fenwick* was indicted, *&c.* Sir *J. Fenwick* hath had a Copy of this Bill ſent him,

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Council allowed him, and upon a ſecond Reading he comes to make his Defence. We are told, the Proceeding upon this Bill is not to be reſembled to the Proceeding in *Weſtminſter-Hall*, and this is ſufficient in a Bill (though in an Indictment it would not) without alledging that Sir J. *Fenwick* is guilty. But one would think that if Sir J. *Fenwick* is guilty; every Allegation in the Bill, that is, the Inducement to the Bill which is for attainting him, ſhould be a good and juſt Ground for the Attainder; and then, this Gentleman that hath had a Copy of the Bill to prepare for his Defence, and ſhew you Reaſons why the Bill ſhould not paſs, though our Proceedings are not to be reſembled to the ordinary Proceedings, yet we are to expect from him ſuch a Defence as the ordinary Proceedings in *Weſtminſter-Hall* would require: But I think this is hardly to be expected; one might have thought, and reaſonably enough, that it might have come into his Imagination, that if there had been Ground to attaint him, by the ordinary Proceedings and Methods of Juſtice, the Parliament would not have taken an extraordinary Courſe to come at it: For I can never think it a good Reaſon to proceed this Way, that is, for the ſaving of Time; and if there be extraordinary they muſt gueſs at that out of the Bill: Now that is grounded upon thoſe Suggeſtions that I have cited; and then I ſhould have imagined, that whereas he had been indicted upon the Oaths of two Witneſſes, as the Law requires, and one of them was withdrawn; that you had rather intended to have charged him with ſome Contrivance to elude Juſtice, whereby you had reaſon to exert your extraordinary Authority to proceed againſt him by way of the Legiſlative; and I do not find we have any Precedent to warrant this Proceeding, though in our Debates we have endeavoured to find one; yet I can't but obſerve the Conſequence of this hereafter: For whether we can find a Precedent to warrant this Proceeding in former Ages, or not, we are making a Precedent for our Poſterity. And conſider the Conſequence of this Precedent you are making; I think all the Bills in Parliament are grounded by the moſt ſerious Ways of Deliberation, before you come to Judgment: And Bills of Attainder ought much more ſure to require the Seriouſneſs of your Debates; but I can't but obſerve the Steps now made; I am afraid there was a wrong Step at firſt; I was not here the firſt Day: But I recollect ſome Things from the Bill it ſelf; the tenderneſs of thoſe Things upon which this enacting Clauſe does ſtand. Here was no Evidence given to introduce the Houſe to bring in this Bill of Attainder; when this Bill is brought in the Houſe, and the Preamble, that ſuggeſts that which is the Ground of the Enacting Part conſidered in the Houſe; and the Houſe did not think it reaſonable to proceed to the Reading of it a ſecond time: I remember we were told, Won't you read it a ſecond time, when you may have an Opportunity of having thoſe Suggeſtions proved to you? This was the Ground why this Bill was read a ſecond time. For conſider, otherwiſe a Gentleman may in any other Caſe as well as this, deſire leave to bring in a Bill for attainting ſuch a one, and tell you, you ſhall have good Reaſon given to you for it afterwards; and though the Reaſons ſuggeſted in the Bill, are not ſufficient, you may have Reaſons out of the Bill that are ſufficient. What a Precedent will this be? Why Sir, length of Time gives a Sanction to thoſe Precedents which the Age that made them think not of; and they become good Examples to Poſterity, that were even very heinous Precedents to the preſent times. Now if this ſhall ſtand, as now in the Bill, I would ask what Man in *England* is ſecure when a Parliament ſhall ariſe that hath a Mind to attaint him? Why then, Sir, if you do amend the Bill, conſider the Method of your Proceedings; you do your ſelves, in effect, declare, That for bringing in of the Bill, for twice reading of the Bill, you had no Ground at all; for otherwiſe you had good Grounds recited in the Bill, and that muſt be a ſufficient Ground to attaint him; and if you declare it no ſufficient Ground to attaint him, you declare you have brought in a Bill, and read it twice, without any Ground. Whether you will allow liberty to offer at your Bar any Suggeſtions otherwiſe than in the Bill, that I muſt ſubmit to you; and for giving time, ſince that is a Queſtion of a very extraordinary Nature; but have humbly offered my Thoughts, whether any thing ſhall be offered otherwiſe than is ſuggeſted in the Preamble of the Bill? I hope you will not, for the Precedent ſake you are now making, which if you do, I am afraid Bills of Attainder may be come now as frequent as Bills of Attainder were in *Richard* the II. time, which I hope never ſhall be.

Lord Norreys. Mr Speaker, I will not pretend to tell you that you are bound by other Rules than Rules of Juſtice; but what is Juſtice in *Weſtminſter-Hall*, is ſo here, and every where. And laſt Year you thought it Juſtice that no Man ſhould be brought to a Trial, but he ſhould know what were the particular Facts that were alledged againſt him.

Lord Cutts. I think it, in ſome meaſure, a Misfortune, That a Matter of this Nature, as is your preſent Debate, hath held you ſo long; and conceive it a Thing to be wiſhed, that every Gentleman that ſpeaks upon this Occaſion, would apply himſelf more cloſely to Reality, and leſs to Forms; I mean to Forms conſidered meerly as Forms, for it ought to be true Reaſon that is convincing to you: And you ought not to tie your ſelves to any Forms upon this Occaſion, but ſuch as are grounded upon Reaſon; and really I have not heard any thing that fell from any Gentleman that ſhews his doubt of the Nature and aggravating Circumſtances of the Crime of the Priſoner; but it hath conſiſted with the great Candour and Juſtice of this Houſe, to ſhew this Favour to the Priſoner before you: The Council ſay, they are unprepared; if they mean they ſhould prepare themſelves for more grounds of Difference and Chicanry, I would not give them farther time; I can't perceive there is any reality of Argument in it, and there is in Reaſoning, as in Religion, ſometimes a Form without a Power.

Sir *Tho. Dyke.* Sir, you have now two or three Queſtions before you; I deſire you will confine our Debates to one Point; I think whatever Opinion Gentlemen may be of concerning the Proof, I think the Point under your Conſideration, if you will make a right Judgment, is the Preamble of your Bill, which I take to be the Foundation of it, and the Cauſe for which you attaint this Gentleman: Now the Preamble does not recite, and ſay, he is guilty, but only indicted, nor ſet forth any time; nay it does not ſay he was arraigned. So that theſe things are very uncertain, and yet you muſt attaint him for the Things recited

recited in your Bill. And you know these Acts of Attainder are extraordinary Methods in Cases of Treason; and if you put it upon this Point, that the Act attaints him for one Thing, and the Council shall prove another, it makes it more uncertain than it is, and no Man can be safe; and therefore I hope you will confine the Council to Proofs of the Matter contained in the Bill.

Mr *J. How.* Sir, I shall not move you to any thing that may tend to a delay of the Matter before you: I think, if you please to go on upon the Matter suggested in the Bill, they are Allegations which must be proved before the Bill is committed, (and that will not hinder Sir *J. Fenwick* from being examined to the Treason likewise.) Therefore all that is alledged in this Bill, I suppose, being thought necessary to be proved, I desire he may be called in, and the Council may go on to prove what is alledg'd in the Bill, and afterwards Sir *J. Fenwick* may answer them.

Lord Coningsby. If the Question was, whether you should grant this Gentleman time or no to make his Defence, I should not have troubled you? But the Question now seems to be, whether the Bill does depend upon the bare Suggestions of the Bill, or upon the Guilt of Sir *J. Fenwick?* And therefore if Gentlemen do insist upon it that he should have longer time to defend himself, as to his being Innocent or Guilty, I shall not oppose it; but if you think fit to put it off, as if the Fate of the Bill did depend upon the Suggestions of it, I can't agree to that Matter; therefore I desire a short time may be given him to answer the Matter of his Guilt.

Mr *Harley.* I find all Gentlemen that speak of this Subject, do say this Matter is of a very extraordinary Nature, and you have entered into it by very extraordinary Methods: But I must only observe, that this being the first Bill of this kind that hath been brought into the House, before any Proof, Gentlemen must be excused if they are cautious what Steps they do take; and when the Wisdom of the House have thought fit to take quite different Methods, as to the Preliminaries, 'tis not to be wondered if they meet with difficulties in their Proceedings.

Some Gentlemen press for more Time to be given to Sir *J. Fenwick* to be prepared; and others urge, that you should declare, whether the Council should be heard to any Thing, but what is suggested in the Bill? And I think you must give a Determination to the last Question, though the whole House agreed to give him longer Time: For if you give him longer time, it will after come to the same Debate, whether they shall be heard to any Thing but what is suggested in the Bill? If you should think fit to add any Thing, then it will be reasonable that he also should be heard to that; for in the Case of the Death of a Man, let him deserve never so much, yet he does not deserve to die unjustly by your Hands.

It seems a very plain Proposition, that when a Man is accused, he should not answer to what he is not charged with; and to charge it with *Innuendo*'s and *Implications* is so uncertain, that as I always have seen it denied in this House, so I hope I shall not see so great an Assembly give any Countenance to it. They did tell you, they were prepared to speak to the Reasonableness of the Bill; but this Matter not being suggested in the Bill, they are not prepared to speak to it.

Sir *Tho. Littleton.* I see now where your Debates have led you: I thought the regular Subject of our Debates had been the Point upon which the Council withdrew; and that was for Time. For what? Why, to prepare themselves to answer any Evidence that might be given against them; because they perceived you did expect the Council for the Bill should produce their Evidence. But they made an Objection; say they, we did not understand your Order was, that we should come prepared to oppose any Testimony *Vivâ Voce* to be given against us, but only prepared to speak to the Reasonableness of the Bill. Now, Gentlemen, after five or six Hours Debates, have been willing to accommodate the Matter (that no Body might think that any one pressed a Matter unreasonable) that they might have time: But some Gentlemen will not be satisfied with granting what the Council desired, but they desire more. And what is that? Why, that is to know the Opinion of the House, whether you will admit any one Thing to be proved that is not suggested in the Bill? And I do take this to be within the Suggestions of the Bill as fully as can be expressed. For what does the Bill say? The Bill does say, he was indicted of High-Treason, and that one of the Witnesses are gone: And, Gentlemen come to the Conclusion, and skip over the intermediate Part of the Bill; for the Bill does say, that he did incite and consult, *&c.* And the Objection of the Council was not against the Evidence; but they said, they were not prepared at that time to answer it, and there they leave it; and thereupon the House go on upon the Debates. What can we expect that they intended? They might think, either we shall gain our Point, and the House will give us time; or otherwise, if they go on, and hear this Evidence, then we say we wanted time. And that will be only Evidence *ex Parte*, and not carry so much Weight with it, though we have nothing to say to it; or they might think it may have this Effect, that the House will not go on, and hear any Evidence at all; in either of these Cases, we have the fairest Advantage that we can have, on the second reading of the Bill, in defence of our Client: All they desired was, that they might have time; and I hope that which satisfied them that are most concerned, may satisfy any Gentleman of the House.

Mr *J. Howe.* The Question is not, what they asked? But what is reasonable for us to grant? I was in the Beginning against any Delay and I think there is no occasion of Delay; All I desire is, Sir, That the King's Council may be desired to prove the Suggestions of the Bill *ex Toto.*

Mr *Soll. Gen.* Most that have spake of this Matter have said, that the Matter is very generally laid in this Bill, and the Council could not very well know to what to apply themselves: That it speaks of High-Treason in general, and of Aiding the King's Enemies, which is very general: It recites that indeed; but the Indictment is legal, according to the late Act of Parliament. 'Tis not only said, that he designed the Death of the King, but for that Purpose, he, and others, met together and agreed to send *Charnock* to *France*, to go to King *James*, to induce the

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French King with an Armed Power to invade *England*. Now how can any thing be more particularly charged? And the Indictment is so charged in your Bill. I think therefore the Council could not be ignorant to what they ought to apply themselves: But by what I perceive, Gentlemen are very well contented to give him further time. I remember, when the Bill was first brought in, there was a long Debate for a second Reading; and some Gentlemen thought it hard to be tried by so great an Assembly, and said, they had rather be tried by a fewer Number: But I shall observe, that you have sent the Copy of the Bill to Sir *J. Fenwick* before hand, and you sent him Notice that he should provide himself. But I remember a much better Man than Sir *J. Fenwick*, who had the Misfortune to be under an Accusati- of High-Treason, had his Indictment one Hour, and was tried the next; and though he pleaded to have his Trial put off till the Afternoon, he could not prevail with the Court of Justice to do it. Sir *John Fenwick* hath had a Copy of his Bill for two or three Days, but he never had any Copy till he had pleaded.

Mr *Waller*. I stand up only for my Information; that which I would know is, whether the Council did not ask you the Question, whether they should be bound to answer any thing that is not in the Bill? If they asked that, then the Gentleman that spake here is answered; and the Gentlemen of the House do not insist upon what Sir *J. Fenwick*'s Council did not insist on. And I do think the King's Serjeant, who opened the Proceedings, after he had opened what had been before the Grand Jury, seemed to make it a Charge, as if Sir *J Fenwick* had been condescending to the withdrawing of *Goodman*. Now that seemed, as if they designed to make that a Part of the Evidence.

Sir *Richard Temple*. The Council did not insist upon it only to answer the Suggestions of the Bill: Every Body knows, they objected to the others going on with the Evidence they opened, because it was not in the Bill; and the King's Council could not so much as alledge, that it was in the Bill; and they would have gone on to have proved the Indictment. There is another Thing: It is told you as if the Preamble had suggested something of this kind, that there was a Meeting. Now that Gentleman that spake last but one, has cleared it, that it only recites he was Indicted for these Things, and this brings nothing in Issue, whether he be guilty or no? Now, I think, the present Question, and only Question before you, is upon the Suggestions of the Bill; for you can bring nothing in Issue here, but what is in the Bill; and no Body can insist, by the Rules of Reason or Justice, That any Man should be heard to any Matter of Fact but what is in the Bill. And therefore I think there is nothing before you, but that you should give Direction to hear them to what is suggested in the Bill.

Mr *Methwen*. Sir, I speak to the Method of your Debates: Your Debates arise upon an Objection that was made by Sir *J. Fenwick*'s Council, against the Council for the Bill going on, with their Evidence to prove Sir *J. Fenwick* guilty of High-Treason.

I must beg leave to differ as to what the Council did say; for some of the Gentlemen that spake last, the Force of their Objections was, that they should not now go on, for they were not prepared to answer them; and the Reason they gave, was, that they had not formal notice; and the other afterwards spake to the Shortness of the Time; your Debates for a long time went pursuant to this, whether you should allow them further time or not? But the length of your Debates hath raised a new Matter. Though I think that Doubt, though it was not made by the Council, may be very properly made by any worthy Member that hath that Doubt, whether as the Bill is brought in, the King's Council might at any time speak to that Point, though Sir *J. Fenwick* be acquainted with it? And I must always agree that Doubt ought to be resolved, before you come to resolve whether further time shall be allowed him or not; and therefore I propose it, that this Question may be put, whether the House will hear, at the Bar of the House, the Evidence there is to prove Sir *J. Fenwick* Guilty of the High-Treason whereof he was indicted?

Col. Wharton. You have three or four Questions upon your Paper; and now after so long a Debate as we have had, I hope Gentlemen will not think fit to start new ones; and I hope you will take care that Gentlemen shall not rise up three or four times to speak to this Matter. You have another Rule of the House, That when a Question is moved, and seconded, though another Question is moved afterwards, yet that must be the first Question that is to be put, and I hope you will keep us to these Rules.

I wonder at some Objections: 'tis told you, that this is such a Proceeding that never any thing of this Kind was before; and that you are here going to read a Bill of Attainder before you have had any manner of Evidence, upon which you should ground the bringing in of this Bill. Gentlemen must remember, or should have informed themselves; for 'tis very certain that you had very good Grounds to vote this Bill to be brought in: I see the Gentleman that brought in his own Accusation; you had his own Discovery read, and Mr Attorney did inform you what was against him, and how he stood indicted. And another Gentleman by me told you, he was with him, and there was a Treaty for his Pardon; this was Evidence for reasonable Men to go upon: And to tell you that these Precedents will endanger your Liberty? Under favour, this is the Ground of all your Liberty. 'Tis by this Power of Proceeding, when you have not that Evidence that *Westminster-Hall* requires, by which you will keep great Men in Awe.

Now give me leave to speak to the Question that I think you ought to put; 'tis told you, by the Council for the Prisoner, that they are not appraised what the Sense of the House was, and upon that Account they desired further time: I confess, when you allowed Council, I was of Opinion it was a Favour; and now since they have made this Objection, though I do not believe you are obliged to allow them further time; yet I had rather err on that than the other Side; and therefore I think the fairest thing is to allow them some further time.

Mr *Secretary Trumball*. Mr Speaker, I have attended all this Day to your Debates, which are now in my Opinion of a very extraordinary Nature; for a great deal of your time hath been spent upon Motion of the Council for the Prisoner at the Bar, whether you should allow them further Time or no: And now, by what I recollect from

from the Senſe of ſeveral Gentlemen, the Houſe ſeems willing to allow them further time; even that is oppoſed at this Time of Day.

Sir, the King's Council have opened the Matter of Fact, upon which they did intend to produce their Evidence; and when they had opened the ſeveral Heads, the whole Objection that I heard made by the other Side, was, They did not think the King's Council could have proceeded to examine Witneſſes upon thoſe Facts, and that they were not prepared to bring Witneſſes on the Side of the Priſoner, and therefore prayed for further time; truly, whether that be reaſonable or no, or whether upon one Favour the Houſe think fit to grant another; I can't tell what might appear, if it had come to a Queſtion; ſince the Life of a Man is concerned, we ought to be tender of it, and I ſhall be as tender as another; therefore I am of Opinion, that a reaſonable Time ſhould be allowed. To do what? Why, upon the Evidence the King's Council ſhould produce, they ſhall bring their Witneſſes on the other Side to anſwer them: Whether the King's Council will produce Evidence that is foreign to the Bill, that will be in Judgment of the Houſe; but it was a good Motion made below, which I cloſe withal, that a ſhort Time may be allowed them to make their Defence, and bring their Witneſſes.

Mr *Speaker*. Gentlemen, you have had a long Debate; I don't remember any formal Queſtion that was propoſed at firſt, till ſuch time as I read to you what I thought was the Queſtion upon the Debate; when I read you the Queſtion for further Time, there were ſeveral Members ſtood up, and ſaid, that was not the Queſtion; and took Exceptions to it, and propoſed that the Council ſhould be confined to produce Evidence only to the Matters ſuggeſted in the Bill; ſo that now I have two Queſtions upon my Paper, which I will read to you, and put which you will. One Queſtion is, That they be confined to make their Proof to what is ſuggeſted in the Bill. The ſecond Queſtion is, that Sir *John Fenwick* be allowed further Time, *&c.*

Sir *Chriſtopher Muſgrave*. A Gentleman ſaid, the ſecond Queſtion upon your Paper was but lately ſtarted; but I remember, a little after the Council was withdrawn, it was moved, Whether you would give them further Time? And I, preſently after in the Debate, did take the Freedom to ask, Whether it was intended they ſhould Anſwer to any Thing but what was contained in the Bill? And I remember there was a Gentleman of the long Robe ſaid, That there was nothing offered by the King's Council, but what was within the Suggeſtions of the Bill. Another Gentleman ſaid, when they may have longer Time, they'd not ſeem ſo fond of it; 'tis indifferent to me, provided he be prepared to Anſwer. But I can't but obſerve, That the Concluſion of that honourable Perſon was, that at laſt you muſt come to determine the Queſtion. You were likewiſe told, by an honourable Perſon nearer the Bar, Why do you diſpute this, now you have ordered the King's Council to produce the Evidence, and ſo you have concluded your ſelves? But for my ſelf, I muſt confeſs I did never think the Evidence was to be heard otherwiſe than as to the Suggeſtions of the Bill. And if that Point be to be determined, Why will not you determine it now, rather than to have another Debate upon it?

Mr *Boſcawen*. That which is preſſed by ſome Gentlemen, is Begging of the Queſtion. What have we here brought Sir *John Fenwick* for? Was it not to ſatisfy our ſelves, whether Sir *John Fenwick* was guilty of High Treaſon? Now that is ſuppoſed by ſome Gentlemen not to be within the Bill: If it be not within the Bill, I deſire you would throw out the Bill. But the Thing is, we muſt not examine to thoſe Things that will make Sir *John Fenwick* guilty. Sir, This is a very nice Thing, and very curiouſly woven. The great Thing, ſay ſome Gentlemen, we muſt take care of, is the Blood of a Man: Does any one ſay he is Innocent? No: But we muſt have ſome Way or another that he muſt not be brought to his Tryal. I deſire, as *Engliſh* Men, you will not only take Care of the Life of one Man, but of the Life of the King; of the Lives of our Wives and Children, and all our Families. What will they ſay without Doors? You are afraid to meddle with Sir *John Fenwick*; and therefore you will ſlide it away upon another Point, That his being guilty of High Treaſon is not within the Bill. I am not for taking the Advantage of Time; I deſire, as it was moved before, That you will give him Time, and try whether he be guilty of this Treaſon or no, or otherwiſe do nothing in it at all.

Then the Order was made for Candles to be brought in.

Sir *Thomas Littleton*. Now you have Candles brought in, it will be fit for you to return to the Queſtion: For my Part I am willing to put both: But I think the laſt Queſtion that you have upon the Paper, properly ſpeaking, is to be put firſt; and that is, That the Houſe will proceed to examine Witneſſes to the Treaſon in the Bill for which he ſtands Indicted.

Mr. *J. How*. I think the Queſtion ought to be, That his Counſel be directed to bring Witneſſes to the Allegations in this Bill.

Sir *Thomas Littleton*. I propoſe it to you thus; That the Houſe will proceed to examine Witneſſes at the Bar, to the Treaſons mentioned in the Bill for which he was Indicted.

Mr. *J. How*. I think that Gentleman might very well have moved the Queſtion without that Limitation; for that is as much as to ſay, That Witneſſes ſhall be examined to none of the Treaſons in the Bill, except thoſe for which he hath been Indicted; and that is a Limitation I hope ſhall not be put to the Enquiries of this Houſe. I hope you will put it, That they ſhall bring Evidence to the Matters alledged in the Bill generally: There are ſeveral other Allegations in the Bill which I would have him anſwer to; as the allienating the Affections of the King's Subjects from him, which I take to be High Treaſon.

Members. No, no.

Mr. *J. How*. Why? If it be not High Treaſon, it hath nothing to do in that Place. I believe 'tis a very high Crime, and would induce me very much for the Puniſhing of Sir *John Fenwick*.

Mr. *Norris*. Sir, I do not know how the Queſtions may be carried ſince Candles are come in; but I think 'tis for the Better. I think there are two Things have been ſpoke to; one is this Bill: I find thoſe Gentlemen that were againſt the Bill on *Friday*, are more againſt it now. I was for the Bill then, and am now for a ſecond Reading of it: I think the Bill is very plain, and know not what they would have mentioned in it more, unleſs

leſs they would have had the *King*'s *Head Tavern*, and what Wine they drank there. I think there is all the Reaſon in the World to hear the Witneſſes to prove him guilty of High Treaſon. As to the Point of Time, I ſhould be very willing to allow it them, if that Queſtion was put; and I think you have been very favourable to him already, in allowing him Council.

Mr. *Smith*. I would only obſerve, when the Bill was to be brought in, the Objection was, That you had not Witneſſes. And now the Queſtion is, Whether you can hear Witneſſes upon Facts not particularly aſſigned in the Bill. I believe no Man can ſay, but that in the Indictment there are particular Facts that ought to be examined: I do own, for my Part, if Sir *John Fenwick* was a greater Man than he is, It were better he ſhould eſcape, than you ſhould ſpend ſo much Time about him. Sir, the Indictment is mentioned in the Bill; no Man thinks that *Goodman*'s going away, is Reaſon enough for bringing in ſuch a Bill againſt Sir *John Fenwick*

Mr. *Speaker*. Shall I read you the Queſtion?

That Sir John Fenwick *be allow'd further Time to produce Witneſſes in his Defence, againſt the Charge of High Treaſon, and that he name his Witneſſes.*

Which Queſtion was put, and paſſed in the Affirmative.

Mr. *Speaker*. The other Queſtion is,

That the Council, who are to produce their Evidence againſt Sir John Fenwick, *be allowed to prove Sir* John Fenwick *guilty of High Treaſon?*

Sir *Thomas Littleton*. I do think one of the Reaſons why this Bill was brought, was, becauſe poſſibly, by the Abſence of this Witneſs, he could not, ſtrictly ſpeaking, be proved guilty; though all Mankind is ſatisfied in his Guilt. And therefore I queſtion whether it will amount to a legal Proof: And if you had ſuch a Proof as would convict him by the common Proceedings of Law, I ſhould not have been for a Bill of this Nature: For 'tis againſt the Honour and Dignity of this Houſe, to do the Work that an inferior Court can do. But probably, by the Abſence of this Witneſs, Sir *John Fenwick*, at a Tryal in the *Old-Bailey*, might eſcape; though at the ſame Time 'tis highly probable, the Witneſs that is wanting to convict him, is by his Means gone out of the Way. Therefore I ſpeak to the wording of the Queſtion; you ſay, *Shall be allowed to prove*. I would willingly prevent what may be objected when we come upon this Debate: If you do uſe the Word *Prove*, they may ſay, this is not Proof; for ſtill *Goodman* is not here. If you pleaſe to ſay, That we will examine Witneſſes to the Treaſon, and we will be Judges how far it appears to us, whether he be guilty, or not guilty.

Mr. *Speaker*. Will you let me propoſe it to you thus then? That the Council, in producing their Evidence againſt Sir *John Fenwick*, be allowed to examine Witneſſes touching the Treaſons mentioned in the Bill, for which Sir *John Fenwick* is Indicted?

Mr. *Mountague*. I do not obſerve, that in Reading of it, you ſay any Thing as to the other Allegations of the Bill: I think you ſhould word it, That the Council be allowed to produce Evidence to the Allegations in the Bill, and the Treaſons whereof he ſtands Indicted.

Mr. *Speaker*. Well then, the Queſtion is this, That the Council that manage the Evidence againſt Sir *John Fenwick*, be allowed to produce Witneſſes touching the Allegations in the Bill, and the Treaſons whereof he ſtands Indicted?

Which Queſtion being put, it paſſed in the Affirmative.

Mr. *Speaker*. Will you pleaſe to appoint a Time for it?

Mr. *J. How*. That I would move you is this. You were ſo extreamly late before you went upon this Information, That you had not Time to go through any Part of it; therefore I would move you, that you would appoint early in the Morning for Sir *John Fenwick* to be here.

And thereupon it was Ordered, That Sir John Fenwick *ſhould be remanded to* Newgate, *and brought to the Houſe on* Monday 10 *a Clock.*

Mr. *James Mountague*. Sir *John Fenwick* now inſiſted he had not Notice; I humbly move, that he may be brought in, and acquainted with what you have Ordered. *And accordingly Sir* John Fenwick was brought to the Bar.

Mr. *Speaker*. The Houſe have conſider'd, of what Sir *John Fenwick* hath ſaid at the Bar, by his Council, and they are of Opinion, That Witneſſes ought to be examined there, to prove the Allegations of the Bill, and to prove him guilty of High Treaſon whereof he ſtands Indicted; but in favour to you, becauſe your Council ſaid you were not prepared, the Houſe is willing to give you Time till *Monday* next, to make your Defence; and they require you to give in a Liſt of your Witneſſes, and if you ſend to me, you may have a Warrant for their appearing at that Time; and they require you to be here, ſo that they may proceed upon the Bill exactly at Ten a Clock.

And Sir John Fenwick *being withdrawn,*

Reſolved,
That the Bill for Attainting Sir John Fenwick *of High Treaſon, be read a ſecond Time on* Monday *next.*

Lunæ 16 die Novembris, 1696.

Mr. *Speaker*. Gentlemen, I would receive your Directions in one Thing: You have Ordered a Member to produce a Letter, and the Council, in opening the Evidence, have referred to it. That Member deſires to know the proper Time for him to do it; Whether, while the Council are managing the Evidence at the Bar, or whether he muſt ſtay till they are withdrawn?

Mr. *Sloane*. As to this Matter, I do not queſtion but 'tis to be offered as an Evidence; and by the ſame Reaſon that you give him the Favour to examine the Witneſſes that are produced againſt him; for the ſame Reaſon the Letter ought to be read in his Preſence, that he may explain it, or deny it: And give me leave to tell my Thoughts of another Matter: If that worthy Member is to offer Evidence of what he took from Sir *John Fenwick*'s Mouth, (though a Member commonly gives his Evidence in his Place, after the Council is withdrawn) I think 'tis not only fair to produce the

Letter in his Preſence, but that Sir *John Fenwick* ſhould hear what he ſays, and deny if he can.

Mr. *Speaker*. Is that your Pleaſure, that the Letter be produced before Sir *John Fenwick*, and that the Evidence to be given by Mr. *Vernon* ſhall be in the Preſence of Sir *John Fenwick*?

The Queſtion being accordingly put, it paſſed in the Affirmative.

Then the Serjeant was Ordered to take his Mace, and go into Weſtminſter-hall, *and ſummon the Members.*

And being returned, The Order of the Day for Proceeding on the Buſineſs of Sir John Fenwick *was read.* [*It being a Quarter before Eleven a Clock.*]

Then Sir John Fenwick, *and the Council and Sollicitors on both Sides, were brought in.*

Mr. *Speaker*. Sir *Thomas Powys*, when you were here laſt, you inſiſted upon it, That the Council againſt Sir *John Fenwick* ſhould be kept to the Proofs relating to the Allegations in the Bill only; or elſe that you might have further Time, becauſe the Witneſſes were not ready. The Houſe have conſidered that Matter, and in favour to Sir *John Fenwick*, that he might have no Surpriſe, have given him to this Day; but they do allow the Council to give Evidence not only as to the Allegations in the Bill, but to prove Sir *John Fenwick* guilty of High Treaſon; and therefore Mr. Serjeant *Gould*, you are at liberty to go on with your Evidence.

Mr. Serjeant *Gould*. May it pleaſe you, Mr. *Speaker*, We are here to give in our Charge; and the Evidence that we have againſt Sir *John Fenwick*. I find by your Order, That we are now allowed to produce Evidence touching the Allegations of the Bill, and likewiſe of the Treaſons for which he ſtands Indicted; therefore I ſhall beg leave to open firſt, how he ſtands charged by the Indictment.

The Indictment firſt charges him with compaſſing and deſigning to depoſe the King, and put him to Death. The ſecond Charge is, For inciting the *French* King to ſend an Army of Soldiers to invade this Kingdom, and to make a miſerable Slaughter amongſt the Subjects of this Kingdom. The Third Thing is, For adhering to the King's Enemies. The Fourth Part is, That to effect this, That he, together with ſeveral others, that is to ſay, *Charnock*, Sir *John Freind* and others, did conſult, propoſe, treat, and agree to invite the *French* King to ſend a Number of Soldiers to invade this Kingdom, and to procure great Numbers of armed Men againſt the King, to riſe and be formed; and with theſe Enemies, upon their landing and invading this Kingdom, to join, for to make and carry on a Rebellion and War in this Kingdom. And further it charges, That he did conſult, conſent and agree, to ſend *Charnock* as a Meſſenger from Sir *John Freind*, and others, into *France* to the late King *James*, to propoſe to him, to procure the *French* King to ſend Soldiers and armed Men to invade this Kingdom. Then likewiſe to effect this, the Indictment charges him with providing Horſes, Piſtols, and other warlike Arms. This is the Charge of the Indictment; and theſe Matters are in the Bill: For the Bill does charge him with compaſſing and imagining the Death and Deſtruction of the King, with adhering to his Enemies, by conſulting and agreeing with ſeveral Perſons at ſeveral Times, to ſend *Charnock* to the late King *James* in *France*, to invite and encourage the *French* King to invade this Kingdom with armed Forces, and Promiſes to join them, and aſſiſt them with Men and Arms.

Then the Bill does take notice of other Matters, That Sir *John Fenwick* hath protracted his Tryal, by giving Aſſurances to the King to make a plain Diſcovery; by Reaſon of which he did not come to his Tryal, and now one of the Witneſſes againſt him is withdrawn. May it pleaſe you, Sir, This is the Charge as it ſtands before this Honourable Houſe; and the Evidence we ſhall charge him with, will be of this Nature: We ſhall give you an Account, That the latter End of *May*, or Beginning of *June*, Sir *John Freind* and *Charnock*, and ſeveral other Perſons, met at the *King*'s *Head*, and upon that Meeting they conſulted how to invade this Kingdom; and they concluded in this, That they would ſend *Charnock* into *France*; and he was to propoſe it to King *James*, That he ſhould procure 8000 Foot, and 2000 Horſe and Dragoons; and upon their Landing they were to join them with 2000 Horſe. After this they had another Meeting; for *Charnock*, to be Sure of the Matter, would have another Meeting; and then he propoſed it to them, Whether they continued in the ſame Reſolution? And they all then declared, particularly Sir *John Fenwick*, That they did approve of it, and ſtuck by it; and that *Charnock* ſhould go for that Purpoſe to *France*. *Charnock*, in purſuance and execution of this Treaſon, does go to *France*, and brings back a Meſſage, That the Matter had been communicated to the *French* King, but at that Time he was not ready for them, and could not ſpare his Soldiers, and his Troops. Then it reſted for ſome Time, till towards *Chriſtmas*, when Sir *George Barclay* came into *England*, and he brought with him a Detachment of about Sixteen, and their Province was to aſſaſſinate the King: But there was another Part, and that was the Invaſion; and in that Part was Sir *John Fenwick* concerned, which we ſhall produce our Evidence to prove upon him; but it does fall out that we have but one Witneſs to this Matter, that we can produce *viva voce*; though when this Indictment was found, (for it was found upon the Act laſt Seſſions, which required two Witneſſes to each Species of Treaſon) we had two, but one is ſince withdrawn, and that is touched in the Bill, as in Truth the Fact is. Now if Sir *John Fenwick* had come on in the ordinary Courſe of Proceedings to be Tryed, Sir *John Fenwick* might have been Tryed upon his Indictment, for then *Goodman* had been there; but he procraſtinates his Tryal, he makes application to the King, and gives him Aſſurances from Time to Time of an ingenuous Diſcovery; but inſtead of that, when *Goodman* now is withdrawn, theſe Aſſurances have terminated in this counterfeit Confeſſion that hath been laid before the Houſe, and is charged in the Bill.

But, Sir, to ſupply this, we ſhall produce the Examination of Mr. *Goodman*; we ſhall prove to you not only the Evidence that hath been given upon this Indictment, upon which he hath been arraigned; but alſo the Evidence which hath been given upon the Tryal of *Cook*, who was convicted upon that Evidence. We ſhall go by theſe further Steps in the Caſe; and humbly offer it to the Conſideration of this Houſe, how far Sir *John Fenwick* will be affected in it. And that is this: Here hath been *Goodman*, and Captain *Porter* who

ſtill

ſtill ſtands his Ground; but they have tempted him with 300 Guineas in Hand, and 300 more was to be remitted to him upon his firſt landing in *France*, with Aſſurance likewiſe of King *James*'s Pardon, and likewiſe 300 *l.* a Year; 100 *l.* a Year whereof was to be ſettled by Sir *John Fenwick*; this Propoſition ſprung from one *Clancy*: It could not be expected that Sir *John Fenwick* ſhould appear in his proper Perſon, but he did by his Lady, who was with Captain *Porter*, and gave him Aſſurance of all that was propoſed by *Clancy*, that That ſhould be performed, and a great deal more.

We ſhall further give this Account, That when Sir *John Fenwick* was taken, there was a Letter handed to a third Perſon; and it appears by That, that he thought himſelf at that Time not ſafe, unleſs they could corrupt the Jury: For, ſays he, we muſt now get two or three ſtanch Perſons that will ſtarve the Reſt. Theſe Steps we ſhall proceed upon, and begin with the Indictment, and call our Witneſſes to it.

Mr. Serjeant *Lovel*. Mr. Speaker, I ſhall not repeat what hath been ſaid; becauſe I know what hath been materially ſaid, can't paſs the Obſervation of this Houſe. The Method we deſire leave to proceed in, is the Method you have preſcribed us; and that is, firſt to prove the Allegations of the Bill: And that we ſhall make appear to you by undoubted Proofs. That Sir *John Fenwick* does ſtand indicted for theſe Treaſons at the Seſſions at the *Old Baily*, the 28th of *May*, upon the Oaths of *Porter* and *Goodman*, that we ſhall prove by Records, and that is not capable of any Traverſe or Denial. We ſhall alſo prove, by Matter of Record, That ſeveral who were concerned with Sir *John Fenwick* in this Conſpiracy have been tryed and attainted; and then we ſhall call a living Witneſs to prove Sir *John Fenwick* guilty of Treaſon in the higheſt Manner. Mr. *Tanner*, deliver in the Indictment of Sir *John Fenwick*.

Which was delivered in, and read at the Table.

Mr. Serjeant *Lovel*. The Bill does charge, That he ſtands Indicted upon the Oaths of theſe two, Captain *Porter* and Mr. *Goodman*: Beſides, I muſt beg leave to obſerve, that by the Act of Parliament made laſt Seſſions, 'tis enacted, That no Perſon ſhall be indicted unleſs upon the Oaths of two Witneſſes; had not theſe Witneſſes been Sworn before the Grand Jury at that Time, this Bill could not have been found according to that Law, nor would Sir *John Fenwick* have pleaded: But he hath been arraigned, and pleaded; ſo that we ſubmit it to this Houſe, that it does appear upon Record, That this Indictment was found upon the Oaths of two Witneſſes: Beſides that, two Witneſſes are ſubſcribed to the Bill. Now that other Perſons have been indicted, and convicted upon the ſame Evidence, we ſhall prove, and that likewiſe by Records.

Mr. Serjeant *Gould*. I thought when we came to give you an Account of the Abſence of *Goodman*, then to have given you Account of this, aud other Matters.

Mr. *Speaker*. You will agree upon your Method, Gentlemen: Who do you call in the firſt Place?

Mr. Serjeant *Gould*. Captain *Porter*, Sir. *(Who being preſent.)*

Mr. Serjeant *Gould*. I deſire, Mr. Speaker, that he will give an Account of what he knows concerning this Matter, as alſo of what is charged in the Indictment.

Mr. *Speaker*. Captain *Porter*, the Houſe requires you to give them an Account of your Knowledge of any Conſpiracy, by Sir *John Fenwick*, againſt the King and this Government; and likewiſe of your Proceedings upon the Indictment againſt him for High Treaſon.

Captain *Porter*. About the Middle of *May* was Twelve-months, there was two Conſultations, one at the *King*'s *Head* in *Leadenhall-ſtreet*, and the other in *Pall-mall*; theſe two Conſultations were for the Conſidering of the beſt Means to bring the late King *James* into *England* again: For it was ſaid, That King *William* being gone beyond Sea, he had left but few Forces, and therefore they thought they could not have a fitter Opportunity than that Juncture; upon which, they pitched upon *Charnock* to go into *France*, and make ſome Propoſals to the late King *James*, to borrow 10000 Men of the *French* King, whereof there ſhould be 8000 Foot, 1000 Horſe, and 1000 Dragoons; and it was propoſed, when they came over, to meet them with 2000 Horſe.

Mr. *Speaker*. Where was this?

Captain *Porter*. Our firſt Meeting was at the *King*'s *Head* in *Leadenhall-ſtreet*; after that, Mr. *Charnock* deſired another Meeting, and then we met at *Mountjoy*'s in St. *James*'s, and we all ſtood to what he had before reſolved, That he ſhould go over to King *James*, and make this Propoſal; and that if he could get ſo many Men of the *French* King, we would meet him with ſo many Horſe.

Mr. *Speaker*. Sir, you ſay the firſt Meeting was at the *King*'s *Head* in *Leadenhall-ſtreet*, who was then preſent?

Captain *Porter*. There was my Lord *Aylesbury*, my Lord *Montgomery*, Sir *John Fenwick*, Sir *John Friend*, Sir *William Perkins*, *Charnock*, Mr. *Cook*, and my ſelf; we dined there, and after Dinner Mr. *Goodman* came in to us.

Mr *Speaker*. Did Sir *John Fenwick* hear this Diſcourſe?

Captain *Porter*. Yes, Sir.

Mr. *Speaker*. Did Sir *John Fenwick* conſent to it?

Captain *Porter*. He did abſolutely conſent to it. Sir *John Friend* did propoſe it; ſays he, Do not let us propoſe more than we can bring.

Mr. *Speaker*. Then you ſay you had a ſecond Meeting.

Captain *Porter*. When we agreed upon this Buſineſs in *Leadenhall-ſtreet*, Captain *Charnock* deſired another Meeting, to know if we continued in our Reſolution; and the next Meeting was at Mrs. *Mountjoy*'s, I think then my Lord *Montgomery* was not there, nor Mr. *Goodman*; but there was my Lord *Aylesbury*, Sir *John Fenwick*, Sir *John Freind*, Sir *William Perkins*, Mr. *Charnock* and my ſelf.

Mr. *Speaker*. How long after?

Captain *Porter*. About eight or ten Days, to the beſt of my remembrance.

Mr. *Speaker*. What was ſaid at that Meeting?

Captain *Porter*. The ſecond Meeting was to agree to the ſame Thing: We deſired *Charnock* to go as ſoon as poſſible to acquaint King *James*, that the ſooner he came that Year, the better.

Mr. *Speaker*. Did Sir *John Fenwick* conſent and agree, at the ſecond Meeting, to his going into *France* to procure the Forces?

Captain *Porter*, Yes, Sir.

Mr. *Speaker*. Will you give the Houſe an Account of any Thing elſe you know, relating to this Matter?

Captain *Porter*. That is all.

Mr. Serjeant *Gould*. Was you examined by the Grand Jury, when the Bill was preſented againſt Sir *John Fenwick*?

Captain *Porter*. Yes, Sir.

Mr. Serj. *Gould*. What Evidence did you give to them?

Captain *Porter*. The very ſame I give now.

Mr. *Speaker*. Mr. Serj. *Gould*, what have you to ſay further to him?

Mr. Serj. *Lovel*. We would ask, whether Mr. *Cook* was at the firſt Meeting?

Capt. *Porter*. Yes, Sir, he was at both Meetings.

Mr. Serj. *Lovel*. Was Mr. *Goodman* at the preferring of the Bill of Indictment at the *Old Baily*?

Captain *Porter*. I ſaw him go in to the Jury, and he told me it was for the ſame Thing.

Mr. Serj. *Lovel*. We have ſome of the Jury here, and we will call them to that.

Mr. Serj. *Gould*. Now, if it pleaſe you, Sir, we will ask him to the Matter concerning *Clancy*'s tampering with him.

Mr. *Speaker*. Will you give the Houſe an Account of that Matter?

Sir *Tho. Powys*. By your Favour, I hope you will give us leave to interpoſe in this Matter: For I am ſure in the Caſe of Life, and in Caſe where there is a Law prepared to be made, ſubſequent to the Fact, to condemn any Man to Death, you will not only have good Evidence, but that which is legal Evidence. And I take it, that in Caſes of this Nature, of a ſubſequent Law, the Evidence ought to be much ſtronger, and much fairer than when a Man is to be tryed by a Law in Being. If they ſhould offer that which was ſaid in the great Caſe of my Lord of *Strafford*, (which Attainder there hath been an Act of Parliament to reverſe) by a Gentleman that did then appear againſt my Lord of *Strafford*, That where the Houſe proceed in a legiſlative Way, there needs no Evidence at all; but every Man may follow the Dictates of his own Thoughts and Conſcience. 'Tis in *Peniſhworth*'s *Collections*, *fol.* 377. Yet, I hope, you will be of another Opinion, and expect ſtronger Evidence, than if a Man was to be tryed by a Law in Being. Now that which is offered now, cannot be allowed in any Court of Juſtice: They were going about to ſhew, That my Lady *Fenwick*, the Wife of the Gentleman at the Bar, that ſhe had uſed ſome Means to take off *Goodman*'s Evidence, and they would make uſe of that againſt her Husband. Now, what any Man's Wife ſays cannot be made uſe of againſt him, as nothing that ſhe ſays, or does, can be made uſe of for him; and, by the ſame Rule of Juſtice, it cannot be made uſe of againſt him: For otherwiſe the Rule would be unequal, That ſhe might be a Witneſs againſt him, but not a Witneſs for him; that ſeems ſo unjuſt, that it will not be admitted in any Court whatſoever.

Sir *Barth. Shower*. By your Votes the Priſoner is allowed Council, and the King's Serjeant is to produce the Evidence againſt the Priſoner: That Phraſe of Evidence makes us believe, or at leaſt to hope, that you will give us leave to object to that which is not ſo; and in this I appeal to the Knowledge of the Gentleman on the other Side, who hath had a great deal of Experience of this Kind; and I am ſure, in all his Obſervations in the *Old Baily*, he can't ſay this was ever admitted in Caſe of Treaſon, nay not in Felony, the Actions or Sayings of other Perſons; and I muſt confeſs I wonder to hear him move it now.

When attempted on behalf of a cloſe Priſoner, that was not viſited by any Body, it was not admitted that the Actions of a third Perſon at large, ſhould be admitted againſt him: There the Actions of a Wife cannot be Evidence for, nor againſt her Husband. It was never but in one Caſe, and that for Sodomy, allowed, and that was after two or three Witneſſes beſides had been produced, and by the Opinions ever ſince, it hath been allowed not to be Law; and that for the Oeconomy, the Danger might follow in Caſes of Matrimony and Families. Now they both do concern the Acts of other Perſons, and not Sir *John Fenwick*. Beſides, I have one Objection more, and that is, There is no ſuch Thing alledged in the Bill; and with Submiſſion, you have declared, That they ſhould produce Evidence as to the Allegations in the Bill, and the Treaſons in the Indictment; but I can't find any Order that they ſhould produce Evidence concerning the carrying away of any Witneſs; and 'tis not alledged, that *Goodman* is withdrawn by Sir *John Fenwick*'s Privity: As to *Porter*'s being tampered with, there is no Colour of Suggeſtion in the Bill; ſo that this neither being in the Bill, nor being Evidence at Law, we muſt be ſurprized very much by it, if you ſhould admit it.

Mr. *Speaker*. You hear the Exception, What do you ſay to it?

Mr. Serj. *Gould*. I think what theſe Gentlemen ſay, will receive a plain Anſwer. They have made an Objection without anſwering the ſubject Matter; it is an Allegation in the Bill, That *Goodman* hath withdrawn himſelf. Now the Uſe we make of this, is to let us in to give an Account of what *Goodman* hath Sworn, and to entitle us to read his Examination: For, ſay we, he hath been tampering to ſtifle this Conſpiracy, to take off the King's Evidence. For no Body doubts of the execrable and wicked Conſpiracy; and 'tis as plain here hath been two Witneſſes to prove it; and as plain that this Indictment is found, according to the late Act of Parliament, upon the Evidence of *Porter* and *Goodman*. Now to ſhew this Conſpiracy is carrying on, we offer to prove the Tampering that hath been, to take off the King's Evidence, and to lay that before the Conſideration of this Houſe; ſo the Uſe we make of it, is only preparatory to let us in to tell you what *Goodman* hath Sworn, and in good Time we ſhall produce to you an Indictment, where, upon his very Oath, and upon the ſame Evidence as we offer here, another of the Traytors hath been convicted; and therefore we humbly offer it, Whether as this Caſe is, we ſhall not be admitted to prove this Tampering?

Mr. Serj. *Lovel*. Before we withdraw, I beg two Words as to what is objected on the other Side, for the learned Gentleman appeals to me; and I muſt appeal to the Knowledge of ſome Members that are learned in the Law, and to all, That even in criminal Caſes, Courts are not bound up to poſitive Evidence, but that the Evidence of Circumſtances, and ſome Perſons to corroborate them, is admitted: And if it ſhould be ſo, that nothing but poſitive Evidence ſhould convict, we ſhould have very few Convictions at the *Old Baily*; as to Clipping and Coining, where One is convicted by poſitive Evidence and direct Proof, Forty are convicted and attainted by Circumſtances, as Materials found about them, and putting off Counterfeit-money. Sir, I muſt ſubmit

mit to you, Whether, as the Nature of this Caſe is, this Houſe will not think fit to hear all Evidence that may concern this Matter, whether Certain or Circumſtantial; and the Wiſdom of this Houſe will diſtinguiſh afterwards, what they think is Material, and what is not. We do take this to be Part of the ſame Conſpiracy we do charge the Priſoner at the Bar with, that he might not come to condign Puniſhment; and therefore we pray, that let the Proceedings of other Places be what they will, that you will hear the whole Matter in this Caſe, whether the Evidence be Poſitive or Circumſtantial.

Sir *Thomas Powys*. I think they miſtake us when they give us ſuch an Anſwer; we doubt not but there is poſitive Evidence and circumſtantial, but we ſuppoſe this to be no Evidence at all: Mr. Recorder tells us true, That circumſtantial Evidence is frequently made uſe of; but we ſay, That whatever my Lady *Fenwick* hath ſaid or done, is not to be admitted as Evidence againſt the Priſoner at the Bar; becauſe what ſhe hath ſaid by Way of Endeavour to draw off *Goodman*, is no Evidence at all to be offered againſt her Husband, and is not ſo much as circumſtantial Evidence.

Sir *Barthol. Shower*. We do agree, If the Bill had been brought in againſt my Lady *Fenwick*, or againſt *Clancy*, this had been proper Evidence; and they did, and may deſerve Puniſhment for it themſelves: But this is no Evidence againſt Sir *John Fenwick*, that is here.

Mr. Serj. *Lovell*. We think 'tis properly before the Houſe, even by the Order of the Houſe it ſelf: For in the firſt Place, we are to ſpeak to the Matters contained in the Bill. One Matter is, That Sir *John Fenwick* had been Tryed before now, but for Reaſons mentioned in the Bill; and that he delayed his Tryal, till ſuch Time as *Goodman* was withdrawn; therefore what lies before us by the Direction of the Houſe, is, That till ſuch Time as *Goodman* was withdrawn, Sir *John Fenwick* did pretend to go on to make a Diſcovery, and afterwards put it off with what is charged in the Bill: But ſay they, What is done by my Lady *Fenwick*, is no Evidence againſt him. When all the Circumſtances are laid before the Houſe, what Dealings there was with Captain *Porter*, and what was ſaid at that Time, and the Conſequence preſently after *Goodman*'s going away, I hope it is as much Evidence as the Caſe will bear.

Sir *Richard Temple*. Sir, Deſire they may withdraw.

Accordingly they withdrew.

Sir *Richard Temple*. I think it much concerns the Honour of the Houſe, when a Priſoner is at the Bar, that he ſhould be allowed the Right of an *Engliſhman*; what you do here, may be a Precedent in after Ages; you are told what is offered as Evidence here, is admitted in no Court, and the Anſwer that is made to it, is of no Force at all; they tell you there is no Allegations in your Bill, That Sir *John Fenwick* had any Hand in his withdrawing, nor nothing in the Indictment of it, and for that Reaſon the Evidence ſeems improper; and if it was, this would be no Evidence at all; for the Oaths of other Perſons is no Evidence againſt the Priſoner, to make him guilty of any Thing.

Lord *Cutts*. I think 'tis agreed already, That the Council for the Priſoner ſhould not meddle with the Authority and Juriſdiction of this Houſe; for if we are to be ty'd up to all the Forms and Niceties obſerved in inferior Courts, then to what End is the Priſoner brought here? I think Evidence ought to be admitted, that may clear every Man's Conſcience, that this Bill againſt Sir *John Fenwick* ought to paſs.

Mr. *F. How*. A Gentleman ſaid, We are not ty'd to the Forms of inferior Courts; but tho' we are not ty'd to the Forms of inferior Courts, we are ty'd to that which was the Ground of them, and that is right Reaſon and true Senſe: They have alledged that he was Indicted, no Body doubts it. That *Goodman* is withdrawn, no Body doubts it: But what is that to Sir *John Fenwick?* It might be with a Deſign for Good or Evil to Sir *John Fenwick*. My Lord *Jefferies* ſaid, at my Lord *Delamare*'s Tryal, (as I am informed) That one Witneſs, with good Circumſtances, was enough to convict a Man of High Treaſon. And I am told, it was told him then, that if they ever met him in the Houſe of Lords, he ſhould anſwer it with his Head. I deſire you would ask Captain *Porter*, when he comes in, Whether this was diſcourſed before Dinner, at Dinner, or after Dinner? And whether he knows that *Goodman* heard this or no?

Mr. Chancel. of the *Exchequer*. There ſeems a particular Shyneſs to know the Truth of this Matter; I mean in the Council t'other Day: The Gentleman ſays, That *Goodman* might be withdrawn to the Prejudice of Sir *John Fenwick*, as well as for his Good; I deſire you will not let the Government be ſo Stigmatized. You have given leave to the Council to examin to any Thing that may be added to the Bill; for upon a Commitment, I can move you to put any Thing that ſhall be thought reaſonable.

Sir *Thomas Dyke*. It may be a reaſonable Thing to enquire why *Goodman* is withdrawn? But the Queſtion is, Whether this be a proper Time? The Houſe is not ty'd to the common Forms, but they are ty'd to the common Rules of Equity: And the Queſtion is, Whether the Houſe will permit any Perſon to ſuffer by the Acts of another?

Mr. *Soll. Gen*. It is diſcretionary, whether you will determine that this is Evidence now, or after you have heard it. I can't tell at whoſe Tryal it has, but I won't enter upon the Legality of the Thing: 'Tis one Thing when a Man is to be Tryed by a Jury, and another Thing when he is to be Tryed before Judges. A Jury may be ſo ſway'd and poſſeſſed by it, that it may not be fit for them to hear it: But look into the Court of *Chancery*; and there, Depoſitions, if one Side ſay, they are Evidence, and the other Side ſay, they are not, are every Day admitted; and the Rule is, That it is ſooner diſpatched by hearing of it, than not. You do not ſit here as a Jury, but as Judges; and will conſider how far the Actions of a Wife ſhall concern her Husband; you will do the Priſoner Right, and your ſelves Right, if you will hear them.

Sir *Francis Winnington*. The Queſtion is, Whether the King's Council ———

Mr. *Speaker*. Let me ſet you Right; they are not here as King's Council.

Sir *Francis Winnington*. Very well: But in this Houſe you are the Judges and Jury too. The Evidence that is opened, is to induce you to believe that he is guilty, and the Gentleman that ſpake laſt, will not allow it to be a legal Evidence. Then the Queſtion is, Whether, you being Judges of the Fact, as well as of the Law, ſhould be afraid to be induced to believe a Fact, by that which is not legal Evidence? Suppoſe my Lady *Fenwick* had had the Deſign, and had told her Husband what

ſhe

ſhe intended to do, and he ſhould have ſaid, he ſcorn'd it: This is poſſible, if you go to ſuppoſing; and that he might apprehend it would do him a Miſchief. Now it can be to no purpoſe to hear this Evidence, unleſs it be to ſatisfy the Houſe, in order to attaint the Priſoner. No, but ſay they, Let us hear, and we will judge afterwards: Why ſo? It can't affect the Priſoner: And if any Perſon hereafter have a Mind to have my Lady *Fenwick* puniſhed, they may examin it.

Mr. *Sloane*. The Gentleman that ſpake laſt, hath made one Suppoſal; let me make another. He ſuppoſes, That it may appear by the Evidence, upon the Examination of Witneſſes, that what my Lady *Fenwick* or *Clancy* did, was contrary to the Direction of Sir *John Fenwick*: If the Evidence happen to be ſo, 'tis nothing. But we may ſuppoſe again: Suppoſe it happens, that it appears by the Evidence, that it was for the Benefit of Sir *John Fenwick*, to the greateſt Degree, to get away one of the Witneſſes, *& Cui bono*, is the ſtrongeſt Preſumption to me. I do allow, in *Weſtminſter Hall*, that a Woman ſhall not be a Witneſs for or againſt her Husband; but if ſhe be directed by her Husband, *Qui facit per alium, facit per ſe*; you do not alledge all the Evidence in the Indictment, that runs in general; if the Evidence differs as to Time and Place, ye may find him guilty of the Indictment.

Lord *Norryes*. Becauſe I would not willingly go upon Suppoſitions, I deſire the Clerk may read the Queſtion that you have paſſed the laſt Day, to examining Evidence.

Which was accordingly read.

Now I deſire to know, Whether this be Treaſon within the Indictment, or any of the Allegations of the Bill; otherwiſe I think you have tied your ſelves up by that Rule.

Mr *Pelham*. I did expect the Gentleman that ſpake lately, would have cleared the Matter. He gave you a Diſtinction between the Proceedings of *Weſtminſter* Hall and the *Court of Chancery*. I am ignorant of both. I deſire to know, whether we are to go here by the Proceedings of *Weſtminſter* Hall, or the *Court of Chancery?* If we are not tyed by theſe Rules, we may let our ſelves into any Evidence that will induce us to believe him guilty or not guilty. If we are tyed to thoſe Rules that are obſerved in all Courts of Juſtice, where Tryals of Treaſon are had, this can be of no Validity: So I deſire to know, whether we are to go according to the Proceedings of thoſe Courts, or whether we may proceed as the Court of Chancery?

Sir *Tho. Littleton*. The honourable Member that ſpake laſt, deſires to know, Whether we are bound by the Rules in *Weſtminſter* Hall, in their Proceedings or not? I believe it would have been to very little Purpoſe to have thought of this Bill, if thoſe Courts could have convicted him. I believe if the Council had tyed you to the Proceedings of *Weſtminſter* Hall, and therefore that you could not have proceeded on this Bill, you would have taken Notice of them, and reprimanded them for ſaying ſo. I know not what to ſay to the Proceedings of *Chancery* in this Caſe; but I ſuppoſe upon this Tryal, you will inform your ſelves by the beſt Methods you can; and every Man, according to his Judgment, be for, or againſt the Bill. If upon what I hear, I am of Opinion, he is notoriouſly guilty, I ſhall freely paſs the Bill. If I do ſo much as doubt that he is guilty, according to the old Rule, *Quod dubitas ne feceris*, I ſhall not be for it; and in Order to this, I am for hearing every body that comes before us. It is ſaid, that poſſibly *Goodman* is withdrawn to Sir *John Fenwick*'s Prejudice: I would be glad to hear that; if ſo, I ſhall have the worſe Opinion of the Bill. They ſay, 'tis not alledged in the Bill, concerning Captain *Porter*'s being tampered with; but 'tis alledged, That *Goodman* is withdrawn, and that 'tis not alledged, that Sir *John Fenwick* was privy to it; but it may weigh to Gentlemens Judgments, how he comes to be withdrawn. They that tamper with one Witneſs, may be thought like to tamper with another. They tell you, That the Evidence of a Man's Wife will not weigh againſt her Huſband. It may be ſo in Point of Law; but if you think your ſelves bound up to the ſtrict Rules of Law, diſpoſe of your Bill preſently.

Sir *Will. Coryton*. You have been pleaſed to give Leave to the King's Council to prove Matters againſt Sir *John Fenwick*: You have heard Captain *Porter* upon the Fact. If they had opened the Matters, that Sir *John Fenwick* was inſtrumental to convey *Goodman* away, I ſhould have been willing to have heard it: But they opened it, That my Lady *Fenwick* was inſtrumental in Conveying away *Goodman*: And this ought in no ſort to be admitted. An honourable Gentleman of the Long Robe, made a Difference in the Proceedings between the Court of *Chancery*, and the Courts of *Weſtminſter* Hall: But I would fain know, if a Fact was ſtated, Whether my Lord Keeper could determine the Matter before a Commiſſion went to prove it. 'Tis true, we are not tyed to the Forms of Law, but we are tyed to the Forms of Juſtice. I know no Caſe where a Wife is admitted to be a Witneſs for or againſt her Husband. In *Brown*'s Caſe indeed, who took a Woman away, and forced her to marry him; the Queſtion was, Whether ſhe ſhould be admitted? And in that Caſe ſhe was admitted as a Witneſs, becauſe the Neceſſity of the Thing required it; and there was no other Way to prove, whether he had her Conſent or not. Another Caſe there was of my Lord *Caſtlehaven*, where from the Nature of the Thing, it was admitted; for it was impoſſible there ſhould be any other Proof of it. But if my Lady *Fenwick* be guilty of this Matter, it muſt only by Way of Inference affect Sir *John Fenwick*. They tell you, they inſiſt upon it as an Indictment; then it comes to be a Matter of Conſequence; and therefore ſince the Matter hath been fully ſtated to the Houſe, as to what they would prove: I think we may now give our Judgment upon it.

Mr *Boſcawen*. You are here in your Legiſlative Power, and are no more tyed to the Rules of Law in Examining of Witneſſes, than you are in giving of Judgment; for you can give thoſe Puniſhments that never are given in *Weſtminſter* Hall. I am of Opinion, that my Lady *Fenwick* cannot be examined for or againſt her Husband; but if he ſend her to ſolicite for him, it ſhall have ſome Weight with me. Thoſe that don't believe it from what he ſays, may give their Judgment accordingly: I deſire to know of this Gentleman, if I don't believe it, whether I can give Judgment againſt him? I believe a Man's Conſcience ought to go with his Judgment.

Mr *Speaker*. I will read the Queſtion. That Captain *Porter* be examined to the Attempt of taking off his Teſtimony as to the late Conſpiracy.

Which

Which Queſtion being put, it paſſed in the Affirmative.

Mr *Harley*. I ſuppoſe you will let the Council of both Sides, have firſt done with their Queſtions; and then there will be ſome Queſtions propoſed to you.

Mr *J. Howe*. They tell you how that Sir *John Fenwick* was Indicted, and that *Goodman* is withdrawn; but there is one Thing the Council of both Sides ſlip over, and that is, Sir *John Fenwick* hath given in falſe Informations; it looks as if they were agreed on both Sides in that Matter: I deſire the King's Council may be asked, Whether they have any Evidence of that Matter?

Col. *Crawford*. Since I am mentioned in that Paper ——

Adm. *Ruſſel*. I believe though that Gentleman was afraid that Matter would have been paſſed over, yet that the Gentlemen of this Houſe that are therein named will take Care, for their own Vindication, That that Matter ſhould not be ſlipped over; I ſuppoſe the proper Time for that is, when the Evidence is over: I aſſure you, if no Body elſe will, I will.

Then Sir John Fenwick, *and the Council of both Sides, and Captain* Porter, *were brought in.*

Mr *Speaker*. Sir *Tho. Powys*, The Houſe hath conſidered of your Exception to the Teſtimony of Captain *Porter*, as to the Point he was to be examined to, and they are agreed, That 'tis fit that all the Evidence ſhould be laid before them, and they can judge afterwards, whether it be material or fit to be allowed, or not. Therefore, Captain *Porter*, pray do you give the Houſe an Account at large of what Attempts have been made upon you, at any Time, to draw you off from your Teſtimony, with Reſpect to the late Conſpiracy.

Capt. *Porter*. I had a Meeting with one *Clancy*, firſt in *Mitre Court*, at
and afterwards at the *King's-Head* Tavern by the Play-houſe: At thoſe Meetings he propoſed to give me 300 Guineas to bear my Charges to *France*, and to ſend me a Bill for 300 more; and likewiſe that I ſhould be allowed 300 *l.* a Year.——

Mr *Speaker*. How long had you been acquainted before?

Capt. *Porter*. Several Years.

Mr *Speaker*. Did he tell you who he came from?

Capt. *Porter*. He ſaid, he had been with —— *Fenwick*, who deſired him to make this Propoſal to me.

Mr *Speaker*. How often had you Meetings with him?

Capt. *Porter*. About ſeven or eight Times.

Mr *Speaker*. What Satisfaction did he give you, that Sir *John Fenwick* would perform the Agreement?

Capt. *Porter*. He told me, my Lady *Fenwick*, and my Lady *Montgomery*, ſhould meet and confirm every Thing that Night. The Day before I was to go, I met with my Lady *Fenwick*, who told me, my Lady *Montgomery* could not come, becauſe one of her Children was fallen ſick.

Mr *Speaker*. What Satisfaction did ſhe give you, that Sir *John Fenwick* would perform what *Clancy* had propoſed?

Capt. *Porter*. She ſaid, what *Clancy* had propoſed ſhould certainly be made good.

Mr Serj. *Gould*. Did you receive any Thing in Part, in Purſuance of this Agreement?

Capt. *Porter*. I received 300 Guineas of *Clancy*, and he promiſed to me a Bill of 300 more, which was depoſited by —— *Fenwick* in his Hands, to be ſent after me into *France*.

Mr Serj. *Gould*. Pray what Letter was that he brought you?

Capt. *Porter*. He brought me a Letter, and ſaid, It was writ by Sir *John Fenwick* to King *James* on my Behalf.

Mr *Speaker*. Did he deliver that to you?

Capt. *Porter*. No; he delivered it to the Gentleman that was to go with me, one Captain *Donelagh*.

Mr *Speaker*. Why did you not take that Letter into your own Hands?

Capt. *Porter*. I had it, and read it, before it was ſeal'd up.

Mr Serj. *Gould*. Do you remember the Contents of it?

Capt. *Porter*. As much as I remember was, He deſired his Majeſty, by Reaſon that my going away was to ſave my Lord *Aylesbury*, and my Lord *Montgomery*, &c. to pardon what I had done.

Mr Serj. *Lovel*. Who ſubſcribed it?

Capt. *Porter*. It was not Sir *John Fenwick*'s Name, but they told me, King *James* would know who it came from.

Mr Serj. *Lovel*. How did you proceed after the Meeting with my Lady *Fenwick*?

Capt. *Porter*. The next Night after that he had paid me my Money, and ſhewed me the Bill, and I was to go away the next Day after; They ſaid, the Boat was provided.

Mr Serj. *Lovel*. Can you tell whether the Boat was provided?

Capt. *Porter*. They were taken up preſently after.

Mr Serj. *Gould*. We will now produce a Record to confirm the Evidence that he hath given you: This Perſon hath been convicted for this Tampering.

Accordingly the Record for Clancy's *Conviction was produced.*

Sir *Tho. Powys*. I deſire to know, Whether they offer this as Evidence againſt Sir *John Fenwick*?

Mr *Speaker*. They offer to prove, That this very Perſon hath been tampered with, to take off his Teſtimony; and they leave it then to the Houſe to judge, who is moſt likely to be guilty of *Goodman*'s Withdrawing. They begin to ſhew you, there hath been an Attempt to take off this Perſon's Teſtimony; you have heard the Perſon himſelf to it already: So now they offer to read the Conviction of *Clancy* to this Matter.

The Record of Clancy's *Conviction was read.*

Mr Serj. *Lovel*. We will prove the like Solicitation hath been made by Mr *Dighton*, who is the Sollicitor for the Priſoner at the Bar.

Mr *Speaker*. What is your Witneſs's Name?

Mr Serj. *Lovel*. *Thomas Roe*. If you pleaſe, Sir, to ask him, what Endeavours have been uſed by Mr *Dighton*, to make Uſe of him, that *Goodman* might withdraw himſelf.

Mr *Speaker*. Mr *Roe*, You are required to give this Houſe an Account of what hath paſſed between Mr *Dighton* and you, in Order to take off the Teſtimony of Mr *Goodman*.

Mr. *Roe*.

Mr *Roe*. About the Middle of *September* laſt, I had Occaſion to go to Mr *Dighton*, to enquire, Whether the Commiſſioners of the Land Tax in *Surrey*, ſate; for I knew he was concerned in ſome Affairs for that County: He told me, He did not poſitively know, but would ſpeedily enquire. At the ſame Time, he took Occaſion to tell me, He knew it was in my Power to do Sir *John Fenwick* Service. I asked him, What he meant by it? Says he, I know you know *Goodman* well, and it will be the better for you, if you will tell me: I asked him, What he meant by that Way of Talking? He deſired I would meet him ſome other Time, and I ſhould know further of his Mind; accordingly I did meet Mr *Dighton*: Says he, You know *Goodman* well, and if you can ſay any Thing that can diſcredit *Goodman*'s Teſtimony, you ſhall have 100 *l.* a Year ſettled upon you for your Life. Says I, Sir, I do know him well: Says he, Did you never hear him talk of Poyſoning the Duke of *N.* and Robbing on the High-way, and that he is concerned with Clippers: Says I, I have heard him talk of thoſe Matters ſeveral Times, but you can't think I will be a Witneſs, and expoſe my ſelf, and diſparage People, till I know for what. Says he, For that you ſhall be ſatisfied; you ſhall have 100 *l.* a Year ſettled upon you, provided you can diſcredit *Goodman*'s Teſtimony, that Sir *John Fenwick* may come off, and it will be done by a Friend of yours.

We accordingly agreed to meet the next Day at a Coffee-Houſe in the City, and appointed a Friend to be there, but Mr *Dighton* did not meet at the Time; and the Reaſon he told me, was, becauſe Sir *John Fenwick* was that Day to be arraigned. As ſoon as Mr *Dighton* had made this Propoſal, I told Mr *Goodman* of it, and he adviſed me to go on with him, and ſee if I could get any Offer under his Hand: I told him, he had appointed to meet me in the City, and a Friend to be there to hear me: I went, and told Mr *Dighton*, but Mr *Goodman* would not be ſatisfied with that, but ſaid I muſt go to the Arch-Biſhop and tell him what paſſed; ſo I did go and tell the Arch-Biſhop what I have told you now.

Mr *Speaker*. Had you any Meeting after that?

Mr *Roe*. Yes, on the 19th of *September*, and then he made great Aſſeverations, that what he ſaid ſhould be performed; and that I ſhould not only oblige Sir *John Fenwick*, but my Lord *Montgomery*; and that *Goodman* was a loſt Man by being become a Common Evidence; and that it would not be in his Power to oblige any Man, my Lady Dutcheſs having diſcharged him of his Employ, and he would not be in a Condition to do further for me; and ſays he, whatever you would have gotten by ſerving my Lady Dutcheſs in her Concerns, ſhall be made up over and above this 100 *l.* a Year that I have promiſed.

Mr Serj. *Gould*. I deſire he may be asked, Whether *Goodman* did not acquaint him, that a Siſter of Sir *John Fenwick*'s had been with him, and upon what Occaſion?

Mr *Roe*. About the Time of the Preferring of the Bill againſt Sir *John Fenwick*, I ſaw *Goodman* at *Hicks*'s Hall; and a little after, he told me, that a Siſter of Sir *John Fenwick*'s had come to him, and made ſome Propoſals to him, and I acquainted the Duke of *Shrewsbury*'s Deputy, Mr *Vernon*, with it.

Mr *Speaker*. Did you purſue this Diſcourſe with Mr *Dighton*, ſo as to come to any poſitive Agreement?

Mr *Roe*. No otherwiſe than what I told you, my Deſign was to have Mr *Dighton* to have given it me in Writing, or elſe for him to have ſaid it before ſome other Man; but I don't know any Thing whereby I could have diſcredited Mr *Goodman*, if he would have done it.

Mr Serj. *Gould*. You obſerve, Sir, that one of the Witneſſes whoſe Name is ſubſcribed to the Bill of Indictment, is withdrawn: Now to give you an Account that he is withdrawn, I deſire the King's Proclamation may be read.

Members. No, no.

Mr Serj. *Lovel*. We have Mr *Goodman*'s Examination under the Hand of Mr *Vernon*; we pray it may be read.

Sir *Tho. Powys*. Mr Speaker, I deſire to be ſpared a Word to this Matter: I take this to be a great Point, not only as it concerns the Life of this Perſon, but as it may be a Matter of Example in all Times hereafter; that which they would offer, is ſomething that Mr *Goodman* hath ſworn, when he was examined by Mr *Vernon*; Sir *John Fenwick* not being preſent or privy, and no Opportunity given to croſs-examine the Perſon; and I conceive, that cannot be offered as Evidence; for if that ſhould be allowed for Evidence, then what is ſworn behind a Man's Back, in any Caſe whatſoever, may as well be produced as Evidence againſt him; and they know, that in a Caſe of the Value of Five Shillings, no Depoſitions or Examinations of any Man can be made Uſe of; and I am ſure they will not ſay, that the Depoſitions taken between other Perſons, where a Man is not a Party, can be made Uſe of as Evidence againſt him; and if not admitted where Property is concerned in the loweſt Degree, I hope you will never admit it in this great Place, from whence inferior Courts (as to Juſtice) take their Meaſures.

Sir *Bartholomew Shower*. Mr Speaker, I deſire you would ſpare me a Word of the ſame Side. I humbly oppoſe the Reading of this Examination, as not agreeable to the Rules of Practice and Evidence, and that which is wholly new; and this in civil Cauſes can't poſſibly be done: No Depoſition of a Perſon can be read, though beyond Sea, unleſs in Caſes where the Party it is to be read againſt, was privy to the Examination, and might have Croſs-examined him, or examined to his Credit, if he thought fit; it was never pretended, Depoſitions could be read upon other Circumſtances. But in criminal Caſes, I appeal to the Gentlemen on the other Side, who know the Proceedings in the *Old Baily* very well, it was never admitted: Nay, in an Appeal of Murder, if Depoſitions be taken before the Coroner, and there be an Examination of Witneſſes upon the Indictment, though the Appeal be for the ſame Fact, and in order to bring the Perſon to the ſame Puniſhment; yet, in that Caſe, thoſe Depoſitions can't be read, becauſe 'tis another Suit: But it was never attempted in any Court of Juſtice, that the Examination of Witneſſes behind a Man's Back, could be read in any Place whatſoever. Our Law requires Perſons to appear, and give their Teſtimony *viva voce*; and we ſee that their Teſtimony appears credible, or not, by their very Countenances, and the Manner of their Delivery; and their Falſity may ſometimes be diſcovered by Queſtions that the Party may ask them, and by examining them to particular Circumſtances, which may lay open the Falſity of a well-lay'd Scheme; which otherwiſe, as he himſelf had put it together, might have looked well at firſt; and this we are depri-

deprived of, if this Examination ſhould be admitted to be read.

Now, though the Practice of other Courts does not oblige this Houſe, yet we know you will conſider the Rules of Juſtice; 'tis but Juſtice in criminal Caſes, eſpecially as our Conſtitution is, that the Perſon ſhall ſee his Accuſer. A Man may ſwear to a Depoſition reduced into Writing, whoſe Conſcience perhaps would not let him publickly accuſe the Priſoner, Face to Face: Experience hath ſhewed it often, that ſeveral that will calumniate another privately, will not juſtify the ſame in open Court of Juſtice. What *Goodman* is, 'tis not proper for us at preſent to give an Account of, but we oppoſe it at preſent, for that we were not preſent, nor privy, nor could have Croſs-examined him; 'tis only an Information before a private Juſtice; for if not ſo, we know not what Authority he had to examin him; and then if ſo, Mr. Recorder knows, that in the *Old Baily*, if *Goodman* had died, it had not been Evidence: In caſe he had been ſick, or withdrawn without our privity, they could not have read it: Nay, if he were withdrawn by our privity, it could not be read: 'Tis true, the Inticing him to withdraw, had been puniſhable in another Man, but could not have been read to have convicted the Party; and ſince this Examination could never have been read there; and if it muſt be unjuſt, and hath not been practiſed, I hope you will not do it now.

Mr. *Speaker*. Mr. Serjeant *Gould*, what do you ſay to it?

Mr. Serj. *Gould*. I obſerve this Gentleman's Objection, why this Examination ſhould not be read; and under Favour, we think we are regular, as this Caſe is, to have his Depoſition read. 'Tis true, as long as the Witneſſes can be produced in all Courts, and Practice of the Law, you ſhall not read his Examination, or what is taken before a Juſtice of Peace: But that is not our Caſe: It is now fully proved before you, that he is withdrawn; and it is fully before you, that he hath given Evidence for the King, and hath been examined; and this is an extraordinary Caſe, and that is the Reaſon we are in Parliament: He hath Sworn this Matter, and before a proper Officer; Why then ſhall not his Evidence be read and allowed, when he is wilfully withdrawn, and we ſay, by the Contrivance of the Priſoner at the Bar? And the Thing ſpeaks it ſelf. Now, with Submiſſion, I take it to be every Day's Practice, that where an Evidence is dead, his Depoſition ſhall be read. It appears to you, that there was to have been a Tryal, but the Witneſs is withdrawn; and it appears plainly, that he hath been tampering: The Evidence, is full, in the Caſe as to *Porter*; and we have produced a Record of Conviction, that does confirm it: Now this is ſuch a Practice, we come into Parliament to have it remedied; for otherwiſe Men ſhall commit Treaſon, and by their Contrivance and Art, the Witneſſes ſhall be drawn away, and the Priſoner ſhall not be brought to condign Puniſhment. Here is the Record in which he gave Evidence, and he is withdrawn; and therefore I hope, in this Caſe, we ſhall be admitted to read his Depoſition; for I deny what the Gentleman ſays, to be Practice; and Mr. Recorder can give you a better Account, who knows more of the Practice of it, That if a Witneſs is dead, they may read his Depoſitions. We are here before you in Parliament, and by the ſame Reaſons that others have been tampered with, this Witneſs may be preſumed to be tampered with; and therefore we are in your Judgment, Whether in this Caſe his Depoſitions ſhall not be read.

Mr. *S. Lovel*. 'Tis objected, on the other Side, That this Evidence ought not to be offered; and for what Reaſon? Becauſe, ſay they, a Jury ought to go *Secundum allegata & probata*; and what is not ſtrictly Evidence by Law, you are not to take notice of; but in Criminal Caſes (which is this Caſe) where Perſons do ſtand upon their Lives, accuſed for Crimes, if it appears to the Court, that the Priſoner hath by fraudulent and indirect Means, procured a Perſon that hath given Information againſt him to a proper Magiſtrate, to withdraw himſelf; ſo that he can't give Evidence as regularly they uſed to do; in that Caſe his Information hath been read. Which, I ſuppoſe, with humble Submiſſion, is this Caſe; but I ſuppoſe, we are not here tied up to formal Evidence; but 'tis our Duty, ſince the Houſe hath Commanded, to lay the whole Fact before you, and you are Judges what is Material, and what is not Material.

Sir *Thomas Powys*. 'Pleaſe, Sir, to ſpare me a little; for ſure this is no ſmall Matter. I did expect that they, if they intended to have ſupported this Evidence, would have mentioned ſome Author, ſome Caſe, or ſome Precedent where this has been before: —— But he makes ſuch a Diſtinction, I am mightily ſurpriſed at; for Mr. Recorder cites no one Inſtance, that ever he ſaw ſuch a Thing in his Life; nor cites one Book that hath ſuch Authority; but he gives you a Diſtinction, whether it be of his Side or ours, I muſt ſubmit to you; for he ſeems to agree, that in Caſes of Property, ſuch Evidence is not allowed; but in Caſes of Life, in which we ought to be more tender, he ſays, 'tis to be allowed. Sure, if it be not Evidence where Five Shillings only may be at Stake, I ſubmit to you, whether it ought to be admitted in the Caſe of Life? For my Part, I know nothing of it, if it be a Rule; but I always thought the Evidence ought to be more Clear and Full in the Caſe of Life, than in the Caſe of Property; but Mr. *Recorder* turns it upon us, and ſays, though it is not Evidence in Caſe where Property is concerned, yet 'tis Evidence in Caſe of Life: But I deſire he will ſhew any one Lawyer in *England*, that ever ſaid it but himſelf.

Sir *Bartholomew Shower*. I anſwer to what Mr. Serjeant *Gould* ſays, That this is an extraordinary Caſe, I will not pretend to ſay any thing, you are the proper Judges of that; we now oppoſe it in reſpect of the Rules of Juſtice. As to Mr. *Recorder*'s Diſtinction between Civil and Criminal Cauſes; he hath admitted, that in Civil Cauſes it would not be allowed; and I hope you will be of Opinion, that it ought not to be admitted in Criminal. The Jury muſt go *Secundum allegata & probata*. I deſire to know what other Rules a Jury hath in Criminal Caſes? But they ſay, that a Juryman hath not as much upon his Oath in trying a Priſoner for his Life, as in trying an Action of Treſpaſs? Is not the Oath, *You ſhall well and truly Try*, &c. *according to the Evidence you have heard?* Now, I would know whether the Form of the Oath, which the Wiſdom of our Anceſtors hath thought fit to uſe for 1000 Years paſt, does not direct what ſhall be Evidence? Evidence of *Prima Faciæ* muſt be Evidence of living Perſons: I am

ſpeaking for the Life of a Man, and for maintaining the Rules of Law, which I hope ſhall continue for ever: And that is, that the Examination of a Perſon that is abſent, ſhall not be read to ſupply his Teſtimony. What you ſhall think fit to do here, we muſt ſubmit to; but that 'tis allowed below, we muſt deny.

Mr. *Recorder*. Sir, I do, with humble Submiſſion, ſtand to what I ſaid: As to the Definition of *Allegata & probata*, in matter of Property, we agree with them; but as to *Allegata & probata*, in Matters Criminal, we muſt differ with them: I did ſay it before, and do ſay it again, with Submiſſion, That in many Caſes Criminal, there need no poſitive Evidence at all: and yet the Jury according to *Allegata & probata*, in that Caſe, may convict a Criminal. And I do ſay, with Submiſſion, that where there is no poſitive Proof at all, yet in that Caſe, many Criminals are, and ſtill will be convicted. I did inſtance before in the Caſe of Clipping and Coining, which are Matters ſo ſecretly practiſed, as 'tis very rare, there can be any poſitive Witneſs to prove the Fact: What is then the Method? Why we go by Circumſtances, by Information of other Perſons, by Tools, and other Inſtruments that are found; and though no Body ever ſee them do the Thing, yet they are convicted. We do not offer this Evidence to be as concluding Evidence, as if *Goodman* was here; but a Corroborating Evidence of what Captain *Porter* hath ſaid. If it did wholly depend upon this Evidence, it may be it might have no great Weight; but ſince there is other Evidence *Viva Voce*, and ſince you have been pleaſed to order us to lay before you all the Evidence, we humbly offer it to you, and pray it may be read.

Mr. *Manley*. I humbly pray they may withdraw,

Mr. *Speaker*. If you pleaſe to withdraw; but firſt I am required to ask, if on both Sides you inſiſt upon this Point?

And the Council for both Sides declared, they inſiſted on it.

And then withdrew.

Mr *Manley*. I ſhould not have preſumed to have given you this trouble of their withdrawing, but that a Thing is inſiſted on by the Council for the Bill, which I think is of the greateſt Conſequence to all the Freemen of *England*; 'tis true, the Rules of *Weſtminſter-Hall* are not binding to the Legiſlative Power; but I would not have the Legiſlative Power to be governed by the private Senſe of any Man whatſoever; but by thoſe Rules that are the Rules of Juſtice and common Equity. God forbid that we ſhould, upon Suppoſitions, ſuppoſe our ſelves out of all the Rights of the Law. I never heard any Gentleman of the Long Robe, before the Learned Serjeant at the Bar, aſſert, that an Examination before a Juſtice of the Peace, could be read againſt a Man for his Life. 'Tis known to all that have looked into the *A B C.* of the Law, that it was never practis'd. 'Tis, true, in Equity, Depoſitions may be read, becauſe they are taken by the Conſent of all Parties; and 'tis as well a Depoſition of one Side, as of the other, and the Witneſſes may be croſs examined. But that is nothing to this Purpoſe.

Mr. *Sloane*. I believe I may ſave you a great deal of trouble in this Matter; for thoſe Gentlemen from the Bar that made Objections ſpake without Book, but I ſpeake by Book; (having my Lord Chief Juſtice *Hales* Pleas of the Crown in his Hand.) No leſs a Man than my Lord Chief Juſtice *Hales* (and I think he was paſt his *A B C.* of the Law; I know not how far this Gentleman is advanced.) In his Pleas of the Crown, in that Part where he ſhews what is Evidence to the Petit-Jury, he ſays,

Firſt, By the Statute 1 & 2 *Phil.* and *Mary.* c. 13. and 2 & 3 *Phil.* and *Mary.* c. 12. the Juſtice hath Power to examine the Offender, and Informer; and ſo he goes on in ſeveral Particulars: And then, 5. He ſays, theſe Examinations, if the Party be dead or abſent, may be given in Evidence. I muſt allow, ſuch an Examination not of the ſame Authority as if the Witneſs was preſent it would be, becauſe he can't be croſs examined; but ſtill it muſt be of ſome Weight, and it muſt be read: But in this Caſe, 'tis of greater Weight than in that which my Lord Chief Juſtice puts; for he ſays, it would be Evidence, if the Party was dead; or if he was withdrawn without the Conſent of the Party againſt whom he is a Witneſs, and that comes to the Caſe in Chancery, every Day practiſed; That if any Perſon gets my Deeds and Evidences into his Hands, and he hath imbezled the Deeds, they ſhall be preſumed to ſay what I alledged, becauſe 'tis his Fault he does not produce them. So this withdrawing by the Inſtigation of Sir *John Fenwick*, is a ſtrong Preſumption, that what he Swears againſt Sir *John Fenwick*, is true.

Sir *Richard Temple*. No Man can give Evidence of any Depoſitions, nor was it ever admitted to be Evidence either upon the Party's Death or Abſence; and I would not have that Doctrine paſs, that we are not tied to the Rules of Law: My Lord Chief Juſtice *Vaughan*, when he was of this Houſe, told us, we were not bound to the Forms of Law, but we were tied to the Rules of Law; and if you are not, how will you judge of this Crime? How will you judge it to be Treaſon in the worſt of Times? In the Tryal of my Lord *Mordant*, who was try'd before the High Court of Juſtice, they would not allow of this Piece of Evidence, though they had thrown aſide Juries. We are tied by the Rules of Law, or we are tied by nothing.

Sir *Thomas Littleton*. The worthy Member here tells us, we are tied by the Rules of Law, or we are tied by nothing. I hope he does not intend to put the Pun upon us, that was by a Noble Lord. You are tied by Rules or no Rules; if you are tied by no Rules, what Rules are you tied by? I think you may act by Rules, and yet admit of this Evidence. I told you before, I ſhould not reckon my ſelf ſo tied by the Rules of Law, but that I would hear all Evidence that ſhould be offered; and I do not think 'tis for our Honour to ſtifle any thing that may bring out the Truth. A worthy Lawyer ſaid, Let them produce one Evidence that is of the Recorder's Opinion; and a Member hath produced the Opinion of my Lord Chief Juſtice *Hales:* And I hope we ſhall not be debarr'd from the Satisfaction of hearing what they might hear in the Courts below. Here are two Witneſſes that have been examined againſt him, which the Jury did believe that found the Bill. If we can't have theſe two Witneſſes, let us have as much as we can. We have heard what one ſaid: We have an Opportunity of hearing what the other ſaid. No, ſays the

the Gentlemen, we do not desire to be informed; but I believe it must come to that at last.

Sir *Richard Temple*. The Gentleman that spake last, insinuated, as if I had dropped something he could not understand. Give me leave to tell you, there was the Courts of the Precedents of *Wales*, when they urged Rules of Law, then they were a Court of Equity; and when they argued from Points of Equity, then they were tied up by the Rules of Law: And so gave Judgment neither according to the one nor the other; and so it was taken away by Act of Parliament.

Mr *Boscawen*. I have seen it my self, that a Justice of Peace has been examined himself, as to Depositions he hath taken, and I take it to be an ordinary Examination.

Mr *Harcourt*. Sir, I must say, if you were to pick all the Absurdities out of the Trials in the last Reign, you could not pick out more than has been endeavour'd by the King's Council to be imposed upon you this Day: This does in some measure convince me of what was said by another Gentleman the other Day, that it is much better to be tried by an Assembly of 400 Gentlemen, than at the *Old-Baily*. There was a Quotation of a learned Author, and the Gentleman read you what was Evidence, and what was not. And the Conclusion was, That these Depositions, if the Party was dead or absent, is Evidence. Why Sir, if these Depositions be Evidence if the Party be absent; then what are we doing of all this Day? If that be a certain Rule, there is no manner of need of applying in this extraordinary Way; but if you please to enter into the Consideration of that Point (I am neither afraid, nor unwilling to be informed.) If Gentlemen will take it, *De bene esse*, For better for worse, with all my Heart, but if you enter into that Matter, I will freely tell you my Opinion of it.

Sir *Edward Seymour*. It hath been made a Question, how far you are bound to pursue the Rules of Law? I suppose it is no new thing I am going to say, That Bills of Attainder, and Judgments of Attainder, have been reversed for no other Reason, but because the Parliament have not proceeded according to the Rules of Law: I will not say, you are bound by the Rules of inferiour Courts, but you must be bound by the Rules of Parliament, and by the Proceedings and Practice of Parliaments, which is the Law of Parliament. And then I would know, whether this House did admit of an Affidavit for Evidence? And the Reason is this, because by that you make this, which is the superiour Court, lame, without the Assistance of an inferiour Court.

Mr *Geo. Rodney Bridges*. The Matter before you is, whether Sir *John Fenwick* be guilty, in your Judgments, of this Conspiracy? And if so, I can't imagine why you should not take all the Information that is offered to you; and why not hear all the Circumstances of it: If you do not read this Affidavit, I do not say but 'tis a Kindness to Sir *John Fenwick*; but what Kindness will it be to the Country and Government?

Mr *James Mountague*. I hope you will not spend much more time about this, because the Law is so plain: If there be any thing in the Objection, 'tis this, That if it be Evidence, the other Courts below may proceed upon it: but that I take to be no Objection neither; for though it be Evidence, there are not two Witnesses; and the Courts below require two Witnesses, though there be other Evidence, and one Witness besides, so that you can't try him without two Witnesses; it would be admitted in the Case of Felony, and there two Witnesses are not required expresly by the Law. And I can tell you; upon my Reputation, I have seen it done several times. The Learned Gentleman tells you, my Lord Chief Justice *Hales*'s Opinion is so, and that is grounded upon an Act of Parliament; and I think that is of greater Authority than any Judge; and therefore I think that Objection will vanish. He says, you have no Authority to receive Affidavits, but sure we must take Notice of Acts of Parliament; and if that requires Depositions to be taken, and to be Evidence against Criminals, we ought to take notice of it, so that what the Law makes to be Evidence will be good in this Place.

Mr *Harley*. I look upon this Matter under your Debates to be of the greatest Consequence to the Lives of the Subjects of *England*, that possibly can come before you: Gentlemen have given you several Reasons for reading these Depositions; one, that it was my Lord Chief Justice *Hales*'s Opinion; another, that there is an Act of Parliament for it: Now, I think, it would be proper to join Issue in these two Points, If any Act of Parliament can be produced for this, then the Debate will be at an End; but if there be an Act positive in Fact against it, then I hope you will not receive it: And if my Lord Chief Justice *Hales*'s Book, have not one Word relating to this, then I hope that will be no Argument. He begins his Chapter of Evidence, and says, that the Evidence to the Jury, in Cases of Treason, must be two Witnesses; and then comes to the Cases of Felony: But is that any Debate before us? And he tells you, that Informations might be taken of the Person himself, but that was not by the Common-Law, but was allowed of by particular Acts of Parliament; and then tells you, that his Information, and that Depositions before the Justice, were to be admitted, (but he was to be by:) But is this any thing to lead you? Have they brought any Statute that tells you, there must be two Witnesses in this Case? If you will take Notice of a Statute, you must take notice of a Statute that is in Point. If any Man suffers by one Witness, I believe all the World must say, he suffers unjustly: I think 'tis of the greatest Consequence to admit of Affidavits. Here it is, that the Boundaries are established for the Lives and Liberties of Mankind: And this is an Observation that is found in History, that those that have broke their Bounds down, it hath returned upon them to their Prejudice.

Sir *Robert Richard*. I am sure now we are not upon the Point of Reading, whether it be much or little, but upon the Point of Hearing, and that I speak to: And, I think, the Gentleman near the Table, did not mistake what the Bar said; for the Council on the other Side insisted positively, that neither by the Practice, nor by the Books, was a Deposition to be read as Evidence: Against that, the Gentleman near the Chair produced that Book, as to the Matter of Treason, every Parliament Man can remember, that you have made an Act, that there shall be two Witnesses in Cases of Treason. Now at the

ſame time, it will be taken notice of, that you have taken Care in that Act, that the Proceedings of this Houſe ſhall not be tied up. The Gentleman tells you, of a Court that wavered between Law and Equity, and ſo came to nothing; and I am afraid, if we bring the Houſe of Commons down to the Courts of *Weſtminſter-Hall*, they will make nothing of us neither: I do not ſay, that this Paper ſhall be as ſtrong Evidence as if *Goodman* was at the Bar; but to ſay, it ſhall weigh nothing, I can't agree neither; I agree alſo to make a common Practice of reading Affidavits, will be of ill Conſequence: And if you take this to be a Matter of ſmall Conſequence, I am not for reading this Affidavit. Now I aim not at Sir *John Fenwick*'s Blood, but the Safety of the King and Government: And I would not refuſe any Evidence in this Caſe, be it never ſo ſmall. Theſe Gentlemen ſpeak againſt a Matter being Evidence before it is read; 'tis offered as Evidence, if it be ſmall, or come to nothing, it is the better for the Priſoner at the Bar.

Mr *Pelham*. I am indifferent whether I hear that Paper read, or no; but what is ſaid by a Learned Gentleman ſtartles me; ſays he, in *Weſtminſter-Hall* they are bound to the Evidence of two Witneſſes, and there this Evidence would not be proper, but here we are upon another Foot: I hope we are not here upon another Foot; I hope though here, we are not to be tried by the Chicanry of the Law, we are to be tried by the Equity and Subſtantial Reaſons of it: I deſire to know, if any one can be tried for Treaſon upon one Witneſs? And if we are not tied by the Rules of Law, we may hear any Evidence whatſoever, if the King's Council thinks it may ſatisfy your Fancies, it muſt be received.

Lord Cutts. I conceive, Gentlemen, we are out in the Way of arguing; I muſt put you in Mind that we are at the Bottom, only arguing againſt the Juriſdiction of this Houſe; and though that Matter hath been ſettled before, we are told very often of the Law, and Rules of *Weſtminſter-Hall*; in anſwer to that, I muſt obſerve there are ſeveral Sorts of Laws; there is the Law of Nature, the Law of Nations, the Law of God, and there is the Legiſlative; and 'tis a Self-evident Maxim not to be contradicted, that no Superiour is to be circumſcribed by an Inferiour: And I would ask, if the Courts below are not inferiour to the Parliament? There is nothing can limit us, but the Law of Nature, the Law of God, and the Law of Parliaments; and though I cannot tell you very well what is the Law of Parliaments, yet no Gentleman hath ſaid any thing upon that Subject, that is, againſt the Queſtion before you: The Matter was in a Courſe of Law; but upon an extraordinary Accident, and for extraordinary Reaſons, 'tis brought before you. The Accident is the withdrawing of a Witneſs; the Reaſon is the Securing of the King, the Government, your ſelves, and Poſterity. I don't think any Man that ſpoke againſt it, is for favouring Sir *John Fenwick*; for I think this is the worſt way: I would appeal to every Man, what Prejudice 'tis to you to hear this Paper read? And it may be a Diſadvantage to you not to hear it.

Mr *How*. There have been many Arguments given for and againſt the Reading of this Paper; and if I did not take it that the Reading of this Paper could be of no uſe to the Judgment we are about to make, I ſhould be for the reading of it; either it amounts to a Proof of High Treaſon againſt Sir *John Fenwick*, or it ſignifies nothing to you. If you ſuppoſe it to weigh any thing, I can never agree to the reading of it; for 'tis only an Hearſay brought to convict a Man that is tried for his Life. But there is a greater Argument which weighs more than the Reaſon hath been urged; and that is, your Enemies will have an Advantage, and your Government is at Stake: But I don't take that to be ſo much an Argument of their Strength, as of their Weakneſs and Neglect; however when they prove that, I will ſee how far I can go. 'Tis ſaid, that in the worſt of Times, they would not convict a Man upon one Evidence; as to Sir *John Fenwick*, though he ſhould not be a good *Engliſh* Man, yet his Cauſe may be a good *Engliſh* Man's: The Queſtion is, whether there be more danger by the withdrawing of a Witneſs, and the eſcaping of Sir *John Fenwick*, or the withdrawing of the Witneſs and the convicting of Sir *John Fenwick*? Here they let *Goodman* (ſuch a Rake) go about, and he is gone; and now the Fate of the Government ſeems to depend upon it. The Precedent on the other Side is not ſo much to be feared; for I ſuppoſe future Governments will take care not to let a Witneſs go about the Streets again: But it may happen that certain Men, for aſſerting the Liberties of their Country, may be run upon by ill Governments, and Attempts made upon their Lives by falſe Witneſſes: But the Bill of Treaſon provides, that no Perſon ſhall be proſecuted without two Witneſſes. Now it may happen that they ſhall have no ſuch Witneſſes as can convince a Jury; (I believe this Man to be as much guilty, in my own Thoughts, as I believe any Thing in the World, and yet I will condemn no Man upon my private Fancies;) but here are two Witneſſes brought before the Grand Jury, and nothing is ſo eaſie as to get a Bill found by them (and that is all that is done by *Goodman*.) Now ſay they, if this ſhould come before a Pitit Jury, one of theſe Witneſſes may not be credited, ſo they will carry him away, and urge this for a Precedent, and ſo this Man may be convicted.

Mr *Smith*. I think we are come to the Debate of the Bill, inſtead of reading the Paper. Was the Queſtion, whether this Paper ſhould be allowed as a ſecond Witneſs? Then it would be a great Queſtion with me, whether it ſhould be Read; but the Queſtion, as to *Coll. Sidney*, was not whether the Paper ſhonld be read, but whether it ſhould ſupply the Place of a ſecond Witneſs? But your Debate is extraordinary; your Bill takes notice of *Goodman* being gone away, and now you won't take notice of what he hath left behind him, which I ſhould the rather be ſatisfied in, becauſe I ſaw a Gentleman ſoliciting at the Bar, that did endeavour to get him away. If *Goodman* had been brought a Priſoner to the Bar, I do not know, whether it might not have been reckoned as great a Fault, as now his having too much Liberty. It hath been cited as a great Lawyer's Opinion, that it might be given in Evidence; but he does not ſay what Weight ſhall be laid upon it.

Mr *Pelham*. I am ſorry that honourable Gentleman miſtook me ſo much; I thought I had ſpoke very plain; I told you, I was not againſt reading of the Paper, till the Learned Gentle-

man

man told you, you were not tied up as the Courts of *Weſtminſter-Hall*, to two Witneſſes. As to what I ſaid of Mr *Sidney*'s Caſe, it was not againſt reading that Paper; but I ſaid; he did rely upon it as againſt Common Juſtice, to be attainted upon one Witneſs: And that Attainder you have thought fit to reverſe; and the Reaſon he gives for it, was becauſe it was impoſſible for a Man to make any Defence againſt one ſingle Witneſs.

Mr *Att. Gen.* The Matter you are now debating upon, is, whether theſe Papers ſhould be now Read. And Gentlemen have let themſelves into a Debate foreign to the Queſtion. A great many are againſt it upon this Argument, that they would not be of Opinion to condemn him, unleſs there were two Witneſſes: That is not the Queſtion, for I think no Man is ready to give his Opinion to Condemn or Acquit him, unleſs there were two Witneſſes: One Gentleman is againſt the reading of it, and yet believes Sir *John Fenwick* guilty. I muſt reſpite my Judgement, till I have heard his Defence: I think that the Council for Sir *John Fenwick* at the Bar, are very much miſtaken, when they ſaid, that ſuch a Thing as an Examination in Writing, was never read in any Court of Juſtice. I think that is in a great miſtake, and a good Authority hath been cited for it; and every one knows the Practice is otherwiſe; 'tis often allowed, that the Examinations before a Juſtice of Peace are read. The Queſtion is now, whether the Examination ſhall be read? If there do not appear another Witneſs to prove him guilty, you will debate that Matter then, Whether you will condemn him without two Witneſſes? You might as well have debated before, whether *Porter* ſhould be examined, becauſe no Man will condemn him without two Witneſſes, and therefore do not examine one. Why, we know not what further Witneſſes may be produced, if Sir *John Fenwick* was upon his Trial; I think this Information might have been admitted for Proof, if *Goodman* was out of the Way; but if it was admitted, unleſs there was another Witneſs produced, I believe the Court will tell the Jury, here are not two Witneſſes, and thereforey you muſt acquit him.

Sir *William Coryton.* I muſt crave leave to differ from that worthy Gentleman; I think this is the proper time to determine, whether this Evidence is to be admitted afterwards? Indeed you may determine, how far it is available. I thought both in Law and Juſtice, before I came into the Houſe, that this ought not to be admitted for Evidence. A Gentleman grounded his Argument, upon what? My Lord Chief Juſtice *Hales*'s Opinion; but the Fate is, that my Lord Chief Juſtice *Hales* States the Difference in Caſes of Treaſon, and in Caſes of Felony. Now in Felony, they make uſe of Depoſitions; and the Reaſon is, becauſe 'tis more for the Advantage of the Priſoner than his Diſadvantage; for if the Witneſs differ from his Examination before the Juſtice of Peace, that turns to the Advantage of the Priſoner. In the Nature of the Thing it ſeems not to be reaſonable, for it is eaſie to turn the Tables. And ſuppoſe *Goodman* in the Place of Sir *John Fenwick*, and Sir *John Fenwick* in the Place of *Goodman*; it would be hard (take the Informations to be as they are) to admit them for Evidence; which in my Opinion, are great Reflections upon Perſons of great Honour and Worth.

Sir *Charles Muſgrave.* That which I perceive to be your Debate, is that upon which the Council withdrew; you heard it aſſerted, That there was no Inſtance in a Criminal Caſe, where an Affidavit was allowed for Evidence: And I think the Learned Council at the Bar, did not much inſiſt upon it; and yet I don't think they were ignorant of the Caſe quoted out of my Lord Chief Juſtice *Hales*, but they thought it was not applicable to this Buſineſs before the Houſe: But only related to Felonies, and when Depoſitions were taken in the Preſence of the Party. 'Tis ſaid, we are not tied up to the Rules of *Weſtminſter-Hall*; and that Parliaments may Denominate Crimes after they are committed; but I never did hear, that the Parliament did take upon them to determine that to be Evidence which is not Evidence in any Court of the World. If you read this Paper to inform your ſelves, you admit that to be Evidence, which is no where elſe to be admitted. You are told, you are not tied to the Forms of inferiour Courts of Law, nor Equity: If you are not bound by them, you are bound by your own Conſtitutions. You are told, you are uſed to read Affidavits in Common Cauſes; but if my Memory ſerves me right, you have always had it oppoſed in this Houſe: Therefore I think, according to the Rules of your own Houſe, we ſhall not read Affidavits. Will you make a new Rule in this Caſe? Pray conſider the Conſequence of it hereafter. Suppoſe there came down Affidavits upon another Perſon, againſt a Great Man for High-Treaſon, Whether that may not be thought ſufficient for to govern your Judgments: I hope thoſe that hear me, will have a Care of the Matter. Why, by the Parity of Reaſon, may not two Affidavits do by the help of the Legiſlative Power? I would be glad to know, whether in the Caſe of an Impeachment, they ever heard of Affidavits being read? And this is much in that Nature; and therefore, why ſhould you admit of an Affidavit now, when the Party charged was not preſent, when that Affidavit was taken?

Sir *Joſeph Williamſon.* I am ſorry this Point coſts us ſo much time; the Gentleman that ſpake laſt, hath brought us to the Queſtion, How far you will admit this Affidavit (as they call it) to be read: I am of Opinion notwithſtanding all that hath been ſuggeſted, that it not only may be read, but that it ought to be read. None of the Caſes that have been inſtanced, comes up to the Caſe in Queſtion; all the Caſes that are brought, are from inferiour Courts, and the laſt that is brought, is from the Example and Uſage, in leſs conſiderable Caſes; and indeed of a different Nature.

This Bill of Attainder, is indeed a Thing ſo extraordinary (as hath been ſaid) as it never ought to be uſed but upon extraordinary Occaſions; and upon that Principle, all that is feared, is all anſwered and avoided. It is to be thought never to come, but upon the like Occaſion; and then God forbid, but they ſhould be governed by the like Precedent; and if that was proper to ſpeak now, which will be at the bottom of it, when we come to give Judgment, and we have time to conſider of it; I can't think we ſhall differ in many Voices. Whether it be Evidence, and how far it is ſo, is not now the Queſtion;

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but the Queſtion is only, whether it be ſuch an Evidence as ought to be read? And all the Inconveniencies that have been alledged, depend only upon this, that it ſhould not be admitted in the ordinary Proceedings in the Courts of Juſtice. Now I ſay, there was a Power lodged in the Parliament of *England* to make a Man guilty of Treaſon, that was not ſo before; and that even in a Reign, when they came to determine what Treaſons were: They did not think it for the Safety of the Community of Mankind, but that there ſhould be a Power lodged in the whole, to declare that to be a Crime, that was no Crime before it was committed, giving them more than is asked here: For here can be no Queſtion, but as to the Forms of Proceedings. The Queſtion is not upon his Crime, that is no Queſtion; and I take it, that if upon any Occaſion 'tis to be juſtified in this, and the Law hath truſted the Parliament with a greater Power than now they are about to execute, and there are only Objections to it raiſed from another Place, which I think can never conclude in this.

Mr. *Chancellor of the Exchequer.* I am for reading of this Paper, though I don't think it Evidence equivalent with *Viva Voce*; nor do I think, that in like Caſes it ought to be admitted below; but I think, in your Proceedings in Parliament, it ought to be read, whether it be an Affidavit or not; and I am more of that Opinion, from what happened in a Caſe to Day. We had a diſpute, whether *Porter* was to be examined, becauſe the Teſtimony of a Man's Wife was not good below? But when that came to be examined, it was not the Teſtimony of a Man's Wife, but his own, better appeared in Evidence; and *Clancy* told *Porter*, he came from *Fenwick* himſelf, and therefore the Evidence which at firſt, for that Reaſon, was urged not to be heard, did amount to more when it came to the Proof. I would have this Paper read; not becauſe it ſhould ſupply the Place of a Witneſs: No, but becauſe you ſee he hath been indicted by the Evidence of *Goodman* and *Porter*, and the firſt is withdrawn; and by whoſe Means you have heard: And I would know, whether *Goodman*'s Evidence did amount to accuſe him of the ſame? I do ſay, in your Power of Judging, you are not conſtrained to the Rules of *Weſtminſter-Hall*. And I would ſay, that for your Conſtitution, the Courts of *Weſtminſter-Hall*, are to be governed by the Letter of the Law; but there is lodged in the Legiſlative, a Power to judge thoſe Crimes that are ſheltred behind the Law; and I believe, if the ſeveral Attainders were examined, there was never any Attainder that went upon a more juſt Proceeding than this. I take the Crime to be a Plot with your Enemies, to bring in a foreign Power; and as if that was not ſufficient, he hath made a Falſe and Scandalous Confeſſion, to bring a Diſtruſt and Jealouſy among the King and his People; and he hath dallied and gain'd ſo much Time, as he hath had Opportunity to corrupt one of the Witneſſes; and therefore it would be hard, if no Law ſhould reach him. 'Tis ſaid, Why did not you keep the Witneſs? It would be hard, after a Perſon hath made a Confeſſion for the Good of the Kingdom, that he ſhould be always kept in Irons. We are debating of the Bill, while we are now only, purely to ſee what is in this Paper. I ſhould not have offered to have made uſe of this as a ſecond Witneſs; but the being an Affidavit or not, is not material in this Point; The Commons proceed upon Impeachments, without Affidavits: 'Tis offered as Evidence, That *Goodman* was a Witneſs againſt him (you have had proof of;) and that he hath been tamper'd with, to withdraw, by the Friends of this Gentleman. I do think we have gone more fairly and equally to work, than upon any of the Records of Attainder in your Journals.

Mr. *Brotherton.* The Queſtion is, Whether this Paper ſhall be read? Firſt, It hath not been proved before whom it was taken, nor nothing at all. It hath been objected, that there ought to be two Witneſſes, by the late Statute. But I muſt put you in mind, that it was ſo by the Statute of *Edward* V. and ſo was the common Law before; and my Lord *Coke* ſays, there muſt be two Witneſſes, and they brought Face to Face: And ſo goes to the Divine Law; and if it ſhould not be ſo, I will put you in mind of an Inconveniency. Eleven Witneſſes were produc'd before the Grand Jury; and when they came to give Evidence, Face to Face, before the Pitit Jury, the firſt Witneſs did not know the Criminal, that he had ſworn againſt. It was in the Caſe of Sir *Rowland Stanley.*

They mention a Paper againſt *Algernoon Sidney*; but that Paper was wrote by himſelf. 'Tis ſaid, this Houſe are not bound by the Rules of other Courts; for that Reaſon, they ought to give Rules for other Courts. Nothing is more common, than to ſay, Judgment was ſo in the Houſe of Lords, and that ſettles the Law in other Courts below.

Sir *Godfrey Copley.* Several Gentlemen have ſpoke to the reading this Paper; ſome have ſaid, That it ſhould be read as Evidence; ſome others are for reading of this Paper; but yet at the ſame time tells us, It is not to be looked upon as Evidence, at leaſt, not equivalent to a Witneſs: If the Paper be to be read at all, I would know for what Reaſon? If it be to have any ſway upon our Judgment; if it hath any Effect upon my Judgment, then in ſome meaſure it is equivalent to a Witneſs, when 'tis in the Nature of a Witneſs; and if it ſhould be read to ſupply the Defect of a Witneſs, then I would know, what the Conſequence of this might be? I do very well underſtand, that the Court of Parliament does take no Precedent from *Weſtminſter-Hall*; nor am I afraid of any Precedent they ſhould give to *Weſtminſter-Hall*: But I am afraid of a Precedent to future Parliaments. Suppoſe the Information of Sir *John Fenwick*, that hath been delivered in here, ſhould be produced as Evidence againſt any of thoſe Honourable Perſons that are charged in it, though I believe they are very Innocent; and ſome Knaves, or Raſcals, in future Reigns ſhould come in againſt them, and this Paper ſhould be brought to ſupply another Witneſs, what a Conſequence would that be?

Sir *Henry Hobart.* I muſt differ with the Gentleman that ſpake laſt; as to the Gentleman that ſpake before, I did not expect any thing to be quoted out of *Lancaſhire* againſt the Reading of it. I will tell you why I think this Paper ſhould be read; you have it ſuggeſted in the Bill, that *Goodman* was one of the Evidence againſt Sir *John Fenwick*; they are to make good the Suggeſtions, and this will ſhew, that *Goodman* was an Evidence. You are told the Danger of the Precedent, and there may come ill Reigns, and ill Parliaments; as to that, I ſhall only ſay, in a good Reign, and a good Parliament, there is no Danger; and in an ill Reign, and ill Parliament, they

they will make Precedents without your giving of them. Mr. *St. John* tells you in his Arguments, 'tis true in inferiour Courts, by the Statute of *Edward* VI. they are bound by two Evidences *Viva Voce*; but you are not preſcribed by that here, but you are to judge in your own Conſciences as the Thing appears: I may ſay as another did upon another Occaſion, let it be read; *Valeat quantum valere poteſt.*

Sir *Marmaduke Wyvell.* I deſire to take notice of one Argument, that hath been made uſe of by one or two honourable Perſons; which is, that they tell us, that *Goodman* hath been tampered with by Sir *John Fenwick*: I remember no ſuch thing that hath been proved; but indeed it was ſaid, that Mr. *Dighton* offered Mr. *Roe* 100 *l.* a Year, to invalidate Mr. *Goodman*'s Teſtimony.

Lord Caſtleton. Let me ask you this Queſtion. Whether if you read this Affidavit you read it as Evidence?

Mr. *Soll. Gen.* I deſire you would conſider what you did, before you ordered Captain *Porter* to go on with his Evidence, and did agree you would conſider of it afterwards. Some are for reading this Paper, and others are indifferent, whether it be read or no; and thoſe that are againſt reading of it, are againſt reading of it becauſe 'tis no Evidence: But that is no Reaſon why you ſhould not read it; for it is at moſt, but doing a vain Thing.

I think you have been told already, if it was inſiſted on below, it muſt be read; and the other Side muſt demurr. The Court might ſay, 'tis not Material, but it muſt be read before they can demurr: So that the Queſtion, Whether it is Evidence? muſt come afterwards; and if you go according to the Rigour of Law, with Submiſſion, it muſt be read.

Mr. *Price.* I did not deſign to trouble you in this Matter, but the Doctrine laid down by ſome Men of our Gown, ſurprizes me: 'Tis only an Argument, that the Court below ought to admit this Paper to be read; but there is no Precedent ſhewed, nor convincing Reaſon given, why the Courts ſhould admit it. The Queſtion is, Whether an Information taken before a Juſtice of Peace, ought to be read here? If it be to introduce a new Law, and make a new Crime, then you make a new Sort of Evidence: But if this be a Crime againſt an Act of Parliament, or Law in being, then you muſt take the Evidence the Law doth afford you, in the Nature of the Crime. The Charge here is a Charge of Treaſon againſt a known Law: But the great Argument is, this is an extraordinary Offence; that Sir *John Fenwick*, or his Lady, had a Hand in ſending *Goodman* away: 'Tis a Miſtake; and offering one Thing that is not Evidence, brings us to another; the Evidence of *Clancy*'s tampering with him; Captain *Porter* does not ſay, that Sir *John Fenwick* employed him; only that *Clancy* ſaid ſo, which is but a Hearſay, and that is no Evidence, unleſs *Clancy* was at the Bar, and would ſay it.

In the next Place, it is ſaid, That there was a tampering by a Sollicitor: What is that? Is it not natural for a Sollicitor to ſay, is there any Objections to ſuch a Witneſs? Is it not natural for him to leſſen his Reputation if he can? Now you would have a Copy of an Information to be Evidence. 'Tis ſaid, 'tis *Tanta Mount*: If ſo, then the Courts of *Weſtminſter* ought to intermeddle with it, and not this Houſe. A Noble Lord mentioned to you the Law of Nature, the Law of Nations, and the Law of God; but he forgot one Law, which was moſt Material, and that is Marſhal Law; which if he had ſaid, does juſtifie the taking away a Man's Life upon extraordinary Evidence, he had ſaid right.

Mr. *Speaker.* The Queſtion is this, that the Information of *Cordel Goodman*, taken upon Oath, 24th of *April*, 1696. be read?

Which Queſtion being put, the Houſe divided.

Ayes, 218. Noes, 145.

So it paſſed in the Affimative; and Sir *John Fenwick*, and the Council, and Sollicitors on both Sides, were called in again.

Mr. *Speaker.* Gentlemen, ſince you withdrew, the Houſe have conſidered of the Matter, upon which you did withdraw, and they have thought fit, that the Information of *Cordel Goodman*, taken upon Oath, before Mr. *Vernon*, 24th of *April*, 1696. be read.—— Clerk, read it.

Clerk of the Houſe of Commons. Reads—— This is Signed, *Cordel Goodman*, and ſworn 24th of *April*, 1696. before *James Vernon.*

About ſome two Years ſince, or better, I underſtood, Col. *Parker* was Reſident here, in order to engage ſeveral People for the Service of King *James*; and Captain *Porter* told me, he had a Mind to ſee me, which he accordingly did; where he told me, there would be an Invaſion, and that King *James* would be reſtored; and that in order to it, he had Commiſſion to levy Men, and to grant out Subordinate Commiſſions for a Regiment of Horſe, and did ask if I would accept of one, which I accordingly did. He likewiſe ſaid, he would ſee me as often as he could; and that Captain *Porter* and I ſhould receive Directions from him, from Time to Time upon ſeveral Meetings; and having received my Commiſſion, I underſtood what Captains were to be in the Regiment; which were Captain *Porter*, Sir *William Parkyns*, Mr *Charnock*, Sir *Hugh Smithſon*, Mr. *Higgens*, and my ſelf; and one Mi. *Witherington*, to be Lieutenant Colonel.

The Commiſſions were to be Blank when they were to be delivered, and to be filled up by the Captains, *&c.* I then came acquainted with Mr. *Charnock*, and Sir *William Parkyns*; and by them and *Parker*, Captain *Porter* and I were informed, that there was a great Body of Horſe to be ready in the North; but though I asked, yet they never named any Perſons to me, but ſaid, it was ſufficient I ſhould receive Orders, and a Roll to March, to Rendezvous upon Occaſion; and indeed I did not much preſs it, becauſe I did gather there were a great many concerned; and at this time, Captain *Porter* and I took a Houſe in the *Chaſe*, with Stables and Barns, fit for holding Horſes, and as a fit Place to meet, upon Orders given us to March, which were then daily expected.

Sometime after this, Colonel *Parker* was taken, and being Committed to the *Tower*, he made his Eſcape; and after that, I ſaw him, and then he told me, he would be ſure to correſpond with me and *Porter*; and I ſhould receive his Letters of Mr. *Charnock*, or Mr. *Johnſon*, and he accordingly did; and in his Letters he ſtill gave us

Hopes,

Hopes, and ſaid, he would certainly ſend us notice to be in readineſs Time enough, to be ſerviceable to the Deſign of the Invaſion.

The laſt Letters I received from *Parker*, gave me Advice, That he doubted not, but the Cauſe would come to a Hearing as this *Eaſter* Term; and he ſhould write no more, but bring the Orders himſelf; upon which I went to *Charnock*, and he told me, he did expect him here in a ſhort time: But always, or moſt commonly in his Letters, he told me, for a Sign, That when the *Thoulon* Fleet ſhould join the *Breſt* Fleet, I might certainly depend, that we ſhould be invaded here.

During theſe Tranſactions, Captain *Porter* complained, that ſomething he was ſending to *Lancaſhire*, had miſcarried; he deſired me to ſet by two Boxes, which I looked not into, but ſuppoſed them to be Arms, and I did ſet them by for him: I had not bought any Arms, but had beſpoke ſome of one *Perry*, a Gunſmith, who ſaid, I ſhould have them at a Week's Warning.

After *Parker*'s having made his Eſcape, and getting into *France*, Mr. *Charnock* came to me, ſometime before the King's going to *Flanders*, and ſaid, he had ſomething to propoſe to me; and deſired me to go along with him, which I did; and he brought me to one Mr. *Waugh*, who ſaid, he expected a Commiſſion from King *James*, to ſeize King *William*; accordingly we went to the *Chocolate-Houſe* in St. *James*'s-*ſtreet*: and after ſome Diſcourſe about the Commiſſion he ſaid he expected, we appointed another Meeting at that Place, and adjourned from thence to my Houſe in *Brownloe-ſtreet*, where was preſent, Mr. *Charnock*, Mr. *Porter*, Mr. *Waugh*, Major *Matthews*, and Mr. *Donelagh*. The Subject of our Diſcourſe was, about the Surprizing and Seizing the King, as he came from *Richmond*; and after ſeveral Ways propoſed to that Purpoſe, I particularly asked; Suppoſe that the King were in our Power, What then? For we ought to have regard to ſome End or other in ſuch an Undertaking; for I was not willing to offer any thing to his Perſon. Mr. *Waugh* ſaid, we might have a Coach, and convey him away; and he ſaid, he was aſſured of a Fort to be delivered to him, and put into his Hands (to the beſt of my Remembrance, it was *Deal*) which might give us Shelter till we might find Opportunity to carry him into *France* by Shipping. I muſt confeſs, I did ſee very little Probability in what he ſaid, neither did I believe, that he would receive any ſuch Commiſſion, as he ſaid he expected: (For about two Years ſince, I remember I ſaw Sir *George Berkeley*, with Col. *Fountain*, and Mr. *Porter*; Sir *George* was then going over to *France*, and it was the only Time that ever I ſaw him; and then Captain *Porter* and I did deſire, that if King *James* deſigned any ſuch thing as Seizing King *William*, he would ſend over a Commiſſion, and a Pardon withal in Caſe of an Accident; which Meſſage Sir *George* carried over, and King *James* refuſed to ſend it.) However, we had another Meeting after that at my Houſe, by which time, he ſaid, he would ſhew us the Commiſſion, and facilitate the Deſign; it was at a Houſe behind the *Temple*, where the aforeſaid Company met, and Mr. *Waugh* brought with him one Mr. *Hays*, who, he ſaid, could furniſh us with a Ship, which would be ready to tranſport us after we had ſeized the King; but upon Diſcourſe with Mr. *Hays*, we found that the Demands were ſo exorbitant, and not in poſſibility of being complyed withal; and beſides, no Order nor Commiſſion being produced, we did deſiſt then; for Captain *Porter*, and Major *Matthews*, and I, did declare we would not meddle without ſight of the Commiſſion. After ther this, Captain *Porter* and I talked of having a Veſſel, and ſending *Le Rue* and *Charnock* about it. We met at the *Fountain* by the *Temple-Gate*, and Sir *William Parkyns* was there; and during the Time of our being there, one called Sir *William* out, and Sir *William* called out *Porter*, who came in, and ſaid, there was a Gentleman that could help us in this Affair; who he was, I know not; I believe Captain *Porter* may, for I ſaw him not: But all this proved ineffectual, for the King went away ſuddenly, and no Commiſſion ever came. And by Letters from *France*, I underſtood King *James* was angry, that they uſed his Name to what he had not promiſed; and *Porter* and I wrote over by his Order, the Truth of the whole Matter.

Sometime after this, Captain *Porter*, the Earl of *Aylesbury*, Sir *John Freind*, Sir *William Parkyns*, and Sir *John Fenwick*, and others, met about ſending over ſome Propoſals to K. *James*, to expedite an Invaſion; and likewiſe Captain *Porter* ſaid, it was proper I ſhould be there, for he had engaged for me. I told him, I would come, and at the *King*'s-*Head* in *Leaden-hall-ſtreet*, I found the Perſons above-named, together with my Lord *Montgomery*, and one Mr. *Cook*.

The Effect of their Conſultation was, the ſending Mr. *Charnock* with a Meſſage to this Purpoſe; That if the King of *France* could ſpare ſuch a Number of Foot, and ſo many Dragoons, amounting to about 12 or 15000, or thereabouts, in all: That then upon Notice given, that every particular Man there, was to furniſh ſuch a Number of Horſe; ſome more, ſome leſs, to be ready to ſuccour the Forces from *France*, when Landed. Mr. *Charnock* went and returned with a Refuſal, that Forces could not be ſpared; Sir *John Freind*, and my Lord *Aylisbury* were of Opinion, that if King *James* would venture hither with ſome ſmall Retinue, he had Friends enough to appear for him, without any Foreign Forces; but that was held in doubt.

I uſed afterwards to ſee my Lord *Aylesbury*; I always asked what News he heard? He ſaid, when he received any Orders he ſhould know; for he having been in *France* (as he did not deny) I ſuppoſed him not to be ignorant of what was intended.

And to the better facilitating an Invaſion, Sir *John Fenwick* uſed to ſend over a Liſt of the Forces, and how they were quartered, and what were in Garriſon, and what otherways diſpoſed of: He having made a Miſtake in the Account, *Parker* did by Letter, deſire me to try if I could procure ſuch an Account; which I accordingly did of one *Gibſon*, a Clerk in the Office, and ſent it over frequently.

After the Eſcape of *Parker* out of the *Tower*, Sir *John Fenwick*, when I asked him, how he got away, and how much Money was given? He ſaid, 200 *l.* promiſed, and 300 *l.* given; for when a Perſon came in and told him, he had brought him Liberty, and was to have 200 *l.* he replied, you ſhall have 300 *l.* and it was made good to him afterwards.

Cordell Goodman.

Much

Much about the ſame time, I uſed now and then, with Captain *Porter*, to be with Sir *John Fenwick*, and it was agreed, that if *Parker* ſhould not bring us timely Orders, that what Forces we could bring in, (*viz.*) *Porter* and I, we were to take Orders from Sir *John Fenwick*; this we offered him, and he kindly accepted: And then he ſaid, That he believed, moſt of my Lord *Oxford*'s Regiment would go to King *James*. When I told Mr *Paradiſe* had promiſed to bring in 7 or 8 to me, and that Mr. *Aynſworth* was to bring in 20, and *Parker* had ſaid, if I made 30, it was ſufficient for me.

As to keeping the Horſes, Sir *John* ſaid, it was dangerous, and they would certainly be Seized; but the beſt Way was, to have a Liſt of what Horſes were in and about the *London* Stables.

Captain *Porter* and I, ſent accordingly to view the Stables. I ſent Mr *Reyhough*, and Captain *Porter* ſent *Cranborn*, and they took an Account.

Cordell Goodman.

Jurat. 24. *April*, 1696. *Coram me*, *Ja. Vernon.*

Mr. *Serjeant Gould.* Now Mr. *Speaker*, if you pleaſe, we will call ſome of the Grand Jury that will give you an Account what Evidence they found the Bill upon ——— Mr. *Gracedue*, you were one of the Grand Jury that found this Bill?

Mr. *Gracedue.* Yes, Sir.

Sir *Thomas Powys.* This is ſo far from being Evidence, that I think 'tis the Oath of the Grand Jury, that they ſhall not diſcloſe or diſcover the King's Secrets. The Bill of Indictment is but an Accuſation. A Bill of Indictment cannot be given in Evidence againſt a Man for the leaſt Crime ſoever. It can't be given in Evidence to be credited, becauſe 'tis but an Accuſation; and by Conſequence, whatever any Witneſs ſays at that time, can go no farther. When a Perſon comes upon his Tryal; they can't ſo much as reſort to any Thing that is ſworn before the Grand Jury, nor make uſe of it.

Sir *Bartholomew Shower.* We humbly oppoſe this Evidence; becauſe the Gentlemen can give no Inſtance either in their Reading or Obſervation, that the Teſtimony that hath been given before a Grand Jury, hath been given in Evidence to a Petit Jury: And 'tis Part of the Oath of a Grand Jury-Man, that it ſhould not be diſcloſed. We do not ſay, it will bind your Houſe, but I hope it will be Evidence to you, that 'tis not agreeable to the Rules of Law.

Members. Go on, go on.

Mr. *Speaker.* Mr *Gracedue*, Will you give the Houſe an Account, who were the Witneſſes before you upon finding the Bill?

Mr. *Gracedue.* The Witneſſes before us, were Captain *Porter*, and Mr. *Goodman.*

Mr. *Speaker.* Can you remember ſo well, as to give an Account to this Houſe of what Evidence Mr. *Goodman* gave.

Mr. *Gracedue.* Yes, I think I can. When he came before us, he told us, That he was at a Meeting at the *King*'s-*Head* in *Leaden-hall-ſtreet*, where there was Sir *John Fenwick*, my Lord *Montgomery*, Captain *Porter*, Mr. *Charnock*, and others; and the Buſineſs was to ſend Mr. *Charnock* over to *France*, to procure Men to invade this Kingdom; and 8000 Foot, and 2000 Horſe was propoſed. He told us, the Reſult of that Conſult was, that if *France* would ſupply 8000 Foot, and 2000 Horſe, it would be a ſufficient Power to come over; and that they would ſupply 2000 Horſe among themſelves. Upon which *Charnock* replied, Gentlemen, you ſend me over upon Uncertainties; you ſay, you will ſupply 2000 Horſe, but unleſs you give me ſome Aſſurance, I can't, nor will I go. And the Queſtion was propoſed to all of them, if they would make good their Proportion, and they promiſed ſingly: Says I, did Sir *John Fenwick* promiſe? And he ſaid, Yes. Says I, Did my Lord *Montgomery*? And he ſaid, Yes. He was asked, Who elſe? But, ſays he, 'tis not a Queſtion for you to ask us; and for that he referred himſelf to me: For, he ſaid, he was not bound to anſwer further, having proved the Indictment.

Mr. *Serjeant Lovel.* We deſire Mr. *Joſhua Meade* may be asked to the like Purpoſe. Were you one of the Jury that found the Bill againſt Sir *John Fenwick*?

Mr. *Meade.* Yea.

Mr. *Speaker.* Pray, who were the Witneſſes before you upon finding of the Bill?

Mr. *Meade.* There was Captain *Porter*, and Mr. *Goodman*, Sir.

Mr. *Speaker.* Can you remember what Mr. *Goodman* teſtified then?

Mr. *Meade.* Mr. *Goodman* did then teſtify, That Sir *John Fenwick*, my Lord *Montgomery*, &c. were at the *King*'s-*Head* Tavern in *Leaden-hall-ſtreet*; and *Charnock*, and the reſt there did conſult how to bring in their old Maſter; as to *Charnock*, That they agreed to ſend him over to King *James*, to know whether the *French* King could furniſh them with 8000 Foot, and 2000 Horſe, and that they would endeavour to meet him with 2000 Horſe. Hereupon *Charnock* (*Goodman* ſaid) put it to every Man of them, to know if they were all of one Mind; and they all ſaid they were. This he did prove, and this is all I can remember.

Mr. *Serjeant Lovel.* We have many more to the ſame Purpoſe, if the Houſe think fit to hear them.

Members. No, no.

Mr. *Serjeant Gould.* We will go thus much further; That upon the Tryal of Mr. *Cook*, wherein there was Evidence given by this Gentleman, and in that this Gentleman that is the Priſoner at the Bar was particularly named to be concerned, we will call them that were preſent there at the giving of the Evidence: But firſt, we deſire to read the Record of *Cook*'s Conviction.

Thereupon a Motion was made for the Council to withdraw; and being withdrawn, a Motion was made for Candles, which paſſed in the Affirmative without a Diviſion, in regard it being dark without Candles, there could be no Motion made for adjourning the Debate, or remanding the Priſoner.

Afterwards a Motion being made for adjourning the Houſe till to Morrow Morning, the Houſe divided.

Ayes 141. Noes 163.

And ſo it paſſed in the Negative; and Sir *John Fenwick*, and the Council, and Sollicitors, were brought in again to the Bar.

Mr. *Speaker*. Mr. Serjeant *Gould*, the laſt Evidence you were about to offer was, That of the Record of Mr. *Cook*.

Sir *Thomas Powys*. Mr *Speaker*, we oppoſe that being offered as Evidence; as I underſtand it, they are going to give in Evidence againſt Sir *John Fenwick* what was ſworn againſt Mr. *Cook*; that is not admitted in the Courts below; for, according to that Method, the Tryal of one in the Company would be the Tryal of all the reſt. This was never allowed in any other Caſe, and I hope you will not allow it here.

Sir *Bartholomew Shower*. The Indictment is, that they did conſult together, but their Crimes are ſeveral; if they had been mentioned in one Indictment, and one had been tried at one time, and the other at another, it would not have been allowed that they ſhould give in Evidence againſt the one, what had been ſworn againſt the other: For though their Charge is by the ſame Witneſs, and for a Fact done at the ſame time, yet the Defence of the Parties may be different; and it cannot be expected, that we, on the behalf of Sir *John Fenwick*, are prepared to give an Anſwer, in regard of any thing that was Sworn againſt Mr. *Cook*.

Mr. *Speaker*. Mr. Serjeant *Gould*, you hear the Exception.

Mr. Serjeant *Gould*. We hope in this Caſe we ſhall go on with our Evidence, as offered and propoſed to this Houſe. Theſe Gentlemen have made their Objections, as if they were below in the inferiour Courts; but we are here now before you, in a Parliamentary Way; and what is that which brings us here, but becauſe there is a Witneſs withdrawn by Artifice, ſo that we cannot produce him? And therefore we come, and humbly apply our ſelves to this Honourable Houſe. Now, Sir, you are Judges of the Method of coming at the Truth, and ſupplying that Defect? if we could produce him, there would be an End of the Matter; but in this Caſe we are in the Judgment of this Honourable Houſe, Whether we ſhall not give ſuch Evidence as he hath given upon his Oath, though in other Caſes it is not admitted.

Mr. Serjeant *Lovel*. When we produced the Record of Conviction, we only produced it to ſhew you there was ſuch a Tryal; and by that means to let us in, to ſhew you what was Sworn by Mr. *Goodman* at that Tryal.

Then upon the Motion of Colonel *Granvil*, and Sir *Richard Temple*, Sir *John Fenwick*, and the Council, and Sollicitors, withdrew.

Sir *Richard Temple*. If I did not believe what is now offered, is what was never offered before, and of dangerous Conſequence to every one here, I would not have troubled you at this time of Night. There has nothing been offered that this hath ever been done. They ſay, It hath not been done in Inferiour Courts: Pray let us ſee if ever it hath been done in Parliament, That what was given in Evidence at another Tryal, ſhould be given in Evidence againſt another Perſon here, when this Perſon was not by, and had no Opportunity to defend himſelf againſt it; I am ſure it was never done yet.

Sir *Thomas Mompeſſon*. This Gentleman complains this was never done. When the Duke of *Monmouth* was Impeached, the Bill was read three times in one Day, and that Gentleman moved for the Impeachment.

Sir *Richard Temple*. Here were three Witneſſes that did declare they ſaw him in actual Rebellion, at the Head of an Army; but I hope I am not to anſwer for all the Proceedings then.

Colonel *Granvil*. When I ſaw them going on to make uſe of that as Evidence, which was never allowed in any Court; I thought I ought to move for them to withdraw. I ſhall not give my Conſent to have it read, till ſome Body ſatisfies me 'tis good Evidence againſt Sir *John Fenwick*: I can't ſee how you can admit this for Evidence: Are we to read all the Tryals that are upon this Plot? Therefore I deſire you will bid them produce what is Evidence againſt Sir *John Fenwick*, and not to trifle with you.

Sir *Thomas Littleton*. If you proceed in this manner, I know not when you will have done. They do not tell you, they produce this as Evidence againſt Sir *John Fenwick*; nor do I take this to be the only Evidence to prove him guilty. If nothing but exact Proof would have ſatisfied, this Bill would not have been brought in: But this is to make as good Proof as the Nature of the Thing will bear; you have heard ſeveral Things before, in Relation to *Goodman*, that poſſibly might ſtrictly be no more Evidence againſt Sir *John Fenwick* than this, as *Goodman*'s being withdrawn. Firſt, they offered to prove that he was gone; that it was ſuſpicious that Sir *John Fenwick* was privy to his going: Why did you admit the Evidence of what he ſaid to the Grand Jury? What is this, but to give Evidence of what he ſaid to the Petit Jury, wherein the Grand Jury and Petit Jury have both believed him?

Mr. *Harley*. I think if you had come to one Determination before you had entered upon this Matter, you had very much ſhortned your Buſineſs; that is, that you would not expect ſuch Proof as is neceſſary at Law; and it may be if you would come to it now, it would ſave you time: For I find by the Council, that what is ſworn againſt another Man, at another time, would not be Evidence at Law againſt the Priſoner; and I believe if he ſhould except to a Jury-Man, becauſe he was upon *Cook*'s Tryal, it would not be allowed as a good Exception, and he would be told, he was no way concerned in another's Tryal.

Mr. *How*. 'Tis a ſtrange Sort of Evidence that is offered here, and 'tis a ſtrange way of bringing it in. The Houſe made nothing lately of Hearſay, and yet now Hearſay muſt be taken for Evidence. I have heard that the Grand Jury take an Oath not to diſcover what was ſworn before them; this ſince the Grand Jury have ſubjected themſelves to (yet you have brought them here as Witneſſes to give an Account of what was ſworn before them,) which I am afraid is a Breach of their Oath, it ſhall make me give leſs Credit to what they ſay. We are here to attaint a Man, but we muſt not talk of Proof; that is a ſtrange Thing. I am ſure, if you do not find it with Proof, it would be againſt Proof. Shall I be plain with you? I queſtion if this Houſe had heard what *Goodman* ſwore at that Tryal, and what was alledged againſt it, whether this Houſe would have been of that Juries Mind: For I have heard that two or three did ſwear, he was not at the Place at the time he ſwore he was, as plain as a Negative could be ſworn.

Mr.

Mr. *Harcourt*. If you please to let the King's Council go on upon this, you will save a great deal of Time, and prevent any Exception to any Evidence afterwards: For 'tis not in the Power of Man to offer any Thing more absurd. I don't believe that ever any Man heard of such a Thing offered, That a Record should be given in Evidence against a Man, that is no Manner of Party to the Record: I am sure never any such Thing was attempted before. As for the other Things, you had something offered that made it seem doubtful how far you should give Credit to them. Upon those Matters, the Council at the Bar for the King told you, That there was some Pretence that it was Law, and practised below, and a Book was produced to justify it: But in this Case, if there be Book, Practice, Precedent, or any Thing to justify it, I will sit down; the Answer made it ten times worse. The Gentleman said, he would not have the Record read; but upon that Record to prove what was sworn at the Tryal, Why, does that concern any Person in the World but *Cook*?

Lord Cutts. If the worthy Gentleman that spake last had made out all his Propositions with Clearness, equal to the Assurance with which he asserted them, they would have more Weight: But I will say, That which he hath asserted does not appear to me so. I take this to be the same Thing in some Measure debated over again: It hath been told you, That this House are to give their Judgment in a Matter of great Importance; and therefore I think 'tis fit that all the whole Matter should be laid before them; when that is done, they only are the Judges of what Weight it is.

Mr. *Sloane*. I go along with those Gentlemen, That this is no sort of Evidence against Sir *John Fenwick*: But our Question is about a Witness that is withdrawn, and to know what he said, and how he was believed when he was here. How he is gone, we have seen already; and therefore though I think the Verdict against *Cook*, nor nothing of that, can be given in Evidence against Sir *John Fenwick*; but yet if he hath withdrawn the Witness, and the Credit of him is at Stake, as you have heard Evidence of what he said upon Oath, before the Tryal came on, by the same Reason you may hear what he said at the Tryal.

Mr. *Pelham*. I think it would shorten our Debates, if we were truly satisfied about what we are a doing; That we are Trying Sir *John Fenwick*, as we were told at the Bar; he called it a Tryal, and 'tis a Tryal. I must confess I was in hopes I should never sit in the House of Commons to try any Body; I did not think it the Business of us; if I had, I would not have come hither: But since we are come into it, is any Thing more natural, than to examine whether this Evidence be proper, or such Evidence as any Court would allow of?

Sir *William Williams*. I suppose there is no Gentleman of our Profession that hath seen any Record will say, That this hath been offered in any Court of Law: I believe, if he was upon his Tryal upon the Indictment, no Body will say it would be read against him. Let us consider how many Judgments that have been given hastily, in the late Reigns, have been reversed. What is the Reason that is given for it? It is for receiving that for Evidence which was not Evidence in the Law: Your Bill of Right takes Notice of it.

Mr. *Sollicitor General*. I did not think this Matter would have held you a quarter of an Hour: But if Gentlemen will debate upon the same Matter that hath been over-ruled twice before; all that is to be proved by this Record is, That one *Peter Cook* was attainted for High Treason; if the Council on the other Side would have owned *Peter Cook* to have been Attainted, you had not been troubled to have the Record brought to the Table. But as to what they say, That Sir *John Fenwick* was no Party to the Record, and therefore it can be no Evidence against him; I suppose it would be Evidence for him. Suppose *Goodman* had sworn he never had been at the *King*'s-*Head* Tavern, would not the Prisoner have produced a Witness to prove what he had sworn? Then I would put you in mind of a Case, because there is a Nicety in this Matter without any Reason: It was in the Tryal of Alderman *Cornish*; he was Indicted and Tryed, and the great Fact was in the House of one *Sheperd*; there was a Witness against him, one *Rumsey*, who swore, *&c.* Says Mr. *Cornish*, he was a Witness at my Lord *Russel*'s Tryal, and he did not name me to be one; and it went so far, That when *Sheperd* said, I was in the Room; he stood up and said, No, it was read before I came in. Mr. *Cornish* would have produced a Witness to have proved what *Rumsey* said; says the Court, We cannot admit of that; for it does not appear to us, that my Lord *Russel* was ever tryed for High Treason; and there, upon that Slip, was that Gentleman destroyed. I pray it may be read; I have given no Opinion of what Force it is, but I think it depends upon the same Reason; nay, you have more Reason to do it, than any Thing you have read to Day.

Mr. *Price*. 'Tis very much pressed, That you should read that, which when Read, they say, is not Evidence, but only to introduce another Matter. If it be not Evidence, upon what Account shall they read it? But if it introduce other Evidence, this is an Ingredient and Part of that Evidence. Now suppose the Record should be produced, and they should bring Witness to say what *Goodman* swore at that Tryal; would that be Evidence? No sure, for no Body ever pretends that this hath been admitted either at Law, or in Parliament. By what Law? By what Rule? By what Measure of Reason are we to proceed in this House? If you would permit to be produced a Record of Conviction against a Third Person, and this to be Evidence against one that is not present; I think you may as well admit to be produced a Record of the Conviction of any other concerned in the Assassination. But I stood up Principally upon the Observation made at the Bar, and he put you that which he takes to be a sinister Case; for, says he, suppose Sir *John Fenwick* had brought this Record, and made use of it to take off *Goodman*'s Testimony, should it not be Evidence? Yes, no doubt of it, and there is the Distinction: 'Tis one Thing where you are to give in a Record to Convict and Attaint a Person; and another Thing where it is to prove a Man perjured, and to invalidate his Testimony; for when Evidence is brought against a Prisoner, he hath no Way to lessen his Evidence but what is Collateral; if it be upon a Tryal when another is concerned, if the Witness gave a contrary Evidence, or the Party was acquitted, then the Record may be made use of against the Witness: But it differs very much, where you bring Evidence to take off the Credit of a Witness, and where you bring it to Convict or Attaint a Person. The Case of *Cornish*, that turns upon the same Reason;

and it was only to be uſed to take off the Teſtimony of *Rumſey*; but if this Record of the Conviction of *Cook* be brought to any Purpoſe now; 'tis to ſatisfy your Conſciences, that *Goodman* gave a good Teſtimony at that Tryal; and I wonder the Serjeants ſhould offer it, who are Sworn to offer nothing in Violation of the Law.

Dr. *Oxenden.* If I did not think this Queſtion had been determined before, I ſhould not trouble you in this Debate, for did not we receive what *Goodman* depoſed upon Oath before a Juſtice of Peace? Was it read becauſe it was taken in Writing, or becauſe it was his Evidence? Now they offer you an Evidence of his, that was not put into Writing, but they will prove by Witneſs; what is the Difference? If it had been taken down in Writing, it muſt have been admitted as the ſame was before.

Sir *Marmaduke Wyvell.* That worthy Gentleman deſired to know the Difference, *&c.* That Depoſition was againſt Sir *John Fenwick*, but this Evidence that they offer now, was given againſt *Peter Cook.*

Mr. *Att. General.* You are now upon a Debate, Whether you ſhall read the Conviction of *Peter Cook?* I do agree with thoſe Gentlemen that have ſpoke of this Matter, that the Conviction of *Cook*, nor any Evidence upon his Conviction, can be Evidence againſt Sir *John Fenwick.* I don't pretend that this is: Nor don't believe that this is offered upon any ſuch Conſideration; but 'tis one of the Allegations of the Bill, that ſeveral of theſe Gentlemen were preſent at this Conſult, of which Sir *John Fenwick* is accuſed; therefore I ſuppoſe the Council for the Bill, did offer this Record to make good that Allegation, and ſo think it may be properly offered, unleſs it be admitted: I don't ſee how it can be made good further; I do not think it proper to examine to what *Goodman* Swore at *Cook*'s Tryal.

Sir *William Williamſon.* I ſpeak only to ſhew my Concurrence with the Attorney General; Mr. *Attorney* hath Stated it right no doubt, as to the Conviction of this Perſon; as Mr. *Attorney* offers it, it may be proper enough.

Members. Call them in, call them in.

Sir *Chriſtopher Muſgrave.* I hear Gentlemen ſay, Call them in; do you intend when you call them in to read this Record? I think the learned Gentleman hath ſtated it, That it ought not to be read as Evidence. Now the Council for Sir *John Fenwick* ſaid, they hoped you would not ſuffer it to be read as Evidence againſt the Priſoner: I never heard the Council ſay, that *Cook* was not Attainted, nor ever heard that any Man did doubt it; then if it be no Controverſy between the Council, to what End is it brought hither? Do you think that the Steps that are urged to be taken in this Caſe, will not be a Precedent for Poſterity? I take it that there is a great deal of difference between the Paper you have read, and this Record, and therefore if you call in the Council, I hope you will not gratifie them in reading of it.

Mr. *Edward Harley.* Before you call the Council in, I humbly propoſe it to you to conſider to what Purpoſe this Record ſhould be read; if as Evidence, you are through all the Courſe of Proof that is ſettled by the Common Law, and Statute Law; for it hath been in all Tryals oppoſed to give in Evidence that which is improper, becauſe it ſhould not influence the Jury. I would not have it ſaid, that under the Reign of King *William*, any Thing was done contrary to the Law and Conſtitution of the Nation. There hath been an Inſtance given of the Tryal of Mr. *Corniſh*, though that Caſe does not come up to it; but we know what was done in thoſe Reigns hath been juſtly reflected upon: And I hope you will not make a Precedent here, to encourage Judges to do what is againſt Law.

Mr. *Speaker.* Gentlemen, This is your Queſtion, That the Record of the Conviction of *Peter Cook* ſhall be read.

Which Queſtion being put, the Houſe divided.

Ayes 181. Noes 110.

So it paſſed in the Affirmative.

Mr. *Speaker.* Gentlemen you have had another Queſtion that hath been the Subject of your Debate, That the Council for the Bill be admitted to give Evidence, as to what *Goodman* ſwore againſt *Peter Cook.*

Mr. *Robert Harley.* The Learned Gentleman did tell you, That what *Goodman* ſaid at that Tryal, ought not to be given in Evidence; and therefore, I think, Gentlemen won't inſiſt upon that, that is, carrying it too far; and I think, he opened it, that it was only to prove that *Cook* was Attainted, and to make uſe of it no further.

Mr. *Speaker.* Is it then your Pleaſure, that Sir *John Fenwick* and his Council be called in?

Which Queſtion being put, it paſſed in the Affirmative, and accordingly they were called in.

Mr. *Speaker.* Sir *Thomas Powys*, The Houſe hath determined to have this Record read, not as Evidence againſt Sir *John Fenwick*, but to prove the Allegations in the Bill, and that *Cook* was Attainted.

Read the Record.

Accordingly that Record was read by the Clerk.

Sir *Barthol. Shower.* We are ſure the Record does not prove that he was Convicted upon *Goodman*'s Evidence.

Mr. Serj. *Lovel.* Look upon the Indictment.

Sir *Thomas Powys.* It appears by that, that *Goodman* was a Witneſs upon the Indictment; but it does not prove by that, that he was a Witneſs upon the Tryal.

Mr. Serj. *Gould.* May it pleaſe you then, Mr. *Speaker*, thus far 'tis agreed, that here is a Record of the Conviction of *Cook*; and 'tis agreed, and the Record ſpeaks it, That *Goodman* was a Witneſs, for it is indorſed upon the Indictment. Now the main Diſpute is, Whether *Goodman*'s Evidence did prevail to Convict *Cook* upon that Indictment? And for that we ſhall apply our ſelves. Call our Evidence, ſome of the Jury, and ſome that were then Witneſſes, and they will give you an Account upon what Evidence that Conviction was.

Sir *Thomas Powys.* In what you were pleaſed to acquaint us at our laſt coming in, you were pleaſed to give ſuch a Reaſon in Relation to the Reading of this Record, that if we had heard it before, we would not have troubled you to have withdrawn; for it was proper to make out the Allegations of the Bill, and that *Cook* was Convicted; but we apprehend, they can carry it no further than what they have applied it to. But I perceive from hence, the Gentlemen of the other Side are encouraged to proceed to another Piece

of

of Evidence, ſuch they call it; they are going to call the Witneſſes to prove what was ſworn at the Tryal of *Cook*, where Sir *John Fenwick*, nor no Perſon on his behalf, was preſent, either to hear, or obſerve, or croſs examine, or offer any Thing to their Credit, which poſſibly he might be furniſhed with, though *Cook* was not; I hope that will be no more allowed of as Evidence here, than in any other Place.

Sir *Barthol. Shower.* We humbly oppoſe their calling of Witneſſes to give this Account of the Evidence given at *Cook*'s Tryal. And we ſubmit it to your Conſideration, whether you will think it Juſt, that the Evidence that is given with reſpect to one Man only, ſhall conclude another Perſon that ſtands at the Bar in defence of his Life; or that it ſhall be given againſt him. Every Man's Defence is ſeveral; and we oppoſed the Reading of the Record before, and ſo do now the calling of any Witneſſes to this Purpoſe, for the ſame Reaſon.

Mr. Serjeant *Lovel.* We call theſe Witneſſes for no other Purpoſe, but to prove, that *Goodman*, what he did inform by that Paper, he did Swear before a Jury.

Mr. *Speaker.* Gentlemen, you muſt withdraw.

Accordingly they withdrew.

Mr. *Manley.* I thank God I have that regard for the Laws of *England*, and to every *Engliſh*-man's Life, that when I ſee any Thing attempted againſt it, I muſt give my Teſtimony againſt it; I did not believe they would have inſiſted on it, for there was a Gentleman that ſate near to you, who in the cloſe of his Debate, I thought had ſatisfied every Body, That this was a Thing that ought not to be read; if they ſhould do it, it would be a Thing of dreadful Conſequence; if you ſhould admit of every Thing theſe Gentlemen that come in for the Bill offer, I know not where it will end. How will it appear, that upon *Goodman*'s Evidence the Jury found *Cook* guilty? For they might find *Cook* guilty, and yet give no Credit to *Goodman*; for he was contradicted materially, and there might be other Evidence upon which they might find him guilty, and yet lay aſide the Evidence given by *Goodman:* But whether one Way or the other, we can't tell. They tell us, We are not to be guided by the Rules of *Weſtminſter-Hall*, but we are to be governed by the Rules of Juſtice; and we are not at this time to ſeek a Way to the King's Favour by voting againſt a Criminal for High Treaſon.

Mr. *Sloane.* There is no manner of doubt of it, That that Gentleman is in the Right, who tells you, If this Indictment and Conviction of *Peter Cook*, ſtood ſingly, as to Sir *John Fenwick*, 'tis no Evidence; and if they will produce *Goodman* now, it ſhall be no Evidence againſt them; but take the Caſe as it is, here is a Witneſs, who hath given me Satisfaction, that 'tis one of Sir *John Fenwick*'s Friends or Agents (which is the ſame Thing as if done by himſelf) by whoſe Means this Witneſs is withdrawn: Now the Queſtion is, What could this Witneſs ſay, when he was here? What did he ſay? 'Tis not Concluſive, but 'tis Material for you to hear what he did ſay when he was upon his Oath.

Sir *Chriſtopher Muſgrave.* The Gentleman of the Long Robe that ſpake laſt, was pleaſed to tell you, It is very reaſonable that you ſhould hear thoſe Perſons, as to what *Goodman* ſwore at *Cook*'s Tryal; I confeſs, I think this is harder than all the reſt, becauſe what you have hitherto Admitted was in Writing; one was an Examination before a Juſtice of Peace, the other a Record; but for any Man to ſay, he can exactly repeat what any Man ſwore at the Tryal, to me is wonderful: Why, in his Evidence, the leaſt Miſtake of a Word alters the Nature of the Thing, and therefore this would be a bold Undertaking for any Man; for if he wavers in the leaſt Circumſtance, 'tis not true that he ſwore ſo; then this Gentleman was no Ways concerned in that Tryal; and to what Purpoſe is it read, if not to the Prejudice of Sir *John Fenwick?* I do not know but by the ſame Rule, you may hear Evidence of what any Man hath ſworn upon all the Tryals this three quarters of a Year.

Mr. *Sloane.* I have been called upon, to know in what Caſes Teſtimony hath been given, that Witneſſes have ſworn ſo and ſo at a former Tryal. 'Tis every Day's Practice between Party and Party, that where a Witneſs doth die, between the ſame Parties (I will ſtate the Caſe fairly) 'Tis given in Evidence, that ſuch a Witneſs at ſuch a Tryal, did Swear ſo and ſo; ſometimes they take it in Short Hand, and then they can tell the Words of it, otherwiſe they repeat it upon their Memories, but I will not ſtrain it: But I put it with a further Reaſon upon it, for we do not deſire to hear it as Concluſive Evidence upon the Priſoner, but only in this Senſe; here is a Witneſs ſuppoſed to be carry'd away by the Priſoner's Means; and therefore, Is it not neceſſary to hear what he ſaid before he was deluded and carried away? Not that after it is heard, it is any Concluſive Evidence, but it is reaſonable we ſhould come at the Truth, *Omnibus viis, & modis quibus Melius ſciri poterit.*

Sir *Thomas Littleton.* A Gentleman ſays, to what purpoſe ſhould it be read, if it be not to the Prejudice of Sir *John Fenwick?* On the other Side, we may ſay, 'tis for his Benefit; that is only ſuppoſing one Way or another: I will hear any Body to his Benefit, and any Body to his Prejudice. Says a worthy Gentleman, It is not done in Criminal Caſes: Why, in this Caſe you have heard the Grand Jury, what he Swore before them already; and what Objection is there more againſt hearing what he Swore in another Caſe, than againſt hearing what he Swore upon the Indictment? The main Inducement for you to hear it, is becauſe he is gone away, and can't be heard *Viva Voce*, and with Suſpicion that it was by Contrivance of the Party.

Mr. *Gery.* I would ſpeak but one Word as to what the Gentleman that ſpake laſt but one ſaid, and that is, as to the Courts below, That one Man is allowed very often to give in Evidence what another Swore; it hath been ſo, and 'tis at the Peril of any Perſon that Swears that he Swear Truth; for he may be proſecuted if he does not Swear Truth; but I would ask him, what Remedy there is here, if he do not ſay the Truth? We have no Remedy againſt him if he takes away this Man's Life by what he ſays here.

Mr. *Smith.* Truly, Sir, if I muſt give my Opinion, I do think 'tis very reaſonable, that Bills of Attainder ſhould be only upon extraordinary Occaſions; I think, that take it at beſt, if there was not a Place where the Witneſſes are to be Sworn, and more particularly examined, I know not whether I ſhould give my Conſent for the paſſing of this Bill through your Houſe; for the Witneſſes againſt the Priſoner are not Sworn, nor the Witneſſes

neſſes brought againſt them; ſo that we can only give our Opinion upon the Probability of the Matter; for what that Gentleman ſays, weighs with me, That 'tis a difficult Thing for any Man to charge himſelf with what was Sworn at a former Tryal; for the Miſtake of a Word may alter the Senſe very much. We are told, by a worthy Gentleman, That there was two or three Witneſſes that did give ſuch Evidence againſt the Teſtimony of *Goodman*, that 'tis a Wonder almoſt how *Cook* could be found guilty: It is our Misfortune that *Goodman* is not here, it would have been worth our While to have heard what *Goodman* could have ſaid in his own Defence; but ſince there are ſuch Witneſſes like to be offered againſt *Goodman*'s Teſtimony, Is it not reaſonable that we ſhould hear what *Goodman* ſaid for himſelf?

Mr. *How*. Sir, I always thought it very reaſonable, that you ſhould hear any Evidence that might tend to your Information; but I think 'tis plain, that nothing can tend to your Information that is alledged by any Perſon that is not to be believed; that is to ſay, is not to be believed from the Nature of the Evidence, though from the moſt credible Perſon in the World. I know not whether theſe Witneſſes are to be brought or no, but I have heard that *Cook*, after he was condemned to die, without any Apprehenſion of his being ſaved, did, upon the Sacrament, declare, That *Goodman* was not upon the Place at that Time he ſwore himſelf to be there. I have heard ſince, that the ſame Divine that gave him the Sacrament, Dr. *Wake*, when he had confeſſed it, after he had made ſuch a Declaration, had ſuch an Abhorrence of it, that he would go to him no more; but I can't think we can have Information from theſe Perſons, that I ſuppoſe did not think of giving Evidence in this Tryal, and therefore did not take notice ſo particularly of what he ſaid; and if ſo, 'tis loſing your Time to hear it.

Mr. *Speaker*. Gentlemen, the Queſtion is this, That the Council againſt Sir *John Fenwick* be allowed to examine Witneſſes, as to what *Goodman* Swore at the Tryal of *Peter Cook*.

Sir *Godfrey Coply*. I muſt confeſs it would weigh with me, if it had been made appear, that Sir *John Fenwick* had taken off any Evidence, and I ſhould be ready to apply it as well as I could; but I muſt needs take notice of what was ſaid in this Debate, that we had done as much as this comes to already; this makes me a little more apprehenſive, and to take care what we do now, ſince what this Houſe does, hath ſo quick an Operation. We are citing Precedents of this very Day already, and make one Thing a Hand to draw on another, and ſo they may eaſily be made uſe of in after Parliaments.

Sir *Henry Dutton Colt*. I believe no one Gentleman doubts, that *Cook* was convicted upon the Evidence of *Goodman*; if they do, I would know the Reaſon of it; for upon the laſt Act, there are to be two Evidences to the ſame Treaſon: There were but two poſitive Witneſſes againſt him for Treaſon, and they were *Porter* and *Goodman*: I think, therefore, he was convicted upon the Evidence of *Goodman*; what then needs any Perſon to remember any Particulars that paſſed at the Tryal, if they remember in the Whole, that he was convicted by the Evidence of *Porter* and *Goodman*?

Mr. *Speaker*. As many that are of Opinion that the Council againſt Sir *John Fenwick* be allowed to examine Witneſſes, as to what *Goodman* ſwore at the Tryal of *Cook*, ſay, Aye.

Ayes 180. Noes 102.

[*Afterwards the Queſtion of Adjournment was put, and it paſſed in the Negative; and ſeveral Gentlemen that were againſt the Bill, to about Forty, went away together in a Body; ſome of them having declared, that their Health would not give them leave to ſtay there longer.*]

And Sir John Fenwick, *and the Council were brought in again.*

Mr. *Speaker*. Mr. Serjeant *Gould*, the Houſe do allow you to examine Witneſſes as to what *Goodman* ſwore at the Tryal of *Cook*; pray go on with your Evidence.

Mr. Serjeant *Lovell*. We call Mr. *Collins*, Sir.

Who was brought to the Bar.

Mr. *Speaker*. Was he a Jury-Man?

Mr. Serjeant *Lovell*. He was one of the Petit-Jury, Sir.

Mr. *Speaker*. Mr. *Collins*, can you give the Houſe an Account of what was Sworn by *Goodman*, upon the Tryal of *Cook*?

Mr. *Collins*. To the beſt of my Memory, I will give the beſt Account I can. *Goodman* did depoſe, That he came to the *King*'s *Head* in *Leaden-hall Street*, and enquired for Captain *Porter*, according as the Captain had ordered him; and the Captain came down and carry'd him up into the Room where the Gentlemen were. There was Sir *John Freind*, Sir *William Perkins*, Mr. *Charnock*, Mr. *Cook*, and Sir *John Fenwick*; there was two others, if you pleaſe to have me name them.

Members. Yes, yes.

Mr. *Collins*. My Lord *Aylesbury*, and my Lord *Montgomery*: This was what he depoſed.

Mr. *Speaker*. Go on, Sir, you have named thoſe that were at the Meeting.

Mr. Serjeant *Lovell*. Did he give you an Account of what was Agreed on at that Meeting?

Mr. *Collins*. I think it was about ſending *Charnock* to *France*.

Mr. *Speaker*. Sir, you ſhould repeat all the Particulars what *Charnock* was to do.

Mr. *Collins*. I can't remember any Thing further than what I have told you.

Mr. Serjeant *Gould*. If you pleaſe that Mr. *Cooper* may be asked to this.

Mr. *Speaker*. Was you of the Petit-Jury that convicted Mr. *Cook*?

Mr. *Cooper*. Yes.

Mr. *Speaker*. Can you give the Houſe an Account what Evidence *Goodman* gave to you for conviction of *Cook*, and what he ſaid in that Evidence?

Mr. *Cooper*. Mr. *Goodman* did declare upon his Evidence, That he was at the *Old King*'s *Head* in *Leaden-hall Street*, where he did meet with divers Perſons that were in Conſultation; he named *Charnock*, Sir *John Fenwick*, Sir *John Freind*, and divers others.

Mr. *Speaker*. What was the Conſultation?

Mr. *Cooper*. It was about ſending *Charnock* over into *France*.

Mr. *Speaker*. To what purpoſe?

Mr. *Coo-*

Mr. *Cooper*. To bring over Forces, or encourage the Bringing over of Forces: That was the Purport of his Meſſage.

Mr. *Speaker*. Will you produce any other Evidence to this Point?

Mr. Serjeant *Gould*. We deſire this Gentleman may be asked to the ſame Purpoſe.

Mr. *Speaker*. Was you one of the Petit-Jury.

Another Witneſs. There was Captain *Porter*, and Mr. *Goodman*, that were the two Evidences; and *Goodman* did ſay, That he had been at the *Old King's Head* in *Leaden hall Street*, one *Coxe's*, and Sir *John Fenwick* was there, and ſeveral other Gentlemen, conſulting of an Affair to ſend over into *France* for ſome Forces to be brought over into *England*; and that *Charnock* was the Perſon, and they all agreed he ſhould go over.

Mr. *Speaker*. But did he give you an Account of what *Cook* and the others did agree to, upon which you found Mr. *Cook* guilty?

The ſame. We did apprehend that *Cook* did conſent that *Charnock* ſhould go over to *France*, and acquaint King *James*, That there had been a Meeting of ſeveral Gentlemen, and that they had made ſeveral Offers of Soldiers and People that were to be raiſed here, and to acquaint King *James* with it; and he declared, That Sir *John Fenwick* was there at the ſame Time.

Mr. *Speaker*. Pray, can you give this Houſe an Account of what Exception was taken to *Goodman's* Credit, and how it was anſwered?

The ſame. There was Exception taken, That he was guilty of a great many Crimes, and that he had his Pardon, and the Fines were levy'd upon him; but it was ſaid then, that he had paid his Fine, and that he was a very good Evidence in the Caſe.

Mr. *Speaker*. Mr. Serjeant *Gould*, Have you any other Evidence to produce?

Mr. Serjeant *Lovell*. If you pleaſe, Mr. Speaker, here is Mr. *Tanner*, the Clerk of the Arraignments, that beſt knows the Nature of theſe Things; that as to theſe Objections that were made, it appeared to the Court to be a Contrivance, for he was never Bailed, but diſcharged without any more to do. If you pleaſe that he may be asked, What Objections were made to *Goodman's* Reputation, and what Anſwer was made to it?

Mr. *Speaker*. I did ask the Jury-man that; and I ſuppoſe you need not labour this Point, unleſs the Credit of *Goodman* comes in queſtion here.

Mr. Serjeant *Gould*. Then may it pleaſe you, Mr. Speaker, we have one other Piece of Evidence againſt Sir *John Fenwick*, which we are humbly to offer to your Conſideration, and I think 'tis very Material; and 'tis ſome of the Evidence which I did open in Stating of the Caſe, wherein Sir *John Fenwick* hath, in a Manner, given a Verdict againſt himſelf; for while Sir *John Fenwick* was working of his Eſcape to go beyond Sea, at that very Time there was a Letter written by him, directed to his Lady, and delivered into the Hands of one Mr. *Fowler*, who was to cauſe it to be delivered to his Lady, by one *Webber*, who was taken up when Sir *John Fenwick* was; this Letter imports, That Sir *John Fenwick* look'd upon himſelf, as having no Defence, but depended only upon a Contrivance with the Jury; they were to work with ſome Perſons of the Jury, who were to ſtand it out, and to ſtarve the reſt; and ſo by that Means to ſave him. Our Evidence of this will be, That it fell out that *Webber*, (we have him not here now, but have endeavoured it as much as was poſſible; but he is gone too out of the Way.) That he was taken at the ſame Time that Sir *John Fenwick* was; but by reaſon of the protracting of Sir *John's* Tryal, he comes, and is delivered, there being no Charge againſt him; and he is ſince his Deliverance, upon his *Habeas Corpus*, gone out of the Way; but we ſhall, in the Method of our Evidence, produce you Mr. *Fowler*, the Perſon to whom this Letter was handed, who will give you an Account of this Letter; and then will produce this Letter: To which End, we muſt humbly beg the Favour of a worthy Member of this Houſe, Mr. *Vernon*, who hath this Letter, that it may be produced, and ſhewed to Mr. *Fowler*.

Mr. *Vernon*. Sir, I receiv'd your Order to bring the Letter that Sir *John Fenwick* wrote, while in Cuſtody at *Rumney*, which was ſent up to me by Mr. *Maſcall*, who had it of Mr. *Fowler*; and, if you pleaſe, I am ready to deliver it.

Mr. *Speaker*. Who ſent it to you?

Mr. *Vernon*. One Mr. *Maſcall*, a Juſtice of Peace of *Rumney*.

Sir *Thomas Powys*. I hope now we ſhall make an Objection to this Letter, with good Authority. Surely for them to produce a Letter, as Sir *John Fenwick's*, is not to be allow'd as Evidence, unleſs it was prov'd that he wrote it, becauſe that Sort of Evidence was particularly taken notice of by Parliament: And Judgment given upon that Sort of Evidence, by Compariſon of Hands in the Caſe of Mr. *Sidney*, and the Act of Reverſal of his Attainder, does allow it to be illegal Evidence. This is ſuch an Authority as, I hope, will bear no diſpute: And the Courts of *Weſtminſter Hall*, have ſince thought it ſo; they did ſo in the Caſe of *Crosby*, who was Tryed the other Day in *Weſtminſter Hall*.

Sir *Barth. Shower*. In this Objection we have the Opinion of inferior Courts, and the Parliament too; for the particular Evidence Mr. *Sidney* was convicted upon, was upon a Paper which was found, and proved by ſome who pretended to know his Hand; and I am ſure that is more than they can pretend to, and more than they have yet opened. We do therefore humbly oppoſe this Evidence, it being in the Caſe of the Life of a Man; and the King, Lords and Commons, having declared, That this Sort of Evidence ought not to be allowed: And therefore, I hope, you will not allow it in this Caſe. And in *Crosby's* Caſe, upon reading the Act of Parliament, this Evidence was not allowed, and *Crosby* was acquitted.

Sir *Thomas Powys*. I have a Copy of the Bill for reverſing the Attainder in my Hand; and it ſays, The producing a Paper found in the Cloſet of Mr. *Sidney*, which was not proved by any Witneſs to be his Hand-writing, *&c.* and, we hope, if in the Judgment of the Parliament that was not thought reaſonable Evidence to Attaint him, this will not be thought reaſonable in Parliament to Attaint this Gentleman.

Mr. Serj. *Gould*. As this Caſe is, we hope this may be a concurring Evidence: It will be plain, upon the Evidence we ſhall give, That *Webber* was with Sir *John*, and taken with him; and at that Time this Letter was handed by him over to *Fowler*, to be carried to my Lady. Now, Sir, we humbly offer it to your Conſideration, How far it is available, and what Operation it will have? Whether, in a Caſe of this Nature, theſe two being taken together, and *Webber* delivers this Letter to *Fowler* to deliver it to Sir *John Fenwick's* La-

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dy, and the import of the Letter concerns Sir *John Fenwick* for his Acquittal, you will not ſuffer it to be read? 'Tis not to charge him with a Treaſon, for that is the Caſe of *Algernoon Sidney*: 'Tis not to prove a Crime upon him; but we will prove that Sir *John Fenwick* handed this Letter over, that it might come to his Lady; by which he deſired his Lady ſo far to work the Matter, That ſome Jury-man might be found to ſtarve the Reſt, and ſtand out for him: If we could produce *Webber* we would; 'tis plain, *Webber* correſponded with Sir *John*, and was with him.

Mr. Serj. *Lovell.* I humbly beg one Word in this Matter: The Council on the other Side do very well know, the conſtant Practice is, That in the Caſe of a Deed or Will, let the Value of the Eſtate be what it will, if the Witneſſes can't be produced, or are gone beyond Sea, they always admit Evidence by Compariſon of Hands. But for the Caſe of *Algernoon Sidney*, there is no doubt but his Attainder ought to be reverſed, becauſe that Attainder was upon no other Evidence; for there was no other Proof, but a Paper, that he himſelf did ſay, was only for the Exerciſing of his own Ingenuity and Parts; and was ſaid to be written for no other Purpoſe, and proved only by the Compariſon of Hands. Had there been any other Witneſs to corroborate, it had altered the Caſe; but in our Caſe, we do produce the Letter, not for the Convicting of the Priſoner at the Bar; but we are humbly to lay before you all the Matter of Fact. It will be worthy of your Conſideration, what you will think fit to take, and what to reject; that is a Matter for your own Judgment. We produce this Letter for this Purpoſe, to ſhew you, That after Sir *John Fenwick* was taken, he apprehended his Caſe to be ſo deſperate, that he uſed theſe indirect Means.

Mr. *Speaker.* What mean you by that? This Letter came from Mr. *Fowler.*

Mr. Serj. *Lovell.* Here is Mr. *Fowler* that receiv'd it from *Webber*, when Sir *John Fenwick* was by, in the Preſence of Sir *John Fenwick.*

Mr. *Speaker.* Shew Mr. *Fowler* the Letter.

Accordingly the Clerk went down to the Bar, and ſhew'd Mr. Fowler *the Letter.*

Mr. *Speaker.* Do you know that Paper?

Mr. *Fowler.* Yes, Sir.

Mr. *Speaker.* Where have you ſeen it before?

Mr. *Fowler.* I had it from one *Webber*, that was at *Rumney*, about the Third of *June*, as I remember.

Mr. *Speaker.* Was that the Time that Sir *John Fenwick* was ſeiz'd?

Mr. *Fowler.* He was then at *Rumney.* Mr. *Webber*, I was told, had ſome Acquaintance with me, and deſired to ſpeak with me. I went to him; and he was riſing; and when up, ſays he, Mr. *Fowler*, I would deſire you to put a Letter into the Poſt; ſays he, There is no Hurt in it; it is directed to Mrs. *Frances Farrer*, at the Counteſs of *Carliſle*'s in *Soho-Square*; and when I had deliver'd it, he deſir'd me to come to him again.

Mr. *Speaker.* Did you come to him again?

Mr. *Fowler.* Mr. *Maſcall* of *Rumney* ſent for me to his Houſe, and told me, That he had heard that I had received ſome Letter from Mr. *Webber*; and when he had open'd it, and ſaw what it was, he thought fit to ſend it up to the Secretary of State; and I made my Mark upon it, that I might know it again.

Mr. *Speaker.* Have you made your Mark upon it?

Mr. *Fowler.* Yes, Sir.

Mr. Serj. *Lovell.* I deſire he may be asked, Whether Sir *John Fenwick* was not in the ſame Room when *Webber* delivered it?

Mr. *Fowler.* Yes: But I queſtion whether he ſaw Mr. *Webber* give it; for he delivered it privately, as I thought.

Mr. *Speaker.* Was Sir *John* in the Room then?

Mr. *Fowler.* Yes, Sir.

Mr. *Speaker.* Can you ſay any Thing more of Sir *John Fenwick*'s Knowledge of that Paper?

Mr. *Fowler.* No, I know no more.

Mr. Serj. *Gould.* If you pleaſe then, Mr. Speaker, becauſe perhaps there may be ſome Objections, that we ſhould give an Account of *Webber*, we will call a Witneſs, that we have done our utmoſt to find him out.

Members. No, no.

Sir *Thomas Powys.* That which I was going to offer is, That this Proof is ſhort; if that which in the Act of Reverſal of the Attainder of Mr. *Sidney*, is admitted to be no Proof againſt him; for the Act recites that Letter was found in his Cloſet, and proved by Compariſon of Hands, and yet for all that, this Sort of Evidence is condemn'd by this Act of Reverſal, as illegal Evidence. This Caſe before you comes ſhort of that; for here is no Proof by Compariſon of Hands, nor that it was in the Poſſeſſion of Sir *John Fenwick*: But only that a Perſon in the Room, without the Privity of Sir *John Fenwick*, delivered it to another; and the Witneſs ſays, he did it in a private Manner.

Sir *Bartholomew Shower.* With Submiſſion, this Letter could not be read in any Place whatſoever, againſt Sir *John Fenwick*, in a Civil Cauſe; for even in that Caſe, they muſt prove it to be his Hand-writing, by Compariſon of Hands.

Mr. Serjeant *Gould.* I think not to inſiſt upon it: But that we ſhall deſire is this; we have now done with our Evidence, only we ſhall deſire the worthy Member, Mr. *Vernon*, to give an Account what was the Reaſon, why Sir *John* hath not been Tryed; for indeed, he hath very much trifled with the Government, pretending ſtill to make a free and ingenuous Confeſſion.

Sir *Thomas Powys.* I am of Council for this Gentleman at the Bar; for his Life, for his Fortune, for All that he hath in the World. 'Tis not only this Gentleman's Caſe, but 'tis a Caſe that may be of great Conſequence in all future Times. I have, as 'twas my Duty, attended for at leaſt theſe twelve Hours, either in opening the Matter, or by producing ſuch Evidence as, we hoped, we did fairly Object to. Sir, there are ſeveral Things offer'd on their Parts, which I confeſs we little expected, and which will require ſomething to be ſaid to; and I have a great deal to offer on the Behalf of Sir *John Fenwick*, both as to this Method that is taken, and what is alledged in the Bill, and what is contained in the Indictment upon which the Bill is founded, wherein I deſire to be heard; and ſince you have been pleaſed to allow us to be Council for him, I am ſure we ſhall have a fair and favourable Hearing. We have a great deal to offer to you, both as to the Matter of the Indictment, and the Manner of it: And I hope to ſhew you, That the Indictment, as it is laid, does contain a ſufficient Charge of Treaſon. We have likewiſe a great deal to ſay, as to the Evidence they have offer'd, at leaſt what they call ſo: But I muſt make it my Requeſt, That we may

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have Liberty till to Morrow Morning to make our Obſervations, and Anſwer what hath been ſaid by the Council on the other Side. I am not in a very good Condition by this long Attendance, and by attending my Duty in the Courts in *Weſtminſter-hall*; and I am afraid I am not now in a Condition to do my Duty, as may be expected from me. I muſt own it, I am not prepared as I ought to be; and I hope when there is ſo great a Stake, you will allow us till to Morrow Morning?

Sir *Bartholomew Shower*. I beg your Favour in the ſame Manner, and to the ſame Effect as Sir *Thomas Powys* hath done. It is to be acknowledg'd there are ſeveral Things offered in Evidence, which is new to us Lawyers; we do not deſire to Trifle: We do not deſire it on behalf of the Priſoner by Way of Delay; but on behalf of the Length of the Proceedings, that you will give us a fair Hearing, as you have allowed it to the King's Serjeants; and that we may make that Defence that is incumbent upon us in diſcharge of our Duty to the Priſoner.

Mr. *Speaker*. Gentlemen, you muſt withdraw. *(And being withdrawn.)*

Mr. *Smith*. I would not give an Opportunity to any Man to practiſe with Witneſſes, to hinder the Truth of the Matter from appearing, after they have heard the Evidence for the Bill. I would know what Liſt of theſe Witneſſes Sir *John Fenwick* hath given in?

Mr. *Speaker*. You did make an Order, That Sir *John Fenwick* ſhould deliver in a Liſt of his Witneſſes; but I believe he did not ſend any Liſt to any Body upon that Account, for I have made no Order for any.

Lord *Coningsby*. I am convinc'd that you are obliged to ſit ſo long as to hear the Witneſſes on both Sides; and therefore my Motion is, to call in the Council, and ask them, if they have any Evidence to produce; but I do not deſire the Council ſhould go on to make their Obſervations to Night.

Sir *Walter Young*. I think you are rightly moved by that noble Lord that ſpoke laſt. I think if Sir *John Fenwick* hath any Evidence to produce, he ought to produce it now; and that you ought not to give him Time till to Morrow Morning to produce That.

Mr. *Speaker*. Is it your Pleaſure that Sir *John Fenwick* and the Council be called in, and told, That the Houſe do expect, if they have any Witneſſes, that they do examin them to Night; but as to their Obſervations, the Houſe will give them Time till to Morrow Morning.

[*Which was generally conſented to, and they were brought in again.*]

Mr. *Speaker*. Sir *Thomas Powys*, the Houſe have conſider'd of what you ſaid, when you went out, and they are inclin'd to allow you Time for making your Obſervations; but they have commanded me to ask you, Whether you have any Witneſſes to produce? and to let you know, That if you have any Witneſſes to produce, they expect you ſhould produce and examine them to Night.

Sir *Thomas Powys*. Sir, I would acquaint you with all the Openneſs that becomes me on this Occaſion. I muſt confeſs, we have not any Witneſſes that we propoſe to call; but when we come to ſpeak to the Matter, we hope to give you ſome Satisfaction as to That; but at preſent, we have no Evidence to produce, unleſs it be a Copy of a Record.

Mr. *Speaker*. Sir, If you pleaſe to withdraw, you ſhall know the Senſe of the Houſe.

Accordingly they withdrew.

Mr. Chancellor of the *Exchequer*. I ſuppoſe, ſince the Gentlemen have no living Witneſſes to produce to Night, you will not think fit to receive them at any other Time, for 'tis giving them too much Advantage; and the whole Meaning of the *Chicanry* of the Council, is only to get Time to Reply, Mr. *Dighton* having heard the Evidence. And now I have mentioned him, give me leave to tell you, That I think you can't riſe without taking ſome Notice of him. I think there is as plain a Subornation prov'd in *Dighton*, as can be, by one *Roe*; and when you have heard ſuch a Character of a Man, and there is no other Evidence that he can ſollicit, I think you ought to take care that he be forth coming; and that he ſhould be taken into Cuſtody. I think you may give the Council further Time: As to the Record, that can't well be falſified, tho' I believe, in a Matter of this Moment, where the Government is concern'd, there never was ſuch a Proceeding by the Council, as this has been, to entertain us ſix or eight Hours together, by Delays.

Mr. *Smith*. I ſuppoſe before you hear any Thing as to *Dighton*, you will do ſomething as to the putting this Cauſe off to another Day; I humbly propoſe that you will go on this again on *Wedneſday*.

Sir *H. Hobart*. When 'tis proper to go upon Ways and Means, I ſhall come into it: But while this is upon your Hands, I believe you will never get heartily into other Buſineſs: And therefore I humbly move you, that you will go upon this to Morrow Morning.

Thereupon the Houſe came to theſe Reſolutions.

Reſolved, *That this Houſe will proceed further in relation to this Buſineſs of Sir* John Fenwick *to Morrow at Twelve a Clock.*

Ordered, *That Sir* John Fenwick *be remanded to* Newgate.

Ordered, *That the Bill be read a Second Time to Morrow Morning.*

Mr. *Ruſſel*. I am unwilling to trouble Gentlemen at this Time of Night: But I would know, Whether, when Sir *John Fenwick* is called in, you will ask him any Queſtions upon that Paper?

Members. No, no.

The Council were called in, and withdrawn again.

Reſolved, *That this Houſe being informed that the Council for Sir* John Fenwick *have no living Witneſſes to produce, except to prove a Record, that this Houſe will not hear any Witneſſes, except to prove the ſaid Record.*

Ordered, *That Mr.* Dighton *do attend to Morrow Morning.*

Adjourned till to Morrow Morning Twelve a Clock.

[Memorandum, *It was half an Hour after Ten, at the Time of Adjournment.*]

Martis 17. *die Novembris*, 1696.

[*Sir* John Fenwick *and the Council of both Sides were called in.*]

Mr. *Speaker*. Sir *Thomas Powys*, you that are of Council for Sir *John Fenwick*, the Houſe agreed laſt Night, to give you Time till to Day to make your De-

Defence; your Obſervations upon the Evidence that hath been given.

Sir *Thomas Powys*. Mr. *Speaker*, I am of Council for Sir *John Fenwick*, who now ſtands before you upon the greateſt Concern he can have in this World; and as you have been pleaſed to aſſign us to be of Council for him, and I muſt own have very favourably heard us hitherto, ſo I ſhall think my ſelf very unfortunate if I ſhould let fall any Expreſſion in his Defence, that ſhould ſeem indecent, and give Offence to this Houſe, for I am ſure I have no Intention to do it; but on the contrary to behave my ſelf with all the Deference that is poſſible, in a Caſe of this Nature.

The Thing I ſhall inſiſt upon, will be upon Three Heads.

Firſt, The Manner of Proceeding, and Method that hath been taken in this Proſecution.

Secondly, I ſhall take notice of thoſe Things that are alledged againſt him in the Bill, upon which he is to make his Defence.

In the *Third* Place, I ſhall beg your Favour, to Obſerve what Sort of Proofs they have offered on the other Side, and which they call Evidence.

As to the *Firſt* Matter, I muſt intreat the Favour of you to be thus underſtood; That when I ſay any Thing in Relation to the Manner of Proceeding, I do not ſpeak in Oppoſition to the Power of Parliaments; for I know very well, that our Lives and Eſtates, and all that we have, are ſubject to Acts of Parliament; but I hope you will permit me to offer ſome Reaſons, which (I hope) may be of Weight, in Oppoſition to the Exerciſing of that Power in the Way you are now going. No Body can ſay, but when an Act of Parliament is paſſed, though the Party concerned may think it was upon hard Terms; yet when it is become a Law, it is not to be oppoſed. I can't ſay but thoſe Perſons, who in the laſt Seſſions of Parliament, were Impriſoned by an Act *ex poſt facto*, and ſubſequent to the Fact complained of; yet when it was paſſed into a Law, they were legally detained: But, I hope, I may ſo far take notice of their Caſe, as ſome kind of Reaſon againſt this, to the End that thoſe Laws may not grow familiar, that they may not eaſily be obtained; becauſe Precedents generally grow; and as that Law *ex poſt facto*, extended to Liberty, ſo this extends to Life: One Precedent is apt to beget another; and therefore, ſure you will be careful how you give Precedents, eſpecially in Caſe of Life.

The firſt Thing I obſerve is obvious; that is, the Perſon who is to be ſentenced by this Bill, is forth-coming, in order to be Tryed in the ordinary Method of Juſtice. He is not only Indicted, and actually under Proceſs, but he hath Pleaded, and he is ready when his Majeſty, in the Courſe of Juſtice, ſhall call upon him to undergo his Tryal; and either there is ſufficient Evidence, legal Evidence againſt him, as the King's Serjeant inſiſted there was; and if there be ſo, then, under Favour, there is no Reaſon but he ſhould have the Benefit of an Ordinary Tryal, which is the Birthright of all the King's Subjects; or there is not ſufficient Evidence againſt him; and if there be not, it will be a good Reaſon againſt making a particular Law for taking away his Life: For, we think, nothing can be ſaid for this Law, but want of Evidence; and that, to my underſtanding, is a very odd Reaſon.

Sir, I would not ſpend Time in taking Notice, That the meaneſt Subject in the Kingdom, is Entituled, by being born in this Kingdom, to be Tryed by a Jury, where there are thoſe juſt Advantages that can't be had in another Caſe: There is a Liberty of Challenging of 35, without ſhewing any Reaſon, and as many more, as he can any way object to, with Reaſon. The Witneſſes are upon Oath, and all the Proceedings are by certain known Rules and Methods, and not only by the Statute of *Magna Charta*, but by the Common Law of *England*, much more Antient than that Statute; and though the Proceedings therein, are ſuch as a Criminal may ſometimes eſcape; yet the juſt Advantages are ſo much beyond any Thing of that Nature, that I hope we ſhall never complain of that antient Courſe of Proceeding by Jury; I am ſure it is the Honour of our Government, the Mark of our Freedom, and Envy of our Neighbours; and, I hope, that Method of Tryal ſhall never be laid aſide, though ſometimes it may not have the Effect that is deſired by it.

I would take notice to you, that in a Caſe of the greateſt Crime, and moſt Notoriety of Fact; yet the Perſons concerned in it were brought to their Tryal. The Regicides, who did not fly, but were found upon the Reſtauration of King *Charles* II, though their Treaſon had the worſt Effect even in the Murder of the King; yet notwithſtanding, though the Fact was ſo Notorious, thoſe that were found upon the Place were admitted to their Tryals in the ordinary Courſe of Juſtice; although at the ſame time there was a Bill of Attainder againſt ſome that fled, and ſome that were dead, and ſo could not be Tryed.

I would, with your Favour, likewiſe obſerve, That the Parliaments of *England* have been ſo far from depriving Perſons from their ordinary Tryals, that whereas the Common Law of *England* ſays, that Perſons Out-law'd for Treaſon and Felony, if taken, ſhall be put to Death without Tryal; yet the Parliament, in the Reign of *Edward* VI, made a Law, providing, That Criminals that returned within a Year, according to that Law, ſhould be admitted to their ordinary Tryals.

Sir, all along, the Statutes run in favour of Tryals; there are no leſs than Two Acts of Parliament in the Reign of *Edward* VI, in the Firſt and Fifth Year of his Reign, that ſay, there ſhall not be leſs than Two Witneſſes againſt any Perſon for Treaſon: And I hope I ſhall never ſee a Law made ſo much in oppoſition to thoſe Acts, as that a Perſon ſhall be ſentenced to Death without ſo much as one Witneſs, as I ſhall ſhew by and by.

Perhaps it might be thought Extraordinary, That in the ſame Parliament that paſſed a Bill for regulating Tryals in Caſes of High Treaſon, requiring two Witneſſes with great Strictneſs, and giving further Advantages to the Criminal than ever were before allowed; An Act ſhould paſs, to put a Perſon to Death, without any Tryal at all. And let any one compare the Preamble of that Act with this Bill.

Sir, I take it, with humble Submiſſion, that the preſent Caſe is not at all to be likened to moſt of thoſe Bills of Attainder that may be cited; thoſe, when they come to be looked into, will be found either to have paſſed againſt ſuch Perſons as fled from Juſtice; and therein they only purſued the

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Rules of the Common Law, which allowed them to be Out-lawed, and by Conſequence to be Attainted. And the Parliament therefore, in Attainting them, did but the ſame Thing; and therein, there was nothing done extraordinary. True it is, That where Perſons have been forth-coming, there have been ſome few Bills of Attainder: But I will preſume to ſay, they are never mentioned without heavy Cenſures, and a great Complaint againſt them.

This Cauſe is not like the late Inſtance of the Bill of Attainder againſt the Duke of *Monmouth*; for he was preſent in the Kingdom; yet he was in direct Oppoſition to any Method of Tryal; he was in Defiance to all Courts of Juſtice: But here is a Perſon who ſubmits himſelf, and hath Pleaded, and ſtands ready to be Tryed; and I hope, I may take notice, to take off all Prejudice that may be raiſed; That this Gentleman, though he was of the Parliament that paſſed that Bill, yet he was not in Town, till at leaſt a Month, after the Bill was paſſed.

I do agree, there are ſome Caſes where Perſons have been Attainted without being admitted to be Tryed. In the Beginning of the Reign of *Edward* III. *Roger Mortimer* was Attainted, and Executed, without being Tryed; but 28 *Ed.* III. it was reverſed, becauſe he was not brought to Judgment according to the Law of the Land, 1 *Ed.* III. The like in the Caſe of *Edmund* Earl of *Arundel*: But 4 *Ed.* III. *Richard* his Son, Petitioned in Parliament, ſetting forth the Proceedings to be againſt the *Great Charter*, and inſiſting, That there ought to have been due Proceſs of Law, and he was then reſtored in Part; but 28 *Edw.* III. there was an Act of Reverſal, Declaring, That it clearly appeared, that the ſaid *Edmund* was unduly put to Death; and that the Statute by which he was Attainted, was Void, Erroneous, and Null. There is an Inſtance in 32 *H.* 8. *Co.* 4. *Inſt. fol.* 37, of *Thomas Cromwel* Earl of *Eſſex*, who, though he was in Cuſtody in the *Tower*, yet he was Attainted without being Tryed: But the Words of my Lord *Coke*, are as follow, *Auferat oblivio, ſi poteſt, ſi non utrumq; ſilentium legat:* For the more High and Abſolute the Juriſdiction of the Court is, the more Juſt and Honourable ought it to be in its Proceedings, and to give Examples of Juſtice to Inferior Courts. And he adds further, to the end, as I apprehend, That the Rehearſal of this Attainder may be of no ill Uſe: I am, ſays he, confidently perſwaded, ſuch Worthy and Honourable Members, ſhall from Time to Time be of both Houſes of Parliament, as never any Attainder, when the Perſon is forth-coming, ſhall be had hereafter, without hearing of him: Which I underſtand to be, without Trying of him; and 'tis memorable, what my Lord *Coke* recites, That he, who thus died, attempted the like againſt another.

There is another Caſe of *Thomas Seymour*, Admiral of *England*, who likewiſe was Attainted by Act of Parliament; and as it appears, without Execution: You have an Account thereof in the Second Part of the *Hiſtory of the Reformation*, fol. 98, 99, 100. whither I will refer you, only to read the Sentence of the Learned Author, there pronounced againſt him. That latter Caſe is, that of my Lord *Strafford*, which every Body knows. I ſhall, as the beſt Account of that Matter, crave leave to read the Words of the Parliament in the Act of the Reverſal. I will not trouble you with reciting the Whole, but only read the Beginning, and ſome Part thereof in another Place. *Whereas* Thomas, *late Earl of* Strafford, *was Impeached of High Treaſon, upon Pretence of endeavouring to ſubvert the Fundamental Laws, and called to a Publick and Solemn Arraignment and Tryal, before the Peers in Parliament, where he made a particular Defence to every Article objected againſt him; inſomuch, That the Turbulent Party then ſeeing no hopes to effect their unjuſt Deſigns, by an ordinary Way and Method of Proceedings, did at laſt reſolve to attempt the Deſtruction and Attainder of the Earl, by an Act of Parliament, to be therefore purpoſely made to condemn him upon* Accumulative *Treaſon* —— And then it goes on to ſhew, it was carry'd by the Tumult of the People, and then follows —— *And to the End that Right be done to the Memory of the Deceaſed Earl of* Strafford *aforeſaid:* Be it further Enacted, *That all Records and Proceedings of Parliament relating to the ſaid Attainder, be wholly Cancelled and taken off the File, or otherwiſe Defaced and Obliterated, to the intent the ſame may not be viſible in After-Ages, or brought into Example to the Prejudice of any Perſon whatſoever.* So that the Parliament that Enacted that Reverſal, did conſider thoſe Proceedings as very Evil and Unjuſt, and was not willing there ſhould be any Remains of ſuch an Example to future Ages.

Sir, having made theſe Obſervations as to the Manner of Proceeding, I come now to that which is the Subject Matter of the Bill at preſent before you, and which we take to be the Charge againſt Sir *John Fenwick:* I muſt crave leave to obſerve, That in all Courts of Juſtice, where any Perſon is accuſed, he is to make his Defence *ſecundum allegata & probata:* 'Tis not enough that a Matter is proved, if it be not alledged; nor that it is alledged, if it be not proved: But if it be both alledged and proved, then it is a full Charge, and requires an Anſwer. It is not only the Law of *England*, but I believe, of all Nations, and whereever any Perſon is to make his Defence, eſpecially in Capital Crimes, that to which he is to anſwer muſt be alledged againſt him, from whence I ſhall obſerve what is alledged againſt Sir *John Fenwick*; for, I hope, we are not concerned to defend him further than as to what at this Time he is charged with. This Bill of Attainder, as it is drawn, and now ſtands before you, doth not ſo much as alledge, or ſay, That Sir *John Fenwick* is Guilty of the Treaſon whereof he was Indicted; and that hath prevented us from producing Witneſſes to that, and ſeveral Matters which the King's Council have entered upon: For though you have permitted them to examine Witneſſes to ſeveral Things quite out of the Bill; yet, I hope, you are not come to any Reſolution, That theſe Matters ſhall be thought fatal to Sir *John Fenwick*, that are not ſo much as alledged againſt him. We do not therefore think we are bound, or ought to follow them in thoſe Things that are totally out of the Bill; and therefore his being guilty, is not now the Queſtion, becauſe 'tis not a Charge upon him.

The firſt Thing that is alledged in the Bill is, That Sir *John Fenwick* was indicted at the Seſſions; for that which is laid in the Indictment to be Treaſon (which by and by I ſhall crave leave to be heard to) and, I think, no Body will ſay this alone does require any Anſwer, further than to own the Fact or to deny it: And we do admit that he was ſo Indicted. I need not labour much

to clear him of the Conſequence of that alone; for very often innocent Perſons have been Indicted and Accuſed, (for an Indictment is no more than an Accuſation;) and this Bill, as I have obſerved, doth not ſay he is guilty. When the Bill hath recited that Matter, it proceeds to take notice, That they by ſome fair Prevarications (for ſo I agree they were, if the Facts alledged in the Bill are true, which by the Way hath not been yet proved, by producing any one Witneſs) did obtain the King's Clemency to put off his Tryal, in expectation of an ingenuous Confeſſion, which the Bill takes for granted he hath prevaricated in, by Charging ſeveral Perſons of Honour and Fidelity with Matters of a High Nature, only by Hear-ſay; and by uſing other unfair Artifices to put off his Tryal. How far it is made out, that I muſt ſubmit to you; we think at preſent there is no Proof of it, and by Conſequence we are not concerned to anſwer it: But had they proved it as fully as it is laid (though far be it from me to excuſe ſuch a Behaviour;) yet when a Criminal is to be tryed for that which will be of fatal Conſequence to him if he be Convicted, no Body can ſay it comes near Treaſon, by unfair Means, to contrive to put off his Tryal.

The next Thing the Bill recites is, That one of the Witneſſes, who might have been produced againſt him upon his Tryal, if it had proceeded as was intended, is ſince withdrawn. I can't ſay, but *Goodman* is withdrawn: But as the Bill does not ſo much as alledge, That it was by the Means or Procurement, no nor Privity, of Sir *John Fenwick*; ſo from thence that Part of the Bill charges no Offence home to Sir *John Fenwick*: For in Caſe the ſame Witneſs had hapned to have died by the Act of God, it would not have been ſaid to have been a good Reaſon for this Bill of Attainder againſt Sir *John Fenwick*, unleſs he had contributed to it.

From theſe Premiſſes follows the enacting Part, that Sir *John Fenwick* be Attainted of High Treaſon; and in future Times the Act muſt be ſuppoſed to be grounded upon the Inducement to it. And I humbly ſubmit it to you, Whether this Bill condemning him for High Treaſon, upon ſuch Recitals, will be thought to be reaſonable?

Theſe being the Allegations of the Bill, I will now, with your Favour, come to that, which they on the other Side do call Proofs; and I muſt humbly obſerve to you, and ſubmit it to your Judgment, Whether in a Caſe where a Man's Life is to be taken away, by a ſubſequent Law made on Purpoſe for him, the Proofs in that Caſe ought not to be much more Evident, than if he were to be tried by a Law already in Being? In my poor Apprehenſion (I ſpeak it with all Submiſſion to you, Sir,) It would be too much at once to make a ſubſequent Law to condemn a Man to Death, and to do it upon doubtful and uncertain Evidence, or rather upon no Proof at all. Nothing could excuſe ſuch a Law, but an undeniable Proof of the Fact. And therefore ſurely the Poſition we find of Mr. *St. John*'s, in my Lord *Strafford*'s Caſe, is of moſt dangerous Conſequence. I am afraid none are ſafe if that be admitted, That a ſubſequent Law may take away a Man's Life without any Evidence, other than the private Opinion or Conſcience of every particular Law-maker. He is pleaſed ſo to aſſert, That it may be done as in *Ruſhworth*'s Hiſtory of that Tryal, *fol.* 677. I am ſure if this be ſo, no Man knows how long his Life is his own: I hope this Doctrine ſhall never be followed or approved. Sir, we have the Happineſs to live under an Eſtabliſhment that every Man does, or may know the Law he is to go by: Every one is bound at his Peril to take notice of the Laws, and to act accordingly, becauſe they may be known: But at this Rate none but Prophets can live amongſt us.

In the next Place, I would obſerve what Courſe they have taken in their Evidence who are the King's Council.

Firſt, They have betaken themſelves to that which is not Alledged in the Bill; and we think that this is not agreeable to a Courſe of Juſtice.

In the next Place, to make out that they inſiſt on, they have produced but one Perſon that comes hither *viva voce* to ſpeak to it; and I muſt take Notice to you, That he is not upon Oath. I know very well it is not your Courſe in this Houſe to adminiſter an Oath; But I know very well, though it is not your Courſe in this Houſe to adminiſter an Oath, yet, I hope, that is ſo far from being a Reaſon why this Bill ſhould paſs here, without an Oath; that it is a good Reaſon why ſuch a Bill ſhould not begin here: There is no Place in the World, where a Perſon is ſentenced to Death without an Oath. In the Caſe of my Lord *Strafford*, the Proceeding firſt was by way of Impeachment, and the Witneſſes had been firſt examined upon Oath in the Houſe of Peers; and that Bill of Attainder takes notice of it, reciting that it had been fully proved; and, by Conſequence, we may ſuppoſe, that they would not otherwiſe have paſſed it, that being the Ground of their Proceeding upon that Bill of Attainder: But for the Bill to begin originally in this Place, to form ſuch a Judgment, the Heavieſt that can be pronounced againſt a Man; a Judgment of Death, corrupting of his Blood, and forfeiting all he has in the World; and this upon bare Allegations, without ſo much as the Sanction of an Oath, is extreamly hard. Mr. *Porter* is ſuch a Perſon, that I know not how he hath gained ſo much Credit, that this Act ſhould paſs upon his Parole to take away the Life of a Man. He was lately of that horrid Conſpiracy of the Aſſaſſination of the King; and ſhall that Man, who was ſo lately of that villainous Diſpoſition, to be ingaged in a Crime of that black Nature, and not convicted by his own Conſcience, but by the Danger he had run himſelf into, not ſo much as pardoned his Crime, but at this time, if I may without Offence uſe that Expreſſion, Drudging for his Pardon; I ſay, ſhall this Perſon's Life be taken away by his Parole?

Sir, The next Thing I would go to, is that (which likewiſe they call Evidence) which is an Examination, as they term it, of *Goodman*, taken before a Juſtice of Peace: But he was not examined, and I muſt inſiſt upon it; That though you permitted it to be read, yet I did obſerve you did not declare it to be Evidence; but you were, I preſume, willing to hear all Things, and then judge what would be the Evidence. And, I think, the King's Council did not preſs it further. Sir, as this is not Evidence that would be allowed in an inferiour Court, ſo, I hope, you will not allow it to be Evidence here; for then it is like to be followed by other Courts, who obſerve the Proceedings

ceedings here as their great Rule: 'Tis only what Mr. *Goodman* thought fit to write down without being examined.

Sir, the next Thing they reſort to, is What *Goodman* ſwore upon his Examination in another Cauſe, where Sir *John Fenwick* was neither Party, nor Preſent. Sir, there are, I ſuppoſe, ſuch Reaſons againſt that ſort of Evidence from natural Juſtice, that it is not admitted in any Court; becauſe there may be a weak Defence, or the Perſon that ſwears it againſt one, perhaps may not, when Face to Face, have the Confidence to perſiſt in it, in Caſe it be falſe againſt another; or at leaſt that Perſon, who was not a Party before, when he comes upon his Tryal, may think of ſuch Queſtions as may go a great Way to diſcover the Truth, may produce ſuch Evidence againſt his Credit as may overthrow it.

But if what is Sworn at one time againſt one Man muſt be always taken for Truth againſt all others, the Tryal of one in the Company is the Tryal and Condemnation of all the reſt: And how contrary is this to a fundamental Rule in our Law, That no Evidence ſhall be given againſt a Man, when he is upon Tryal for his Life, but in the Preſence of the Priſoner; becauſe he may croſs Examine him who gives ſuch Evidence, and that is due to every Man in Juſtice.

But I would with Submiſſion inquire, how they are ſure that *Goodman* would have ſwore this Matter again, if he was now forthcoming? Becauſe he did ſwear ſo in *Cook*'s Cauſe, is it neceſſary that he would ſwear ſo again now, if Face to Face, with Sir *John Fenwick*? No Body can ſay ſo poſitively and abſolutely; they only can imagine it, becauſe he once ſwore it, therefore it is poſſible that he would do ſo again: Whereas we may as well ſay, he did then ſwear to ſave his own Life; and having done that, and found an Opportunity to get out of the Way, his own Conſcience might put him upon flight, to prevent his doing of it again; and that might be the Reaſon for the withdrawing of himſelf. However, I inſiſt upon it, That there is no Proof that it was by the Procurement of Sir *John Fenwick*: The Bill does not alledge it, and the Proofs do not come up to it: Nay, there is nothing offered to ſuch Purpoſe, ſave only that Mr. *Porter* was pleaſed to ſay, That another Man told him, that the 300 Guineas he was offered, and 300 more he was to have received, were to have come from Sir *John Fenwick*: But hearſay Evidence is to be rejected, eſpecially againſt a Man for his Life; becauſe every Man is at liberty to talk at large: But God forbid that that ſhould be allowed for Evidence.

The next Thing they went upon was what Mr. *Roe* ſaid; That Mr. *Dighton*, who by your Permiſſion is Sollicitor for Sir *John Fenwick*, was inquiring of him what he could ſay to take off *Goodman*'s Evidence: The Words I think he uſed were, What he could ſay to diſcredit *Goodman*'s Evidence; and, I hope, that does no way affect Sir *John Fenwick*. For it does not appear that he had any Authority from him; but 'tis only ſuſpected, becauſe he is now Sollicitor for him, which he was admitted to after the Time ſpoken of. But I take the Words to be nothing relating to *Goodman*'s withdrawing of himſelf; but to inquire what he could ſay to diſcredit his Teſtimony, which ſuppoſeth he would appear, and imports the quite contrary of withdrawing himſelf: And if he had gone on further, I think, there had been no Fault in that; for any Sollicitor may enquire up and down for the Advantage of his Client; and the Word *Sollicitor* imports his Employment. As to the Offer Mr. *Roe* ſays he made him, of a very great Recompence, how far he is guilty of that, I ſuppoſe, he can give ſome Account, if you ſhould pleaſe to enter into the Examination of it: And as I find he does not doubt to clear himſelf, ſo that Sir *John Fenwick* is in no ſort proved to be privy to Mr. *Goodman*'s withdrawing himſelf, much leſs to be proved to have had a Hand in it.

There is one Thing more I would offer, and that is grounded upon the Bill of Indictment preferred at the *Old Baily* againſt Sir *John Fenwick*; That the Matter in the very Indictment that they have read on the other Side, as it is there laid, and as far as it hath been offered to be here proved, does not amount to Treaſon; or, at leaſt, it hath been made a very great doubt, and by ſome within theſe Walls: But this I offer, with all Submiſſion, I have the Author in my Hand, who is a Perſon of Note of the King's Council, he hath furniſhed me with ſuch Arguments as, I hope, I may be admitted to put you in mind of without Offence.

The Indictment lays, That there was a Conſpiracy and Agreement to call in Foreign Power, and to that Purpoſe to ſend *Charnock* to *France*; but the Indictment does not ſay, That *Charnock* was ſent, only that there was a Meeting, and an Agreement, and a Conſpiracy, to ſend him: So the Indictment does not lay it as a Thing done, nor does the Bill charge it ſo; but only takes Notice, That he, I mean Sir *John Fenwick*, was Indicted for Conſpiring and Agreeing to call in a Foreign Force; ſo that this Bill does not ſay that *Charnock* was ſent. And I appeal to you, Whether it be proved that he was ſent: For Mr. *Porter* ſays no more, but that there was a Meeting at the *King*'s *Head*, and he named Sir *John Fenwick* to be one who was preſent; and there it was, he ſays, agreed, That *Charnock* ſhould be ſent into *France*. Now, if there was nothing more than an Agreement and Conſpiracy to do it, and no further Act, but ſuch a Meeting to do it, but the Perſon was not actually ſent, or, at leaſt, not proved to be ſent; then, from this learned Author's Opinion, I inſiſt upon it, that this is not a ſufficient Overt-Act of Treaſon. In the late Caſe of my Lord *Ruſſel*, whoſe Innocency is vindicated by this Author, he takes notice, That a Conſpiracy or Agreement to levy War is not Treaſon, without actual levying War; and of that Opinion was my Lord *Coke*, and my Lord Chief Juſtice *Hales*. A Conſpiracy or Agreement to call in Foreign Forces, unleſs actually done, or a Perſon, at leaſt, actually ſent, or ſomething more than a bare Agreement for that Purpoſe, is the ſame as a Conſpiracy to levy War. And in the Caſe of my Lord *Ruſſel*, the Proof being only, That he, and others, met together, and agreed to ſeize upon the Guards, and levy War, which he never actually did; it is inſiſted upon by this Author, That that was not Treaſon; for that Indictment went no further. And therefore my Author ſays, Show me where ſuch an Accuſation was ever agreed to be more than a Conſpiracy to Levy War? And that ſuch a Conſpiracy was ever agreed to be Treaſon within the Statute of *Edward* III. till within theſe few Years?

Sir,

Sir, now I muſt humbly ſubmit it to you, whether this be any Thing more? And for the Purpoſe you will pleaſe to conſider, What this preſent Bill, and what that Bill of Indictment is: For it is not, for that *Charnock* was ſent into *France* to ſollicite Foreign Forces; but only that Sir *John Fenwick* was at a Meeting, where they did agree ſo to do. Calling in Foreign Forces is levying War, but Conſpiracy to levy War is not Treaſon, unleſs it be actually done: A Conſpiracy to call in Foreign Forces is nothing more. And therefore I humbly inſiſt upon it, That neither by this Bill, or by the Indictment recited in it, or the Proofs offered before you, any Thing is charged, but only an Agreement at that Meeting mentioned by Captain *Porter*, a ſingle Perſon, and he not upon Oath, to call in Foreign Forces. For he only ſays, That *Charnock* told him he had been in *France*. I ſhall not trouble you any further; we have not thought fit to produce Witneſſes, for the Reaſons I have offered: For that we do not find, That Sir *John Fenwick* throughout the Bill is charged with being guilty of Treaſon; and we are not willing to enter upon the Defence of a Matter not charged upon him. I hope, Sir, you will not make a Precedent, That where a Perſon is Indicted, and ready to abide his Tryal, in the ordinary Courſe of Juſtice, as Sir *John Fenwick* now is, that he might be taken out of the Hands of the ordinary Judges, and be brought to this Bar, to receive his Tryal here.

A Matter of this Nature may be of very great Conſequence: We know at preſent upon what Ground we ſtand; for by the Statute of *Edward* III. we know what is Treaſon; by the 2 Statutes of *Edward* VI. and the late Act of Treaſon, we know what is Proof; by the Statute of *Magna Charta*, we know how we are to be tried, *per legem terræ & per judicium parium*; That is, a Peer by his Peers, and a Commoner by a Jury: but if Bills of Attainder come into Faſhion, we ſhall neither know what is Treaſon, what is Evidence, nor how, nor where we are to be tryed. Sir, I ſubmit it to you, and hope this Bill ſhall not paſs.

Sir *Bartholomew Shower*. Mr. *Speaker*, I am of Council for Sir *John Fenwick*, the Priſoner at the Bar; and firſt, I am humbly for to thank you for your Candour, of which I have had frequent Experience; and humbly beg for my ſelf, That if I offer any Words that are indecent, or unfit for me, that you will interrupt me, for it is furtheſt from my Intention ſo to do.

The Bill that is brought into this Houſe againſt Sir *John Fenwick*, is that whereby every one of you (with Submiſſion) are to declare and pronounce, *That he ſhall be Drawn, Hanged and Quartered, as a Traytor*. And the Queſtion before you is, Whether you will do this in this Caſe?

Sir, I ſhall not pretend to queſtion, nor enter into any Debate or Argument in this Thing concerning the Power of Parliaments: No queſtion, but in all Governments, there is ſome Supream Power; and by our Conſtitution, it is lodged in the King, Lords and Commons.

There are Precedents of Attainders, and that many; but can they ſhew me, where there hath been any Attainder by Parliament, for High Treaſon upon one ſingle Act, which if Treaſon, was Determinable at Common Law; there have been Bills of Attainder for flagrant Treaſons, and for Great Miniſters of State; ſome topping Sinners, who have been above Judges and Jury, and whom Inferiour Courts could not tell what to ſay to: But I believe I may ſay this, That for a ſingle Conſult or Agreement between four or five private Gentlemen, in a private Room, in which there was no Danger, but by the Conſequence of the Reſolution, if it was put in Practice, no Man can ſhew any Precedent for Attainting any Perſon in Parliament.

If you pleaſe to obſerve the 25 *Edw.* III, reſerves the Power to Parliament, to proceed in Treaſon not expreſſed within the Statute; but as to the Compaſſing the King's Death, Adhering to the King's Enemies, and thoſe Things that are there particularly ſpecified, it ſeems the Senſe of the Parliament to leave them to the Rules of the Common Law. So 1 *H.* 4. *No.* 144. upon the Roll it is at large complained of Accuſations in Parliament for Treaſons and Felonies, and declares for the future, they ſhould be determined in the Inferiour Courts.

1. This was occaſioned by Sir *Raw. Harray*; *Cotton*'s Abridgment, 189.

There is a Melancholy Precedent or Two of ſingle Acts of Attainder; but they are moſt of them reverſed. Sir *Thomas Haxey* in *Richard* the IId's Time, was Attainted for bringing in a Bill into the Commons Houſe againſt the Prerogative; but 1 *H.* 4. it was reverſed with great Cenſure, *Cott. Abridg.* 362. 363. There are others in *H.* 8. Time, but they were for Acts in that Reign, which were queſtionable, whether or no within the Statute of *Edw.* III. and were for ſuch Actions, as perhaps were not for the Honour of the Prince, or Good of the Government, to diſcloſe by publick Tryal, as the Attainder of the Queen, and others concerned.

I beg leave to repeat the Words of a great Author, the Biſhop of *Salisbury*, in the *Hiſtory of the Reformation*, which I crave leave rather to do, becauſe it hath been approved of by this Houſe, for he had Thanks of the Parliament for it; *fol.* 359. 360. where ſpeaking of theſe ſort of Attainders, then he ſays, *After theſe Executions, followed the Parliament in* 1539, *in which theſe Attainders were not only Confirmed, but divers others were made of Perſons in Cuſtody, without bringing them to Tryal*; (and he ſays) *which can't be enough condemned as a Breach of the moſt Sacred and unalterable Rules of Juſtice.*

That of the Marchioneſs of *Exeter*, &c. I ſhall make no Paraphraſe upon it: There is no queſtion but you will Agree, and I muſt Admit, *Salus Populi* to be *Suprema Lex*; but for an Act, not the laſt of *May*, but laſt *May* was Twelve Months, the Danger paſſed, the Perſons executed, that were concerned in the Great Treaſon, and all Danger that might have been from that Act gone, and no Fear now concerning it: I hope you will not uſe the extraordinary Power of the Legiſlative, to puniſh for that Fact which may be puniſhed by the ordinary Rules of Law.

The Reaſon ſuggeſted in the Bill is, That 'tis impoſſible to have this Gentleman Tryed by the Rules of the Common Law; for otherwiſe there is none: For you will not waſte your Time; and if the Doctrine that was broached here yeſterday, be true, there is no Occaſion to trouble you now; for according to their Doctrine, there is legal Evidence, and there is no need of a Bill of Attainder; but taking that for granted, that we muſt do; otherwiſe there is no Reaſon for this Bill. Then

the

the Bill ſays, That *Goodman* was an Evidence, and that he is withdrawn; which I muſt obſerve, is neither laid, nor proved to be by the Privity, Conſent, or Procurement of Sir *John Fenwick*: There is no pretence of it in the Bill; no Inſinuation of it, nor any Evidence to that Purpoſe. Then ſuppoſe *Goodman* is withdrawn, we may preſume you will not paſs a Bill to put Sir *John Fenwick* in a worſe Condition than if *Goodman* was preſent, if he had been ready to have ſworn the ſame Thing.

In caſe you do paſs this Bill, you do put Sir *John Fenwick* in a worſe Condition than he would have been if *Goodman* were here: Perhaps it might have been reaſonable to have an Act paſſed, That *Goodman*'s Depoſitions ſhould be read at the Tryal, if *Goodman* was withdrawn; but we hope it can't be a Reaſon to condemn Sir *John Fenwick* of High-Treaſon without Tryal; for the Conſequence of this is (if it were by his Means) that he is puniſhed greater than the Thing requires. For if *Goodman* was here, Sir *John Fenwick* would have had his Tryal by a Jury, the Benefit of Challenges, Exceptions to the Array, might have Challenged upon Account of Favour, if any of the Grand-Jury had been impanelled, had his legal Exceptions to the Teſtimony of the Witneſſes, might have theſe Witneſſes examined upon Oath, might give Evidence upon Oath to it, and all this he is deprived of: So that now he is in a worſe Condition, by *Goodman*'s abſence, than if he was preſent. We inſiſt upon it therefore, and ſubmit it to you, whether any Puniſhment can be impoſed by the Legiſlative Power, but only to ſupply that Defect; and put the Caſe in the ſame Circumſtances it would have been, if ſuch a Miſcarriage had not been committed: But this Bill is to condemn him to Death upon the Oath of one Witneſs, though there was your Act of Parliament laſt Year requires two. With ſubmiſſion to their Judgment, it was the Law of the Land, before that; and in all Caſes, where Tryals are *per Teſtes*; and 'tis the Law of God, and the Law of the whole World; and no Law allows a Man to be condemned but by two Witneſſes; and the Reaſon that here one Witneſs is admitted, is, becauſe he hath the Benefit of a Jury, and Challenges to them, who the Law ſuppoſes are privy to the Fact, and therefore are to come from the *Vicinage*, from the Neighbourhood of the Place where the Party dwells; and for that Reaſon, in Caſes of Felony, where no Statute interpoſes, the Law allows but one Witneſs. Natural Reaſon requires two Witneſſes in caſe of ſo great Crimes, becauſe that one Witneſs can be no Rule to guide your Judgments; one affirms, the other denies, this is equal; and Preſumption ought to be on the Side of Innocency, rather than otherwiſe; but we hope, in this Caſe, it will not be thought reaſonable to paſs the Bill to condemn Sir *John Fenwick* for Treaſon, and to condemn him to the baſeſt of Executions, upon the Teſtimony, nay, upon the Parole of one Witneſs. And 'tis no more than if *Goodman* had been dead, then you would not have done it: If *Goodman* and *Porter* had both come to this Bar, you would not have done it, but have referred him to his Tryal at the Common Law. Now what is there pretended by them to induce you to judge the contrary, or at leaſt without ſo much as an Allegation in the Bill, that Sir *John Fenwick* procured his withdrawing. I propoſe it to your Conſideration, Whether there be any Proof that *Goodman* is withdrawn? He was once in Cuſtody, let out upon Bail, the Proſecutors approved the Bail, he never yet called upon his Recognizance; nay, there is not one Tittle of Evidence, but that *Goodman* may be in the ſame Lodging where he was: And then, ſuppoſe when you have paſſed this Bill, *Goodman* ſhould appear again and contradict his Teſtimony he has given before: Then it may be too late for you to do Right to Sir *John Fenwick*. 'Tis not ſo much as offered that *Goodman* could not be found; they offered a printed Proclamation, which I am ſure the King's Serjeant will not allow to be any Evidence. Whether it paſſed the Great Seal before it was printed, or whether it paſſed it at all, *non conſtat*; for it was not read; they waved it. It does not appear Sir *John Fenwick* conſented, or procured *Goodman*'s withdrawing; he could not procure it, for he was a Priſoner, and ſo not likely to effect it, being a Priſoner, eſpecially for his Life.

As for my Lady *Fenwick*, whether ſhe did ſo or not, I am ſure you'll be of Opinion, it ought not to affect Sir *John Fenwick*: Suppoſe *Clancy* a Stranger to Sir *John Fenwick*, and in Truth he never ſaw him: Or ſuppoſe him a Friend, and he officiouſly did what he did; he ought to anſwer for it, and I think he hath undergone the Puniſhment the Law thought fit to inflict in that Caſe; 'tis his own Crime, and by the Rules of Juſtice, no Man's Crime ought to tend to the Puniſhment or Misfortune of another Man: The Act of one Criminal, thought to be a Party, or Acquaintance, or a Friend of Sir *John Fenwick*'s, ought not to affect him, nor no Body but the Actor; 'tis he that hath ſuffered for it.

And what hath been ſaid in that Matter, ought not to influence your Judgments; for 'tis not improbable, but what *Clancy* told *Porter*, is falſe; you will never allow Hearſay, nor permit your Judgment to be governed by any Thing but what is certain, and hath all the moral Rules of Perſuaſion. Hearſay was never, by any Law in any Court of the World, allowed, nor indeed believed in private Converſation.

As to my Lady *Fenwick*, there is this further, That Husband and Wife, in reſpect of Crimes, are diſtinct Perſons; and what one does, cannot affect the other, no more than ſhe deſerves to be executed for what Sir *John Fenwick* did; and as to what *Porter* ſays concerning it, it only relates to himſelf; it proves no Suggeſtion of the Bill, which is, That *Goodman* is withdrawn, becauſe a Stranger to Sir *John Fenwick*, (and it muſt be ſo in Conſtruction of Law) made an Attempt upon Captain *Porter*; therefore *Goodman* being withdrawn, there was an Attempt upon him, and by the ſame Perſon, and by the ſame Means; this is no Evidence; it carries no Logick in it, and won't prevail upon your Judgment.

We offer another Thing to your Conſideration. 'Tis ſaid, that one *Roe* was ſpoke to by a Sollicitor of Sir *John Fenwick*'s, Whether or no he could ſay any Thing to the Diſcredit of *Goodman*, as to his Robbing or Clipping? The asking of that Queſtion was lawful; and to deſire him to teſtify it was lawful: I muſt agree, to offer too great a Sum of Money, may ſubject him to an Information in the *King*'s *Bench*; (but Mr. Attorney knows that beſt) but God forbid it ſhould affect Sir *John Fenwick*; Mr. *Dighton* was not his Sollicitor at that Time, not appointed, nor had any Liberty to come to him; beſides, it can't be an Evidence, nor can't induce you to believe, That the ſame Perſon was inſtrumental to get away *Goodman*, becauſe

cauſe he asked *Roe*, if he knew *Goodman* to be guilty of thoſe Crimes; for there is no Evidence, that he asked him to perſuade him to withdraw himſelf.

There's another Thing we could offer to you: There's no Proof of that, which, upon the firſt Reading of this Bill, was aimed at, to be puniſhed with greater Pains than the common Law inflicts, and that is, the Giving of falſe Papers and Accuſations againſt great Perſons; they have not attempted any Thing like it; ſo that That is to be taken as if there was no ſuch Thing. Neither is there any Proof of protracting his Tryal, by any Promiſes of Confeſſion or Diſcovery; they opened it, but did not attempt the Proof of it, but waved it.

But take it to be ſo; I hope you will not paſs an Act to Attaint a Man for making a falſe Accuſation, which only incurs an Action of *Scandalum Magnatum*, or Fine and Impriſonment upon an Indictment; and, I hope, you'll not condemn him to a greater Puniſhment, when, at the Time he did it, he had no Notice of that Puniſhment. The Deſign of the Law, is to influence Men by Fear of Penalty; and how can that be, when Penalties are not known at the Time the Fact was committed? I ſpeak with Submiſſion ſtill; it ſeems not Juſt, that I ſhould forbear with ſo much Caution, from an Action that expoſes me to the Penalty of 20*l.* as from an Action for which the Law ſays, I ſhall forfeit my Life: Now, Sir, in this Caſe, it might be expected that he ſhould incur the Penalty of Fine, Pillory, and Impriſonment; but not that he could incur the Penalty of Death.

Then, Sir, as to the protracting of his Tryal by ſuch Promiſes of Confeſſion. Certainly the putting off his Tryal, in it ſelf, is ſo far from being a Crime, that it can't be thought but lawful; 'tis every Man's Duty, upon the Principle of Self-preſervation; and it was at the Liberty of the Government and Miniſters, to do as they thought fit in it.

In the next Place we do inſiſt, That there is no Treaſon alledged nor proved in this Caſe: There is no Pretence of Truth nor Charge, in reſpect of the Aſſaſſination; nor of buying of Arms or Horſes, though mentioned in the Indictment: And if Sir *John Fenwick* had been to have been Tryed upon this Indictment, and they had had both theſe Witneſſes there, all that could have been proved, muſt be of the Conſult; as to the Reſt, he muſt have been found not Guilty: And I believe 'tis moſt notorious, that the whole Company there, could not have raiſed what was talked of. Now as to this ſingle Act, it hath been ſaid, That a Conſpiracy to levy War is not Treaſon: My Lord *Ruſſel* was attainted for it, and that Attainder was reverſed upon this very Account, and the Act declares the Reaſon of it, he being deny'd his lawful Challenges, and by ſtrained Conſtruction of Treaſons, he was unlawfully convicted of Treaſon. Now the Overt-Act in the Indictment was this, That my Lord *Ruſſel*, and others, did conſult and conſpire to ſeize the King's Guards: The Proof of it went further, That they ſent Sir *Thomas Armſtrong* to view them and ſeize them: But then the Queſtion is, Whether the Conſulting to ſend a Man to invite foreign Forces, is any more than a Conſult to ſeize the King's Guards? We ſay each are levying of War, and 'tis not within the Clauſe of adhering to the King's Enemies; for they muſt be either preſent aiding and abetting of them, or ſending them Money, Arms, and Ammunition, and the like; and I think, for that, I may appeal to your Act made againſt correſponding with the King's Enemies; which, I ſuppoſe, if the Law before was otherwiſe, it needed not to have been made. Now here is only a Conſult and Agreement to do this Act.

It hath been queſtioned, Whether *Scribere eſt agere?* But here it is only *mittere*; nay, it is not ſo much, 'tis only *agreare mittere*; ſix Men had between them a little private Diſcourſe, and at laſt One of them did agree to ſend *Charnock* to *France*: The Queſtion is, Whether the Law of the Land will warrant this to be Treaſon? And if not, then you muſt not Paſs this Act upon ſuch a ſingle Point. Dr. *Story*'s Caſe is deny'd to be Law; this Caſe is no more than that in my Lord *Dyer*, for writing a Letter to invite the *Spaniſh* King to invade *England*; and it was a Time of great Fear of them, as it is of the *French* King now; and he was attainted upon that, but that Judgment hath been queſtioned and deny'd to be Law. My Lord *Hales* expreſly, in his Pleas of the Crown, ſays, That a Conſpiracy to levy War, is not an Overt-Act of the King's Death; and that attempting to levy War, is not Treaſon. Now the Sorts of Treaſons are theſe Three; compaſſing the King's Death, levying War, or adhering to the King's Enemies. Now for compaſſing or agreeing to levy War, to apply that to be an Overt-Act of compaſſing the King's Death, hath been always complained of as a Strain of the Law.

Upon theſe Reaſons, we think this would not have been an Act of compaſſing the King's Death, as laid in the Indictment; and then if it be but a Queſtion, Whether it be or no? We hope you will not proceed in your Legiſlative, eſpecially when he is deprived of the Advantage of inſiſting on this at his Tryal at common Law: Witneſſes are there upon their Oaths; he might have had a Challenge to the Jury; he might move in Arreſt of Judgment. Now the Queſtion is, Whether you will pronounce Sentence of Death upon him for High Treaſon, upon one ſingle Act, a Year and a half ago, juſt after the Act of Parliament for regulating Tryals in Caſes of High Treaſon; and if we had had a Tryal at Law, we ſhould have canvaſed theſe Things; if we had Witneſſes upon their Oaths, for the Pardon reached the 29th of *April*, they could Swear no new Diſcourſe but juſt in *May*; and now they ſay it was in the Middle of *May*, if it had been before, the King's Grace would have exempted Sir *John Fenwick* from Puniſhment; and theſe Things we ſhould have had the Advantage of, if we had had the Liberty of a Tryal.

There's another Conſideration: Sir *John Fenwick* hath pleaded, and hath ſo pleaded to Iſſue, and Iſſue is joined, and a *Venire Facias* is awarded. Now we ſubmit it to you, whether you will think fit to take it out of the Hands of the Common Law, when there is no extraordinary Neceſſity? And the Conſideration we have to offer to you, if you do not caſt out this Bill, if we ſhould have the good Fortune, as we hope for in another Place, Sir *John Fenwick* ſtands ſtill liable, and muſt ſubmit to his Tryal, if the King's Council think fit to proſecute him, and we think it hard to undergo your Cenſure, to be condemned in this Place; and if (perhaps) he be acquitted here, to undergo the like Danger in another, and then to be Tryed in a Third: And for theſe Reaſons, we hope, you will reject this Bill.

Mr. Ser-

Mr Serj. *Gould.* May it pleaſe you, Mr. Speaker, I have hearkened to what theſe Gentlemen have Objected, and could not be aware of all they have ſaid. They have enlarged upon ſeveral Topicks; I ſhall recollect them as well as I can, and Anſwer them in the Method they have taken. I never did think, that the Parliament would take Things out of the Ordinary Courſe of Juſtice, nor Attaint any of Treaſon, unleſs in Caſes Extraordinary; and theſe Gentlemen have agreed, That in Caſes Extraordinary they have done it. They likewiſe have agreed, and Sir *Bartholomew Shower* has told you, That there are ſome Treaſons, by the Statute of 25 *Edw.* 3. reſerved by that Act, to be declared by Parliament. Sir *Thomas Powys* ſays, This is taken out of the ordinary Courſe of Juſtice: So ſays Sir *Bartholomew Shower*; ſays he, Here is an Indictment before you, the Party hath pleaded not Guilty, and they ſay, he may be Tryed in the ordinary Courſe of the Law; and therefore they look upon it as improper to bring it here.

The Gentlemen are miſtaken very much, to think that I did ſay, That the Examination that I ſaid was Evidence here, would be allowed below. If I had thought ſo, I ſhould have thought at the ſame Time, this Houſe would not have meddled with it: But I do diſagree with them in this; and take it, That where a Caſe is Extraordinary, you will come and meddle with the Matter. Here is an abominable Treaſon, that is agreed on all Hands. Here is Plot upon Plot: Here hath been a Plot now to take away the King's Evidence; there was two Witneſſes in the beginning, and 'tis very plain that one of them is not here; for that here was a Proclamation produced, and I did look upon that Matter as taken for granted, That *Goodman* was withdrawn, and for that Matter they may be eaſily ſatisfied. They ſay, we have not proved the Suggeſtions of the Bill; but we think we have: For firſt of all, Captain *Porter* hath here Sworn it expreſly; it is not a Thing of looſe, bare Talking; but he hath proved a deliberate and formed Conſpiracy; he hath proved, that it was actually agreed upon, a Firſt and at a ſecond Time; and that *Charnock* was ſent in order to the Execution of it: And what was it for? It was plainly to depoſe the King. He tells you, for that Purpoſe, they had deſired 8000 Foot, 1000 Horſe, and 1000 Dragoons from the *French* King; and theſe Gentlemen agreed to join them. Now, can there be a greater Evidence of depoſing the King, and conſequently of imagining his Death? 'Tis an Evidence of the Imagination of the Death of the King, as well as of the Rebellion; it being ſo in the neceſſary Conſequence of it. Now, I think, he hath fully proved That. Then we offer to you, how far you will allow of this Examination: Why? Becauſe upon a ſecond Contrivance, here is a Witneſs withdrawn; and can we give you greater Evidence of that, than we have given? We have proved that there was tampering, let the Thing run as far as it will. Captain *Porter* was dealt with, had 300 Guineas in Hand, and 300 more he was to have remitted to him; and was to have 300 *l.* a Year, whereof Sir *John Fenwick* was to pay One. It does follow after, that he is withdrawn, we muſt leave it to this Honourable Houſe, what Conſtruction you will make of That: Whether here is not a ſecond Plot?

Now this Matter is brought before this Honourable Houſe, we have gone ſo far in it, as to produce *Goodman*'s Examination that was taken before a Juſtice of Peace: We have ſhewed you the Evidence that he hath given upon a former Tryal; and now he is gone, ſure no Body but muſt juſtly infer, 'tis by Sir *John Fenwick*'s Means: So that here they have taken away the Evidence that is neceſſary in the ordinary Courſe of Proceedings. In ſuch an extraordinary Caſe, I think it hath been uſual for the Parliament to interpoſe: Therefore, what they pretended, under Favour, that this ſhould not be Evidence, is all taken off. For now we are in Parliament, you will make uſe of ſuch Informations as can give you any Light into the Matter, and may obviate and cure the Diſtemper that is upon us; and you are Judges of your own Methods, and how far Sir *John Fenwick* hath been concerned upon the Inſtances we have given you, that is in your Judgments. As for what Sir *Thomas Powys* tells you; ſays he, This Power hath not been executed by Parliaments very frequently, but it hath generally been done where Perſons are withdrawn from Juſtice, and can't be come at in the ordinary Courſe. Why, we are in the like Caſe; if ſo be we can't come at Juſtice in the ordinary Courſe, and that by our Evidence having been tampered with, and drawn away; then, Sir, under Favour, by their own Arguments, 'tis proper to come before this Honourable Houſe; ſo that notwithſtanding what hath been ſaid, we do think we have given you Evidence.

And as for what they ſaid, That we have not given any Account that Sir *John Fenwick*, by giving Aſſurance of his Confeſſion, had protracted his Tryal; for that I did apply my ſelf, That Mr. *Vernon* might give you an Account of it: So that upon the whole Matter, we muſt leave it to your Conſideration, and hope we have given you good Satisfaction, that there hath been a great Plot againſt the Government; and there was no Evidence of any other Matter before the Judges, and they allowed it to be High Treaſon. Here is the ſame Evidence, only we have not one of them *Viva Voce.*

Mr Serj *Lovell.* Mr. Speaker, I ſhall not trouble you nor the Houſe very long; but I humbly hope, with a little Pains, to ſatisfy the Houſe, that moſt that hath been ſaid on the other Side, is not much to the Purpoſe. Sir, I will conſider, with the Leave of this Houſe, what the Common Law was before 25 *Edw.* 3. and how the Law does now ſtand; and draw ſome Conſequences from thence, and the Neceſſity of this Caſe.

The Statute of 25 *Edw.* 3. I muſt obſerve it, is not an Enacting Law, it is only a Law Declaratory; for all thoſe particular Inſtances of Treaſons that are mentioned there, were Treaſons before that Law was made; and ſo, by the Preamble of it, plainly appears: But the Judges had a greater Liberty upon conſtructive Treaſons, and upon accumulative Treaſons; and that was left too much at the Diſcretion and Liberty of the Judges below, and the executive Power of the Law. Then that Statute comes and reſtrains the Judges in that Point; and ſays, That they ſhall not give Judgment in any Caſes of Treaſon, but only in theſe Caſes, particularly mentioned there: And that Statute ſays, That if any other Matter which ſhall be thought Treaſon, ſhould come before them, they ſhall not proceed to Judgment, but acquaint the King in Parliament with it. I only make uſe of it, to prove how Treaſons ſtood before that Act, and how it comes to be altered from the Common Law: And I am ſure it is not to be denied, but that one Witneſs was ſufficient at the Common Law: But then comes 1 *Ed.* 6. *c.* 12. and that, for the Security of the Subject, does ordain,

That in Cases of High Treason there shall be two Witnesses of the Fact: But that Statute does not alter, but was made for the more Security of the Subject in Point of Proof. But in that Statute of 1 *Ed.* 6. *c.* 12. that does provide there shall be two Witnesses in Cases of High Treason, there is an Exception of Treason for counterfeiting and forging of the Coin; and that is the Reason that the Law is taken now, that though there must be two Witnesses in the Cases of other Treasons, yet in the Case of Coining, there needs but One. The Offence or Crime is never the greater, because there are to be two Witnesses to prove it. In this Case that is here before you, we come to desire your Help, because one of the Witnesses is by Art and fraudulent Means withdrawn: Does that purge the Crime at all, or lessen it? No Man will say the Crime is less, but it does prevent a regular Tryal before the Courts below; and that is the Reason why we did come here; and we hope this Defect shall be supplied by a special Law: But, say they, 'tis very hard a Law should be made *ex post Facto*, to take away a Man's Life. It would be very hard, if the Case was as they have cited it, to make a Crime *ex post Facto*, that was not so before: But I do not take it to be hard for a Law to be made to repeal another, to make a Matter Tryable, that was not Tryable before.

Suppose a Law should be made, That all Treasons from and after such a Time, suppose from a Time before the Fact is here supposed to be committed, as *May* was Twelve-months, should be tryable as at the Common Law, no doubt the Parliament may repeal a Law in Part, or in All. No Man can say, but Sir *John Fenwick* might be Tryed at the Common Law, by one Witness, before the Statute of 1 *Ed.* 6. So that I do observe, and humbly submit it to you, That this Law, by the Act, is not changed as to the Crime; the Crime is as it was before, it is only changed as to the Number of Witnesses. The Instances that have been observed on the other Side, with humble Submission, I think do not reach our Case. We do not insist that there are two legal Witnesses; we do confess the Information that hath been read, is not a legal Proof; but this House, in their Legislative Capacity, is not to be confined to the Evidence that a Jury must have below. This House may take what Ways and Methods they please to satisfy themselves: Say they, Here is the Life of a Gentleman that is concerned. I know all good Men will be tender of the Life of a Man: But here is the Life of the King, and the Safety of the Kingdom, the Peace and Safety of us all, that is concerned in the same Case; and let them put these Things into the Ballance, and consider which ought to weigh most.

You have a Record before you of the Conviction of *Peter Cook*, who was Indicted by the same Witness.

A Learned Gentleman, that is of Council for the Prisoner at the Bar, did make the same Objections as are made now at the *Old Baily*; (it may be there are some other Particulars now) and after all the Debates and Arguments that could be used at that Time, it was unanimously resolved, That the Crime was High Treason: And if it was High Treason in *Peter Cook*, 'tis no less in Sir *John Fenwick*, who was present at the same Time, and engaged in the same Business: For what was a Crime in one, was the same in both.

I think 'tis too determinative an Expression, to say, This was nothing but a little Twittle Twattle. They did there meet upon a solemn Consultation; and not only once, but they did meet a second Time; and what was it to do? It was to invite a Foreign Power to invade this Land, and to make War with the King and Kingdom; and they did promise, and solemnly ingage to assist them with armed Forces; and it was proved, That they did agree with *Charnock* to go into *France*; and *Charnock* was not willing to go the first Time he was desired, till he found they were stanch and steady in their Resolutions; and upon a second Meeting they were all found so, and then he would go: I think that is an Overt-Act of Treason, if there be any. And when he came back, he said, he had been in *France*, and brought an Answer to the Message he went about: This is all now laid before you. But, say they, this is an extraordinary Case: I do agree it; but because it is an extraordinary Case, and for the Safety of the King and Kingdom, it is fit there should be an extraordinary Remedy.

They ask, What Mischief it would be, if this Gentleman should be left to the ordinary Course of Law? It hath been the Wisdom of all Ages to make a Law, to punish such as by their Artifice would evade the Law. Here is this Gentleman, as we say, guilty of High Treason; but that we submit to you.

This Gentleman was in the Prosecution of the Law, and might have been Tryed in the regular Way, had the Witnesses upon their Oaths; (the Grand Jury have found *Billa Vera* upon their Oaths;) but we must appeal to a worthy Member of the House (who because he was a Member we did not call upon him) to give you an Account how he did Delay and Portract his Tryal; and now they know he can't be Tryed at all, they pretend he is willing to be Tryed: And because he can't be Tryed, they would have it as an Argument that he should not be punished by any other Means.

Sir, if so notorious a Crime as this is, should be committed against the Body of a Nation, and go unpunished, either in the common Course, or by some extraordinary Methods, the Nation would be in a doubtful and dangerous Case.

When this House hath passed their Judgments in this Matter, it will go to another Place, where it will have another Examination; and it will have that regular Consideration that all other Acts have. We are in an extraordinary Case, and do think, That this extraordinary Case does deserve an extraordinary Punishment.

Sir *Bartholomew Shower*. I beg Pardon but for one Word: No Man does abhor such Consults more than my self; but I do not think that Discourses are such an Overt-Act of High Treason, as deserves the Punishment of Death.

Sir John Fenwick *and the Council withdrew. And being withdrawn.*

Admiral *Russel*. I think this may be a proper Time to ask Questions: If so, I think my self enough concerned to trouble you with one or two. I think in the Paper that hath been read, I am mentioned twice. These are the Questions I desire to have asked; What Proof he hath of this? Whether ever he saw —— And what Proof he has that I sent Captain *Lloyd* over? And that I gave him a List of the Ships? And that

Meaning Fenwick's Informations.

that I ſaid, we could not fit out thirty Ships in *May?* And whether or no, ſince this Revolution, he hath had any Converſation with me?

Colonel *Crawford.* What that honourable Perſon ſays, calls me up; my Name is mentioned in Sir *John Fenwick*'s Paper: I deſire you would ask him, Why he mentioned me in his Paper, as he hath done? And that you would require him to make Proof of what he ſays in relation to me.

Colonel *Godfrey.* I deſire ſome Queſtions may be asked him in relation to a noble Lord, my Lord *Marlborough:* If he be Guilty I would have it known, and I would as willingly have it known if he be Innocent, as I believe it will ſo appear. I would have him asked, Whether, ſince the Beginning of this War, or from the Time of this King's Landing, Sir *John Fenwick* did ever ſpeak to him, in Publick or Private? Or ever did write to him, or receive any Meſſage by Word of Mouth, or Letter, from my Lord *Marlborough?* He ſays, That ſome Service he had promiſed King *James*, which inclined him to promiſe him his Pardon: I would know what that Service was? And in relation to his ſending *Lloyd* into *France*, Whether he can, by any Body elſe, make that appear?

Colonel *Crawford.* That Gentleman hath put me in mind of one ſhort Queſtion; Whether ever he converſed or ſpake with me in his Life?

Mr. *Bridges.* Whether Sir *John Fenwick* hath any Body but himſelf, to ſupport the Hearſay he hath given an Account of? And I deſire a Queſtion may be asked him on behalf of the Duke of *Shrewsbury*; What Proof he has that the Duke of *Shrewsbury* came into the Office of Secretary of State again, by the Operation and Conſent of King *James?*

Mr. *Vernon.* I deſire a Queſtion may be asked previous to that, becauſe 'tis ſo in Time; How he knows that noble Lord was in Treaty with King *James*, before he went out of the Secretary's Office, when he firſt came there?

Colonel *Granvil.* I deſire he may be asked, What Proof he can give, that my Lord *Bath* was to betray *Plymouth* into the Hands of King *James*, or the King of *France*, and whatever elſe my Father is accuſed of in that Paper?

Mr. *Harley.* I humbly propoſe it to you for the Method of your Proceedings, ſince you take this Method, Whether it will ſave you Time for you to look upon that Paper, and ask him as to the ſeveral Parts of it, what Proof he can make of it.

A Vote made a little before, by which that Paper was condemned.

Mr. *How.* I do not oppoſe Sir *John Fenwick*'s being examined to this Paper, but it might have been more to your Credit, if you had Examined him before your Vote: But here are a great many Gentlemen riſe, to ask a Man to that which he does not pretend to any Proof of. The beſt Way for ſaving your Time is, I conceive, to have the ſeveral Parts of the Paper that does concern theſe Gentlemen read to him; and to ask him upon what Grounds he gave the King that Information. This will lead him into all that he knows of the Matter.

Mr. *Boſcawen.* I am not againſt the Queſtion that is propoſed laſt; but you may ask him that at laſt. But there is a noble Lord that is reflected on in that Paper, and that is my Lord *Godolphin*; I deſire you would pleaſe to ask the ſame Queſtions as to him.

Lord *Coningsby.* I did intend to take care of my Lord *Godolphin*; there is a hard Reflection upon that noble Perſon; but, under Favour, you muſt, I think, let him know you have ſuch a Paper; and then ask him in General, What Proof he has to the Particulars of that Paper? And then you will do Injuſtice to no Body.

Mr. *Norris.* There have been ſeveral Queſtions moved by ſeveral worthy Members; and, I think, the Queſtions ought to be asked: But, I think, there is one previous Queſtion to all theſe; and that is, when you tell him that you have ſuch a Paper. I think the firſt Queſtion ſhould be, Whether ever he delivered thoſe Papers to the King?

Sir *R. Delaval.* I find I am named in that Paper that Sir *John Fenwick* hath given; I deſire that Part that relates to me may be read to him; and that he may give a Reaſon, why he hath ſaid ſo of me, and Mr. *Killigrew.*

Lord *Walden.* There is another mentioned, and that is Commiſſary *Crawford*; I deſire he may be asked, What Proof he hath, that he gave Mr. —— a Liſt of the Army?

Mr. Chanc. of Exchequer. I can't blame Gentlemen for asking Queſtions that concern them, or their Friends: Some are for reading of it to him, I am againſt that: But yet I would have you to enquire into this Paper. And being you intended to do it, it might have been as well enquired into before Mr. *Dighton* came laſt to him. I think you may put your ſelf into an eaſy Method, and avoid all leading Queſtions; and ask him upon every Name in that Paper, as you come to it, What he knows of that Gentleman? And ask him no other Queſtion.

Mr. *Smith.* I was ſtanding up to the ſame Purpoſe: I would not have you to put Words into his Mouth, nor let him know by any Queſtion what Anſwer he is to make.

Mr. *Speaker.* Gentlemen, I am willing to do you any Service I can; but here are long Informations, and I never read them, nor know the Contents of them, but as they were read at the Table.

Mr. Att. Gen. I think the Method lately propoſed, will ſave you a great deal of Time, and is proper for the Diſcovery of the Truth; That you will Name the Perſons to him in Order as they are in the Paper, and ask him in general, What he knows of thoſe Perſons? But when you call him in, I am not for asking him to the particular Things he hath ſaid againſt them in that Paper; becauſe that Paper, though it is under his own Hand, is not his own; and if he knew it then, he knows it ſtill.

Colonel *Mordent.* I won't pretend to propoſe any Thing, only for the Shortning of your Time: If after you have informed him there is ſuch a Paper, that you ſhould ask him, Whether he will own it? And then, What Sort of Proof he will bring to prove it? You will find he will either tell you, he will Adviſe with Council, or whether he will give any Anſwer at all.

Lord Cutts. I have only one Queſtion to be asked Sir *John Fenwick*; 'tis not a Queſtion that relates to any Perſon named in that Paper. I think there is no one Perſon that he hath named, but is eminently known or believed to be in the Intereſt of this Government; and none but what are in ſome Poſt of Truſt, and Employment in it. Then, I think it highly neceſſary to know, How it comes to paſs that he hath had ſo much Converſation with Perſons of that Character, and none with thoſe People that he hath been ſeen daily to converſe with? And if he hath, Why he hath not diſcovered them, as he hath done the Reſt?

Mr. *Speaker*. Is it your Pleaſure I inform him we have the Informations?

Mr. *Palmer*. If I am not miſtaken, when you firſt called Sir *John Fenwick* before you, he referred himſelf to what he had informed the King; and referred himſelf to that Paper, as often as you asked him any Queſtions. And if you ask him general Queſtions, I preſume he will give you the ſame Anſwer: Therefore, I think, it may be proper to ask him, Whether this is the Paper that he delivered in, or not? Or otherwiſe, I doubt, he will tell you, He knows nothing but what is in that Paper. Now, if he refers to that Paper, you may ask him, If he knows it again, if it be ſhewed to him?

Mr. *Sloane*. What this Gentleman has ſaid, has partly interrupted what I was going to offer; but as to what he ſays, That when he was here before, he referred to his Confeſſion delivered in to the King; we did not tell him we knew of that: But he put it further, That he was not bound to accuſe himſelf, and that what he ſaid might be given in Evidence againſt him; and ſo far he was in the Right. For if he knew of any Body that was concerned in a Conſpiracy againſt the Government, that was Miſpriſion of Treaſon at leaſt in him. I don't queſtion but it was a very miſchievous Contrivance; but if he ſhould confeſs it, without ſome Aſſurance of being indemnified, he proves himſelf to be Guilty of it.

Mr. *Vice Chamberlain*. You are now upon the Method of your Proceedings: There is great Suſpicion whether this Paper be Sir *John Fenwick*'s own or no. If you will tell Sir *John Fenwick*, that in the Paper in your Hand he hath laid Things to the Charge of Perſons of Truſt, whom this Houſe hath a good Opinion of; and that this Houſe deſires to know, What Ground he hath for it? If he does not think fit to give you an Account of it, there is an End of your Enquiry.

Mr. *James Mountague*. The Houſe ſeems to agree, that they will have Sir *John Fenwick* ſent for in: I ſuppoſe you will not have the Council, nor Sollicitor by; and when he withdraws, I deſire he may be kept private, from his Council and Sollicitor.

Lord Cutts. By Sir *John Fenwick*'s Behaviour, when he firſt appeared at the Bar, and by what he ſaid then, I believe Sir *John Fenwick* did tell you to this Senſe, That he had Aſſurance from a noble Perſon, that what he then ſaid, ſhould not riſe againſt him in Judgment; and I think he was told, If he dealt ingenuouſly, he might expect Favour, or to that Effect. I do, for the Saving of Time, mention it to you, to conſider how far the Houſe may give him Security, that what he here ſays, ſhall not riſe up in Judgment againſt him; and that if he dealt Ingenuouſly, he might expect ſome Favour from this Houſe.

Mr. *Harley*. You are upon the niceſt Thing, in its Nature, that poſſibly can come before you. I think before you call him in, it ought to be underſtood that the Queſtions be very plain.

Mr. *Manley*. I think you have been well moved from the other Side, That we ſhould not read this Paper to Sir *John Fenwick*: And I am of that Opinion from this Conſideration, beſides what hath been mentioned; we are here in a judicial Capacity as well as a Legiſlative; and this Paper I take to be an Examination made upon Sir *John Fenwick*; and as my Memory ſerves me, ſome Things he ſpeaks of as Matters of Fact, which he does poſitively aſſert; which being contained in the ſame Paper with other Matters of Hearſay, if you ſhould read that Paper to him, and ask him a Queſtion, Whether that be his Paper? That, I doubt, will be contrary to the Rules of Law: For it will be asking, Whether this Information againſt himſelf be true or falſe? And I think it does not become the Dignity and Honour of this great Aſſembly, to ask him any Queſtions that may make him Accuſe himſelf.

Mr. *Vernon*. I would obſerve to you, that he has not conſidered theſe two Papers: The firſt of theſe Papers I think the Bill refers to, and that is under Sir *John Fenwick*'s Hand; and there he does charge nothing at all upon himſelf, but it is an Accuſation upon the Perſons named. In the firſt Paper he does ſay, There was a ſelect Number to manage the Affairs of King *James*, and ——— was ſent over, but they are not named; and afterwards he went about to explain it in the Second; and the Bill referring only to the Firſt, I ſuppoſe you will confine your ſelves only to the firſt Paper.

Mr. *Chancellor of Exchequer*. I would think of ſome Way to reconcile theſe Things you are going upon: For though Gentlemen are in the Right to preſs for theſe Queſtions; yet I do not think it the Buſineſs before you. Therefore I think you ſhould acquaint Sir *John Fenwick* that this Paper hath been preſented to you, which this Houſe hath thought falſe and ſcandalous: But before he goes away, this Houſe has a Mind to hear what he would ſay to it; and let him ſay what he would upon that, then you would not lead him by any Queſtion. The firſt Perſon that is named, I have a great Reſpect for, and am as willing he ſhould be vindicated as any. The firſt Queſtion that you ask him is, What he knows of my Lord *Godolphin*? But that you ſhould literally ask him Queſtions, as the Paper ſtates it, I don't think it proper for this Aſſembly to ask: For there are Facts beyond the Act of Indemnity many of them. After you have done with the Paper, I have ſome Queſtions to ask him: I take theſe Matters to be falſe; but I ſhall have ſome Queſtions to ask him, which I believe will prove true.

Mr. *Bridges*. Before you call in Sir *John Fenwick*, I would offer one Thing to your Conſideration; I think that Paper you are upon, is written with Sir *John Fenwick*'s own Hand. Why may it not be fit for you to ask Sir *John Fenwick* if that be his Hand?

Members. No, no.

Mr. *Speaker*. Is it your Pleaſure that Sir *John Fenwick* be called in?

[*Which Queſtion being put, it paſſed in the Affirmative. And he was brought in without his Council.*]

Mr. *Speaker*. Sir *John Fenwick*, this Houſe does underſtand that you have given in Informations againſt ſeveral Perſons of great Quality, that have been in the Government; and they do expect from you, that you ſhould deal clearly and candidly with them, and give them an Account of what you know in relation to thoſe Perſons. I am commanded, in the firſt Place, to ask you, What you know of my Lord *Godolphin*, in relation to this Matter?

Sir *John Fenwick*. I am under a double Proſecution for my Life; I know not but what I ſay may turn to my own Prejudice: I hope the Houſe will not think it Obſtinacy in me; and ſince this Houſe

House have done me the Favour to hear me by my Council, I hope they will pleaſe to conſider what they have ſaid.

Mr. *Speaker*. No doubt the Houſe will conſider what you have ſaid by your Council, that is, in reference to your own Defence; but they do expect from you, as I told you before, That you do deal candidly with them in what you know of this Matter.

Sir *John Fenwick*. Sir I am under Proſecution for my Life; and, I hope, the Houſe will pleaſe to conſider, That I know not what Inconveniency may come upon me by it; and, I hope, the Houſe will Excuſe me, for I do it not out of Obſtinacy, but for my own Preſervation.

Mr. *Speaker*. You would do well to adviſe your ſelf well in this Matter, 'tis of great Concernment; the Favour of this Houſe, if you deſerve it, may be of great kindneſs to you. I have only in command to tell you, what the Houſe expect, and you are to conſider how to Anſwer it.

Sir *John Fenwick*. I hope the Houſe will not put me upon any thing that may hurt my ſelf: I ſhould be ſorry to incur the Diſpleaſure of this Houſe, but I hope they will conſider my Condition; and I am ſure the Juſtice and Honour of the Houſe is ſuch, That they will not preſs any Man to do any Thing that may hurt himſelf.

Mr. *Speaker*. Sir, if you pleaſe to withdraw.

Accordingly Sir John Fenwick *withdrew.*

Lord *Cutts*. I would humbly propoſe ſomething to you to ſave your Time, and remove this Inconveniency. The Houſe have heard what Sir *John Fenwick* ſays; I can't but ſay, that in Matters of Blood we can't be too tender; but that I would propoſe to you, if this Houſe approve of it, is this; Suppoſe you wave the whole Matter to the laſt Moment of paſſing your Bill, and then I ſhall have ſomethlng more to ſay to you in the Matter.

Mr. *Clerk*. Now I think it very proper for you to proceed in your Legiſlative Capacity. I am glad the Houſe have taken ſo much Pains in the Examination of the Matter; and it is no ſmall Satisfaction to me, That the Gentleman was brought to the Bar upon this Enquiry; very probable another Time may induce him more to comply than he does at preſent; though, if I may ſpeak my Opinion, there is little hope of the Gentleman's Anſwering your Expectation here: And I think the firſt thing you are to do now, is to read your Bill.

Mr. *Pultney*. One of the Allegations of the Bill is, That his Tryal was put off upon ſeveral repeated Pretences of making a Confeſſion. The Council for the Priſoner took Notice, That that Allegation was not proved: The Council for the Bill told you, They muſt refer to a worthy Member of this Houſe, who could prove it; the worthy Member is Mr. *Vernon*. I ſuppoſe before you enter into a Debate, as there will be after the ſecond Reading of the Bill, Gentlemen will deſire to have all the Evidence. And I find your Order is, That Mr. *Vernon* do give in his Evidence while Sir *John Fenwick* is at the Bar; and therefore I humbly move, That Sir *John Fenwick* may be called in while Mr. *Vernon* gives his Evidence.

Mr. *Speaker*. I ſuppoſe if Mr. *Vernon* gives Evidence, you will call in the Council.

Members. Yes, yes.

Mr. *Speaker*. Pray then hear the Motion that hath been made. Shall I put the Queſtion, That Sir *John Fenwick* and the Council be called in, while Mr. *Vernon* does give his Evidence?

[*Which Queſtion paſſed in the Affirmative; and Sir* John Fenwick, *and the Council on both Sides, were brought in.*]

Mr. *Speaker*. Gentlemen, you that are of Council of both Sides, the Houſe, before they proceed any further, was willing to hear the Teſtimony of a worthy Member of this Houſe which has not yet been given; and they are willing that Sir *John Fenwick*, and you, ſhould be preſent while it is given. Mr. *Vernon*, will you pleaſe to acquaint the Houſe, *&c.*

Mr. *Vernon*. If I underſtand the Council for the Bill aright, that which they did appeal to me for, was about the Portracting of Sir *John Fenwick*'s Tryal, and upon what pretence it was. The Account, Sir, that I can give of it, is this; That Sir *John Fenwick's* Tryal was put off, will appear beſt from the frequent Adjournments of the Seſſions at the *Old-Baily* for ſix or ſeven Weeks together. For when Sir *John Fenwick* was committed to the *Tower* (which was as I take it) on the 19th of *June*, there was, I believe, a Seſſions to be held ſoon after; for as I remember it, the firſt Application that Lady *Mary Fenwick* made for putting off Sir *John Fenwick's* Tryal, was upon the 30th of *June*; and the Petition was, That he might have ſome Friends come to him to adviſe him how to make his Application to the King: On the 30th of *June*, or about that time, my Lady *Mary Fenwick* did firſt Propoſe, That ſomebody ſhould be ſent over from Sir *John Fenwick* to the King upon ſome Matters of Importance, but did not declare what they were; but only that ſhe was told there was ſuch Matters, and ſhe had a proper Perſon to ſend, and would acquaint the Lords Juſtices with the Man, if he might have leave to go: But afterwards my Lady *Mary Fenwick* ſaid ſhe could not provide a Perſon ſo ſoon; and, I think, the 2d of *July*, ſhe came and offered to go her ſelf, and ſaid, if it was not as much for the King's Service, as Sir *John Fenwick's* Benefit, ſhe would not undertake the Journey. She had leave to go, and would have capitulated, that the Tryal ſhould be put off till ſhe returned; but the Lords ſaid, when ſhe ſhould return, would depend upon her pleaſure; but they would write to the King at the ſame time, and give notice of her Intention, and that the Tryal ſhould not go on till they had an Anſwer of their own Letter.

There was a Paſſage in the Tranſport Ship going to *Holland*, and my Lady *Mary Fenwick* deſired to ſpeak with Sir *John* in Private, in Order to her Journey; the ſame Night ſhe came back again, and ſaid, ſhe had conſidered of it, and ſaid, ſhe would not go, and ſeveral Reaſons ſhe gave. Upon the 7th of *July* there was a Noble Lord that was in the Commiſſion for the Adminiſtration of the Government, ſaid, he had had an Application made to him from another Noble Peer, my Lord *Carliſle*, who deſired that he would go to Sir *John Fenwick*, for he had been very earneſt to ſpeak with him. That Noble Lord did acquaint the Lords Juſtices with it, who acquieſced in what he thought fit to do in the Matter.

He went the ſame Day to Sir *John Fenwick*, and the next Day the Lords Juſtices met again; he then

then told he had been with Sir *John Fenwick*, and that Sir *John Fenwick* had told him, he had ſent to the King; for he did not allow it ſhould be otherwiſe communicated: My Lords then thought it was fit to ſtay for the King's Anſwer. This was the 7th of *July*, and by what Accident I know not, but no manner of Account came till the 7th of *Auguſt*, that the Letter was received; but the 7th of *Auguſt*, the Letter was acknowledged to be received; and the Anſwer that then came to it, was, That the King had not received any great ſatisfaction by the Meſſage; (I know not what it was) but that Sir *John Fenwick* ſhould be Tryed; but withal, that Noble Lord acquainted my Lords Juſtices, That the King was pleaſed to write to him, That what Sir *John Fenwick* had to ſay ſhould be ſent him in Writing. It happened at that time, that the Judges were upon their Circuit; and there being the King's Directions to receive what Sir *John Fenwick* had to ſay, in Writing; that Noble Lord did undertake to go again to Sir *John Fenwick*; and, I ſuppoſe, he did receive ſomething from Sir *John Fenwick*, which he ſent to the King: When the Anſwer to that came, it was in *September*, and that Noble Lord was at the *Bath*; and ſo it required a little time——Why then it appeared, That the King's Direction was, That what Sir *John Fenwick* had ſent to the King, he ſhould prove it; and he ſhould likewiſe ſhew his Ingenuity in Confeſſing what he knew of any other Deſings againſt the Government: And the 10th of *September*, as I take it, I was directed to go to Sir *John Fenwick*, who was then in the *Tower*, and to acquaint him with this Meſſage from my Lords Juſtices. Sir *John Fenwick's* Anſwer was, That he had no more to ſay, or ſome Words to that effect; and then he muſt prepare for his Defence as well as he could; but if he could ſpeak with that Noble Lord, he ſhould be glad to do it; but he was not come from the *Bath*, and Direction was then given for his Tryal: Again in the mean time, that Noble Lord did come, and he did go to Sir *John Fenwick*, and he brought an Account from him; That Sir *John Fenwick* would prove to the King, and make out what he had ſaid; and was ready to give the Lords Juſtices Satisfaction: And upon that, I was ſent to Sir *John Fenwick*; I carry'd the Meſſage in Writing, which you may ſee when you pleaſe; and it was to ask him, Whether he was willing to make out by Proof, what he had already ſaid to the King; and whether he was ready in Compliance with the King's Directions, to give the Lords an Account of what he knew of any Deſign againſt the Government? I carry'd Sir *John Fenwick* this Meſſage, and he returned an Anſwer in Writing, That he was ready to make out to the King what he ſaid, and would acquaint the Lords with all the Matter that he had not obſerved to the King; (his Arraignment was then to have come on the 17th) but he did dictate a Paper which was brought to the Lords, which they thought fit to be ſent to the King; and the Tryal was put off as to that time: And before an Anſwer from the King, came, it was (I believe) the beginning of *October*: And this is the Account I have to give you.

Mr. *Speaker*. Gentlemen, you conſider that this Evidence is given, with Relation to that part of the Bill, that ſets forth, how Sir *John Fenwick* had delay'd his Tryal by Offers of Confeſſion. You have heard what the Evidence is; if you have any thing to obſerve as to that Point, you may ſpeak before you withdraw.

Sir *Tho. Powys*. As to this Matter, I can only ſay, That in it ſelf at leaſt, according to our Rules of Law, it is not, in any degree, Treaſon: What you will conſtrue it to be I can't tell. We think it is only what is very uſual when Perſons are under an Accuſation; they will put off their Tryal as long as they can: Perhaps their Witneſſes may be out of the way, or ſomething elſe may be the Reaſon of it, and it does not carry any Crime in it ſelf; at leaſt, not of the Nature that this Bill is of.

Sir *Barth. Shower*. We do think, with Submiſſion, That conſidering the Nature of the Bill, and the particular Caſe of Sir *John Fenwick*, will (in ſome meaſure) Anſwer this Fact: I take this ſingly in it ſelf, as it hath been obſerved, not to conſiſt with Honour; but it does not import a Crime, for any Man to uſe little Inſinuations to put off his Tryal: But, ſuppoſe it was unlawful, or that which they call Prevaricating, I hope it is far from making him Guilty of high Treaſon, which is the greateſt Crime this Bill deſigns to paſs Sentence for; and, I hope, you will conſider, if it be an Offence, 'tis ſo at Common Law; and the ſame Evidence will prevail to bring Sir *John Fenwick* to Condign Puniſhment by the Common Methods. And if it be no Offence, I hope you will not by a Law make it an Offence, ſo as to inflict the greateſt Puniſhment for this Artifice.

Mr. *Speaker*. Mr. Serjeant *Gould*, Have you any thing to ſay?

Mr. Serj. *Gould*. No, Mr. Speaker.

Mr. *Speaker*. Then withdraw.

And being withdrawn,

Mr. *Sloane*. I propoſe it to you, Whether, if the Paper be Evidence, it ſhould not be read in the Preſence of the Priſoner?

Members. No, no.

Then the Queſtion was put for Candles, which paſſed in the Affirmative, and they were brought in.

Ordered, *That the Council be diſcharged any further Attendance at this time.*

Mr. *Methwin*. There can be no Debate previous to the reading of your Bill. I deſire the Order of the Day may be read.

Accordingly the Order of the Day for reading of the Bill a ſecond Time, was read by the Clerk.

Then the Bill was read a ſecond Time by the Clerk.

And being afterwards opened by Mr. Speaker, and Mr. Speaker having expected for ſome Time, and no Member riſing up to ſpeak.

Mr. *Speaker*. Shall I put you the Queſtion of Commitment?

Sir *Tho. Dyke*. Sir, I hope you will not put the Queſtion of Commitment till ſome Exception is made to the Bill; I am ſure it is as liable to Exceptions as any Bill that hath been brought in a great while: 'Tis a tender Subject to ſpeak of, the Pretence of the Bill being for the Preſervation of the King and Government; and if I thought it was really ſo, I ſhould be heartily for it; for I think there is no Compariſon between the

the Value of the King's Life, and that of Private Perſons, but that hath been often ſaid, but not proved; therefore, I think, I may tell you my Reaſons why I am againſt the Bill: That the Parliament hath a power to make ſuch a Law, is Agreed; but I think it ought not to be uſed but upon Extraordinary Occaſions, when great Perſons are concerned, that can't be otherwiſe brought to Juſtice, and when Crimes do not fall under the Denomination of the Law, which is not the preſent Caſe. This Caſe is, That a Gentleman is charged with Treaſon; and 'tis proved but by one Witneſs; though the Council did ſay, That a Conſult to levy War was not Treaſon. Now either it will not be the Crime that is alledged, or it is not proved. Here you are Judges, Proſecutors, Witneſſes and Jury: I would know in what Country it is ſo? Beſides, the Witneſſes are produced here, and not Sworn; and upon the whole, there is but one Witneſs. Sir, I am againſt the Bill, and againſt it as being of dangerous Conſequence.

Mr. *Pultney*. This Matter before you, is of ſuch a Nature, that as a Debate is riſing upon it, I hope all Gentlemen will hear one another with the greateſt Attention that may be.

The worthy Member admits you have a Power to paſs the Bill, and I do not find that conteſted by any Body; though (with Submiſſion) the latter part of what he ſaid, contradicted what he admitted at firſt; but ſince that is ſo much Agreed, I ſhall ſay but little to it, and that is this, That without ſuch a Power as this, any Government would be imperfect, and would want a ſufficient Power for its own Preſervation, upon extraordinary Occaſions. You have been told, this hath been an untrodden Path; but, I believe, Gentlemen are pretty well ſatisfied it hath not been ſo untrodden, and many Precedents of that kind have been quoted; and the Council againſt the Bill have admitted, That there have been frequent Precedents. An Objection hath been made to ſome of them, That they were made in ill Reigns: but I take it to be no Objection, That the Precedent was made at one Time or another, ſince 'tis Agreed, that we have ſuch a Power, and that that Power hath been Executed.

The chief Matter before you is, Whether in the preſent Caſe, there is ſufficient Ground for you to exert that Power? And upon that, give me leave to obſerve the Nature of the Crime of this Gentleman, and the Evidence that hath been brought to prove him Guilty of that Crime. His Crime his high Treaſon, the higheſt Crime in the Law: 'Tis for Conſpiring the Deſtruction of the King, and the Overthrowing of the Government. The Overt-Act which the Bill tells you (and which is mentioned in the Indictment) is his inviting in a *French* Force, in order to accompliſh his Deſign. If this Crime would admit of Aggravation, ſome other Parts of the Bill would aggravate it; but I think it will admit of none. The Council at the Bar made a Doubt, Whether or no, that which was laid in the Indictment, did amount to a ſufficient Overt-Act of High-Treaſon? And his Argument he drew from a Book that hath been put out by a learned Gentleman of the Houſe; but the Gentleman could eaſily have anſwered himſelf; and, I preſume, did not ſpeak his own Opinion. For ——— Gentleman did write a Book, called, *His Majeſty and Government vindicated:* By which he endeavoured to overthrow the Arguments in the other Book of the other Gentleman.

As to the Proof before you, you have had the Teſtimony of Mr. *Porter*, whoſe Evidence hath been juſtified by the ſeveral Convictions grounded upon it; and by the Confeſſion of ſeveral Gentlemen, that have owned the Fact at the very Time when they have been going out of the World: And there hath been no Evidence brought by the Priſoner at the Bar, that ſhould invalidate the Teſtimony of this Gentleman. And ſo (with Submiſſion) you have one undoubted Evidence, that does charge the Priſoner with the Fact mentioned in the Bill: You have other Proof that does not come up within the Letter of the Law; but you have ſtrong circumſtantial Proof, that every Gentleman will apply to his Conſcience in the Judgment he ſhall give in this Matter. One of the Allegations in the Bill is, That he did, by repeated Promiſes of making a Confeſſion, from Time to Time, gain a Delay of his Tryal. It is a great Preſumption, that That was in order to a Deſign that he had of ſeducing Mr. *Goodman*, that was one of the Witneſſes; for it was obſerved to you, what Practice there was in the Caſe, with the other Evidence, Mr. *Porter*.

Sir, Gentlemen have objected the Conſequences of making a Precedent: You were very well told by a worthy Gentleman that ſpoke the other Day, near the Place where I am, That in the Caſe of a good Parliament, 'tis not to be imagined that they will make uſe of this Precedent, but upon as good a Ground as you have now; and an ill Parliament, they will have the ſame Reaſon, for they will Copy after the ſame Precedents that have been made before, and will not ſtick at doing of it.

Beſides, let Gentlemen conſider the Way of Arguing: I have a Power to do ſuch a Thing, and yet if I have ſuch a Ground as is ſufficient, I ſhall not make uſe of it: To ſay you have a Power, but ſhall not exert it, is as good as to ſay, you have no Power at all.

There were ſome Precedents cited by a learned Gentleman that ſpoke againſt the Bill, and he particularly quoted that of my Lord *Strafford*; and the Act of Parliament that repeals that Attainder, was in Part read to you: But, Sir, the Reaſons given in that Bill of Repeal of my Lord *Strafford*'s Attainder, are, That it was obtained in a tumultuous Manner, which influenced the Parliament in doing of it; and that it paſſed in the Houſe of Lords, when moſt of the Lords were abſent: And at laſt, the King, when he gave his Conſent, by Commiſſion, to the Paſſing of the Bill, it was with great Reluctancy. 'Tis certain, all theſe are Reaſons that are given; but there is not One that queſtions the Parliament's Power of doing it; tho' upon the Tryal, Gentlemen may remember, there was a Doubt in the Law, Whether the Evidence was ſufficient?

Sir, It hath been urged to you, of what ill Conſequence it would be, and how much Injuſtice to make a Law to puniſh a Man, *ex poſt facto*; but that the Parliament may declare That to be a Crime, which was not ſo before, no Body doubts; and without That, the Clauſe in the 25th of *Ed.* III. ſignifies nothing; and I don't imagine it is a greater Injuſtice to ſupply in Point of Form, as to Matter of Evidence, when the Fact committed by the Priſoner, was againſt a known Law, at the Time when it was committed: And the rather, if I think that Defect of Form in the Courts below, was occaſioned by the Priſoner. 'Tis a Matter of Blood, 'tis true; but I do not aim at this Gentleman's Life in it; but any Man

must believe he must be concerned in great Matters, to bring to pass this great Design; therefore, all I propose by it, is to get his Confession, which in all Probability we might have had, if the other Witness had remained here.

Sir, upon the whole Matter, I do think we have Power to do this: I do think here is good Evidence (I speak with respect to my self) to think him guilty of this Crime. I do think, if this Bill does miscarry, there is the greatest Blow that can be given to your Constitution. And give me leave to use this Expression; I think, if this Bill miscarry, it not only turns this Plot upon you, but makes it impossible ever to come to the Depth of any other: And for these Reasons, I am for committing of this Bill.

Mr. *Newport*. Sir, I am unwilling to trouble you at any Time, but more especially at this Time, when I am afraid I am like to speak against the Opinion of the Majority of the House; for I see Gentlemen are in great haste for the Commitment of this Bill.

Sir, in this Matter I look upon my self, as every Gentleman here, to be a Judge; and therefore, I will in this Case, as in all others, go according to the Dictates of my own Conscience: I must be saved by my own Faith, and never will pin my Faith upon another Man's Sleeve: Perhaps it may be a Weakness in my Nature, that I am very tender in the Matter of Blood; but I hope Gentlemen will not be in so much haste to commit the Bill; for *De Morte hominis, nulla est cunctatio longa*. A Gentleman below said, the other Day, it was possible in his own private Opinion, he might believe the Prisoner Guilty; and some notice was taken of those Words; But, Sir, I would put a Case for Argument's sake, and would have it taken no otherwise; and I would go a little farther than that Honourable Gentleman: and suppose that I knew, of my own private Knowledge, that Sir *John Fenwick* was Guilty; yet, Sir, with humble Submission, as a Judge, I do not think it ought to weigh one Way or another with me, and I will give you my Reason for it; for as a Judge, I am to go according to my judicial Knowledge, and not according to my private Knowledge. 'Tis a Maxim, *Nil refert quid notat Judex, si non notat forma judicii*; and it puts me in mind of a Case in *H.* 4 Reign. Two Men travelled together, and One killed the Other, and the Judge saw it: Afterwards that Judge went the same Circuit, and an innocent Man came to be Tryed before him for it; and yet the Judge, in that Case, was obliged to go according to his judicial Knowledge; all the Judge could do (the Man being found Guilty) in that Case, says the Book, was to respit the Judgement, and Execution; and to make application to the King for the poor Man's Pardon.

The Evidence that is produced, is first a living Witness; the next Evidence, was the Confession of *Goodman*, taken before a Justice of Peace; for that, truly I did nor think Yesterday, it was a legal Evidence: I am sure in a Court of Law, it would not be admitted; but the House was pleased to read it, and Gentlemen, when they pressed it, told us, read it: *Valeat quantum valere potest*. Then if you strike this Paper out of the Case, with humble Submission, there is nothing left but the Testimony of Capt. *Porter*; and so then in that Case, you have but one Witness. It would seem a little strange, that the Commons of *England*, that lately were so very careful of the Lives of the Subject, and were so desirous of passing a Bill, that did provide, That where there were two Species of Treason in one Indictment, and one Witness to one Species, and another Witness to another Species, that That should not be good Evidence to convict a Person of High Treason; that they should be Attainting a Man for Treason upon one single Evidence! Surely they will say, we have mightily changed our Opinions since last Sessions. I speak not this upon the Account of Sir *John Fenwick*; I know him not, though I am not a Stranger to his Character, and I hear that is none of the Best: I speak it as it may be my Case, or any Man's whatsoever. God knows we live in an unsettled Time, and how soon a Precedent of this Nature may turn upon any Man whatsoever.

Amongst the great Irregularities committed in the late Reign, I thought that of Mr. *Algernoon Sidney*, one of the greatest Strains I saw in *Westminster* Hall; for there was my Lord *Howard* a Witness against him, and the next Evidence was a Book that he had wrote against Sir *Robert Filmore*, which, I think, is printed since this Revolution, and I have it in my Study; and I hope, I shall not be hanged for it. That was construed to be calculated for a Treason that had not been committed above two Months, and was the second Witness to convict him; but that Attainder was reversed, and it was fit it should be so; for I thought it a hard Strain to convict him upon that Evidence.

I am very sorry this Bill is brought into this House; nor can I imagine, after all that hath been said by the learned Gentleman, why this Man was not Tryed when there were two positive Witnesses against him? All the Reason this Gentleman has told you, is, That he promised to make an ingenuous Confession: But any Man might have easily seen through this Confession, That it was only an Artifice to abuse the King's best Friends; nay, the rather, when this Gentleman's Brother had served this very Government, but two or three Years ago, the same Trick. We know my Lord *Preston* was Attainted of High Treason, and then he must do something for his Pardon; and he made an ingenuous Confession, as he called it, whereby he accused most of the great Men; and when he had a Pardon, though his Confession was under his own Hand, and delivered to the King, he denied every Word of it; and what he told, was to save his own Life. My Neighbour cited you several Precedents, I have looked into a great many of them, they are mentioned in *Rushworth*'s *Collections*, in the great Argument that ——— made for passing the Bill against my Lord *Strafford*; and as to those Precedents, all I can say, is, I could not have come up to them, if I had lived in those Times. The last Precedent was of a Cook that put Poyson into the Pot of the Bishop of *Rochester*: And what did they do? They did Enact that he should be boiled alive. I have a great Honour for the present Bishop, but if it had happened in his Family, I should hardly have consented to the like. *Judicandum est legibus non Exemplis*. I should be glad this Gentleman, might suffer his due Punishment; but I am not, by any Means, satisfied in the Passing of this Bill: And as to what Gentlemen say, is the Reason why this Man was not Tryed; because it was thought he would have made an ingenuous Confession: Sir, if they have made any Mistake, I will not help it, by the Passing this Bill of Attainder. I ask your Par-

Pardon for troubling you ſo long: I am a Judge in this Matter, and ought to deliver my Opinion. I hope no Man doubts but I am as zealous for this Government as any Man whatſoever; but let what will come of it, I can't give my Vote for paſſing of this Bill.

Mr. Sol. Gen. This is a Bill for Attainting Sir *John Fenwick* of High Treaſon: 'Tis the greateſt Crime we know in the Law; and, I think, the greateſt Crime known in a Government. It is much greater than Murther, or any Thing elſe; becauſe it ſubverts the Government, and the Law whereby theſe Crimes are puniſhed; and Perſons ſhould be deterred from committing theſe Crimes.

It hath been made a Queſtion by the Gentlemen at the Bar, (I think Two of them) Whether this Matter that Sir *John Fenwick* is indicted and accuſed of, is High Treaſon or not? I muſt confeſs I heard ſomething of it without Doors; and that they would make it out, That if he was guilty of the Matter charged, it was not High Treaſon. I thought it ſomewhat a bold Matter, but did not think they would have undertaken it in this Place, though they might have pretended ſome Flaw in the Indictment: But it ſeems they have the Authority of a good Lawyer in it; and they have quoted one learned Author, as they pleaſe to call him, though I take that for a great Compliment: I believe they may mean my ſelf; and they have done me ſome Honour; for they ſay, my Lord Chief Juſtice *Hales* was of the ſame Opinion; and then ſaid ſomething of *Dyer*. Now he hath read ſomething at large out of that Author he ſpeaks, and challenges any one to ſhew any Opinion, That ever a Conſpiracy to levy War, was High Treaſon within the Statute of 25 *Ed.* 3. Now, I would give a Challenge on the other Side, That he would ſhew me any Opinion before that Time, or ſince, That a Deſign to depoſe the King is not High Treaſon within that Statute? The Author that he ſpeaks of, ſays that expreſly in the Matter of my Lord *Ruſſel*, and tells you particularly; and in *The Government vindicated*, which was only an Anſwer as to the Proſecution of my Lord *Ruſſel*, there are ſeveral Caſes cited, That a Deſign to depoſe the King, was High Treaſon, and agreed to by that very Perſon; and it always was agreed to be High Treaſon. Then take the State of this Caſe, and that of my Lord *Ruſſel*: The great Matter was, That he ſent ſome Perſons to view the Guards (it was ſaid, in order to ſeize the King) this was Evidence againſt my Lord *Ruſſel*, for a Conſpiracy to levy War; but it was ſaid, That this was not ſo much a Conſpiracy to levy War againſt the King, as againſt the Guards: But this is of a quite different Nature: Captain *Porter* hath given you an Account of it, (and I think *Goodman*'s Examination is to the ſame Purpoſe;) That they met in *Leaden-hall-ſtreet*, and conſulted how to bring King *James* back again; and the only Method they could think of, was to ſend *Charnock* over to King *James*, that he might prevail with the *French* King to ſend them 10000 Men, and they would meet him here with 2000 Horſe; and for what Purpoſe was this? It was to bring back King *James* again: I would be glad to hear if thoſe Gentlemen that were at the Bar, or any Body elſe, could ſay this was any Thing elſe but a Deſign to depoſe King *William*? And they can't ſhew me one Lawyer's Opinion, but that Deſigning to depoſe the King, was ever called, Imagining the Death of the King, within the Statute of 25 *Ed.* 3. The firſt Reſolution of this Matter was pretty early; I think it was *H.* 4*th*'s Time, and that was pretending *Richard* 2. was alive, and that he was the lawful King: So that the Matter is Treaſon, as it is charged in the Indictment.

Then, as to the Precedent, That 'tis an ill Precedent; I muſt confeſs I am not afraid of a Precedent of this Kind: I ſhould be glad if theſe Gentlemen ſhould turn back, and ſee how many Attainders have been by Act of Parliament? But I dare ſay, there have been more Men deſtroy'd by the irregular Judgment of a Commiſſion of *Oyer* and *Terminer*, than by all the Acts of Parliament, whether Legal or Illegal.

As to what they ſay of my Lord *Coke*, who mentions the Attainder of my Lord *Cromwell*, and Sir *J. Mortimer*; the Gentleman pretends to repeat my Lord *Coke*'s Words at large, but he did not deal ſo well as he ought to do by you, for he ſhould have told you all my Lord *Coke* tells you; That *Cromwell* was never brought to Anſwer, never permitted to ſay any Thing for himſelf, neither in Parliament, nor where he was. Now, pray Sir, is this the preſent Caſe? Hath not Sir *John Fenwick* been heard by you? I would be glad that Gentleman, or any Body could ſhew me, that any Perſon hath had ſo fair an Hearing before Commiſſioners of *Oyer* and *Terminer*, as Sir *John Fenwick* hath had before you? As to Sir *John Mortimer*, 'tis much of the ſame Nature: My Lord *Coke* ſays, there was a Jealouſy of Sir *John Mortimer*'s pretending to the Crown; and becauſe they ſuſpected him, they did give out, that he ſaid, That the Earl of *March*, was Heir to the Crown; and if he did not, he would pretend to it himſelf, *&c.* Now, ſays my Lord *Coke*, this was but a bare Pretence, and nothing elſe: He ſpeaks as if he did not ever think him guilty of thoſe Words; and ſays, having indicted him, they not being able to proceed that Way, they made it good by Act of Parliament, and he was condemned: So that what my Lord *Coke* complains of, is, That theſe Perſons ſo condemned, were never heard; and if this be the Truth of the Matter, theſe Precedents (with Submiſſion) have no Affinity with yours: But I believe this may be ſaid in this Caſe, Sir *John Fenwick* hath been heard, and that more than ever any one in Parliament was before, in a capital Matter.

As to the Caſe of my Lord *Strafford*, he had Council aſſigned him to ſtand by and hear, but not to Prompt him: If there aroſe any Point of Law, he was to propoſe the Matter to the Lords, and the Council was to aſſiſt him by their Direction: And in the Caſe here before you, you have allowed Sir *John Fenwick* Council; not only to aſſiſt him in Point of Law, but to aſſiſt him in Point of Fact too. They have made Anſwer for him; ſo that I ſay, he hath been Tryed fairer than any Man ever was in Parliament, be it upon Bill, or upon Impeachment; That is, as to the Matter of Precedent. Then it hath been ſaid, this would not be good before the Judges. I muſt confeſs it; but the Evidence Capt. *Porter* gave of his own Knowledge of Sir *John Fenwick*, every body will agree, is what the Law will allow. But he is but a ſingle Witneſs, and you ought not to proceed upon the Evidence of a ſingle Witneſs. Let us ſee how the Law ſtands upon the whole Matter? you have made an Act of Parliament laſt Seſſions, and I own the Law was before that, that there ſhould be two Witneſſes in Caſe of Treaſon; but all that goes no farther than

to Tryals in the *King*'s-*Bench*, and Commiſſions of *Oyer* and *Terminer*, and Goal Delivery. And if you look upon thoſe Acts, 'tis very plain, for they refer moſtly unto the Judges, what they ſhall do in ſuch and ſuch Caſes: But then you will ſee what is the Reaſon of making thoſe Rules; I think there was good Reaſon that you ſhould not put that Power in Perſons below, that you have in your ſelves: you give them Rules to proceed by, and they are to keep up ſtrictly to them; you may Act by other Rules. 'Tis one thing when I command my Servant to do ſuch a thing, and another thing when I Act my ſelf: And there is a difference when a Judicature is by Few, and when 'tis by Many; the Law puts a greater confidence in Many, than in a Few. The ordinary Tryal is by twelve Jurors; but if it be a Matter of an high Nature, as an Attaint, then it ſhall be by Twenty four; and you do prefer a greater Number in every Thing to a Few: 'Tis ſaid, though a Judge do think in his Conſcience a Perſon guilty; yet he ought not to make uſe of that private Knowledge, and a Caſe was Quoted out of *H.* 4. but I think that Judge might have behaved himſelf ſomething better than he did; and ſure I am, now he would he blamed. I do not ſay, that a Judge upon his private Knowledge ought to Judge, he ought not; but if a Judge upon the Bench knows any Thing, whereby the Priſoner might be Accquitted or Convicted (not generally known) then I do ſay, he ought to be called from the Place were he ſate, and go to the Bar and give Evidence of his Knowledge; and ſo the Judge in *H.* 4. Time ought to have done, and not to have ſuffered the Priſoner to have been Convicted, and then get a Pardon for him; for a Pardon will not always do the Buſineſs, for there may be a Forfeiture that the King's Pardon does not reſtore. But though we Act as Judges here, do we Act only as Judges? I thought we were as well Tryers of the Fact as Judges. There is this difference between the Judicature of *Weſtminſter-Hall* and this Court; They are to judge upon a Fact found by a Jury; but we Act both the Part of a Jury in Trying, and alſo of Judges in judging what the Fact amounts to: So that if a Jury-Man may make uſe of his private Knowledge to Acquit a Priſoner, as (I think) no body doubts but 'tis his Duty to do; then every Gentleman in this Houſe, may make uſe of his private Knowledge, to acquit the Priſoner, or convict him.

I confeſs, for my part, I am ſatisfied, that Sir *John Fenwick* is Guilty of this Crime for which he ſtands Accuſed: I do think this Crime is high Treaſon; I think there is no danger of a Precedent in this Caſe, if you Convict him, being convinced upon the Evidence you have heard, that he is Guilty; I do own, if any Gentleman think he is not Guilty of meeting at the King's Head in *Leaden-Hall-Street*, or at Mrs. *Mountjoys*, for the purpoſe given in Evidence, he ought to be againſt the Bill: But I think every Man that is of that Opinion, ought to be for the Bill. I am one of thoſe that think he is Guilty; and therefore am for Committing the Bill.

Mr. *Harcourt*. I can readily agree with the Gentleman that ſpoke laſt, that high Treaſon is the higheſt Crime in the Law; and further, That the Matter of the Indictment that is mentioned in the Recital of the Act, is undoubtedly high Treaſon; and I am ſure he will agree with me in one Thing alſo, That the greater the Crime is that any Perſon is Accuſed of, the clearer the Proof ought to be, by which he is Convicted.

Some Gentlemen have begun their Diſcourſe in relation to the Power; but ſure 'tis no Argument becauſe I can do a Thing, therefore I will do it; becauſe we have Power to repeal *Magna Charta*, and all other ſubſequent Laws which have been made in Favour of Life and Liberty, and Property, by the ſame Conſequence we ought to do it: A better Reaſon muſt be given me, before I conſent to this Bill.

Then for the Precedents, 'tis ſaid, There have been many, and many have been mentioned; And if I thought it worth while, I would mention many more you have not heard of; as for Precedents in general, they are ſo far imitable as they are grounded upon true Reaſon, and agreeable to Juſtice; but I don't remember any one Precedent of this Nature, for a Perſon in Cuſtody, forthcoming to be Tryed, yet to be Attainted without a Tryal at Law, but what has been Univerſally Branded; and they all ſeem to be Reproaches even to thoſe ill Reigns in which they were uſually made; and rather to be marked out as Rocks for us to avoid, than Patterns for our Imitation.

Before I particularly mention the Facts how they ſtand before you, I would beg leave to obſerve upon the general Method of your Proceedings, and tell you what ſtaggers me in it.

I have often heard this called a Tryal, and that we are the Judges; the Gentleman that ſpoke laſt gave us another Title, and told us we were the Jury alſo: I know no Tryal for Treaſon, but what is confirmed by *Magna Charta*, *per Judicium Parium*, by a Jury, which is every *Engliſh* Man's Birth-right, and is always eſteemed one of our darling Priviledges; or *per Legem Terræ*, which includes Impeachments in Parliament; but if it be a Tryal, 'tis a pretty ſtrange One; where the Perſon that ſtands upon his Tryal, hath a Chance to be hanged, but none to be ſaved. I can't tell under what Character to conſider our ſelves, whether we are Judges or Jury-men? I never heard of a Judge, I am ſure not of a Jury-man before, but he was always upon his Oath: I never heard yet of a Judge, but had Power to examin Witneſſes upon Oath, to come to a clear Sight and Knowledge of the Fact: I never heard of a Judge, but if a Priſoner came before him, the Priſoner was always told, he ſtood upon his Deliverance, and had not only a Power to condemn the Guilty, but to ſave the Innocent. Have we this Power? Suppoſe upon ſuch a Tryal as this (if it muſt be called ſo) it may ſo happen, that a Perſon that comes before us, ſhould be the innoceneſt Man in the World; what Judgment is it that we can give, for ſo much as ſuch a Perſon hath made his Innocency fully appear? Is the Speaker, by his Warrant, to ſend him back again to *Newgate?* You can't diſpoſe of him otherwiſe, though you were ſatisfied of his Innocency: But in ſuch a Caſe, the Party muſt undergo a double Tryal, which is contrary to all the Rules I have heard of. If I am a Judge in the Caſe, I beg leave to tell you, for my own Juſtification only, what a Definition I have met with of a Judge's Diſcretion: My Lord Chief Juſtice *Coke* ſays, 'tis *Diſcernere per Legem*; and by that Diſcretion I beg leave to conſider this Caſe, if Judges make the Law their Rule, they can never err; but if the uncertain arbitrary Dictates of their own Fancies, which my Lord *Coke* calls the crooked Cord of Diſcretion, be the Rules they go by, endleſs Errors muſt be the Effect of ſuch Judgments.

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As to this particular Caſe, I did expect from the Gentleman that ſpoke laſt, that he would have told you there was a plain Evidence, why you ſhould go on to the Paſſing of this Bill; but inſtead of that, I am ſurprized to hear a Thing mentioned, that in parliamentary Proceedings, a Man may be hanged by one Witneſs, certainly that is not to be taken for granted.

As to this particular Caſe, I would take Captain *Porter* as upon his Oath, for Suppoſition: You have one Witneſs againſt Sir *John Fenwick* of High Treaſon, and with your Leave, I deſire to examine what you have more in this Caſe.

Yeſterday you voted a Paper to be read, *Goodman*'s Narrative, or Examination; 'tis a different Caſe now, you have it before you to determine upon. Yeſterday the Queſtion was only for hearing; but, Gentlemen now conſider how far they ought to believe it, and the other Evidence we heard. And firſt, there is ſome Evidence that *Clancy* tampered with *Porter*, and gave him a Sum of 300 *l.* and ſo they would infer, becauſe *Porter* was tampered with to be gone, therefore *Goodman* was. It was told us further (and I deſire I may be informed if I am miſtaken) That *Clancy* ſaid, he came from Sir *John Fenwick*, and afterwards my Lady *Mary Fenwick* ſaid ſhe would make good what *Clancy* had ſaid; and from theſe Arguments they preſume, that Sir *John Fenwick* knew of it. Give me leave to tell you a Rule I never heard contradicted, That Preſumption is to be made in favour of Life; but to preſume a Man guilty becauſe *Porter* was tampered with by another, becauſe he ſaid it was by Sir *John Fenwick*'s Order; ſhall we preſume Sir *John Fenwick* did it? Is Hearſay to be Evidence? Or is a Man to be had to the Gallows upon Preſumption? How often, and with how much Reaſon have we heard Examinations againſt Judgments, upon Preſumptions, Innuendoes, conſtructive and accumulative Treaſon? *&c.*

Gentlemen, there is ſome further Evidence; and that is, of what was ſworn at *Cook*'s Tryal, and ſome Gentlemen thought fit to have the Record read, and an Examination of what was ſworn there. I can never go ſo far as to think it reaſonable, That what Evidence hath been given in one Caſe ſhould affect another Man; but all this is to be anſwered, by calling it parliamentary Proceedings. We doubt 'tis no Evidence in the Courts below, but they are mentioned with ſome kind of diſdain, as very inconſiderable. In this Caſe, I beg leave to ſay this in their Vindication, That whatever the Rules in *Weſtminſter-Hall* are, 'tis not therefore Reaſon becauſe 'tis a Rule; but becauſe 'tis Reaſon, and Reaſon approved of by long Experience, therefore 'tis a Rule, and if they make their Rules for that Cauſe, I hope that is a Cauſe why we ſhould imitate them: But I would not have thoſe Rules thought Matters of Form, but Subſtauce, or more properly part of the Law it ſelf.

Upon the whole Matter; if no Gentleman will give us a Reaſon why this is Evidence, but one Witneſs, and that not upon Oath; and if we are to come to our Parliamentary Diſcretion to ſupply that Defect, the Want of the other, 'tis a Diſcretion I will diſclaim all the Days of my Life. And I hope you will reject the Bill.

Lord *Cutts*. If, Sir, the Gentleman that ſpake laſt had been ſpeaking to *Weſtminſter-Hall*, I ſhould think that he had ſhewed a great deal of Reaſon, and ſpoke with a great deal of Judgment: But ſince I think you are here, upon a quite different Foot, I ſhall not follow him (becauſe I will not unneceſſarily detain you) to anſwer every particular.

I remember when the Council for the Priſoner firſt ſpake, they took notice to you, That Precedents were procreative, and one begat another, and they are apt to multiply; therefore, I do think, 'tis of the higheſt Moment to you, what Precedent you make to night: And if any Gentleman can be ſatisfied, That the Precedent of not paſſing this Bill, will be of worſe conſequence than the Precedent of paſſing it, I ſhall humbly ſubmit. I do think, Sir, the Matter before you is of the higheſt Importance; and I muſt confeſs, 'tis with a great deal of Satisfaction to my ſelf, that I do ſee Genelemen ſeem to apply themſelves with a great deal of ſeriouſneſs to this Debate. Sir, I ſhall not pretend to make a particular Anſwer to what the Council for rhe Priſoner did ſay; as to the Precedents of Acts of Parliament, I think this Anſwer is ſufficient at preſent for that, That if we have no Precedent, we are under a neceſſity of making one. It is told us, That of all the Precedents none will juſtify us in this proceeding; but at the ſame Time it muſt be conſidered, That we are in a Caſe, the like to which never yet happened in *England*.

The firſt Thing I ſhall apply my ſelf to, is the Juriſdiction of Parliaments; and truly, I think, it will be very neceſſary to ſay a little upon that. I have heard none call this Power in queſtion, the Thing ſpeaks it ſelf; 'tis the legiſlative Power. and the Etymology of the Word tells you what it is: 'Tis a Power that can make Laws, and aboliſh them; a Power that is ſuperiour to all other Powers whatſoever, and we are part of that legiſlative Power; and therefore I ſhall ſay no more to that, it being a Matter agreed, That we have a Power to proceed in this Matter. Now I will take leave to obſerve ſomething as to the particular Caſe before you.

Though a Gentleman that ſpoke ſome Time ſince, did ſpeak to you of the Nature of the Crime; yet, with Submiſſion, I think there remains ſomething to be added to what he ſaid. The Conſpiracy of which Sir *John Fenwick* to me appears guilty, is not only againſt the Life of the King, not only to depoſe the King, not only a Conſpiracy to raiſe a Rebellion; but at the ſame Time to contrive an Invaſion from *France*, and bring in a foreign Power. I know not what better Expreſſion to tell my Thoughts in, than by uſing a Term which Phyſicians uſe in ſome deſperate Caſes; they tell you, there is a Complication of Diſtempers, and I think this is a Complication of Treaſons: This is the higheſt Crime, and it is attended with all the aggravating Circumſtances this Crime can admit of. Now, in giving our Opinion, and paſſing our Judgment upon this Matter, I think there are two Conſiderations ought to guide us: There is a Conſideration we owe to the Priſoner that is brought before us; and another Conſideration which we owe to the common Security. As to the Firſt of theſe, It being a Matter of Blood, wherein the Life of an *Engliſhman*, the Life of a Man of his Quality and Figure is at ſtake, we ought to proceed with all the Calmneſs that is poſſible; and I do agree, if there was nothing but Preſumption, that ought to be in favour of Life; but pray let us conſider how this Matter ſtands: Let me deſire thoſe Gentlemen that are of Opinion we ought to have ſo much Tenderneſs for the Priſoner, to lay before them another

Scene, and Sort of Conſideration, at the ſame Time. I do conſider the Hardſhip (if I may uſe that Expreſſion) of paſſing this Sentence; I do conſider what a Condition we had been in, if the Contrivance that was laid, had taken Effect; that is the weightieſt Part of the Matter before you: And tho' it was diſappointed then, I know not how far off 'tis at preſent; this ought really to weigh with you. And I hope I may take leave upon this Occaſion, to obſerve to you, what one of the wiſeſt and beſt of the *Romans* ſaid, upon an Occaſion of this Nature; he tells you, That a Man that would conſider his Duty aright, muſt conſider the Matter in all its Parts and Circumſtances; and when that is done, muſt act adequate, as well to the Community, as to himſelf and his Neighbour. I would apply That to the preſent Caſe; and would deſire thoſe Gentlemen that expreſs ſo much Tenderneſs in this Caſe, to have ſome for the Government, and themſelves.

It was told you, That the Priſoner before you does not ſtand convicted of any Crime: It was told you at the Bar, That the moſt we ought to pretend to, is no further than to leave him in the Condition we found him: I think, with Submiſſion, the Priſoner ſtands convicted of High Treaſon, with the higheſt Conviction upon Earth, and that is, the general Conſent of all Mankind; for I will be bold to ſay, I do verily believe, that there is not one Gentleman within theſe Walls, nor that walks the Streets, not a living Soul, that doubts of his Crime. But, Sir, I would put this Matter yet further; I am not only ſatisfied in my own Conſcience and Reaſon of the Juſtice of your Proceedings, which ought indeed to be the Foundation of every Man's Opinion: But I am ſatisfied, that in this Way, there is no Hardſhip impoſed upon Sir *John Fenwick*, if he will be his own Friend: For I doubt not, upon what hath paſſed in this Proceeding, that before Things are brought to the laſt Extremity, if Sir *John Fenwick* be his own Friend, if he be ſo much a Penitent and Friend to the Government, and to Poſterity, to tell Truth, and leave off his Diſſembling, and be Plain; I doubt not but he will find Favour. Now, Sir, I would beg leave only to anſwer one or two Objections; for ſome Things that have been ſaid againſt the Paſſing of this Bill, I do not think material.

One Objection that ſeems to me to carry the greateſt Appearance of Weight, was made by one of the Council for the Priſoner; he ſaid, It would look ſtrange in after Ages, that the ſame Parliament ſhould paſs the Bill for regulating of Tryals in Treaſon, and this Bill of Attainder. Sir, I deſire you will pleaſe to obſerve how this Matter ſtands; and in the firſt Place, as previous to that, I take leave to obſerve a few Things: 'Tis a Propoſal generally agreed to, and not to be denied, that That which is deſigned for the Preſervation of any Creature, ought not to be made uſe of to their Deſtruction. Now this Treaſon-Bill was deſigned for your Preſervation, to skreen you againſt the Danger of arbitrary Power, and the Malice of falſe Witneſſes; and this Bill of Attainder is brought to skreen both you and the Government from your Enemies, both abroad and at home. And I think the Treaſon-Bill is no Objection upon theſe Conſiderations: Beſides, the Treaſon-Bill was only made to be a Rule to inferior Courts. The learned Gentleman that ſpake laſt, told you, The Rules of *Weſtminſter-hall* were not Rules, becauſe they were obſerved there; but becauſe they were grounded upon Reaſon. Why, Sir, in anſwer to that, I will only take leave to tell him, that That which is Reaſon in *Weſtminſter-hall*, does not carry the ſame Weight here. I think that Matter was ſo well explained by the learned Gentleman at the Bar, that there need nothing be added to it. He told you very well, 'Tis one Thing what I truſt to do by my Servant, and another Thing what I do by my ſelf. It is very obvious to any Man's Underſtanding, if this Power were lodged in the Judges, what Uſe they might make of this unlimited Power; but no Gentleman can miſtruſt any Thing that ſhall be done by this Houſe.

Another Objection that was made by the Council for the Priſoner was; ſays he, This is Evidence, or it is no Evidence; if it be Evidence, then, ſays he, Why do you not Try him at Law? If it be no Evidence, Why do you admit it here? Now, Sir, with Submiſſion, this carries the Face and Form of an Argument, but if you take it to pieces, I think there is no convincing Weight in it: For, Sir, the Reaſon why this Matter comes before you, is, becauſe by the Abſence of one of the Witneſſes, according to the formal Part of the Law, Sir *John Fenwick* will be acquitted; but it is generally agreed, that the Conſequence of ſo great a Crime going unpuniſhed, may be dangerous to your Poſterity. This Bill of Attainder is brought into the Houſe, that you may ſupply that Want of Form, you being convinced of the Reality of his Crime.

Another Objection made by the Council at the Bar was, as to Capt. *Porter*, whom he reflected upon; ſays he, Shall a Man that hath owned hemſelf guilty of ſuch a Villany as the Murther of the King, of a ſuddain have ſuch Credit as to ſway with you? I would take leave upon this Occaſion, to repeat to you what my Lord Chief Juſtice upon the Bench did obſerve at *Charnock*'s Tryal, this ſame Thing was urged and preſſed home by *Charnock*; and my Lord Chief Juſtice was pleaſed to take notice, That it conſiſted with the Wiſdom and Juſtice of all States and Governments to allow of ſuch Evidence, becauſe without it they could never come to the Knowledge of any Treaſon or Conſpiracy: For he added, Whom will you have an Account of theſe Things from, but the Actors of them?

And therefore when they are Penitent, and willing to atone for their Crime, by doing all the Service they can to the State, and Juſtice to Mankind, we ought not only to receive, but encourage them.

When the Danger the Government would be in, if you did not paſs this Bill, was urged; it was anſwered, But what Danger will you and your Poſterity run in not paſſing of it? I think the Matter appears ſo plain and clear before you, that when all the other Parts of the Queſtion are paſſed over, that I ſhould think it a Reflection upon the Houſe, to enter upon a particular Anſwer to it. I have not ſaid what I have ſaid, that I think any Part deciſive, but to clear my ſelf to the World for the Opinion I am going to give, and perhaps what I have ſaid, may give occaſion to ſome others to ſay ſomething that may be much more to the purpoſe; but for the Reaſons I have given, I am for the Bill.

Mr. *Sloane*. Sir, I as little care for meddling in Matters of Blood, as any Man, and ſhould be glad to avoid giving my Opinion in this Caſe; but I think 'tis incumbent upon every Gentleman that

that hath the Honour to ſit here in Point of Truſt; I think 'tis his Duty to them whom he Repreſents, to the King and Kingdom in general, to give his Opinion when he is clear and ſatisfied in it; and if I was in the leaſt diſſatisfied, I ſhould venture the Diſpleaſure of the Houſe to abſent; but upon the whole Caſe, and the Proof that hath been given, I am very clear that Sir *John Fenwick* is guilty of this Treaſon that he is Accuſed of; and that it is Treaſon without any ſtrain, and well Warranted by Precedents.

I would firſt take notice of what is ſaid to your Juriſdiction in general; I remember it was ſaid, this was an Incroachment upon *Magna Charta*; for by that, no Perſon is to be Tryed for his Life, but by the Judgment of his Peers. Thoſe Gentlemen that have made that Objection, have intirely forgot the other part, which is the next Sentence; *Nec ſuper eum ibimus, nec ſuper eum mittimus, niſi per regulrae Judicium parium ſuorum vel per legem Terræ.* What do they make that to be? 'Tis true, in the ordinary Courſe of Juſtice, Perſons muſt be Tryed; a Commoner by a Commoner, and a Peer by a Peer; but there are ſeveral ſorts of Tryals and Laws in the Land: And when you come to conſider what is meant by *per legem terræ*, you have the Commons *lex terræ*; you have the Statute Law, and *lex loci*, the Laws of particular Manners: And there are ſeveral ſorts of Tryals beſides that by Jury; there is Tryals by Battle: The Defendant in Caſe of Appeal may try it by Battle, and he that is killed loſes the Cauſe. Then there is a Law above all theſe Laws, and that is the Law of Parliament, which my Lord *Coke* calls, *Lex Parliamenti, & Lex Parliamentaria* in another Place, which he ſays is, *ab omnibus inquirenda*, but *â paucis nota*; and 'tis not fit it ſhould be known how far they can go (and ſo 'tis in *Chancery*) and that is a Law that is unlimitted, and that is one of the Laws ſaved by *Magna Charta:* I ſay therefore, that without any Incroachment upon *Magna Charta*, or any Law whatſoever, you enter regularly upon this Tryal.

I would Anſwer another Thing that was ſaid againſt a Tryal in Parliament, and I muſt confeſs I did wonder to hear it from that Honourable ancient Member; That if he was to be Tryed, he ſhould rather chuſe to be Tryed in *Weſtminſter-Hall*. Why, Sir, before I ſhould have given ſo ſuddain a Judgment as that, I would have conſidered what my Caſe was: If I had had ſuch a Caſe as Count *Conningſmark*, a bad Cauſe and a great deal of Money, I would rather be Tryed there; or if I could be Tryed as Sir *George Wakeman* was; but if I had a good Cauſe, and would uſe no Corruption, inſtead of twelve Men that might be Corrupted, I had rather be Tryed by four or five hundred Gentlemen that are beyond it. You ſee how Tryals went below, the Tryal of my Lady *Liſle*, that could neither ſee nor hear: and there came a Perſon to her Houſe that was proved to be in *Monmouth*'s Rebellion, and ſhe was burned for it.

Then as to the Caſe before you, I would offer my Reaſons why I believe this Gentleman to be guilty; here is Capt. *Porter*, he hath poſitively ſworn, that he had another Meeting at Mrs. *Mountjoys*, and there they did conſult, and agree to ſend *Charnock* over to *France*; and *Charnock* was directed to go with a Meſſage to invite a foreign Power over here. Now the Queſtion is, Whether he is to be believed? And I would go upon the ſame Reaſons for believing a Witneſs, as they do in *Weſtminſter-Hall*; and will go as far along with thoſe Gentlemen, as to the Credibility of a Witneſs: But if he be to be credited in *Weſtminſter-Hall*, why is he not ſo here? And therefore, if they had brought any Teſtimony againſt his Credit, as made him guilty of Perjury, or Forgery, it had been an Objection againſt his Teſtimony; but it was ſo far from that, That they did not offer to prove one Word of that; but what was ſaid, was ſaid from the Council, and that is to go for no Evidence. The Council indeed did alledge againſt his Credit ſeveral Things, but did not prove any; and if they had, they would not have taken away his Teſtimony in *Weſtminſter-Hall*, That is, that he was concerned in the late intended Aſſaſſination, and Treaſon; this was the ſame Objection that was made below; and they brought Witneſſes to prove that and ſome other Things, but they did not weigh any Thing; for if it ſhould be an Objection that he was in the Conſpiracy, then you can have no Evidence of any Villany, for they will never truſt honeſt Men with it. Therefore I do take it, That *Porter* ſtands before you as a very credible good Witneſs, without any Imputation whatſoever. Then, Sir, ſay they, he is not upon his Oath: that is an Objection to your Juriſdiction; and though they ſay they own your Juriſdiction, yet when they ſay ſo, they ſpeak againſt your Juriſdiction; and by the ſame Reaſon you can go upon no Impeachment whatſoever; for you can in no Caſe give an Oath. Then, Sir, they tell you, he is but one Witneſs, and that 'tis in the Caſe of Treaſon, and there ought to be two Witneſſes, and therefore tho' you have Juriſdiction to do any Thing whatſoever, yet you have no Juriſdiction to go upon this Cauſe. Now Sir, becauſe this ſeems to be the moſt formidable Objection that is inſiſted on againſt the Proceedings in this Caſe, I beg your leave that I may fully anſwer it.

And taking it to de true, that the Fact is proved but by one Witneſs, I conceive we may proceed in this Cauſe, though they can't in *Weſtminſter-Hall*; and I do take it, that there is a great deal of difference between one and the other; and I do not take your proceedings upon this Bill, being there is but one Witneſs, to be any Strain, but what you may extend the Legiſlative to, without going beyond what hath been done. I therefore beg you to conſider what the Law originally was as to Treaſon, and how it came to be altered. Before the Statute of 25 *Ed.* 3. it was uncertain what was Treaſon, and what was not; then the Statute came and reduced it, that as to all inferior Courts, theſe are your Treaſons, and no other ſhall be adjudged ſo; but the Parliament reſerved to themſelves a Power, that if any Caſe ſhould happen like them, they were to determine it themſelves. So, Sir, that at that Time, and after that Time, one Witneſs was good in Caſe of Treaſon; as now 'tis at this Day for Robbery, Felony, or any other Fact but Treaſon. And till 1 *Ed.* 6. one Witneſs, was good in all Treaſons: Then comes two Statutes in *Ed.* 6. Time, and the firſt takes notice, That ſince the 25. *Ed.* 3. by ſeveral Statutes Treaſons had been made which were unſeaſonable, and therefore repeals them, and makes ſeveral new Treaſons. Then comes a *Proviſo* at the end of it; *Provided* always, that no Perſon whatſoever, after the firſt of *February* then next coming, ſhall be indicted, arraign-

arraigned, condemned or convicted for any offence of Treason, *&c.* unless the Offender be accused by two sufficient and lawful Witnesses, or shall willingly, without violence confess the same. Now that *Proviso* relates only to the Treasons particularly mentioned in that Statute. Then comes the next Statute 5 *Ed.* 6. and pursues the same Words: But now this did not mean any Facts whatsoever that were left to the Judgment of the Parliament, because those Facts were not within there cognizance. They are not parliamentary Words; indicted, arraigned, convicted, but only used by the Courts below. Why, Sir, if it be so that one Witness is sufficient, here you have not only one credible Witness, but he is propt up extreamly well by collateral Circumstances; and though I do not allow that below they can proceed upon one Witness with pregnant Circumstances; yet for the Reasons given, considering how this Evidence is propt up, I think it is sufficient before you. For there was another Witness against him, and it hath been proved what that Witness could have said if he was here; and 'tis plain that Men have died upon the same Testimony: I must confess, when I was for reading of *Goodman's* Examination, *&c.* I was not for reading them as conclusive Evidence, nor do I think them so in any sort, either the Conviction of *Cook*, or *Goodman's* Examination before a Justice of Peace; but it is a stronger Evidence in this Case than any other, because the Witness is not dead, nor is he withdrawn by the means of any body but the Prisoner, or his Friends; which, as I take it, appears upon the Evidence; and if so, I think it comes to the Case, That if any one gets my Deeds, if he will not produce them, they shall be presumed to be what I say they are: I must confess, the Acting of his Wife or any Agent, might not be Evidence, if it appeared they did it officiously without his Knowledge; but being *Clancy* said he came from Sir *John Fenwick*, and it was for Sir *John Fenwick*'s advantage, I will believe it was by his Privity: And for my self, I think it no Strain, if in this Case we take him to be a good Second to Captain *Porter*, though it ought not to be admitted in *Westminster-hall*.

Then 'tis said, That you have no Jurisdiction to proceed by Attainder in this Case, where the Person does appear, and he is in the Hands of the Law, and ready to take his Tryal: I quoted you an Instance the other Day, 12 *Car.* 2. where they attainted Persons that were dead, without examining one Witness; and I have viewed all the Books since, and there's nothing appears, but the Bill ordered to be brought in, one Reading, and another, and some Petitions for making of Savings: There is one Rank of People that were dead, a second Rank, which, as you were told from the Bar, were the King's Judges; some of which, it is true, were Tryed by the Law; but how? Not by the Direction of the Parliament: It was before they came into the Hands of the Parliament, and the Parliament takes notice they had been Tryed. There was another Sort that was never Tryed, but absented, and though they might have come into the Hands of the Law and been Out law'd; the Parliament took cognizance of them, and attainted them of Treason. Sir, I do take notice, that there was a fourth Sort of People convicted at that Time; (for if we were confined to the Rules of *Westminster-hall*, no doubt we could not give a lesser Judgment than that for Treason.) There was the Lord *Mounson*, Sir *John Danvers*, and others; and the Statute recites that they were concerned in the Murther of the King, yet in regard so many had actually suffered, they did not give them the Judgment of Treason, but to forfeit their Estates, *&c.*

This is to shew you the Jurisdiction the Parliament have over Offences, and how they can alleviate the Punishment according to the Circumstances as they appear before them; therefore I think this is a plain Proof that we have a Jurisdiction to go on with the Bill, and at the same Time, I say this, I would put it out of the Case, whether the Prisoner be a little Man or a great Man, that is now in Judgment before us; and I would put it out of the Case, what a good Thing his Discovery would be; I do not think that a good Argument: Neither do I think it any Argument if this Man escape, what Danger we shall be in? But I do give my Judgment from the Argument of his Guilt, and our Jurisdiction.

Mr. *Pelham.* Sir, the learned Gentleman that spake last, seemed so very clear in his Opinion, when he began to speak, that I was in hopes he would have given me and every Body satisfaction in this great Point; especially when he began with *Magna Charta*, which says, That every Man shall be Tryed by his Peers, or by the Law of the Land; I do take it to be Part of the Law of the Land, that no Man should be condemned for Treason, without two Witnesses; but after that he did lay his Finger upon the Sore, he told you, the great Objection was, That the Courts of *Westminster-hall* are so governed and ty'd down, that they can't pass any Sentence for Treason, but upon two Witnesses; and he told you, they ought to be ty'd so; indeed he did say we were not ty'd so: But I own to you, he did not give me any satisfactory Reason why we should not be ty'd so. 'Tis said, we are not ty'd, and 'tis impossible we should, for no Act can tye the Legislative Power; and several Gentlemen have said, That though there are several Statutes that declare there shall be two Witnesses in Cases of Treason, yet they do say, That in Case of Attainder by Parliament, one Witness may be sufficient. Why may it not be thought, that these Acts extend to the Legislative, as well as the Statute of *Edw.* 3. by which it is presumed, That the Parliament may proceed upon one Witness? And I take it, That there being no such Hint, 'tis a Presumption that the *Lex Terræ* does crave an Observation of it by the Legislative Power.

I did presume yesterday to tell you, That Mr. *Algernoon Sidney* did stand upon it as his natural Right, that they could not proceed against him, there being but one Witness; I did not bring his Case as parallel to this, or think that his Authority should influence you; but he was a Man that had that Love to Liberty, and the Good of his Country, that he would not have said so, even to save his Life, if he had thought it inconsistent with either of them: But I have looked upon his Tryal since, and there he does declare, That the being condemned by two Witnesses, is the Law of God and the Law of Man; the just Law that is observed by all Men, and in all Places; 'tis certain he reached even by these Words, the Power of Parliament; when I do say Power, I do not mean, but that when such a Law is passed, all are bound by it; but in some Sense we may say, you cannot do what is not just for you to do: You can do but what is just and capable to the Trust reposed in you.

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The Gentleman ſays, he thinks it a ſtrange Opinion of him that ſaid, He had rather be Try'd by a Jury, than the Houſe of Commons; indeed, if he could be ſure of ſuch a Houſe of Commons as this, he might retract what he had ſaid: But I have ſeen that done in the Houſe of Commons, which hath not made me extreamly fond of that Tryal. I have ſat here when ſix or ſeven Noblemen have been declared Enemies to the Kingdom without any Evidence at all, and the Reaſon was ſomewhat like what it is now. The Power of Parliaments was brought in as an Argument then; and it was ſaid, it was only in order to an Impeachment, but no Impeachment followed; yet theſe Noblemen went with that Brand in their Foreheads, and if any Diſturbance had been, they had been expoſed to the Fury of the People: And though we are ſure of this Houſe of Commons, and may be of all in this Reign, yet I know not how Facts may ariſe, and what Parliaments we may have, and upon that Account I am very unwilling a Precedent ſhould be made, at leaſt contrary to the Uſage in all manner of Courts whatſoever.

Sir *Thomas Littleton*. Sir, I ſhall not trouble you long in this Debate, that hath taken up ſo much of your Time already, in the Conſideration of ſome Matters we have been upon; though I did think your Time not very regularly ſpent, till this Occaſion offered it ſelf: I hope therefore, now it will take up leſs of your Time; I ſee the great Matter that was inſiſted on before, is inſiſted upon ſtill; and I do think we may ſay it among our ſelves, though we would not let the Council, That we are ty'd up in this Caſe, by the Rules of *Weſtminſter-hall*; but I believe if that was the Caſe, and the Queſtion was no otherwiſe, than whether or no we are ty'd up by the Rules of *Weſtminſter-hall*, I believe it would receive a Determination that we are not bound up to thoſe Rules.

But I will take leave to tell you what I think is proper for us to ground our Judgment on: I think the great Reaſon, even of thoſe that are againſt the Precedent, why they did admit Sir *John Fenwick* to have Council, and to examine Witneſſes, if he had any, and to croſs-examine the Witneſſes, and why they were willing to hear Evidence on both Sides in the Nature of a Tryal; the great Reaſon was, becauſe that in a Caſe of ſo great Conſequence as this is, they would have the beſt Information they could obtain. Why did they deſire to be informed, but that afterwards they could lay their Hands upon their Hearts, and give their Judgment upon their private Opinion, Whether he was guilty or no? They ſay, we are not to give our Judgment upon our private Opinion; I always will. (It was not long ago we were not to have our Religion upon our private Opinion neither.) And when I am juſtified in that, I will rely upon it: Whether this be ſtrictly legal Evidence, I do not lay ſo much Weight upon it, as whether it hath ſatisfied my Conſcience; and I believe there is not a Man in the Houſe but is ſo, (upon what he hath heard) and doth believe that Sir *John Fenwick* is guilty; and if we believe he is guilty, I would be glad to know by what Rules in the World any Man can give his Vote againſt this Bill, being of that Belief. And I tell you why I think every Man believes ſo; becauſe every Man in the Kingdom that hath not heard ſo much as we have heard, does believe him to be ſo; and I can't think that their Repreſentatives only ſhould be of another Opinion.

What Evidence have you had? You have had Captain *Porter*'s Evidence, and that would be good even in inferior Courts; and beſides that, you have the Evidence of what *Goodman* did ſwear before the Grand Jury; you have heard what he did ſwear, and the Grand Jury did believe him; you have heard likewiſe what he did ſwear in another Cauſe to the Petit Jury, and they believed him, and convicted the Priſoner upon it; and though this be not legal Proof, ſtrictly ſpeaking, will any Body ſay that I have Reaſon to disbelieve this Man, and think he hath ſworn falſe?

Ay, but here is but one Witneſs, Gentlemen tell you: I will put you a Caſe where I believe this Houſe would Attaint a Man without any Witneſs. Suppoſe two Perſons had ſeen Sir *John Fenwick* kill the King, (I believe we ſhould not have pulled him in Pieces in a barbarous Manner, but he would have had a Tryal:) and ſuppoſe before his Tryal they had been conveyed away, if before they had ſworn this to a Grand Jury, and they had found the Bill, I believe this Houſe would have Attainted him for it.

Sir, I do not think that we ſhould ſtand upon theſe little Niceties, nor be bound by the little formal Proceedings of other Courts, when the Government is at Stake. We are ſent hither to take care that the publick Safety do not ſuffer any Miſchief from the Enemies of it: We have had Plot upon Plot, and I have heard ſo much ſaid on behalf of the *Lancaſhire* Plot without Doors, that I wiſh we do not get an ill Name upon our ſelves before we have done. We have this Power to exert upon extraordinary Occaſions, and here is a Man that hath endeavoured to ſubvert the Government, and Well-being of them that ſent you hither. I hope you will uſe it now; and if they knew who were not of that Opinion, I believe thoſe that ſent them would hardly ſend them any more.

Mr. *How*. Sir, as to the Argument that if it was known how we gave our Opinion, thoſe that are againſt this Bill, the People would not chuſe them again: I am not afraid of that. I have been told ſo often, and yet I find the People I live amongſt, uſe me better and better every Day; and I believe, Sir, they will deſire to uſe me, when they will lay other Men aſide. I muſt in ſome meaſure ſupport what was ſeemed to be reflected on an Honourable Gentleman, in that he ſaid, he had rather be tried by 12 than 400. I am of his Opinion, and this is my Reaſon for it; I have my lawful Challenge in Caſe of the 12, and if there be any on the Pannel I have offended, I can deſire they may be withdrawn, and that can't be done in any Caſe here.

But Gentlemen put the ſtreſs of their Argument upon that which no Body denies, and prove it handſomely, and well they may; for it is ſelf-evident the Power of Parliament they inſiſt on, when no Body pretends but we have a Power to do what we pleaſe: But I muſt ſay of their Power what *Bracton* ſays of the King's Power; *Hoc tamen non poteſt facere, quod non poteſt juſte facere*. It is ſaid, We are not ty'd up to the Rules of *Weſtminſter-Hall*, we are not ſo; but I beg leave to tell them, That what is Reaſon and Juſtice in *Weſtminſter-Hall*, is ſo every where. And I do take theſe particular Points we ſpeak of, to be grounded upon Reaſon and Juſtice, and ſo far we are to purſue them.

Two Evidences was not given as a Reſtraint upon *Weſtminſter-Hall*, for fear they ſhould do ſomething that is ill, for they are anſwerable for every

every Thing they do ill; but they were allowed to the People of *England*, that they might have a fair Trial, and it was thought conformable to the Laws of God, the Law of Reaſon, and the Law of all Countries, That no Man's Life ſhall be taken away upon any particular Occaſion. And for to ſay, That a Man's Life may be taken away by two Witneſſes in one Place, and by one in another, is to ſay, That there is no certain Rule to prove a Man guilty of a Crime that may forfeit his Life, which is not admitted in any Country whatever.

But truly Sir, we are going a little further; for the Gentleman before told you, there was no need of two Witneſſes, one would ſerve; but now they go a little further, for they tell you, there needs never a one at all: For I do ſay, if every Gentleman here is to be guided by his private Opinion, there is no Man but before he heard this Cauſe did conceive in their Opinion ſome Judgment of his Guilt. And, Sir, I think no Man, but would have told you, that would have been an unjuſt Judgment.

But they do ſay, That the Bill of Treaſon that was made laſt Seſſions of Parliament was to limit *Weſtminſter-Hall*; and that I will truſt that with my ſelf, which I will not truſt with my Servant. Why truly, if I, or my Servant, was to commit an Error, or a great Crime, I had rather my Servant did it, than my ſelf: But I do not think that my Servant ſhould be bound up from doing an unjuſt Thing, and my ſelf ſhould have the Liberty to do it. Another Thing that Law provided againſt was, the People ſhould not be hanged without ſufficient Evidence, and theſe Things have been long complained of: But I never thought that the Evidence of one Witneſs, and one Witneſs would be ſupported in theſe Days.

But, Sir, what have you done? We have prevented People being Executed by an Arbitrary Power, and in an unlawful Way in *Weſtminſter-Hall*; but if you give this Example, you have brought the ſame Proceedings into this Houſe, and that they may be perpetually Executed here, and ſo the Subject will be never the Safer for the Bill of Treaſon.

And I do believe likewiſe, That it is better that a very heinous Fault, or a Miſtake, ſhould be committed in *Weſtminſter-Hall* for ten Years together, than once perpetrated in this Houſe. And my Reaſon is this, Becauſe *Weſtminſter-Hall* have a Law to be tried by, if they trangreſs that Law; and there is a Way by turning out of Judges, and other Things; and this Houſe hath no Superior Power, and when they do a Thing they make it a Law: So that this Houſe (as it hath often been obſerved) can make this Nation unhappy; becauſe this Houſe can only eſtabliſh Arbitrary Power and Miſery upon this Nation by a Law.

Sir, as to the Evidence, to ſay ſomething to it ſince every Body hath ſpoke to it; for my Part, I do confeſs to you, the longer I ſit here, and the more I have heard of this Trial, the leſs I have been convinced within my ſelf, that theſe Witneſſes can know any Thing of Sir *John Fenwick*'s Guilt. I have heard Captain *Porter* give his Evidence, but that is no ſufficient Proof to me: I have heard what Evidence *Goodman* did give to the Grand-Jury, but whether they did ask ſuch Queſtions as I ſhould, if I had been of the Grand-Jury; or whether they did confront him with Evidence, I can't tell? Therefore tho' the Grand-Jury was convinced by it, it is no Reaſon to convince us; becauſe we might not be convinced by the ſame Evidence.

But to go further: There is very great Reaſon to believe that *Goodman* was not then at this Place, and that not one Word that *Goodman* ſays is true. I have ſuch Reaſon for what I ſay, That if *Cook*'s Tryal had been before this Houſe, (not to Arraign *Weſtminſter-Hall*, though I think we are a ſuperior Power, and I may ſay what I pleaſe of that Tryal;) I ſay, if *Cook*'s Tryal had been before this Houſe, and what I have heard, be true, I do think they would hardly have found *Cook* Guilty upon *Goodman*'s Evidence: For there were three as poſitive Evidence as could be, that he was not at the Place when he ſwore he was. And I obſerve a little Failure in Captain *Porter*'s Evidence in that Point; for I don't think it proved by Captain *Porter*, that *Goodman* was by when this Diſcourſe was: For he ſays he ſpake of this Thing at Mrs. *Mountjoy*'s and Dined there.

Members. No, no; It was at the *King's-Head.*

Mr. *How.* Well, there was but one Place where it was. Now whether Captain *Porter* heard them talk of it before *Goodman* came in, or whether *Goodman* be a good Witneſs, he having been there but the latter Part of the Time, which ſeemed to me to be the Time they ſhould have given over their Talk of the Buſineſs; they having been ſo long together before: But it does not appear to me that *Goodman* can be a good Witneſs.

But I take it, That it is not juſt nor reaſonable to find a Man guilty upon one Witneſs, and Circumſtantial Evidence. I did mention a Caſe where there was a poſitive Witneſs, and a Circumſtantial Witneſs, it was in my Lord *Delamere*'s Tryal; and yet that was not thought a convincing Argument by the Lords to find him Guilty; and I hope no Conſideration will oblige us to do that, which I am ſure we ſhould blame them for doing.

The Conſequence of this, Gentlemen ſay, they do not fear: I believe if Sir *John Fenwick* had been told, when he was Major-General of King *James*'s Army, that I ſhould come here to ſit upon his Life, he would have laughed at it, and thought it impoſſible; but the contrary has happened. And I have ſeen Parties hang one another with ſuch Violence, I pray God we may keep from it: I do not know, we are all concerned in ſome Meaſure; it having been the Unhappineſs of this Nation, that at one Time or another, every Body hath been concerned, that they may have a Proceeding of this Sort againſt them, and this ſurmounts all that at preſent Gentlemen can do: For it extends beyond all Pardons, and will reach beyond the Act of Indempnity. God knows who may be ſerved ſo, notwithſtanding all the Act of Indempnity.

Sir, there is one Thing that is ſaid further, which the Gentlemen at the Bar conclude with as a ſubſtantial Argument that we do not aim at Sir *John Fenwick*'s Blood, (God forbid we ſhould) but at his Confeſſion: You will here read the Bill once, and twice will commit and paſs the Bill, (Sir *John Fenwick* not confeſſing) and ſtill this is not to aim at his Blood: But it happens perhaps that this Man knows no more of this Matter; and this Man is racked in a Manner to Death, from Reading to Reading, becauſe he does not confeſs; and at laſt he comes to be Hanged, Drawn and Quartered (inſtead of High-Treaſon) for not Confeſſing it.

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This I take to be the dangerouſeſt Part of all the Arguments that have been urged: For this I muſt tell you, That according to my private Opinion, I do believe that Sir *John Fenwick* does know of no more Perſons concerned (nor do I believe that he knows all that he ſays) than he tells you. He hath not been a Man that hath kept Company with great Men: He hath generally relieved the poor *Jacobite* Officers: There are five People, as I take it, he hath told you he did converſe with: I would fain know in what Plot any Man converſes with above Five of the Plotters? There may be a Plot that may be moſt Dangerous, and yet a Perſon that knows of this Plot, may not know above Two or Three others that are concerned in it.

But the great Argument is, Take care of your Government. In the firſt Place, they muſt ſuppoſe the Safety of the Government depends upon his Execution, or why do they uſe it as an Argument? But I wiſh they would ſhew me the Government would be one Penny the worſe, if this Bill does not paſs. Do you want Examples of Puniſhment to deter Men? No; you have had lawful Proof againſt Four or Five Perſons, and they have been executed: Here are Examples made, that no Body for the future may preſume to Plot together, and not to be executed.

What is the Reaſon of this Bill then? Why, there is a Plot going on; Sir *John Fenwick* hath been impriſoned this ſix Months and more, and will you hang him becauſe there is a Plot now going on? What Conſequence is that! Do you think that he knows any Thing of it, or that he can diſcover it? It hath been ſtarted ſince his Confinement, it may be, and he knows nothing of it: So that as to what is preſſed of his Confeſſion, I know no one Thing would be gained by it, that could be uſeful to the Government; for I believe all hath been diſcovered already that he knows, and that Plot hath been utterly diſappointed, and they have been fain to make a new one. Will you proceed in a Bill of Attainder, unleſs the Matter be of the greateſt Conſequence? The Preamble of the Bill for Attainting the Duke of *Monmouth*, gave a ſubſtantial Reaſon for it; That he was in Arms, and could not be brought to Juſtice. That implied, That if he could have been brought to Juſtice they would not have Attainted him.

I think I need not give you more Arguments in this Matter, I wiſh I could hear thoſe that have been given, well anſwered. I ſhall ſay no more; but I know this, that my private Opinion ſhall never guide me in this Caſe; 'tis not the ſame Thing with the Caſe my worthy Country-man put: In the Caſe of Religion, my private Opinion does not affect other Perſons; indeed it does the Papiſts, where they will murther others that are not of that Religion.

Mr. *Norris*. This is a very ſolemn Debate, and 'tis upon a very ſolemn Occaſion. 'Tis a Caſe of Blood; 'tis a Caſe that in my Life-time, I thank God, I never had to do with yet; and in this Matter wherein I am now to be a Judge, I will uſe as much Caution as any Gentleman within theſe Walls.

I am ſo conſcious to my own Inability in what I have to ſay, that I can't expect to convince any Body; but what I ſay, is to diſcharge my own Duty, and ſatisfie my Conſcience in that.

I doubt not, but every Gentleman conſiders the Station that he is in, and the Truſt repoſed in him by thoſe that ſent him hither: We are intruſted with the Lives, Liberties, and Properties of every Man in *England*; and we are anſwerable for them to thoſe that ſent us hither; to our Poſterity, and to our ſelves.

In this Matter, many Things of great Weight and Importance are before you; here is the Life of a Man, the Preſervation of the King and Government, and the Power of Parliaments to be conſidered. Sir, as I ſhall be cautious of taking away the Life of a Man, ſo I ſhall be careful of the Preſervation of the King and Government, and the Power of Parliaments; and though I do not think it requiſite, nor never will give my Conſent to Support the Government, or Honour of this Houſe, at the Expence of Innocent Blood; ſo I ſhall not be afraid of giving my Opinion in this Matter to bring a Criminal to Puniſhment; beſides, the Treaſon he hath committed, he hath Crimes of a Nature almoſt equal to Treaſon; and for which, becauſe he hath evaded the Cognizance of *Weſtminſter-Hall*, he is now brought before you; and there are ſeveral Inſtances, where this Houſe hath taken notice of Offences of a leſs Nature, and for a leſs Reaſon than this is brought before you.

To quote Pecedents, is a little dry Subject; but however, I will inſtance in one, that (I think) does aſſert the Power of Parliaments in this Caſe, which has not been mentioned yet; and that was (as I remember) in the 3 *Rich* II. of an Agent that came from *Genoua*, who was (by a misfortune) killed upon a Quarrel that happened in the Streets; he that killed him was brought to his Tryal; it could not be brought within the Statute of 25 *Ed.* 3. but he was brought to his Tryal, and it was found only *ſe defendendo*; but he being a Publick Miniſter, it was thought fit that the Nation ſhould take more notice of it; and he was attainted afterwards by Parliament, and there is a Record of it: They did not think fit to make a General Law, but they made an Example of the Man that committed this Fact.

A great many Gentlemen have ſuppoſed this, and ſuppoſed that, and what ought not to be ſuppoſed; but I will make an eaſy Suppoſition; I will ſuppoſe that we are the Commons of *England* in Parliament Aſſembled; and if ſo, Sir, we have a Diſcretionary Power to do whatſoever we ſee is for the Good of the Kingdom; and if we are to be circumſcribed by the Rules of *Weſtminſter-Hall*, and we are to do nothing but what they would do, to what Purpoſe do we ſit here? If we are intruſted with this Power, and may exert it, I think here is a fit Occaſion for you to exert this Authority.

Sir, give me leave to take notice, That the Strain of Argument that was uſed ſome Years ago, is very much altered by the ſame Gentlemen; (I will mention it) I think it was in 78, when the Bill of Excluſion was brought within theſe Walls, the Arguments ran then (for I have ſeen them in Print.) Thoſe that were againſt that Bill; What will you do? Say they; Will you do this Thing? Paſs a Judgment againſt a Man without hearing of him? Hath he been brought to your Bar, to anſwer what you have to ſay againſt him? How do you underſtand that he is guilty of the Crimes you accuſe him of? And they did uſe thoſe Arguments againſt them that were for diſinheriting the Duke of *York*; but the Anſwer then was, Do you diſpute the Power of Parliaments?

ments? Is there not a diſcretionary Power in the Parliament? I do take notice, That thoſe Gentlemen that uſed that Argument for the Bill of Excluſion, now uſe it a quite contrary Way. Sir, I think the Power of Parliaments is not to be trifled with.

It hath been urged and ſaid, a little while ago, by a Gentleman, That he does not believe Captain *Porter* is a good Witneſs. I will give you a good Reaſon why I do think he is a very good one, and they at the Bar think ſo too, becauſe they would have given a great Reward to have taken him off; and for the ſame Reaſon, I believe *Goodman* to be a good Witneſs too: Sir *John Fenwick* was ſatisfied, that *Goodman* did know how far he was concerned, and he hath been prevailed with to be out of the Way.

Sir, here are a great many Circumſtances that agree ſo well together, That (I think) no Perſon can doubt of Sir *John Fenwick*'s guilt; and (I think) 'tis in this Caſe in the Body Politick, as in the Body Natural, when a Man is almoſt paſt the Cure of Phyſicians; when a Man hath a Gangrene, a rotten Member, which the Phyſicians by the ordinary Means can't Cure, the Remedy the College of Phyſicians themſelves, in that Caſe would uſe, they would ſay, *Immedicabile vulnus Enſe recidendum eſt.*

I am of Opinion, That the Legiſlative hath this Power, and that this is a proper Occaſion to exert it; and to compare ſmall Things with great, 'tis like Thunder and Vengeance in the Hands of Providence, that is not uſed, but upon extraordinary Occaſions; and then it ought not to fail, for that makes a Man trifle and deſpiſe that Power that is not effectually able to exert it ſelf; and if the Sword of Juſtice be drawn, if they find it ruſty, and will not cut, they will have a mean Opinion of your Power for the future.

Gentlemen are afraid of Precedents in this Caſe; for that Reaſon I am for committing this Bill, becauſe I would make this a Precedent; and I will tell you why: Becauſe it may happen in future Ages, that Miniſters of State, and Perſons concerned in the Government, may be faulty (I think I may ſuppoſe that) and as the Law ſtands now, he is but a bungling Politician that can't ruin the Government, and yet not come within the Bill of Treaſon to be hanged for it; and therefore for the keeping an Awe upon Miniſters of State, and becauſe I would have this Houſe always have it in their Power to puniſh future Offenders, as they ſhall ſee cauſe, as well as this unfortunate Gentleman at the Bar, I am for committing this Bill.

Mr. *Finch.* Sir, the Queſtion now before you, ariſes upon a Caſe wherein you have a Man accuſed of High-Treaſon, and for that there is but one Witneſs, which by the Rules of *Weſtminſter-Hall*, is confeſſed by every Gentleman, is not Legal Evidence.

I remember the other Day, when this Evidence was offered, and an Objection made to it, the Anſwer was, That we ought to hear it (though in *Weſtminſter-Hall*, they could not do it) becauſe we ſit here as Judges, and we can diſtinguiſh what is Legal Evidence, and what is not Legal Evidence, and can give its juſt Weight to every Part of it: I do obſerve now, in this Debate, ſome Part of the Evidence, which no Man can ſay could have been given according to the Rules of Law, is inſiſted upon, and Weight laid upon it.

And here they have taken into Conſideration the Power of Parliaments; and the Method of Parliaments has been inſiſted upon; as to the Power of Parliament, Whether the Parliament can do it? And whether if the Parliament pleaſes to do it, they are tied up (as Gentlemen are pleaſed to expreſs it) to the Rules of *Weſtminſter-Hall?* That the Parliament can do it, 'tis a hard Matter to gain-ſay, That any Thing is out of the reach of the Supream Power of a Nation; the Legiſlative Authority can do every Thing: Yet though Gentlemen have ſaid this, and others have obſerved, That there wanted no Authority to prove this, being Self-evident; yet give me leave to Inſtance in ſome Particulars in this Caſe, with the Authority of the Judges upon it, where the Parliament have proceeded according to the Rules of *Weſtminſter-Hall.*

We read in *Hen.* 8th's Time, That the Lord *Cromwell*, Earl of *Eſſex*, was attainted in Parliament; and Hiſtory tells us, That he was attainted by a Law of his own making. Now, ſays my Lord *Coke*, That ſeems ſtrange; but enquiring of an Antient Perſon that lived in thoſe Days, he told him the Meaning of it; That Lord had conſulted with the Judges, Whether or no, if a Man was Attainted by Parliament, and was not brought to be heard, ſuch Attainder would be good in Law? The Judges ſtarted at the Queſtion, but could give no other Anſwer than this; Truly, if ſuch Attainder be made, we know no Law to find fault with it, for 'tis done by the Legiſlative Authority. It fell out, That the Inſtance of Condemning a Perſon in Parliament (not according to the Rules in *Weſtminſter-Hall*) fell out to be the Noble-man's Caſe; for he himſelf was ſo Attainted immediately after.

Give me leave to Inſtance in another kind of Authority; the Authority of Parliament touching theſe Attainders, and what has been the Conſequence of them; if you will look into the Record of *Rich.* II. Time, I do not mean the Record that hath been quoted, nor the Caſe of *John Imperiall*, for killing the *Genoua* Embaſſador, which was declared Treaſon in Parliament, Ten Years after the Man had been tryed in *Weſtminſter-Hall* for it; but I mean the 11 *Rich.* II. how many were Attainted by the Proceedings of thoſe Times; I do not mean by Acts of Parliament, but thoſe Attainders were in an extraordinary manner, not according to the Rules of *Weſtminſter-Hall:* And 21 *Rich.* II. the whole Parliament and its whole Proceedings were reverſed, and the Parliament annulled: In that Year were the Proſecutors of the 11th Year themſelves Attainted: And 21 Year of *Rich.* II. the Act that Repealed that Parliament, repealed the Pardon too; but in order to come to the Attainder of thoſe Perſons: That being done, was not enough; for the Lord *Arundel* had a Pardon the 17 of *Rich.* II. upon that they made a Law to repeal his Pardon by Patent, that they might come to the Attainder of that Lord; and that Lord was Attainted by Act of Parliament: But I muſt obſerve one Thing a little further, That that very Parliament, that doubtleſs knew their own Power well enough, and that their Attainders were firm, being made by the Legiſlative Power; yet they had a little Jealouſie themſelves of their Proceedings; for they paſſed an Act to make it Capital to go about to reverſe any of thoſe Laws;

Laws; and another Act, that all the Lords and Biſhops ſhould be ſworn. Now ſee what fell out after; *Rich.* II. was depoſed, for conſenting to thoſe Laws; and *Henry* IVth, in the firſt Year of his Reign, abrogated the whole Parliament, and repealed all thoſe Laws: Theſe Turns have been upon theſe extraordinary Proceedings of Parliaments.

Give me leave to give you another Inſtance, and that in another Caſe, as odious as poſſible could be. In the Murther of *Edw.* II. there was *Roger Mortimer* Attainted in the firſt Year of *Edward* III. and the Record ſays, That it was notorious to them all; and what then? They adjudged him to be Attainted in Parliament: When Time had a little worn off that extraordinary Zeal (which truly was commendable, though it had tranſported them a little too far beyond the Rules of Juſtice;) and they came to conſider what Precedent they had made for Poſterity, it had another Face; for in 28 *Edw.* III. was that Attainder reverſed, becauſe he was not brought to anſwer as he ought to have been: There was alſo an Act for Attainting the Earl of *Arundel*, which in the ſame 28 *Edw.* III. was reverſed, becauſe he was not brought to Judgment by due Proceſs of Law.

But now we are told, we are not tied here to the Rules of *Weſtminſter-Hall*, Gentlemen do not enough diſtinguiſh in this Matter; the Forms of *Weſtminſter-Hall*, ſay ſome, the Rules ſay others; and others ſay there is no difference between the Form of Proceedings, and the Rules of *Weſtminſter-Hall*; but I hope no Gentlemen do think but the Parliament though they have a Power to act as they think fit (as Inſtances have been given) yet the Parliament it ſelf are tied by the Rules of Common Juſtice. Now I would have Gentlemen that ſay we are not tied by the Rules of *Weſtminſter-Hall*, a little to conſider the Matter. Are the Rules of *Weſtminſter-Hall* no other than what are neceſſary for the executing of Juſtice? If they are no other, how can we be ſaid to go according to Juſtice, when we go beſide thoſe Rules? I deſire them to conſider of the Conſequence of this Proceeding; there is no danger, I hope, of this Parliament: But if we ſhall ſay, that the Rules of *Weſtminſter-Hall* are not ſuch as are neceſſary for the Proceedings in a Courſe of Juſtice, we ſhall ſhake thoſe Barriers of our Liberty and Property, I am afraid, a little more than Gentlemen think of at preſent; and ſhall we declare they are not neceſſary, when our Anceſtors have thought them ſo, and their Wiſdom have derived them to us, and the Wiſdom of the Nation in Parliament have eſtabliſhed theſe Rules?

I can't ſay what Conſequence may follow upon this. This Parliament can never do any Thing to endanger the Lives of the People of *England*; but heretofore Parliaments have been Damned with ſeveral Brands, ſet upon them by ſucceeding Parliaments. As for Inſtance; One, I think, in the 38 *H.* VI. 39, That Parliament was wholly repealed as packed, and paſſing Laws through Rancour and Malice, and having paſſed no good ones. Now, ſuppoſe a Parliament ſhould come, that ſhould not be ſo tender of the Liberties of the People as this; and they ſhould be ſo bold as to ſhake thoſe Laws that are made for the Rules of Juſtice, if they have ſo good a Parliament to guide them in it; Will not this be an Inducement to ſuch a Parliament as that, to ſhake all our Laws and Liberties? But I can't trouble you any longer, my Head will not give me leave: I am againſt the Bill, and have offered you my Reaſons.

Coll. Wharton. I hope, Gentlemen, in a Matter of this Moment, will have Patience to hear one another; and ſince every Gentleman is to give his Vote in this Matter, I deſire to give my Reaſons for my Vote; I am of the Opinion of another Gentleman, That we have not touched the Sore yet; yet I do not think that the Rules for *Weſtminſter-Hall*, are Rules for us. The Gentleman that ſpake laſt, as he always does, made a very Florid and Elegant Speech, and brought you ſeveral Examples of Attainders that have been condemned from one Parliament to another, in ſeveral Reigns. But I do not wonder at that, when the Crown went from one to another. An Inſtance was given in the Caſe of the Lord *Cromwell*, which was ſpoke too from the Bar; and Sir *Thomas Powys* laid a great Streſs upon it, That this was condemned as a wrong Judgment, becauſe he was not heard: I believe that may be a Reaſon why many of thoſe Attainders were condemned; perhaps it might be a Cuſtom of our Anceſtors to paſs Bills of Attainder without hearing the Party: This Perſon hath been heard, and fully heard; and I believe no Perſon that hath been Attainted, hath had ſo fair a Trial; and therefore Parliaments having condemned Bills of Attainder, becauſe the Perſons have not been heard, that will be no Reaſon why any Parliament ſhould condemn us. A Gentleman told you, That the Law of God and Man was not to condemn a Man, but upon two Witneſſes; but there are many Inſtances to the contrary.

It is told you, That *Porter* here before you, is not a good Evidence, becauſe he is not Sworn; and that you are to go by the Rules of *Weſtminſter-Hall*. Says the Gentleman that ſpake laſt, you are to go by their Rules, but not by their Forms: I muſt confeſs there is a great Difference between them two; for a Form is only the Manner and Method by which we proceed in doing of any Thing; but the Rule is the Foundation we are not to err from; but I can't agree, we are upon the ſame Rules as *Weſtminſter-Hall* is. The Rules of *Weſtminſter-Hall* are, when a Man is brought upon his Tryal, the Jury are all to be upon their Oaths; by which Oath they are to make a true Judgment according to Law: This is not the Caſe here; if I was a Jury-Man, and was to Try a Man, and one Witneſs ſwore againſt this Man, and no other Witneſs, though I did in my Conſcience believe him to be guilty, yet in that Caſe my Conſcience is diſcharged, and I muſt find him not guilty: But no Man can ſay this is the Caſe here.

What are we now a doing? Here is a Bill to Attaint Sir *John Fenwick* of High-Treaſon, if I reject the Bill, I do declare him not guilty; and if I do think him guilty, I do declare againſt my own Judgment; for my Judgment here, is not bound up as a Man's Judgment upon a Jury; for his Judgment is bound up to Proof, according to Law; and my Judgment is bound up by my own Belief: This is the Proof I muſt go by; and I think every Man is bound in Juſtice and Duty to his Country, as he believes Sir *John Fenwick* to be guilty, to be for the Commitment of this Bill; and till any Gentleman will convince me, that this is not a Rule I am to go by, I muſt continue in this Opinion.

Mr. *Boyle.* The Diſorder that worthy Gentleman was in, makes me the more concerned for fear of falling into it my ſelf.

I hope in this Debate, Gentlemen will be very cautious of uſing it as an Argument: what Application our Votes ſhall have without Doors, and with thoſe we repreſent, when we are to give Judgment, as far as in us lies, for the Life and Death of a Man; and therefore I muſt obſerve, that the eagerneſs that is juſtifiable upon Impeachments, may not look ſo well now we are Judges upon a Bill of Attainder. You have gone over the whole Courſe of the Evidence, and I believe that this Debate will ſhew you pretty plainly, what is to be the Fate of this Bill; for I believe all the Arguments will now be uſed that can be; as to what hath been ſaid of extorting a Confeſſion, I take it to be quite out of the Caſe.

I am ſorry to be ingaged one way or another, I would not, if I could help it, out of the Houſe, be upon a Jury of Life and Death; yet in that Caſe, I ſhould know the Law, or be told it by the Judges; but in this Caſe, we are both Jury-Men, and Judges, and know not what Rules we are to go by; but ſet up a Court of Equity which hath no Bounds, but our own Conſciences.

As to Sir *John Fenwick*, I know him not; as to his Cauſe, I am ſure, I am againſt it; but how far I think him guilty or not, I think is not the ſingle Point to be conſidered; I muſt confeſs, there have been ſeveral People accuſed of this Conſpiracy, and have been named by the Evidence at the Tryals; and I believe they are much alike guilty, being upon the ſame Evidence; but as to all that hath been opened before you, and proved, it can amount to no more than this; there is but one Evidence, which by the Law would be a good Evidence to Convict him in another Place; and therefore I do agree with the Gentleman that ſpake under the Gallery, that this is a very extraordinary Caſe; for one Witneſs is not ſufficient at Law to convict him, and the Law would be very different hereof. I am to Judge according to my own Opinion, and not by the Rules preſcribed by the Law; but though this Proceeding is not ſtrictly according to the Law of the Land, yet if it was ſuch an extraordinary Caſe that required you to diſpenſe with thoſe Forms, and come to this extraordinary Manner of Proceeding; I think, for my own Part, it might be ſupported by the Neceſſity of it, for 'tis impoſſible that it ſhould be otherwiſe in Practice: Thus, when the Government is at Stake, and nothing will preſerve it, but the breaking through the ſettled Forms; then the Government will break through them, and whatever Rule you preſcribe, it will always happen ſo.

There is a very extraordinary Caſe, and that was in the Conſpiracy of the State of *Venice*, above a hundred Years ago, I think, ſet on Foot by the *Spaniards*; then the State, to get the whole Matter out, promiſed a Pardon to as many as were concerned in it; and after they had promiſed it, and treated with them about it, they thought it neceſſary, for the Preſervation of the Whole, to break their Faith, and they were all put to Death. This was upon Point of Preſervation of the Government.

But, Sir, as to Precedents, give me leave to ſay; I do not give that Authority to them, unleſs I know all the Springs, and ſecret Hiſtory, and Tranſactions, that were their Guide in making thoſe Precedents; and as to Precedents that have been quoted, when the Parliament has declared what was Treaſon, and what was not Treaſon, or have declared Conſtructive Treaſon, they may be grounded upon the Statute of 25 *Ed.* III. But I think there is no Statute upon which they can ground the Condemnation of a Man upon one Witneſs.

In the Caſe of my Lord *Strafford*, upon Conſtructive Treaſons, it was there ſaid, That it was a Fire that had lain hid for 240 Years; and that it never broke out before, but to conſume him, and his Poſterity. It was anſwered by *Pym*, if that was the Caſe, it was not for want of Law to juſtify ſuch a Proceeding, but all that Time had not produced ſuch an Offender.

I do not doubt, but if any one will conſider the late Conſpiracy; and if that was the Queſtion, but it was as Extraordinary as any Thing can happen: For it was to ſubject their Country to a Foreign Power, which is very Extraordinary, and ſeveral Perſons were concerned in it: But there is one extraordinary Part which I do not remember this Gentleman is accuſed of; and that is, the Aſſaſſination. Treaſon it ſelf is a very extraordinary Crime; but give me leave to ſay, that Extraordinary Part is not alledged againſt this Gentleman, and this Bill does not ſeem to be brought in for that, wherein he is concerned in common with ſome others, but for the ſubſequent Matter alledged in the Bill. This Bill is grounded, not ſo much upon that he is guilty, as a great many more are, as upon ſeveral Circumſtances which have happened to no Body elſe. Give me leave to inſtance in a Caſe, now in my Head; (I beg your Pardon that I ramble, 'tis from the Awe I have upon me from this Aſſembly.) In *Catelin*'s Conſpiracy, and if that was our Caſe, no doubt there would be another ſort of Argument for it; there they conſulted what to do with *Cethegus*, and the other Conſpirators; he was at the Head of an Army, which only expected his Orders to lay *Rome* in Aſhes; the Queſtion was, Whether they ſhould break the *Porcian* Law; and for the Safety of the Senate, they were put to Death before the Aſſembly roſe.

Now to come to this Part of it, though Sir *John Fenwick* is a great Offender, yet I think his Caſe is not ſo extraordinary, as to make you proceed upon this Bill. I do take his living or dying not to be of that Conſequence as this Bill of Attainder: I know not how he comes to be ſo conſiderable when in Hold; for when he walked about Town, I never heard he was feared or regarded at that Time.

But to come to the Allegations in your Bill, upon which you are to ground your Judgment; The firſt Part is a new Conſpiracy, that is for intending to create a Jealouſie between the King and theſe Noble Perſons: As to them, you have already paſſed a Vote in their Juſtification; and I think their Actions may juſtifie them to the World, as much as any Vote of the Houſe of Commons; but whatever that may be, I think it was a fooliſh Piece of Conſpiracy, as well an as ill One; for one when he was in danger of being hang'd for one Plot, to venture upon another; and, I think, there was at that Time two Witneſſes to bring him to his Trial, and that is an Allegation in the Bill. And as to the Protracting of his Trial, 'tis natural, and ſo juſtifiable, whether Innocent or no, and what every Body attempts; and no Body can wonder at it, but in one Caſe or the other, it can be no ſufficient Ground to Attaint him.

The

The next Thing that is ſaid, is that he hath been the Occaſion of the withdrawing of the Evidence. Now I muſt obſerve, That is not alledged in the Bill, and is proved but by Hear-ſay; but ſuppoſe it was true, and alledged; if any Man concerned in Treaſon, ſhall endeavour by Friends, or otherwiſe, to get off an Evidence; Can that amount to that which is deſigned to be puniſhed by this Bill? To High-Treaſon? 'Tis the Part of thoſe that are intruſted with thoſe Matters, to be in Expectation of ſuch Practices. What are Goals for, but to keep them in Cuſtody? And the People employed in thoſe Buſineſſes, are to take care of it. Are we to ſupply a Defect of what ought to have been done in another Place?

So that I do ſay, That a Precedent in an extraordinary Caſe, is no Precedent to be uſed in a little Caſe; it may be urged, but 'tis but a Pretence; when you have paſſed this Bill, which is the Record, the Matter will appear no otherwiſe than are the Suggeſtions of your Bill: A Man hath aſperſed great Perſons, which is a great Fault indeed, (for he is not charged with the withdrawing of the Evidence,) therefore attaint him upon one Evidence; I think by this Bill, you will open a Door for a Precedent of all Treaſons of the ſame Nature. Sir, there have been many Precedents mentioned, I will trouble you with none, becauſe moſt Gentlemen have read the Argument of Mr. *St. John*'s in this Caſe: I muſt confeſs, unleſs there was that Neceſſity as is pretended, which I do not ſee; I do not ſee how you can juſtifie paſſing this Bill of Attainder, either by the Law of God or Man, in any Nation allowed.

I muſt confeſs, I have no manner of Concern how this Queſtion goes; what I have ſaid, is more to ſatisfie my own Judgment, than work upon other People; I am not ſatisfied there is that Neceſſity that is pretended; and therefore as my Judgment is now informed, I can't give my Vote for Committing of this Bill.

Mr. *Smith.* Sir, I own my ſelf to be very unfit to ſpeak in this Argument, but ſince I am to give my Vote in a Matter of this Conſequence, I beg leave to give my Reaſon why I give my Vote, as I intend to do; I know the Matter before us, both in the Nature of the Crime and Puniſhment, as well as the Conſequence of it, requires a very deliberate Conſideration; but at the ſame Time, I do take the Hazard and Danger of this Government to be a Matter of great Conſequence too.

Though there have been ſeveral Precedents inſtanced in Relation to Attainders; and though I have obſerved, that moſt have acknowledged, That they might be juſtified upon extraordinary Occaſions; yet when they have aſſerted that, they have told you, they were upon a wrong Foundation, and ſo were laid aſide. Now I think it no great Matter to ſay, That thoſe Attainders that were made in Rancour upon contended Titles, were reverſed when the oppoſite Party got the Power: no more than if any Action, be it never ſo juſtifiable, ſhould be Reverſed when King *James* comes again, which I hope never will be. Is it any Argument, that when *H.* IV. came to the Crown, and depoſed King *Richard*, that he reverſed all the Attainders in his Time? There might be Reaſons might ſway with Perſons for reverſing particular Acts of Parliament, which might be very good, or might be not ſo: There was ſuch a Change of Government at that Time; but they take notice it was made a particular Article againſt *Richard* II. as if when the Power was come to other Hands, they would not have depoſed him if they had not had that Argument: Neither do I take that Argument to be of any Weight; That Attainders have been reverſed, becauſe the People have not been heard; when this Gentleman hath had as full a Hearing as ever any Perſon had upon any Bill of Attainder, or Impeachment whatſoever. And he hath had the Advantage of Council in this Caſe; which, as has been told you, was excepted out of the late Act of Parliament, and of the moſt able Council too.

'Tis ſaid this is a Matter of no great Conſequence, becauſe it concerns Sir *John Fenwick*'s Life ſingly; and he is not thought to be ſo conſiderable, as by his Eſcape to bring the Publick in danger. Now it hath been always one Principle I have laid down, That if a Plot be diſcovered, and not throughly proſecuted, it ſtrengthens and grows upon you, and ten to one if it does not ſubvert the Government.

Now, God be thanked, that we have prevented the Deſign upon the King's Perſon, and ſeveral have been puniſhed for it; but I think we are not gone to the Bottom of it, and that we ought to provide againſt it in a much other Manner. Can any one think that Sir *William Perkins*, or Sir *John Freind*, and the reſt that are diſcovered were the only Perſons concerned in this Conſpiracy: I take it, that there have been much greater Men in it; and when I ſee ſuch a Struggle both to get People out of Goal, and ſend People out of the Way, and all Arts uſed that can be; I muſt ſuppoſe, when ſuch extraordinary Courſes are taken, that there is ſomething extraordinary ſtill to be done; and I would not have Men by bribing of Witneſſes think to ſecure themſelves: It hath been uſed as an Argument to leſſen the Matter, That this was a little after the Act of Indempnity: Can any Thing aggravate a Thing more? Sir, theſe very Arguments turn againſt them.

We are told here, that we muſt not conſult our own private Judgments in the Matter; and we are told at the ſame Time, if there were two Witneſſes that we did not believe, we muſt not find him guilty. We are told of a Judge that though he knew a Perſon to be not guilty; yet it was a commendable Action in him that he condemned the Man, but that hath been very well anſwered already, and I ſhall not meddle with it further; only this I will ſay, That I never will in any Caſe be a Jury-man or a Judge, where the Convictions of my own Conſcience ſhall not govern me; but an Evidence that I do not believe. And becauſe that Story was told you, I will tell you another, that I think more commendable: And that was a Man was Try'd for a Murther, and there was poſitive Evidence againſt him; the Jury went out, and ſtaid a great while: There was Eleven againſt One for finding him guilty; but at laſt the One almoſt ſtarved them, and they brought the Man in not Guilty: The Judge ſent for the Gentleman, and deſired to know his Reaſons for differing with the reſt: And at laſt, upon Aſſurance that nothing ſhould be done to him, Why, ſays he; Would you have me find the Man guilty, when I was he that killed the Man, and he was innocent?

Then, Sir, if you take the Evidence as it is; I think, firſt, here is Capt. *Porter:* I do not find any Body excepts to him; and his Evidence hath been approved of by ſeveral Juries, and ſeveral Perſons executed upon it; and nothing Ma-

terial hath been objected againſt it. I will not ſay, That Sir *John Fenwick* hath owned a great deal of this himſelf: He hath given every body ſatisfaction, how far he ſtands guilty in his Opinion; but it is brought ſo far home, that there was Sir *John Fenwick*'s own Letter was to convey him abroad. Here hath been attempts upon other Perſons; you hear what hath been done by the Sollicitor. They ſay, he was not his Sollicitor at that Time. Here are very pregnant Circumſtances; one Gentleman ſaid, you ought not to make uſe of *Goodman's* Evidence here; and yet he could make uſe of every Thing to diſparage him; for he could ſay, there were three poſitive Witneſſes againſt him.

Now when 'tis ſo notorious what Parties there are for King *James?* and we find Perſons plotting in every Part of the Kingdom: When you have an open Invaſion before you, and when Deſigns are laid againſt the King's Life every Day; if this be not a Time to exert an extraordinary Power, I ſubmit it to you.

Sir *Rich. Temple.* Sir, I ſhall not trouble you with any Thing that hath been offered to Day. That which calls me up is the Danger of the Precedent you are about to make, and the Arguments that have been uſed to ſupport it; which I think, are more dangerous than that. I muſt confeſs 'tis a new Doctrine to me, That the Laws that are made by the Parliament, are to be no rule and guide to this Houſe. Sir, the Birth-right we have, is in our Laws; and I did ever think till now, That the Laws were not only made for *Weſtminſter-hall*, but for all the Subjects of *England*; and eſpecially, that they were to be a Rule to the Parliament that made them, till they ſhould think fit to alter them.

Here have been great Miſtakes between the Power of Parliament and the Juriſdiction of it; the Power of Parliament is to make any Law, but the Juriſdiction of Parliament is to govern it ſelf by the Law; and this, give me leave to ſay it to you, hath been the Opinion of all your Anceſtors, and the Method they ever uſed: Shall we make a Law here in a particular Caſe againſt all the Laws of *England*? 'Tis *ultimum remedium & peſſimum*; you may uſe it in a Caſe of abſolute neceſſity, but otherwiſe it may be a Precedent to overturn all.

There are ſeveral Things in making this Precedent, that overthrow all the Laws and Liberties of *England*. Firſt, you are paſſing Judgment upon a Man upon one Witneſs; I have heard a ſtrange Debate to Day, That there was but one Witneſs in Treaſon, before the Statute of *Ed.* 6. you know, that in Caſe of Treaſon, there was by the common Law required two Witneſſes; for if there was but one, the Party might demand Tryal by Battle, and that was the common Law of *England*.

There is another Thing that is extraordinary; here you are going to paſs an Act without any Tryal at all? for to ſay this is a Tryal before you the Commons, is a miſtake, you never did aſſume a Juriſdiction of Trying any Perſon, nor can you: You may for your own Information hear what can be offered, but 'tis not a Tryal where Witneſſes are not upon their Oaths. There is no manner of Power or Juriſdiction can be pretended for you to Try; in that is a ſecond Thing. All the Bills of Attainder you have had, have been in three Caſes, where the Perſons have been either Dead or Fled, or have been without the Compaſs of the Law, and could not be brought to anſwer: And you have had ſome Bills of Attainder after Tryals had in *Weſtminſter-hall*; but never a one of thoſe have been called Tryals, but they have been generally reverſed; and for what? They tell you, That they have been reverſed by one Party and another Party: It was in the ſame King's Reign, in *Rich.* 2d's Reign; they were forward and backward, as the Court Party or the Country Party were uppermoſt.

There is another Thing in this, that I think of a moſt dangerous Conſequence; and that is, that you are for making way, for what I know, by this Precedent, for a Rack, for ſo 'tis ſaid; this is to force a Man to be an Evidence. Why, give me leave to ſay to you, 'tis a new Way not known in *England*, that you will hang a Man unleſs he will Confeſs or give Evidence; but I think 'tis ſomething more than a Rack, for here is hanging, drawing and quartering in the Caſe; and I do not think this Proceeding will make him an Evidence with any Credit or Reputation to this Houſe; nor am I of Opinion that he can diſcover any Thing worth ſuch a Precedent.

Now give me leave to ſay one Thing as to the Juriſdiction of Parliament. It hath paſſed here for Current, That the Parliament hath a Power to declare what they will Treaſon, though ſo by no other Law; 'tis the greateſt Miſtake in the World; I heard a great Debate upon this, upon my Lord *Clarendon*'s Caſe, and 'tis plain, that Statute relates only to Caſes brought from inferiour Courts to Parliament; for it ſays, That if any other Caſe ſuppoſed Treaſon, which is not in that Statute ſpecefied, doth happen before any Juſtices, the Juſtices ſhall tarry without going to Judgment of the Treaſon, till the Cauſe be ſhewed and declared before the King and his Parliament; Whether it ought to be judged Treaſon, or other Felony, I ſpeak to the Juriſdiction that the Parliament has by that Statute. 'Tis, that if the like Treaſon (for at common Law there was a great many Treaſons) ſhould fall out, and be brought before inferiour Courts, of which they doubted, whether they were Treaſons or no; then they ſhould be brought before the Parliament to judge whether they were Treaſons or Felony: But how ſhall they judge? By the Laws in being. And who is this judgment in? Not in the Parliament by Bill, but only in the Houſe of Lords: Much leſs is it' That you may judge that to be Treaſon in this Houſe, that was not ſo by the common Law before. So that give me leave to ſay, therefore there is no ſuch Power reſerved to the Parliament, to declare any Thihg Treaſon that is not Treaſon before.

I muſt ſay, 'tis of the laſt Conſequence, that we ſhould make a Law in a particnlar Caſe to take away from him all the Liberty that belongs to a Subject: Some Gentlemen talk of the great Favour he hath had at this Bar; I know not what to think of it; I am ſure you allowed the King's Council ſuch Priviledges as I never ſee before, and that was to offer that for Evidence, that every body acknowledged was not ſo; and I do not think any body would think it a great Favour to be heard in this manner, eſpecially to Things not in the Bill.

'Tis ſaid every Man muſt go according to his private Opinion, 'tis not ſaid Judgment neither; the Inſtances that have been given, are of a quite different Nature: A Man is not to give his Judgment againſt his Kuowledge; I think that Judge

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ought rather not to have try'd the Cauſe at all, but if we ſit here to judge, we ſit to judge him according to the Law of *England*, and then we muſt judge him according to legal Proof: Will you ſit upon a Judgment that is not only not tyed to the Rules of *Weſtminſter-hall*, but is not tyed to the Laws of the Land; and attaint a Man without a legal Tryal, without legal Evidence, and upon one Witneſs, when the Law ſays you ſhall have two; and after all, ſay 'tis a reaſonable Proceeding? I know not how it came about, that the Act of Grace was paſſed, it did not riſe from this Houſe; if it hath any ill Conſequence, let them anſwer for it that were the Cauſe of it.

They ſay the Government is at Stake, becauſe the Plot hath not been found out to the Bottom: That is not our fault, this Man hath been long enough in Cuſtody; if he hath trifled with the Government, I am ſorry he hath impoſed upon them; but if it be ſo, I think there is nothing in this Caſe of that Conſequence, as to make you make this Precedent.

Sir *Will. Strickland.* Mr. Speaker, I would not make uſe of any ill Precedent: and yet if the preſent Occaſion, and the Neceſſity of the Kingdom required it, I would make a Precedent; I am glad the ſeveral ill Precedents are avoided in this Caſe, and I would be bold to ſay, whether this Gentleman ſuffers or no, no Man can ſay that he hath been hared to Death by Council.

Sir, I ſhould be as tender in Point of Blood as any Man; but I do think, if the ſafety of the King and Kingdom is concerned, 'tis not one private Man that we muſt have reſpect for, ſo as to let the Publick ſuffer by it: I do think, that upon this Occaſion there have ſo extraordinary Things happened as have hardly happened in former Ages; that One who is known to be in a Conſpiracy to bring over a French Power with a popiſh Army, to deſtroy our Lives and Liberties, after his Tryal has been deferred by his Equivocations and Pretences to make a great Diſcovery; when he comes to make it out, he accuſes the beſt of your Friends; and this is only an Artifice to get Time till they could get the Evidence out of the Way. I think, if you do not take notice of it, and let the Legiſlative ſupply that Defect, it may be of ill Conſequence, and may encourage any one to commit the worſt of Miſchiefs, upon hopes, that if they can get the Evidence out of the Way, they ſhall go unpuniſhed.

Sir *Francis Winnington.* I ſhall trouble you but a little while, it being late; but Gentlemen ſaying 'tis an extraordinary Caſe, I ſhall give my Reaſons why this Bill ought not to be committed; for every Member here now, is a Judge, and he muſt take the Blood of this Gentleman upon him in Judgment, either to condemn or acquit him; and I muſt confeſs, I have very much admired, to hear that Doctrine preach'd that every Man, as he is ſatisfied in his private Conſcience, ought to judge this Man guilty. I deſire to know by what Authority we ſit here? We ſit here and have a legiſlative Authority, and 'tis by the King's Command we come together; but at this Time we are judicially trying this Man for his Life, and therefore I humbly conceive, That we ought to proceed *ſecundum allegata & probata*, and for any Man in his private Opinion, to ſay he his guilty, he does not act by the Commiſſion he ſits here: for to tell you of the *Lancaſhire* Plot, or that a Man ſhall not be choſen hereafter, ſeems to be Arguments to inflame, but nothing to the Queſtion.

Now, Sir, I will humbly offer to your Conſideration, and the Judgment of the Houſe, why I think we cannot judicially condemn this Man, for I think the Queſtion of Commitment to be the ſame as of his Life and Death.

I do agree upon all the Precedents good and bad that have been cited, and doubt not but in extraordinary Caſes, 'tis in the legiſlative Power of the Parliament to look after the Safety of the Kingdom, but I ſhall offer why this does not come to that Caſe.

I humbly conceive in this Caſe, for I will not ſpeak to the Rules of *Weſtminſter-hall*, but upon the right Reaſon of the Thing; for if it be Reaſon in *Weſtminſter-hall*, it may be ſo here, and that ought to overcome every Thing: But whereas Gentlemen ſay you have one Witneſs; I do not apprehend you have one good Witneſs, and I will give you my Reaſon for it; for you muſt take Capt. *Porter* upon his Parole, and conſider what he ſays upon his Word; and then I do appeal, if you take what he ſays upon his Word, Whether ever they did know that a Bill of Attainder proceeded againſt any Man upon bare Affirmation? No; in that Caſe you ſhould have turned it into an Impeachment, if the Thing looked probable, and then you had the Witneſs upon Oath; and the ancient Method of Bills of Attainder uſe to be firſt by Impeachment of the Perſon, and then to turn it into a Bill of Attainder.

Then ſee what is it that is inſiſted on by the King's Council, and recited in the Bill, That there was a Bill of Indictment found by the Oath of two Witneſſes, that is *Porter* and *Goodman*: Under favour, I think they are not to be counted as Witneſſes in the Point; and I offer this as a Reaſon; and, I think, 'tis natural Juſtice in all Courts of the World, That if a Man be accuſed as a Malefactor, he hath the Liberty to croſs-examine the Perſon that accuſes him. Now we very well know, that in Caſe of Bills of Indictment, when they are found by the Grand-Jury, they never admit the Priſoner to put croſs Queſtions, becauſe the Bill of Indictment is but the Accuſation; and if an Accuſation be enough, who can be Innocent? Why, then if it be ſo, then this Oath that was given to the Grand-Jury, is not ſuch an Oath upon which you can put ſuch a Value.

Then, Sir, go to the Paper of *Goodman*, which you would read, and conſider the validity of that; *Goodman* being now abſent, the Priſoner hath no opportunity to croſs-examine him; and I beſeech the Houſe to conſider the ill Conſequence of it; any Miniſter of State may come and get an Examination before a Juſtice of Peace, or Secretary of State, and the Man is conveyed away, and a Bill of Attainder is clapped upon his back, and this ſhall be read as Evidence againſt him. He is but half a Witneſs, and a Witneſs upon an Accuſation, not upon a Tryal.

Then come to Sir *John Fenwick*'s particular Caſe; Sir *John Fenwick* is indicted, Iſſue is joyned, and he hath notice of his Tryal: and one of the Witneſſes goes away, no Man can tell upon what account he went; I may believe why, in my private Opinion, but that is not our judicial Knowledge: Then if that be ſo, was it ever known, that when any Man was indicted, and iſſue joyned, becauſe his Tryal was deferred, therefore a Bill of Attainder muſt be brought againſt him? Here are Plots againſt the Government, and it may be forty may be taken up for it; and as to twenty, there

there may be two Witneſſes, and the others may have the good luck to have but a ſingle Witneſs againſt them; will you have Acts of Attainder againſt all the reſt? If this had been an extraordinary Caſe, wherein the Government had been particularly concerned, it might have weighed with you; for no Man can ſhew me any Precedent of a Bill of Attainder, but where there was open Act of Hoſtility, or Men of great Relation and Power were concerned to Subvert the Government: But what is Sir *John Fenwick*'s Caſe? He is in Cuſtody, and the Plot is detected; if he was run away, you might ſtill ſuppoſe he was plotting againſt the Government, becauſe he was fled from Juſtice: Gentlemen ſay the Government is concerned, ſo it is in every Felony and particular Treaſon, but muſt there therefore be a Bill of Attainder to puniſh it? When there is a Bill of Attainder, it muſt be from an immediate Danger that threatens the Government Eſtabliſhed, that ſuch a Man is Attainted: But I do not ſee that Sir *John Fenwick* hath any of theſe Circumſtances. All Men agree, That this is an extraordinary Way of Proceeding: Then the Queſtion is, Whether Sir *John Fenwick*'s Caſe be extraordinary? or whether he be more than a common Malefactor that is in a wicked Conſpiracy? I do not ſee that this Caſe of Sir *John Fenwick*'s is ſo extraordinary, that if he be not hanged, the Government muſt fail.

And, under favour, a Precedent when 'tis once made, I know not what Time may produce from it: It may be, after the Death of his Majeſty, that came to reſtore our Liberties, we may have wicked Members, and Members choſen as in *H. 6.* Time. It may be the Condition of every Subject in *England*. The Power of Parliament we muſt govern by Reaſon and common Juſtice; and if there be not ſo urgent Neceſſity to uſe this extraordinary Remedy, becauſe it may be dangerous to Poſterity, Therefore I am againſt this Bill.

Sir *Tho. Littleton.* The worthy Gentleman took notice, That the *Lancaſhire* Plot, and ſome Words I uſed, were uſed only to inflame: I can't ſo well gueſs at his Thoughts, but I have heard him ſeveral Times bring his Wife and Children into his Speeches, to no purpoſe at all.

Sir *Francis Winnington.* I have a Wife and Children, and that Gentleman none; therefore I think I may make uſe of that Expreſſion.

Sir *Tho. Seymour.* Mr. Speaker, I have attended your Debate with the beſt Attention I can; and I have heard a great many Arguments, and ſome very wild Ones too. I hope, how frightful ſoever Things have been opened, they will not lead your Underſtanding out of the Methods and Rules of Juſtice: I will not take upon me to tell you, what is nothing to the Queſtion; as that Treaſon is a very great Crime, or that the Parliament hath an unbounded or unlimitted Power, and are not tied to the Rules of *Weſtminſter-hall*; I think that is no Part of the ſubject Matter before you.

That nothing bounds or can limit the Parliament is what every Body does admit; but 'tis the right Application of that Power which is now to be conſidered of: For you may Judge the Priſoner, and others will Judge you. The World will Judge you, if you do not apply that Power a-right.

For my part I ſhall avoid, as much as can be, the ſaying of any Thing that hath been ſaid; and therefore I hope you will believe that my Diſcourſe muſt be very ſhort: But that which does move me in this Queſtion is in ſhort this, That I do not give my Judgment to condemn any Man otherwiſe than the Law directs how, and upon what Terms, I muſt give it; If the Law hath ſaid that Treaſon is not to be Treaſon, unleſs it be proved by two Witneſſes, I am never to give my Judgment in that Caſe when there appears but one.

And this I take to be the ſtate of the Caſe, not to enter into Matters of Precedent of Attainders; for thoſe are only Inſtances of ſo many Facts that have been done. And in all thoſe Inſtances that have been urged and quoted, When Times have been ſedate and quiet, Marks have been put upon them; as was hinted by a Gentleman that ſpake very Ingeniouſly upon this Subject at the beginning of this Debate; I ſay, Marks have been put upon them for you to avoid, but not to imitate. I take it, that the Law hath determined that there ſhall be two Witneſſes to the Proof of Treaſon, and there is no Treaſon that hath not two Witneſſes to it. There is but one Attainder that we meet withal in ſacred Hiſtory, and that is the Attainder of *Naboth*: he was attainted, and we know what induced that Attainder; he had nothing to object as to the Formality of the Proceedings there was ſet up againſt him: And though *Jezabel*'s Letter had diſpoſed the Rulers to deal by him as they did, yet there were two Witneſſes that did appear againſt him.

I take it, that two Witneſſes are requiſite for the Knowledge of the Truth, that you may make a right Judgment whether they ſwear right or no. I will give you but one ſmall Inſtance more; I muſt tell you *Suſannah* had been but in a bad Condition, if one Witneſs and circumſtantial Evidence would have made her guilty.

A Gentleman here ſays, 'tis Apocrypha: But that which weighs with me is, that there may be Inconveniences on one ſide, and there are no Inconveniences on the other. I know not what may be the Conſequence of this Precedent, nor where it may bring you: I know the Conſequence if Sir *John Fenwick* be not executed upon a Bill of Attainder: for no Body will believe there is a Neceſſity for this extraordinary Remedy to be applied for an Offence, a Year and half after he hath been Indicted and Arraigned for it, and they might have proceeded to his Tryal. And I know not whether 'tis his Fault that they did not; for it was not in his Power to prevent it: And if you, upon every Occaſion, come to ſupply the Defects of them that are remiſs in the Government, it will make them more ſo.

As to the Matter of Precedents, Why; It may fall out, that by this Precedent an innocent Man may be puniſhed, and then we that make this Precedent are guilty of his Blood; and if he ſuffer never ſo remotely, it will be required of us, if they proceed from this Precedent. Now, if Sir *John Fenwick* be not Executed, unleſs in a legal Way, What is the Conſequence of That? Is it that Sir *John Fenwick* ſhall go unpuniſhed? Though they are deprived of one Evidence that would make it Treaſon, he may be puniſhed for a Miſdemeanour and impriſoned for his Life; and I had much rather he did languiſh in that Condition, and I am ſure it is much ſafer for you, for no Inconveniency can ariſe that Way; and I take it, That when thoſe that are our Guides diſpute which is the Way, we are to take that which is ſafeſt.

The Learned have diſputed, Whether this Matter, as now it is charged upon Sir *John Fenwick*, be Treaſon? I will not take upon me to determine it, they differ about it; and when they can't determine

termine it, will you by a Queſtion determine it abſolutely?

Upon the Whole, there hath been ſo much ſaid by the Council for the Priſoner, and ſo little ſaid by the Council againſt him, and ſo few Arguments urged againſt him, that I muſt ſtill retain the Opinion I had, That there is not Evidence enough for you to proceed upon this Bill of Attainder.

Mr. *Boſcawen*. Sir, I deſire to give my Reaſons for my Opinion in this Matter. I have no perſonal Diſguſt againſt Sir *John Fenwick*; the great Argument for Sir *John Fenwick* againſt this Bill is, That this is an extraordinary Proceeding, and therefore ſhould be againſt an extraordinary Perſon; and in the next Place, that it is againſt the Rules of Law. The Rule of the Law is, That there muſt be two living Witneſſes: As to that Matter, Gentlemen generally agree, That 'tis within the Law of Parliament to attaint People by Bill of Attainder; but they ſay they have been often miſapplied, which I do eaſily believe, becauſe ſome have been Attainted and have not been heard; and ſome have been in tumultuous Times; but this Gentleman hath had a fair Tryal, and a Debate in this Houſe; but I would fain know, though they confeſs Bills of Attainder may be, how it can poſſibly be, if the Lawyers at the Bar ſay true, That it muſt be upon Oath, and you give no Oath?

To ſay it may begin in the Houſe of Lords; under Favour, I take it, That a Bill againſt a Commoner can't begin in the Houſe of Lords. And if you can't have Witneſſes upon Oath, you muſt have as much Evidence as the Nature of the Thing will afford; that is, you muſt have Witneſſes to convince your Conſciences in the Thing; for if all this great Aſſembly are ſatisfied in their Conſciences, that he is guilty of inviting an Army of *French* to come into *England*, I am aſtoniſhed to think that you ſhould not paſs this Bill againſt him: I think, as to this Witneſs *Porter*, they have not endeavoured to blemiſh him, but their Argument ſeems to run more upon *Goodman*'s not being preſent. I would know if there are two Witneſſes, and I do not believe them in my Conſcience, Whether I can paſs this Bill? But I appeal in this Caſe, *res ipſa loquitur*. The Thing is ſo plain, How many have been attainted and ſuffered for the ſame Crime, that have acknowledged Sir *John Fenwick* to have been preſent. There were ſeveral Members of the Houſe ſent to examine Sir *John Freind* and Sir *William Parkyns*, in *Newgate*; and they were ſent with this Intention, That the Houſe would interceed with the King for a Pardon for them, if they diſcovered the Full of the Plot; (it was not the Death of Sir *William Parkyns* and Sir *John Freind* that was aimed at, but the Preſervation of the Publick) and when they were examined, they did acknowledge, that they were privy to the Calling in of the *French*, and that Sir *William Parkyns* was to have a Troop of Horſe; there was to be 2000 Horſe; but he would not redeem his own Life with the Blood of others. Now I do take it, that there is Evidence againſt Sir *John Fenwick* ſufficient, in a Parliamentary Way, to attaint him.

The Gentleman ſays, the Conſequence of throwing out this Bill, would be nothing, and that Sir *John Fenwick* is a little Man; I agree he is, but 'tis the Conſequence of bringing in a *French* Army that is to be conſidered: Would you pave the Way for them to come over, and make their Entrance eaſie? I hope the People of *England* are concerned in the Caſe, as well as their Wives and Children: If you let him go, what will be ſaid? I have not heard one ſay, That he believes he is not guilty; there is none but think him guilty, and yet will you let him eſcape? What Encouragement will this be to your Enemies? He hath not denied the Matter himſelf. Nay, he hath not brought one Gentleman to vindicate him, That he is a Man of a Behaviour, not to be believed to be guilty of ſuch a Thing, which was done in other Tryals.

I deſire you would conſider what the *French* King ſaid of his Brother King *James*; how could he think to bring in Popery with a Proteſtant Army? I am ſure the Bringing in of a *French* Army muſt be for the Deſtruction of the People of *England*, and the Proteſtant Religion, and will bring your People to go in wooden Shoes: 'Tis the Example of this Thing you are to conſider. It was ſaid at the Deſtruction of *Carthage*, That the Commonwealth was always to be minded: I think you ought always to be mindful for the Preſervation of *England*; and I believe he is guilty, and I am therefore for the Bill.

Lord Digby. I ſhall trouble you but with a Word or two: I ſuppoſe as long as we act by the known Rules of Juſtice, and the Laws of our Land, we ſhall not need to fear any Cenſure in our own Kingdom, or any where elſe; but 'tis a very uncertain Thing for Gentlemen to be Judges in the Caſe of Life and Death, without any Rule to walk by; a great many will not allow us any Rule at all: I always took our Rule to be the Law of the Land, and that even our ſelves are bound by the Laws our Anceſtors have made, till we think fit to repeal them; and I am confirmed in this Caſe by one particular Argument from the Bill of Treaſon that paſſed laſt Seſſions; in which there is a Clauſe, That it ſhould not extend to future Parliaments. The only Argument for exerciſing of this Power, is the extraordinary Caſe of this Gentleman. When a Gentleman ſpeaks of the Power of Parliament, I take it to be the juſt Power of Parliament; I think a Man may ſay a Parliament can't do what they can't juſtly do. But all Gentlemen allow, that this Power ought not to be exerciſed but in an extraordinary Caſe, wherein the Government is nearly concerned: I believe very few but think, that if it had not been for the Vindication of ſome particular Gentlemen, we never had had this Matter before us; and then I will leave it to Gentlemen to conſider, if the Government can be in ſo much Danger if Sir *John Fenwick* does eſcape.

Mr. *Brotherton*. Mr. Speaker, I perceive the Queſtion whether this Bill ſhall be Committed, ariſes very much upon a Suppoſition that ſeems to be granted, That there is no other Law to try this Perſon by; and it hath been hinted, That before the Statute of *Ed.* 6. one Witneſs was ſufficient: Now, if I ſhew you that here is a Law in being, and hath continued for ſeveral hundred Years, whereby a Man may be tryed, and that by one Witneſs, I think it is ſomething that hath not been ſpoke to yet.

Sir, I ground my Reaſon and Opinion upon the Authority of the Law, and upon the Hiſtorians of all Times, who agree in the Thing, and come down to my Lord *Coke*, which is Printed by Authority; and he is expreſs, That where there is but one Witneſs, he treats of what Witneſſes are neceſſary, and he tells you two Witneſſes were required by the common Law for Treaſon, if the Perſon was

tryed by a Jury; but ſays he, if there be but one Witneſs in Caſe of Treaſon, he ſhall be tryed before the Conſtable and Marſhal. And in treating of the Statute of *H.* 8. which does appoint how Treaſon beyond Sea ſhall be tryed; ſays he, that is only where there are only two Witneſſes; but if there is but one Witneſs, he ſhall be tryed before the Conſtable and Marſhal; becauſe, ſays he, the Statute of *Hen.* 8. does not take away that Tryal before the Conſtable and Marſhal; and for that, Sir, there are ſeveral Precedents in this Caſe, of Perſons that have been attainted by a Court Marſhal: And if the Accuſer was vanquiſhed, he was to ſuffer the ſame Judgment the Defendant was, if he was found guilty. I am upon a Gentleman's Life, and never was ſo before, and deſire to be never ſo again; there have been ſeveral Precedents I ſay in this Caſe, and my Lord *Coke* is expreſs in the Point; and I deſire any Gentleman to ſhew me any Law that hath repealed this.

In Caſe of Murther; ſuppoſe a Man be wounded upon the Land, and die upon the Sea, and I could ſhew ſeveral Caſes where the common Law can't try a Man by Jury, but he ſhall be tryed by the Cuſtom of Merchants before the Statute of *Ed.* 6. If a Man was wounded in one Countrey, and died in another, he could not be tryed. That which I aim at, is to ſhew you, that though the common Law ſhould fail, yet they need not come with a Bill in this Caſe: If two Engliſh Men beyond Sea fight, and one kill the other, it can't be tryed by the common Law; How then ſhall it be tryed? It muſt be tryed by the Court Marſhal. It was Sir *John Ameſley*'s Caſe in *Rich.* 2d's Time; and *Wells*'s Caſe, and Lord *Herbert*'s Caſe, in *H.* 6. Time, who (there being but one Witneſs) was Accuſed before the Conſtable and Marſhal.

Memorandum. [*Mr.* Brotherton *was here interrupted by the great Noiſe the Houſe made upon the Novelty of the Argument, and did not go on further with it*]

Mr. *Paget.* Sir, I attended to the Debate of this Day, and have not hitherto troubled you my ſelf, becauſe I did expect to be better informed by this Debate.

I think the Subſtance of the Debate of this Day, hath been not ſo much to ſhew us by what Rule we are to go, as to ſhew us that we have no Rule to go by but our Judgments. Sir, I never had the Honour to ſit in Parliament before this Time, and therefore can't quote Precedents of what hath been done in former Parliaments; others have taken a great deal of Pains to ſhew you, that it is in the Diſcretion of Gentlemen, and they are only to be ſatisfied in their Conſciences; I am not fond to hear my ſelf ſpeak, and therefore I hope I ſhall be favourably heard at this Time, and I do think I have the more Reaſon to ſpeak at this Time, from ſomething that fell from a very honourable Gentleman at the Bar: If I do miſrepeat him, I hope he will excuſe me, for I do not do it with an ill Deſign; but I think his Words were to this Effect, That he did not know, but if it was known in the Country that Gentlemen did give their Judgment againſt paſſing of this Bill, it might hinder their Election in future Parliaments. Sir, ſince there ſeems to be ſo great ſtreſs upon our determination in this Matter, I hope I may at this Time ſhew you my Reaſons why I can't come up to agree in this Bill; and I ſhall ſubmit it to them, whether they will do me the Honour to chuſe me again. I muſt confeſs, I do think this is as nice a Caſe as I can pretend to give my Opinion in; and as it is ſo, I ſhall deſire the beſt Aſſurance of the Truth of this Matter, before I give my Opinion for the paſſing of this Bill.

Sir, you have had before you one Evidence, I will admit him to be as much as a ſingle Evidence can be; as to the Paper of *Goodman*'s Examination, I have heard that, and other Matters too, which I ſhall not repeat: But I do remember, that in the Debate of Yeſterday, it was not inſiſted on to be Evidence: and if not ſo, I ſhall only take the Matter as depending before you upon one Evidence only.

Sir, it is true, I believe this Houſe, as to its Legiſlative Proceeding, is not tied by the Methods of inferior Courts: But I hope I ſhall be excuſed, if in the Methods of Proſecution and Conviction of Offenders, after they have been preſcribed by the Wiſdom of the Parliament, I hope I ſhall be excuſed, if I believe this Houſe can't take away any Perſon's Life upon leſs Evidence than inferiour Courts could do.

And, Sir, I ſhall not enter into any very long Vindication of my ſelf, and my Zeal and Willingneſs to ſerve the Government; I never was imployed in any other Government, and I think my Actions have been ſuch, that no Body can inſtance in any one Thing that hath looked otherwiſe; and when I have ſaid this, I ſhall trouble you no further about that; But there hath been ſo much ſtreſs laid upon this Bill, that whoſoever ſpeaks againſt it ſeems to ſpeak againſt the Government; becauſe it is ſaid, the paſſing of it is ſo neceſſary for the Support of the Government. And I was the more willing to offer you my Reaſons, becauſe, as the Nature of this Debate has been, I can't ſatisfy my ſelf where my Judgment and Opinion ſhall reſt: For if it be ſo, that you are not tied to have as much Evidence as inferior Courts, and, as they ſay, one Evidence is enough, and my Judgment is to be guided by Papers; then they, without any Evidence, may be enough to ſatisfie: And if you take up with leſs Evidence than inferiour Courts, I can't come to declare how little Evidence may take away a Man's Life.

As to the Priſoner I know him not; but I think this Bill is for all that he hath to loſe, and is for all the beſt *Engliſh*-man can loſe upon the like Occaſion.

Sir, I ſhall be very tender in giving my Opinion for the Bill, unleſs it was very clear to me that it was reaſonable. Truly I have heard very little of the whole Plot, or of this Matter that hath been examined, or for which others have been executed; my Life has been generally in the Country, and I have not had the Curioſity to buy the Tryals; and as this is the firſt Perſon that hath been called before me, to give my Judgment on, I hope I may be excuſed for taking this Liberty, upon ſuch Evidence as appears before us, to tell you, I can't give my Conſent to this Bill.

Sir *William Lowther.* Sir, you have had a very long Debate in the Houſe, and long Diſcourſe from the Bar; and though the Council was directed that they ſhould not diſpute the Priviledges and Authority of this Houſe, yet, as far as my Judgment carries me, their whole Diſcourſe was againſt it: And moſt of the Gentlemen that have ſpake againſt the Bill, it hath been becauſe it hath not been adequate to the Proceedings in *Weſtminſter-Hall*, becauſe there hath been but one Witneſs. Sir, if there had been two Witneſſes this Houſe had not been troubled with it: It is a Caſe of a very extraordinary Nature,

ture, and ſo required an extraordinary Proceeding.

It hath been queſtioned by ſome Gentlemen, Whether one Witneſs be ſufficient in this Caſe, or no? Which I wonder at, ſince a great many have been Convicted upon his Evidence, and every one of them has Confeſſed, which ſhews it to be a notorious Truth.

There is another Inference they draw from the Proceedings here; becauſe a great many of thoſe Precedents of Attainders have been reverſed, and thoſe with Notes of Ignominy. If they did conſider the Times they were made in, and the Times they were reverſed in, there might be a great deal of Cauſe for it: We find that it was contrary Factions that reverſed them, and that makes it never the worſe. And truly, Sir, I do not know but where Circumſtances are ſo notorious, but they are *tantamount* to a ſecond Witneſs, as I have heard in *Weſtminſter-Hall*, and in Caſes of Life too. If a Man be murthered, and two in a Room, and one comes out with a bloody Sword, the Law does preſume that Man murthered him, though there is no particular Evidence that he murthered him, but only this Circumſtance; and yet the Man's Life is concerned in that Caſe. So that upon the Whole, it appears to me that he is guilty, and, I think, nothing can be plainer.

There is another Circumſtance, That he fled for it; and that is a Preſumption of a Man's guilt: For a Man loſes his Goods if he flies for Felony.

Mr. *Harley*. It would be very unreaſonable and impertinent to trouble you long after ſuch a Debate; I ſhall avoid Repitition of what hath been ſuggeſted to you, much better from other Perſons than would have been from me.

I own 'tis a Caſe of great Concern, and 'tis my Misfortune that I ſhould ever ſit upon a Thing of this Nature; but I will diſcharge my Conſcience always, and give what Arguments occur to me, why I am againſt this Bill.

Gentlemen have been pleaſed in their Arguments to enter upon the Debate of your Power and Authority, and have made that a part of their Argument; but I think, with ſubmiſſion, we need not diſpute that at all. It is admitted, that there have been Bills of Attainder paſſed formerly, and your Authority is not under Diſpute; for the Legiſlative in all Nations have a Power lodged in them, for the Safety of the whole.

But your proper Enquiry is, Whether this is ſuch a Caſe as you ought to exerciſe this extraordinary Power; *omne regnum ſub graviore regno:* Though you have this abſolute Authority, yet 'tis to be executed by the Rules of Reaſon, and by the Rules (for ſuch there are) of Eternal Juſtice; and I look upon this as one that is inviolable, That no Man can forfeit his Life, in ſuch a Caſe as this is, without two Witneſſes. I muſt adhere to that, becauſe I have heard nothing in this Debate that can make me quit that Maxim: And 'tis ſuch an Antient Land-mark, that I will never draw a Curſe upon me, and my Poſterity, for removing of it. I beg leave that I ſpeak with this Earneſtneſs to you.

Gentlemen have been pleaſed to make it part of their Arguments, The great Danger the Government is in, if this Bill does not ſucceed. I will not uſe many Words, but I think that Argument ought not to be taken in the Groſs, but to be examined, Whether this Argument, of the Hazard of the Government, is of equal Poize for you to break the Eternal Rules of Juſtice. I won't quote the Caſe before, every Gentleman knows it, (though there was two Witneſſes in that Caſe to put an innocent Perſon to Death) where it is urged, the *Romans* will come and take our State and Nation. But with how much Reaſon that was urged, every Body knows; and how far Government is now in Danger. Let us conſider, Is this Gentleman out of your Power? Is the Government in Danger of a Man that is your Priſoner? Is he in open Rebellion againſt you, if this Law does not paſs? If you have not your Hands in this Blood? Is he not under the Power of the Law? Did not he tell you ſo himſelf.

Every Gentleman ought to have a Zeal for the Government, and I wiſh it was as viſible in every Thing elſe; but if that be ſo, give us leave alſo to ſpeak with Zeal for our Liberty, and Antient Conſtitution. The Argument is turned two Ways; on one Side you are told, That this probably may make him Confeſs ſomething; and by others, he is to be made an Example of Puniſhment. This is the firſt beginning of a Bill of this Nature; but the ſame Reaſon that leads you to this, muſt lead you to all the reſt: The ſame Reaſon that is urged for this Bill to make him confeſs, will lead you to bring in a Bill to make him a good Evidence; this every Body muſt allow to be the Conſequence of it.

How does this Bill come before you? It comes before you upon a Villainous, Scandalous Aſperſion of ſome great Men; though I know them not all, yet I have a great Value for them, and I would make their Caſe my own: But if they were the neareſt Relation I had, I would be againſt this Bill upon their Account; and let any one examine the Reaſon of it.

Sir, I won't run into Precedents; but only becauſe it hath been told you, That the Precedents were made in one Reign by one Faction, and then the Attainders were reverſed in another Reign by another Faction. There is one occurs to my Mind, which hath been touched at, and is at leaſt of Inſtruction to me: There was a Caſe in *Ed.* IIId's Time; there was the Depoſition of a King, a King barbarouſly murthered, and his Son upon the Throne; and there was the Notoriety of the Fact, for which a great Man was Attainted in his Son's Reign, and no different Title; and four Years after a Bill was brought in againſt the Earl of *March:* And one of the Articles againſt him was, That he had procured that Attainder of that Noble Lord, under Pretence of ſome Letter, or Paper, that was ſigned by him; which, if it was ſo, ſays the Record, was no Evidence.

I lay this before Gentlemen, to ſhew them how Things have turned, and Precedents that have been made very unanimouſly; but in bad Times have been turned to ſhed the beſt Blood in *England*. It grieves me to my Soul to hear of Mr. *Corniſh*, whoſe Attainder you have reverſed, to hear that quoted as a Precedent in this Houſe: 'Tis not whether two Witneſſes be the Rule of *Weſtminſter-Hall*, 'tis the Rule of right Reaſon; and 'tis a Maxim in your Law, Make what Law you will againſt the Law of God, 'tis void: And this is the Law of God, and right Reaſon.

You muſt provide for the Government, and when you can't do it by Courſe of Law, then Armies muſt do it, when the Courts are ſhut. I hope

Gentlemen will not put a hard Conſtruction upon what I have ſaid, I have done it to diſcharge a good Conſcience.

Mr. *Chancellor of Exchequer.* Sir, I am for the Commitment of this Bill, becauſe in my Conſcience I think Sir *John Fenwick* is guilty; and becauſe I think the Power of Parliaments may interpoſe in this Matter: And if they have ſuch a Power, I think they may juſtly exerciſe it in this Caſe.

Gentlemen ſay, they will not diſpute the Power of Parliament; and yet in their Arguments they tells us, we are not to proceed otherwiſe than according to the Forms of inferior Courts. And if the Parliament is not to proceed without two Witneſſes in the Caſe of Treaſon, give me leave to ſay, there is no room left for a Bill of Attainder, unleſs you will take the Buſineſs of inferior Courts upon your ſelves: And I am confident ſeveral Gentlemen, if there were two Witneſſes, would uſe it as an Argument, What have you to do with it, refer it to the ordinary Courts of Juſtice; And I am ſure that would be very reaſonable. But I do think that Parliaments have this Power, and they have always uſed it; and I believe 'tis for the Advantage of your Conſtitution. The inferior Courts are to go by the Letter of the Law, and whoever can avoid that, is to eſcape Puniſhment there; but the Legiſlative is not to be dallied with: And if the Offence be of that Nature that inferior Courts can't reach it, they can go beyond all Forms to preſerve the Government. This they have done, and upon that Principle you ſit here. Was it by the Forms of common Juſtice below, that you declared the Throne to be vacant, and King *William* to be Lawful King? Is it upon the ordinary Rules of *Weſtminſter-Hall* that his Title does depend? No, it depends upon this Maxim, That the Parliament of *England* are intruſted for the Whole, and may Conſtitute a Government for the Preſervation of the Whole. And upon the ſame right Principle that I gave my Vote to declare him Rightful and Lawful King, by the ſame Principle I declare his Enemies to be Traytors.

You are told here, 'tis according to the Law of God and Nature, that there muſt be two Witneſſes in Caſes of Treaſon: I do not pretend much Skill in other Parts of the World, I think 'tis our particular Happineſs to have this Way of Tryal; I think in any other Part of the World, if he had dealt thus with the Government, he would have had another manner of Proceeding againſt him, than to be Condemned by King, Lords, and Commons: But that is your Conſtitution, but it does not hold in other Parts of the World.

Some Gentlemen lay the Streſs of their Argument upon the ill Conſequence it may have in another Reign; I would avoid ill Conſequences in another Reign as much as I could, but our immediate Care is the preſerving of the preſent Conſtitution.

But if Gentlemen are apprehenſive, that by ſuch an Example, if King *James* ſhould return, others may be puniſhed; if we may judge what he would do, by what he hath done, he would go another way to work: If he came to *London* he would proceed as his Party did at *Dublin*, and attaint all the Proteſtants in one common Bill; that is the Precedent he hath ſet, and he will follow. And therefore in order to prevent that, and in order to puniſh our Enemies, and to preſerve our Conſtitution and Prerogative of Parliament in all Points; and becauſe I am convinced in my Conſcience he is guilty, I ſhall give my Concurrence for Commitment of this Bill.

Coll. Granvil. Sir, I would not preſume to trouble you at this time of Night, was the Debate upon a leſs Subject than it is; but ſince you are going to pronounce Judgment in a Caſe of Life and Death, and that this Houſe is above any Rules, and we have no Precedent for it, but every Gentleman is to find out private Rules to walk by; the Rule that I ſhall take to is, That I would deal with Sir *John Fenwick* as I would have Mankind to deal with me, If I was in Sir *John Fenwick*'s Place, and were Indicted of High-Treaſon, and were not allowed any Tryal, nor the Benefit of making my Defence, according to the known Laws of the Land; I ſhould think my Blood unjuſtly ſpilt, let me be never ſo guilty.

The Laws are what are ſet up for the Defence of every Man; and when once we break through them, whatever our End may be at that Time, and tho' it may in ſome manner ſeem to juſtifie us, becauſe 'tis to come at an ill Man; yet pray conſider, the beſt of Men may be come at as eaſily as the worſt of Men: And what makes me cautious is, That my Hands are guiltleſs of Blood yet, and I will take care how I begin to dip them in it. And that which will make me cautious in any Caſe of this Nature is, when I read in the Story of the late Time, That when once a Set of People had begun to dip their Hands in the Blood of my Lord *Strafford*, nothing would quiet them till they had ſtained their Hands with Royal Blood. The Lords are the common Defence between the King and the People; but the King is ſafeſt when the Laws are moſt ſtrictly obſerved.

I ſhall not pretend to talk of your Power, which hath no other Bounds but your Juſtice and Diſcretion; and what you think ſo, will, I hope, meet with Approbation abroad. And in this Caſe I ſhall always be againſt what is called a Tryal to Day: But I do not think it any; for I do think we are an unfit Court to determine this Matter. We ſit in ſo many Capacities, 'tis hard to diſtinguiſh in what Capacity we are here: Some are accuſed, 'tis hard to be accuſed, and to be a Judge at the ſame Time. I am ſure I am as much concerned as if I was accuſed my ſelf; and 'tis for my Innocence and Honour that I think my ſelf bound to ſpeak againſt this Bill. For as no Reſentment ſhall make me do any Thing that is unjuſt, ſo I fear nothing that he can ſay: And I will never go about to ſtop his Evidence, by cramming a Bill of Attainder down his Throat.

Beſides, 'tis an unfit Thing for any Gentleman who is obliged to be of Council for the King; 'tis hard for him to be ſo, and ſit here as a Judge: I think alſo to proceed in this Manner, is a diſreſpectful Thing to the King himſelf; for in this Caſe you turn the Throne of Mercy into the Seat of Judgment. The King, who ſhould have all the Ways to ingratiate himſelf with his Subjects, you make him, by this Proceeding, to pronounce the Sentence himſelf upon the Life of a Subject; and 'tis hard to offer a Bill to the King in ſuch a Manner, by which you oblige him either to reject it, (which was always look'd upon as an Hardſhip) or to paſs Sentence upon this Gentleman, which perhaps his Gracious Temper and his Mercy make him averſe to.

Sir,

Sir, 'tis too late to give you other Arguments, you have heard a great many better than I can give: But I think this Bill is unjuſt in it ſelf, and dangerous in its Conſequence, and therefore I hope you will not commit it.

Sir *Herbert Croſts*. Sir, I did not think to trouble you in this Debate, but only for the Arguments that have been uſed by ſome that ſpake lately, who ſeem to lay a great Load upon Men, according as they give their Vote in this Matter; becauſe 'tis in relation to the Blood of a Man. I have conſidered the Point, I hope, with as much Caution as any Man within theſe Walls, and hope to act with as ſtrict a Conſcience as any Man whatſoever; and ſhall be glad to be informed from thoſe Gentlemen, that have laid the Streſs ſo hard upon Religion, how they can ſhew me, that I do not as ſtrictly, as to all Points of Religion, give my Vote for paſſing of this Bill, as they would excuſe themſelves from it. I muſt agree with thoſe Gentlemen, That you are no ways bound, or limited, to the Rules of *Weſtminſter-Hall*; and therefore what was ſaid upon that, I did not think worth taking notice of: But when we are told, we are bound up by the Laws of Nature and Religion, and the Law of God in this Matter, this touches me ſo nearly, that I muſt deſire thoſe Gentlemen to ſhew me in Scripture the Law that they quote.

If it be the Law of Nature, and the Law of God, that every Man that dies muſt be convicted by two Witneſſes, as an honourable Perſon obſerved, I wonder it is not obſerved by all Chriſtian Nations and Governments, That they are not all governed by this Law; if there be any Direction from the Law of God, that no Man is to die for Treaſon without two Witneſſes, but he may ſuffer for Murther and Felony with one Witneſs. Now, I ſay, I muſt deſire the Gentleman that aſſerts it, That he would be pleaſed to ſhew me it in Scripture, and I will be entirely of his Opinion: But till I hear that very plainly proved, 'tis not within my Reading nor Remembrance; and therefore I deſire it may have no Weight. And now I am up, I ſhall give you my Reaſons why I ſhall give my Vote for this Bill.

The Reaſon that governs me, is the Preſervation of the Government, and the Common-wealth under which I live; and which I think I am in the Station wherein I ſtand bound to preſerve, by all the Rules of Juſtice imaginable. Now if your Law hath bounded inferior Courts, but have not bounded you in this Matter, though you have ſaid inferior Courts ſhall not determine and give Judgment in ſuch a Caſe; yet, I think, you are not bound up ſo here: But if the Matter be proved to my Satisfaction, I may give my Judgment according to the Evidence that comes before me, without that Reſtriction.

But, Sir, this ought not to be done, 'tis ſaid but upon extraordinary Occaſions. You were told, ſome time ſince, of the Caſe of the Duke of *Monmouth*; but it was ſaid, that he was attainted becauſe he was in Arms, and could not be come at otherwiſe: But I think this is a parallel Caſe to that, if not much ſtronger; for here is a Perſon that hath been accuſed, and fully proved to have been in Rebellion, and in Treaſonable Practices with your Enemies, to bring an Invaſion upon you, and to ſubvert your Government; and though he hath not been proved to have been in that ſingle Act of the Aſſaſſination, yet there is ſuch a Correſpondency between one and the other, that I do look upon him as equally guilty of both. Therefore this having been ſo fully proved, and the Perſon that ſtands accuſed being out of the reach of the common Courſe of the Law; What Remedy have you, but to fly to your Legiſlative Power, to attaint him upon the Grounds and Allegations of your Bill, that one Witneſs is withdrawn? And I am very well ſatisfied, and I think we may preſume 'tis by his own, or his Friends Incouragement and Procurement. And I do take this to be as reaſonable a Ground for your Bill, as any Thing in the other Caſe: And I know not what is an extraordinary Caſe, if this be not one. Is it not an extraordinary Caſe, for a Plot to be laid for the total Subverſion of this Conſtitution, and our Religion for ever, and we can't come at it to puniſh it another Way? But it hath been ſaid, the Safety of the Government does not depend upon him: If we acquit him, we are to acquit every one alike: I hope the Government does not depend upon him alone; but if you clear him, there is the ſame Right to clear any Criminal whatſoever. Sir, ſince I am brought up upon giving my Judgment in this Matter, (though I come as unwillingly as any Body to it) I muſt go according to my Conſcience; and till I can ſee ſomewhat of the Law of God, that has been hinted at, made out, I muſt go according to the Law of my Reaſon; and that is, that I muſt be for the Bill.

Lord Norrys. I will not pretend to tell you what the Authority of this Houſe is, 'tis what they pleaſe to make it: But I am ſure they will ground it upon good Reaſon; but I think the Reaſon chiefly given for the Commitment of this Bill, leaves you a Latitude to do what you pleaſe, and give no Reaſon at all; for it is only to ſay, I am convinced in my Conſcience this Man is guilty; no Matter upon what Proof, no Matter whether any Proof or not, you may believe it from his Life and Converſation, and the Company he keeps, or from his Intereſt; and that may be Argument enough to find a Man guilty. But till I know a Reaſon better grounded than this, I cannot be for the Commitment of this Bill.

Sir *Chriſtopher Muſgrave*. I am ſure at this Time of Night I am unfit to ſpeak in ſo great a Matter; I muſt confeſs I ſhould not have troubled you, if it had not been in the Caſe of Blood.

You have had a great Debate before you of the Power of Parliaments, and that hath been ſufficiently argued; and I have not Learning enough to give you any Precedents that have not been already quoted: But every Body does agree in this, That what Power you have of this kind, is not to be exerciſed but upon extraordinary Occaſions. Now I would be glad to know, What this extraordinary Occaſion is?

Every Body allows, That Treaſon is the greateſt Crime a Man can be guilty of; and the Charge of this Gentleman is High-Treaſon: But therefore in this Caſe, muſt you exerciſe this Authority? Pray wherein does this Caſe differ from any other Caſe of High-Treaſon, that any other Perſon will be practiſing againſt the Government? All the Difference I can make of it, conſiſts in two Points; the One is, that he hath prevaricated with the Government; and the other, That Gentlemen ſay he hath been a Means of *Procraſtinating* his Tryal, in which Time an Evidence hath made his Eſcape. I will allow you, that 'tis

a very

a very great Crime for any one to aſperſe ſo great Men as he hath done; but I would be glad to know, whether there being ſuch an Ingredient, it be ſufficient to attaint him upon High-Treaſon upon that Account.

Then as to that of a Witneſs being gone, Gentlemen have ſaid, They are apt to believe, and there is great Preſumption that he hath been the Occaſion of this Witneſs being gone. Is that an Ingredient ſufficient, though at preſent it hath not been proved to you? But if it had been proved, I ſhould not however think that is Treaſon; then if this be the only difference between this Gentleman, and any other Perſon that ſhall be practiſing to ſubvert the Government, I would know, if there be but one Witneſs againſt any Man, for Conſpiring againſt the King, if they may not have recourſe to this Precedent, to proceed againſt him by Bill of Attainder? For the Argument is, Whoſoever is endeavouring to ſubvert the Government, provided there be but one Witneſs, you are obliged, by virtue of your Legiſlative Power, to bring a Bill of Attainder againſt him. And what then? Of what Uſe is the great Care and Wiſdom of your Anceſtors, and your ſelves, that where a Crime is ſo great, and the Puniſhment ſo great, there ſhould be two Witneſſes;

I was mightily ſurprized to hear Gentlemen tell you, That two Witneſſes is a Form in your Law, and a Form in inferior Courts: I never could believe that was a Form; for according to your Law, no Man ſhall be declared guilty of Treaſon, unleſs there be two Witneſſes againſt him; ſo that it gives in a manner, a Determination to the Crime; that I take to be the Caſe.

A Gentleman told you, That he was fully ſatisfied by the Proof, that this Gentleman is guilty: But how can a Man ſatisfie his own Conſcience, to condemn any Man by a Law that is ſubſequent to the Fact? For that is the Caſe; and pray ſee the danger of Precedents: It now will appear upon your Journals that you have cauſed to be read, a Depoſition of a Perſon that was abſent, taken before a Juſtice of Peace, when the Perſon accuſed, had no opportunity to interrogate him; and likewiſe that you have heard a Witneſs as to what a Man ſwore in the Tryal of another Man: All this will appear upon your Books.

And truly, I would be glad to know if another Age may not be apt to think that you took theſe to make good the Defect of another Witneſs; and then I muſt appeal to you, if you have not admitted of a Teſtimony, which according to no Law is admitted.

They ſay you are not tied to the Rules of *Weſtminſter-Hall*, nor their Forms: Is there any Law in Being, that ſays a Judge may hear a Witneſs as to what was ſworn upon the Tryal of another Perſon, to condemn him that was not Party to that Tryal. If there be no ſuch Law, then the Rule is founded upon Juſtice and common Right, that nothing ſhall be brought againſt a Man when a Man was not a Party when the Oath was made, and he had no Opportunity to examine him.

I thought it my Duty to tell you, That when you have made this Precedent, if any Perſon ſhall be accuſed of Treaſon but by one Witneſs, there will be the ſame Reaſon to proceed thus againſt him.

Then (being a little before Eleven a Clock at Night) the Queſtion was put, Whether the Bill ſhould be Committed? And the Houſe divided.

Ayes 182. Noes 128.

So it paſſed in the Affirmative, and the Bill was Committed to a Committee of the whole Houſe.

Veneris 20 die Novembris 1696.

The Houſe reſolved into a Committee of the whole Houſe upon the ſaid Bill, and ſeveral Words being offered as an Amendment to the ſaid Bill, to Import Sir John Fenwick's *being Guilty; at laſt the Words that were agreed on, were theſe* (Of which Treaſon the ſaid Sir *John Fenwick* is Guilty:) *It was alſo propoſed to the Conſideration of the ſaid Committee, Whether the Lords Spiritual ſhould ſtand in the enacting Part? But upon looking into the ſeveral Acts of Attainder, it appeared they were unconcerned in all thoſe Acts of Attainder, in the Enacting Part, and ſo the Committee was ſatisfied in that Point; and they were left to ſtand in the Bill by general Conſent; and the Bill was ordered to be reported to the Houſe; and afterwards upon the Report, the Houſe agreeed with the Committee in the aforeſaid Amendment of the Words, Importing Sir* John Fenwick's *being Guilty.*

Mercurii 25 die Novembris 1696.

The ſaid Bill againſt Sir John Fenwick *was read the third Time.*

Mr. *Methwin.* Mr. Speaker, I have not troubled you in any of this long Debate, and do it unwillingly now; but I do think it every Man's Duty, in a Caſe of this great Importance, freely to own his Opinion, and give his Reaſons for it.

The greateſt part of the Debate hath run upon two Things; the Inconveniency of Bills of Attainder, and the having them too frequent. That it is neceſſary to have them ſometimes, that any Perſon might not think they are not out of reach, if they could evade the Laws that were made to protect the People.

I think, in general, That this Bill, as every other, ought to have its Fate upon the particular Circumſtances before you; and whoever gives his Affirmative to this Bill, ought to be convinced, That Sir *John Fenwick* is guilty of High-Treaſon; and alſo, that there are extraordinary Reaſons why the Nation does proſecute him in ſo extraordinary Manner; and I do think one of theſe is not ſufficient alone.

If between the Indictment and Arraignment, or Tryal, *Goodman* ſhould have died, and there had been no other Reaſon for Attainting Sir *John Fenwick*, only the defect of his Evidence, I ſhould not have thought it a ſufficient Reaſon, though we ſhould have had an Opportunity of being informed of his particular Evidence, and believed him guilty; and if Sir *John Fenwick* does not appear guilty, I do not think any Reaſon of State, though he hath prevaricated, and behaved himſelf to the diſatisfaction of every Body; therefore, I think, there muſt be both theſe.

You

You have heard the Evidence, I ſhall not repeat it, but rather come to theſe Things that diſtinguiſh Sir *John Fenwick*'s Caſe; only thus, you have received the Evidence againſt Sir *John Fenwick*, and given him Liberty to make his Defence, and have fully heard him; which I think hath altered the Reaſon of a great many Precedents cited from my Lord *Coke*, and other Authors.

That which diſtinguiſhes this Caſe, is the great Danger the Nation was in from this Conſpiracy, and the Senſe the Nation hath had of it; and I find, by the general Opinion of all Perſons, this Danger is not at an end.

There ſeems likewiſe to be an Opinion as general, That Sir *John Fenwick* could have contributed to your Safety by a Diſcovery.

The next Circumſtance, that Sir *John Fenwick* knowing of this, and the Expectation the Nation had from him, for that he could have contributed to your Safety, hath made uſe of that to put off his Tryal; and at laſt, has made ſuch a Paper as does ſhew an Inclination to do you all the Prejudice he can, and tended to the creating of New Dangers; and by this means Sir *John Fenwick*, againſt whom there was two Witneſſes when he was Indicted, hath delayed his Tryal, ſo that now there is but one; and there is a violent Preſumption, That this Perſon is withdrawn by the Practice of Sir *John Fenwick*'s Friends.

There remains yet with me, as great a Conſideration as any of theſe; the Publick Reſentment of the Nation for ſuch his Behaviour, is the only Means his Practice has left you; and it ſeems neceſſary for your Safety, to come the next beſt Way to what he could have done.

Againſt the Evidence that hath been given, there have been great doubts raiſed, not ſo much whether it be ſuch Evidence as may incline us to believe him to be guilty: But whether it be ſuch as you ſhould hear in the Capacity you are in; and whether after it is found ſuch as it is, That is not ſuch as would convict him upon another Tryal. Whether you ought to credit it, and that ſhould influence you to give your Vote for this Bill of Attainder; This is a Doubt that I find weighs generally with them that differ from me in Opinion about this Bill; and therefore I deſire leave to ſpeak to that particular.

'Tis ſaid, That you are trying of Sir *John Fenwick*; That you are Judges; and that you are both Judges and Jury; and that you are obliged to proceed according to the ſame Rule, though not the Methods of *Weſtminſter-Hall*; *Secundum allegata & probata.*

But the State of the Matter, as it appears to me, is, That you are here in your Legiſlative Power, making a new Law for the Attainting of Sir *John Fenwick*; and for exempting his particular Caſe, and trying of it; (if you will uſe that Word though improperly) in which Caſe the Methods differ from what the Law requires in other Caſes; for this is never to be a Law for any other afterwards.

Methinks this being the State of the Caſe, it quite puts us out of the Method of Tryals; and all the Laws that are for limiting Rules for Evidence at Tryals in *Weſtminſter-Hall*, and other Judicatures: For it muſt be agreed, the ſame Rule of Evidence muſt be obſerved in other Places, as well as *Weſtminſter-Hall*; I mean in Impeachments, and it has always been ſo taken.

This Notion of two Witneſſes, has ſo much gained upon ſome Gentlemen, that we have had ſome Gentlemen ſay, That this is required by the Law of Nature; the Univerſal Law of Nature: Nay, by the Law of God. And I think, if it was ſo, there would be no doubt but it will oblige us.

But therefore I go to the bottom of the Matter: That any Man deſerves to be Puniſhed, is becauſe he is Criminal. That this or that Man deſerves it, is becauſe he is guilty of a Crime, let his Crime be made evident any Way whatſoever; for whatſoever makes the Truth Evident is, and is accounted in all Laws to be Evidence.

Now as to the Rules for examining any Perſon, whether he isguilty or not, and the Evidence that is allowed in all Nations, no two Nations agree in the ſame Evidence for the Tryal of Criminals, nor in the Manner of giving the Evidence againſt them.

Your Tryals differ from all other Nations; not only that you are tryed by a Jury, which is particular to you, but that the Witneſſes are to be produced Face to Face before the Offender; and you have made Laws that there ſhall be two Witneſſes in Caſes of High-Treaſon, and herein you are the Envy of all other Nations.

Sir, the Evidence that is to be given againſt Criminals, differs in the ſame Nation where the Offences differ; there is a difference between the Evidence that will Convict a Man of Felony, and the Evidence that is to convict a Man of Treaſon; and the Evidence to convict a Man of the ſame Crime, hath been different in the ſame Nation, according to the Reaſon of the Law No doubt, by the common Law of *England*, that Evidence was ſufficient, which was ſufficient to incline the Jury to believe the Perſon guilty. This before the Statute of *Edward 6.* though that was made upon great Reaſon, and appears to be for the Publick Good, by the general Approbation it hath received; but I don't think in your Proceedings here, you are bound by it.

But, Sir, it is ſaid, Shall we that are the Supream Authority (as we are part of it) go upon leſs Evidence to ſatisfie our ſelves of Sir *John Fenwick*'s Guilt, than the other Courts; and ſhall we reſort to this Extraordinary Way in this Caſe?

Truly, if it did ſhake the Manner of Tryals below, I ſhould be very unwilling to do it; but I do take it clearly that it cannot; but on the contrary, I think there is no ſtronger Argument for your reſorting to this extraordinary Way, like to that of the Caution which your Law hath provided for the Innocency of all Perſons. For if we conſider all thoſe Laws that have been made, 'tis plain it muſt be in the view of our Anceſtors, That Criminals might eſcape; and the Laws are made for your ordinary Tryals, and for thoſe Things that happen uſually; and your Government hath this Advantage, That they can keep to that which others cannot: For in a very wiſe Government (as was obſerved by a Perſon that ſat in this Houſe the laſt time this was debated) the Ways of puniſhing Crimes of this Nature, are extraordinary when Perſons are condemned: They are not only unheard, but they are condemned

demned before they are accuſed; and that is thought neceſſary there which will not be indured here: And yet that Government hath continued ſo long, and no Endeavours have been to alter it, though ſo many Noble Families have ſuffered by it, becauſe they are convinced as to their Conſtitution 'tis neceſſary.

The next Argument is from the Precedent we are about to make; and whatever the other Precedents have been, what you do now will be a Precedent for you and your Poſterity; and whilſt that is uſed to make you cautious, and tends to make you conſider well; whether it is according to the Duty to your Country to paſs this Vote; (which no doubt is the only Queſtion before you) 'tis a good Argument.

Sir, if this Precedent ſhall appear to Poſterity to be a Precedent, concerning an Innocent Man, or a Perſon whoſe Guilt was doubted of, or one whoſe Guilt did not appear, and this Bill ſhould be carried by a prevailing Party; I do agree it was a very ill Precedent: But if the Caſe be, that this Precedent will appear to Poſterity upon the Truth of the Thing, to be a Precedent made of a Man notoriouſly guilty; of a Man that had deſerved this extraordinary Way of Proceeding, this extraordinary Reſentment of the Nation, and that nothing could have hindered this Man from the common Juſtice of the Nation; but his having endeavoured to elude it in this Matter; and if it appears that you would not be put off ſo, but made an Example of this Man, I ſhall not be ſorry it ſhould appear to Poſterity; but I believe Poſterity will (as I think they ought) thank you for it.

Sir, I do ſay for my own particular, while I am Innocent, I ſhould not think my Life in danger to be judged by 400 *Engliſh* Gentlemen, and the Peerage of *England*, with the Royal Aſſent; and when I reflect, I can't be of Opinion, That the Government could have procured a Parliament to have paſſed a Bill of Attainder againſt my Lord *Ruſſel*, or Mr. *Corniſh*, or Mr. *Colledge*: I don't think all the Power of the Government, could have prevailed with the Parliament to have done it; and here I ſee that a great many Gentlemen have oppoſed every Step of this Bill, for fear of making an ill Precedent; yet thoſe Gentlemen do believe in their own private Conſciences, that he is guilty; and I can't think, that any Perſon can be in danger by ſuch a Bill, when Gentlemen oppoſe this Bill only upon the Prudential Part, though they ſtill confeſs him to be guilty.

All the Concluſion I make to my ſelf is, that I do believe, I am convinced in my Conſcience (which I think is ſufficient, when I act in the Capacity I now do) that Sir *John Fenwick* is guilty: But there are Reaſons ſo extraordinary to ſupport this Bill of Attainder, that I do not ſee how any Perſon that is ſo convinced, can refuſe to give his Affirmative to this Bill.

Sir *Godfrey Copley*. Sir, I am very ſenſible a great deal hath been ſaid upon this Subject; but I think there is ſomething in Duty incumbent upon every Man, eſpecially upon me, who can't concur with the general Senſe of the Houſe, to give my Reaſons for my diſagreement; and I will make no uſe of Arguments but ſuch as I can't Anſwer my ſelf: A great deal hath been ſaid upon this Debate, by Gentlemen Learned in the Law; and many of theſe, though they have ſaid they would not ſpeak as to the Power of Parliaments, yet the greateſt part of their Arguments have touched upon your Method of Proceedings; and to ſhew you how they interfere with the Rules of *Weſtminſter-Hall*, ſo great is the force of Cuſtom and Education; but I acknowledge ſome have brought us Arguments quite of another ſtrain.

This is a Matter of ſo extraordinary Importance, that I think it proper to conſider what Rules we have to go by; but I take the Puniſhment of Offenders and Criminals to be the neceſſary ſupport of all Governments whatſoever, without which no Government can continue; but all Societies of Men have ſuppoſed to themſelves ſome Rules, whereby it may be known, whether Offenders are guilty or no.

It is the Cuſtom of our Nation to have two poſitive Witneſſes to prove Treaſon; now it may be imagined, that I make uſe of this as an Argument, that we are tied up to theſe Rules: No, I am not of that Opinion, that we are bound by the Rules of any Society whatſoever. The Parliament have a Power to abrogate all Laws that they have paſſed, if they think good, and ſo certainly cannot be tyed up by any Rules now in being. But, Sir, there are the eternal Rules of Equity, and Juſtice, and right Reaſon, and Conſcience; and theſe I think are unalterable, and never to be ſwerv'd from; and therefore I ſhall take the Liberty to ſee how far agreeable our Proceedings are to theſe Rules.

Sir, I do look upon it, that 'tis no Rule agreeable to what I ſpeak of; that no Man ſhall be accuſed by he knows not whom; and that no Man ſhall be accuſed, but that the Evidence againſt him, and he ſhould be confronted and brought Face to Face.

I am one of thoſe that believe Sir *John Fenwick* to be guilty, and there is clear Proof of it by one Witneſs; and you have added to this an Indictment that is found: But I muſt needs own, That I think that to be ſo far from giving any Addition or Strength to the Evidence; that when that is brought in, I look upon the Scales to be lighter than they were before; for if any Record or Writing that is ſworn to behind a Man's Back, ſhall be brought here to ſupply another Part of the Evidence (and if not ſo, why is it brought here?) And if that be to be interpreted to make up a Part of the Evidence, I do, by parallel Reaſon argue, that the like may make up the Whole at one time or another; and may be ſo far made uſe of, That any profligate Knave, that gives Information before a Juſtice of Peace, or a Secretary of State, this may riſe againſt any Man whatſoever, when he is obnoxious to the Government; or a Perſon may be accuſed for his good Service in this Reign, and this may be ſet up againſt him, and he run the hazard of his Life.

Then, Sir, as to the Neceſſity of this Matter; I muſt confeſs, that thoſe that brought this Matter before us, are much wiſer than I, and therefore I will not examine what Reaſon they had to do it: But it is ſo little agreeable to me, I wiſh it had not come here. But is it to be ſuppoſed, That your Government is in hazard of any Man that is faſt in *Newgate*? Can any Man think, That Sir *John Fenwick* can do any thing in his Condition to hazard it? Can you expect that a Man that hath been ſix Months in Priſon, and no Body came at him, that he may make ſuch a Diſcovery as may be worth your while? But ſuppoſe you had a Man of Invention and Practice, what a Spur do you put to it? May not a Man of Parts, when he hath no other Way to ſave himſelf; may not he frame ſuch a Plot as may make the beſt Subjects in *England* tremble? Why

Why then, Sir, I do ſay, by this you are in a very dangerous Way to ſuffer by the Invention of any Man; and ſuppoſe he ſhould be ſo ignorant as to know nothing, or ſo great a Block-head to be able to invent nothing, Would you hang him either for Ignorance or Inſufficiency? I muſt confeſs, I read the Conſequence of this for the Nation in general, and for our Poſterity: 'Tis not Sir *John Fenwick*'s Life I argue for; I do not think it worth a Debate in this Houſe, nor the Conſideration of ſo great an Aſſembly; but I do ſay, if this Method of Proceeding be warranted by an *Engliſh* Parliament, there is an End to the Defence of any Man living, be he never ſo Innocent.

Sir, I remember I heard it mentioned on the other ſide of the Way, by an honourable Perſon, who never lets any Argument want its Weight; That King *James* Attainted a great number of Perſons in a Catalogue, in a Lump. Sir, I am not afraid of what Arbitrary Princes do, nor an *Iriſh* Parliament; but I am afraid of what ſhall be done here; I am concerned for the Honour of your Proceedings, that it may be a Precedent to a future Parliament in an ill Reign, which I am ſatisfied you would not do. I had ſome other Thoughts which I cannot recollect, *&c.*

Mr. *Foley, the Speaker's Son.* Sir, the Worthy Gentleman that ſpake firſt upon this Debate, calls me up: He ſaid, That he thought in this Matter, every one ought to give the Reaſons of his Opinion; and in giving the Reaſons of my Opinion, I do ſolemnly proteſt, I do it with the ſame Sincerity as I would do, if I was upon my Oath, and of a Jury.

The worthy Gentleman ſaid, That if there could be any Danger from this Precedent, that an Innocent Man might loſe his Life, he would not be for it; I deſire that he would conſider, whether there be almoſt any Inſtances of any innocent Men that have loſt their Lives, but what has proceeded from Precedents that have begun upon guilty Men. The ſame Gentleman told you, That if we did not believe Sir *John Fenwick* to be guilty, no other Conſideration ought to move us to be for this Bill. Now the Reaſon I am againſt this Bill, is, becauſe it does not appear to me from the Evidence that hath been given at the Bar, that Sir *John Fenwick* is guilty. And I do think, that which is not legal Evidence, is no Evidence; and I do think, That all the Lawyers that have ſpoke in this Matter, have allowed it to be no legal Evidence. And I deſire Gentlemen will conſider, if it has not been thought reaſonable that Men ſhould be convicted upon ſuch Evidence, Why now it ſhould be ſaid to be neceſſary? I think the Saying of my Lord *Strafford* upon his Tryal was this; If the Pilot was to direct a Ship in a dangerous Sea, and there was no Buoy to direct his Courſe, if he there ſplit his Ship it was excuſable; but if there was a Buoy up, then he was accountable for it. Now comparing our Government to the Sea; there have been many Rocks and Sands, and many Men have loſt their Lives by them; but the Treaſon Bill ſeems to be ſet as a Buoy to avoid that Miſchief for the future. Now if we ſplit upon theſe Rocks, I ſhall think we are but ill Pilots.

Upon a former Debate we were told, we are not tied up to the Rules of *Weſtminſter-Hall*, and it was ſufficient to juſtify a Man in giving his Vote for this Bill, That he was ſatisfied that Sir *John Fenwick* was guilty: See the Conſequence of that, In Things that I have as much believed as I do this, I have found my ſelf miſtaken.

When a Jury acts according to Legal Evidence, that they have no Reaſon to miſtruſt; when a Jury finds according to Legal Evidence, they are in no manner of Blame: And if this Man be innocent, when you have taken away his Life, and his Eſtate, and ruined his Family, all that you have to ſay for it is, That you have acted according to the beſt of your own Underſtandings, guided by your own private Opinion.

Were this the Caſe of Sir *John Fenwick* only, and I not to give my Vote; I reckon him ſo deſpicable, and becauſe I believe him to be a Traytor, and I think the worſe of him for the Part he hath acted ſince he was in Cuſtody, I ſhould not concern my ſelf about it. But when I ſpeak againſt this Bill, I ſpeak on the Behalf of all thoſe that may hereafter ſuffer by ſuch a Precedent as this. Thoſe Precedents that have been urged, don't come near this Point. And though the Power of the Parliament is above that of other Courts; yet there hath been no Precedent that comes up to this, That we ſhould paſs a Bill to attaint Sir *John Fenwick*, becauſe he will not give Evidence, or there is no Evidence againſt him. If Sir *John Fenwick* be to be hanged, becauſe there is but one Evidence againſt him, any Man in the World may; and then I think every Man's Life depends upon it, Whether this Houſe do like him or not. Conſider what a Reverſe of Opinion this will be, to what former Parliaments have given in Caſes of the like Nature: I think if this Bill does Paſs, every Man's Life will be as precarious as his Election.

We have been told, how much Danger the Government will be in, if this Bill does not Paſs: I have as much Zeal for this Government as any Man; but all the Government is concerned is, That a Man that you think a Traytor, ſhould live. And I do think the Government is no more concerned in this Life, than in the Living of any *Jacobite* in *England*. But, on the other Hand, I think the Lives and Liberties of the Subjects of *England* are concerned; and, by this Bill, you will make all their Lives and Liberties precarious.

I am not for bringing the Blood of Sir *John Fenwick* upon me, or my Poſterity; nor can I conſent for to make a Precedent that a Man may be hanged without Evidence.

Lord Cutts. The worthy Member that ſpake laſt but one, told you, That he thought the Life of Sir *John Fenwick* was not worth the Conſideration of this Aſſembly; I do differ from him in That. If the Scripture tells us, That the moſt inſignificant Creature does not fall without God Almighty's Conſideration, I think the Life of a Gentleman may be thought worth ours.

The worthy Gentleman that ſpake laſt, told us, That he did believe in his Conſcience Sir *John Fenwick* to be guilty: But becauſe he hath found himſelf miſtaken formerly, when he believed Things with the ſame appearing Certainty, therefore he may be miſtaken now. I hope Gentlemen will not preſs an Argument upon our Judgments, from Precedents that are only Miſtakes: I do agree, That any Man may be miſtaken in a Thing which at that Time he thinks himſelf moſt certain of; but till that Miſtake appears, I ſay, it ought not to make him doubt of any Thing that he does clearly and diſtinctly perceive: If otherwiſe, there is an End of all Religion and Law; and it ſhakes the Foundation of the moſt certain Belief a Man can entertain.

As it appears to me, ſome Gentlemen ſeem to lay a greater Streſs on ſome Things than they deſerve, and are not pleaſed to anſwer ſome Arguments; and therefore I deſire leave to ſpeak to two or three Points in ſhort. I ſhall not ſay any Thing of the Authority of Parliaments, it ſpeaks it ſelf; nor of the different Conſideration of our Proceedings, and that of inferior Courts, that ſeems to be agreed: But I ſhall apply my ſelf particularly to mention ſome Things upon Sir *John Fenwick*'s Caſe, and in that take Care, as near as I can, not to trouble you with any Thing I have ſaid upon this Subject.

I can't but obſerve, That every Gentleman that ſpeaks againſt this Bill, begins with an Introduction that he believes him Criminal, which does ſomewhat aſtoniſh me; I hope they will explain themſelves a little. But to the Point, as to Sir *John Fenwick*'s Caſe; I did take the Liberty in a former Debate to obſerve, That it was not only a Conſpiracy againſt the lawful King of *England*, and had ſuch Parts in it, but alſo in bringing in a Tyrannical and foreign Power upon you. But there is one Conſideration I did not mention then, becauſe I thought what I ſaid carried ſo great Weight it needed it not; I do ſay, not only as a Chriſtian, as an Engliſh-man, and as a Subject of this Government, againſt which he hath committed a Crime of the higheſt Nature: But I will ſay, as a Man of Honour, that he hath acted contrary to the Rules of Honour; I think Sir *John Fenwick* had made a much better Figure, if he had appeared in Arms in *Flanders*, where he might have charged this Prince at the Head of his Troops, than baſely have contrived his Death in this Manner.

Sir, I have only one Thing more that I deſire to ſpeak to; for what I ſay, is more for my own Information than to deſire any Man's Opinion further than he agrees with it: I ſay, moſt Gentlemen have likewiſe owned, That if they thought this an extraordinary Caſe, they would be for this Bill. I do ſay, as it appears to me, I do think, if ever there was an extraordinary Caſe, this is one; and if ever any Government was in Danger, this is, or may be, upon your Reſolution to Day. A great deal of Streſs hath been laid upon this Argument, That Sir *John Fenwick* is in Hold: I take that to be nothing; for they keep a Combination together ſtill: 'Tis by Rewards and Puniſhments that all Governments are ſupported. Robberies, that were ſo common in *France*, that you could not walk after it was dark, by Puniſhments they have been brought to that, That you may ride from one end of it to another, with a Purſe of Gold in your hand. And if you think it a trifling Matter, That wicked Men that have ſuch Inclinations ſhould eſcape, I don't doubt but you may have Plots every Day.

I don't doubt but this Gentleman knows a great deal that he hath never laid before you; I would not be thought to preſs it as an Argument that he ſhould be condemned, becauſe he won't Confeſs; but I will be bold to ſay, If he does know of a great many Perſons that have been concerned in this Buſineſs; if he knows of a Riſing that was deſigned, when this Conſpiracy was to be Executed; (and it may be Executed ſtill, if Things ſhall be ripe for it) I ſay, though you keep him in hold, it will be an Incouragement to them to go on in their Cabals, in buying of Arms, *&c.* I think the Matter before you is no leſs than the Fate of *England*, and the Fate of *Europe*, and of all your Poſterity; I am ſure it is: And give me leave to ſay to you one Thing that is Matter of Fact, There are thoſe Stories inſinuated abroad, and thoſe Matters of Fact aſſerted, with relation to a Conſpiracy, and reviling this Houſe, that are not fit for me to repeat. But your Enemies laſt Year, before the breaking out of this Conſpiracy, had the ſame ſort of Meetings, and the ſame ſort of Diſcourſe, as they have now. I will end with proteſting to you, That I deal with Sir *John Fenwick* with the ſame Candour and Honour, as I ſhall always deſire to be dealt with my ſelf.

Sir *Godfrey Copley*. That Noble Lord miſunderſtood what I ſaid, as to the ſmall Value I put upon Sir *John Fenwick*: I did ſay, That Sir *John Fenwick*, conſidered in his ſingle Capacity, I did not think it was worth the while of this Houſe to act in their legiſlative Capacity upon him.

Sir *Charles Cartwright*. I think this Bill is of very great Moment, and ought well to be conſidered before it paſſes; for when it is paſſed, it will be too late to retrieve the ill Conſequence which may attend it: There is ſo much Roguery in the World, I think it a hard Matter to arrive at the Truth. 'Tis not long ago there was a Plot contrived by one *Young*, and others, againſt the Biſhop of *Rocheſter*; and ſo cunningly contrived, That if a Bill of Attainder had been brought in againſt the Biſhop of *Rocheſter*, before the Truth had been diſcovered, I do not know what might have been the Conſequence of it. I ſuppoſe no Body queſtions the Truth of this Plot; but God forbid that every Body that hath been named for it ſhould be guilty. It may be true, That there was ſuch a Meeting that Sir *John Fenwick* is Accuſed of being at, and yet Sir *John Fenwick* might not be there; and I do not think it ſufficiently proved, and therefore I can't give my conſent to this Bill.

Mr. *Manley*. Sir, I have, as well as I could, attended to this Debate in this Matter; and I did not trouble you in the laſt Debate, becauſe I was willing to take all the Opportunities I could to inform my ſelf.

'Tis to me an extraordinary Thing, not only for the Matter, but Manner of your Proceedings; which, conſidering all Circumſtances, appears to me to be not only not Common but Unprecedented; and as we are all in this Matter Judges, ſo I hope we ſhall apply our ſelves to conſider of it with that Temper, as may lead us to give a right Judgment. And if I had never ſo great Obligations upon me, and Dependencies, though from the Crown, I would lay them by, at leaſt they ſhould not influence my Judgment in this Matter. We are to paſs Judgment in a Matter of Life and Death upon this Perſon, and 'tis urged we ſhould do it, becauſe the common Courſe of Juſtice will not reach him for the Crime objected againſt him, which is high Treaſon; and the Species of that Treaſon as it is laid in the Indictment is, *&c.*

Sir, the Evidence that hath been given to ſupport it, hath been the Affirmation of a ſingle Witneſs at the Bar: Indeed other Things have been alledged in the Bill: but as hath been ſaid in *Weſtminſter-hall* upon another Occaſion, They look like Pepper and Salt to me; for in themſelves they are not Crimes (I ſpeak with ſubmiſſion to your Judgments) at leaſt to bear Company with an Accuſation of high Treaſon.

As to the Evidence; firſt Captain *Porter* tells you, That Sir *John Fenwick* was at a Meeting at the King's Head, and at Mrs. *Mountjoys* afterwards, when there were treaſonable Diſcourſes amongſt them

them, and *Charnock* was directed to go into *France*; but the End of that is not proved; For the Witneſs that told you of thoſe Meetings, did not tell you, as I obſerved, that *Charnock* did go to *France*; and what he ſaid upon other Occaſions is no Evidence to me. And though we are not tyed up to the Rules of *Weſtminſter-hall*, I am ſo Young a Member, I know not what Methods are obſerved in Parliament, that I may in ſome Meaſure make them a Rule to me.

The Law of *England* requires two Witneſſes upon the greateſt Reaſon; and 'tis not only the Policy of *England*, but the general Conſent (in this Caſe) of the whole World, and it is grounded upon the Law of God. It was objected by an honourable Gentleman the other Day, to a Gentleman, that he ſaid the Law of God required two Witneſſes. A Gentleman who is very near allied to one, from whom he might have early informed himſelf, made us a Challenge, to ſhew him where it was to be found: If he will look into *Numbers* and *Deuteronomy*, there are three particular Texts very plain in it. The Reaſon of this is illuſtrated in the Story of *Suſannah*, her ſafety depended upon it; and the Jews, when they proſecuted our Saviour, though they wanted no Malice, nor nothing to animate them, to put him to Death; yet, St. *Matthew* tells us at laſt, there was two Witneſſes found againſt him; and this being the Law of the Land, and the Law of God, muſt be my Rule; I muſt have this Matter proved againſt Sir *John Fenwick*, as full as the Law of the Land, and the Law of God requires. The other Evidence brought to mantain this Bill, is what is ſworn by *Goodman* before a Juſtice of Peace, and the Account of the Evidence given by *Goodman* to the Grand-Jury, which I muſt confeſs I declare I am very far from being convinced ought to have Weight with us: But, I think, they muſt lay a great Weight upon it, who give their Vote for this Bill, or otherwiſe they muſt give their Vote upon the Teſtimony of one Witneſs.

The Reaſon for this extraordinary Proceeding is, 'tis urged, There is a Neceſſity for it; The Plot will be loſt elſe, ſay ſome; Sir *John Fenwick*, ſays others, will eſcape elſe. As for the Plot, I wiſh to God there was no ſuch Thing; but 'tis probable the beſt Way of ending this Plot would be, if his Majeſty in his Wiſdom thought fit, to interpoſe with his Mercy and Grace at this Time; and better than for the legiſlative Power, in an extraordinary Manner, to take off a Perſon againſt whom there is not a legal Evidence. Gentlemen ſay they are convinced in their Conſciences; but I will appeal to their Conſciences, Whether there be legal Proof againſt him: And ſhall we then interpoſe, in an extraordinary Manner, to take away his Life?

No Man pretends to anſwer, but that this Proceeding may be dangerous to Poſterity? if we had any Security this might be done without that Danger, it might be ſome Incouragement to Gentlemen to come into it; But ſince it may be dangerous, are not we, who are intruſted by the People, to have an equal Care of the Liberty of the People? We are to take Care of his Majeſty's Life and Government; and the Reaſon is, becauſe upon him, and his Government, the Publick Safety does depend. 'Tis *Salus Populi*, is the great Reaſon that the Law takes ſuch Care of the King; and as we are to do nothing to the Detriment of the King, ſo we are to do nothing for the King that may be of detriment to the People.

An honourable Lord hath been pleaſed to ſay, We are not yet out of Danger; I am ſorry to hear it, and could not think it, when ſo noble a Lord is ſo near the King, and hath ſo great a Share in taking Care of the publick Safety. But ſure nothing can happen from this Perſon; there hath been Care taken he ſhould have no Converſation with any Body: If I thought there was a Hazard to the Government, or to the King, and no Way to ſecure us, but taking away this Gentleman's Life; ſuch a Reaſon as That would make me go Counter to my own Reaſon and Judgment. But I can't be of Opinion, That a Man of Sir *John Fenwick*'s Size, who in his beſt Circumſtances indeed, is a Gentleman by Birth, and hath a Gentleman's Fortune, but is now in a great Meaſure without his Eſtate; ſo his Fortune can't do any hurt, and his Alliance I ſuppoſe is not Conſiderable enough to do any neither.

Then as his Circumſtances do not make him ſo Conſiderable, as to do us any Hurt; let us take Care that we do not in any Caſe, by his Blood, wound our ſelves.

Gentlemen lay but little Streſs upon the Dangerouſneſs of the Precedent; I do lay more; and 'tis chiefly upon that Reaſon I can't come up to be for this Bill. I would not that ſo good a Parliament ſhould lay the Foundation of any, by which, in after Ages, the leaſt Men in *England* may ſuffer: 'Tis ſaid, an ill Parliament will not want a Precedent, but will make uſe of their Power: But they will fall ſooner into it, if led by a good Parliament.

Sir, This is a Matter I would not have preſumed to have troubled you in; for I can't think any Thing I can ſay, will have any Weight with any one that is not of my Opinion: But as an *Engliſhman*, and as I have the Honour to be of this Houſe, when a Thing of this Nature comes before us, and I am to give my Opinion as a Judge in it, I was willing to give my Reaſons for my Opinion. I think this Bill is unprecedented; and you will give me leave to ſay, it appears to me to be unreaſonable. I think it contrary to the fundamental Rules of Reaſon and Juſtice; I doubt it may be dangerous to our Conſtitution; and I fear future Ages may have Reaſon to repent what we do. And therefore I am againſt this Bill, and I hope it will not Paſs.

Sir *William Strickland*. Sir, I do aſſure you I ſhall not in any Thing of this Bill, or any Thing elſe, run counter to my Conſcience or Judgment: But I do think, and I think few deny it, I do think in my Conſcience that Sir *John Fenwick* is guilty; and thinking him ſo, I ought to condemn him. I do think if we ſhould ſpare this Gentleman for Want of Form, as they call it, now we are in our Legiſlative Capacity, and there ſhould be any ill Effects of it; and other People, by thinking they might avoid Puniſhment by the Forms of *Weſtminſter-hall*, ſhould have the like Imaginations againſt his Majeſty, and they ſhould take Effect, I ſhould think my ſelf in a great Meaſure guilty of that Misfortune. I think the Kingdom is concerned, and the King's Preſervation, in this Bill; and I hope you will Paſs it.

Mr. Dolben. Mr. Speaker, I am againſt paſſing of this Bill; and I ſhall, with as much brevity as I can, lay before you my Reaſons, why I am againſt it; and probably I ſhould not have troubled the Houſe with them, but that I think it neceſſary to juſtify my Opinion in a Caſe of this Importance.

I do admit that the Fact that is charged upon Sir *John Fenwick* is an Overt-Act of High Treaſon, within the 25th of *Edw.* 3. though I muſt take leave to ſay, That a Judgment upon a Caſe, at leaſt as ſtrong as this, has lately been very much arraigned and controverted; but 'tis not my Intent to diſpute the Nature of this Fact; for I am perſuaded, That to conſult how to procure an Invaſion of this Kingdom with foreign Forces, is an Overt-Act of compaſſing the Death of the King; and I do think this Charge does amount to ſuch an Overt-Act. But I beg leave to reflect, How far Overt-Acts of this Nature, which fall directly within any Species of Treaſon mentioned in the 25th of *Edw.* 3. how far ſuch Treaſons are cognizable in Parliament, and within the Intention of that Statute: Indeed, that they are cognizable by the abſolute Power of Parliament, there is no doubt.

Sir, That Statute doth firſt enumerate ſeveral Species or Branches of Facts, which it ſays ſhall be adjudged Treaſon, that is, in the Courts of Judicature; and then afterwards it goes on, and ſays, *If any other Caſe, ſuppoſed Treaſon, not ſpecified in that Act, doth happen before any Juſtices, the Juſtices ſhall tarry without any going to Judgment of the Treaſon till the Cauſe be ſhewed and declared before the King and his Parliament, whether it ought to be judged Treaſon or Felony.* Now, Sir, with Submiſſion, this is a great Argument that the Intention of thoſe that made this Law was, That theſe Treaſons, which were directly under any of theſe Particulars enumerated by the Statute, that they ſhould be left and be appropriated to the Deciſion of the inferior Courts: But that Facts of another Nature, which did not come under the Particulars enumerated in the Act, as extraordinary Offences, and misbehaviour of Magiſtrates and great Men, and the like; theſe indeed ſhould be reſerved for the Conſideration and Judgment of the Parliament, who are only a Match for powerful Offenders, whom the common Juſtice of the Kingdom can't grapple with. And as this ſeems to be the Intention of the Makers of the Act, ſo I think the Inſtances generally have been purſuant to that Inſtitution; for I know of but one ſingle Inſtance of any one that ever was attainted by Bill for any Treaſon that is contained under any Species enumerated in the 25th *Edw.* 3. 'Tis true, where Perſons have been out of the reach of the Law, in open Rebellion, or fled from Juſtice; in theſe Caſes the Parliament have thought fit to Attaint them, as in the Caſe of Sir *John Mortimer*, and others who made an eſcape out of the *Tower*: And the Caſe of the Regicides; and likewiſe the Caſe of the Duke of *Monmouth*, who was in open Rebellion. But I ſay, that I have not found in my Reading, upon the beſt Search I could make, where any that were in Cuſtody were Attainted by Bill for any Treaſon within 25 *Edw.* 3. and that was the Caſe of *Ferham*; but I think there is no Precedent of any Man, who is not only in Cuſtody, but hath been indicted, arraigned, and Iſſue joyned; and he hath put himſelf upon his Country for his Tryal; And the Perſon Accuſed was to be convicted, or acquitted, by the Verdict of twelve Men: I never heard of any Inſtance, when after all this Proceeding a Perſon was taken off from this Tryal, and debarr'd the Benefit of the Judgment of his Peers, and the Benefit of his Challenges; and deſtroyed, and cut of extrajudicially, by an Act made on purpoſe, *ex poſt facto.* I never met with any Inſtance like it, unleſs it be that of my Lord *Strafford*: And I believe no Body will cite that, if they reflect upon the Preamble of the Act for reverſing his Attainder: For in the Preamble, 'tis ſaid, That the turbulent Party did attempt the procuring of that Act, on purpoſe to Condemn him. This ſhews the Opinion of our Predeceſſors in relation to proceedings of this ſort; they eſteem it contrary to the fundamental Rules of Juſtice and Right, which Parliaments, as well as other Courts muſt be governed by.

Roger Mortimer was attainted, and afterwards his Attainder was reverſed; and the Reaſon declared, becauſe he was attainted againſt the good Laws and Cuſtoms of the Kingdom.

Ferham's, that I mentioned before, and declared for the Future, That it ſhould be, *&c.*

Another Attainder there was of Sir *Thomas Haxey*; but that was reverſed, and declared to be againſt all Law. Then there are the Attainders of *H.* 8's Time, I ſhall not particularize them; but beſides that, all the Hiſtory of thoſe Times, and Law-Books condemned them, as Proceedings againſt all Law and Juſtice, There is the Statute of 1 *Edw.* 6. *c.* 12. ſeems directly levelled againſt thoſe Attainders in the preceeding Reign; for it ſays, That the Proceedings in King *H.* 8th's Time, were grounded upon Laws that were extream and terrible; and therefore that there might be no Proceedings of that kind for the future, it reduces all Treaſons to the antient Standard of 25 *Edw.* 3. and goes on, and enacts, That no Man ſhall be convicted or condemned for Treaſon, but upon the Teſtimony of two lawful Witneſſes.

Now I take that to be a general Law, and to extend to all convictions and condemnations for Treaſon, and can't but declare my Opinion of it, That it muſt extend to Bills of Attainder, ſince theſe are the Principal and moſt powerful Convictions and Condemnations; and if that Statute does extend to Bills of Attainder, then pray conſider, whether this Bill of Attainder now be ſupported by ſuch Evidence as the Statute requires? There was indeed one lawful Witneſs produced; but inſtead of the other, they have only produced a Record between Parties not concerned in this Bill, and the Depoſitions of a Perſon whether living or dead, *Non conſtat*; and I believe no Body will ſay theſe Depoſitions will be equivalent to a ſecond Witneſs.

I do believe a great many Gentlemen are of Opinion, That thoſe Rules of Evidence are not to guide you here; but I beg Pardon that I can't poſſibly be of that Opinion, I rather incline to my Lord Chief Juſtice *Vaughan*'s Notion, That though we are not bonnd by the Forms of Law, yet we are bound by the Rules of Law; every Body allows we are bound as to the Nature of the Fact: every Body will take himſelf bound by the Statute of 25. *Edw.* 3. to form his Judgment as to the Fact: Why are not we then bound by theſe Acts? Likewiſe as to the Evidence, and the Proof of the Fact. If 25. *Edw*, 3. be binding to us, ſo as to preſcribe us a Rule to judge the Fact by; Why are not the Statutes of *Edw.* 6. binding to us as to the Evidence of that Fact?

But ſay ſome Gentlemen, if there be not two Witneſſes that is from Sir *John Fenwick* or his Agents: Sir, no Gentlemen will ſay that there hath been any Proof of that; the very Bill does not charge him with it, but taking it for granted, what ſhall follow upon that? Shall it therefore follow, that Sir *John Fenwick* ſhall immediately be put to Death? No, God forbid; I think there is no

no Parity between the Crime of ſeducing away a Witneſs, and the Judgment of Death; but I think this a more reaſonable and natural Inference to be made, that becauſe Sir *John Fenwick* hath ſeduced away a Witneſs, therefore it is juſt to make a Law that the Depoſitions of that Witneſs ſhould be of as good Force and effect, as if *Goodman* was here, to give it *Viva Voce*; for then you will not take from him the Benefit of his Tryal, nor the Benefit of his Challenges, which is the Birth-right of every Engliſh Man.

And one Thing I will ſay further, Theſe Bills of Attainder are like *Siſyphus*'s Stone, they have rolled back upon thoſe that have been the Promoters of them. 'Tis known that my Lord *Cromwell* was the firſt Man that promoted them in *H.* 8. Time, and the Advice that he gave his Maſter for the Ruine of others, proved fatal to himſelf.

Sir, this is the laſt Time we ſhall have the Opportunity of conſidering this Matter; I muſt take leave to declare, That my Opinion is, that if I conſent to the paſſing of this Bill againſt Sir *John Fenwick*'s Life, upon any other grounds than ſuch as are intirely agreeable and juſtifiable by the Laws of God and Man, I am guilty of the Death of Sir *John Fenwick*. I am not ſatisfied that I can give my conſent to this Bill upon thoſe grounds, and therefore I beg leave to be againſt it.

Sir *Edw. Seymour*, Mr. Speaker, you all know I have born my Teſtimony againſt this Bill, being not perſuaded that it is juſt, now we are come to the finiſhing Part of it; And I ſhall lay before you thoſe Reaſons that prevail with me, and ſubmit them to the Judgment of the Houſe; and if I am more tedious than I uſed to be, I hope the Occaſion is ſuch, that you will Pardon me; for I will endeavour to contract my ſelf into as near a Compaſs as I can.

I ſhall not trouble you with any Arguments that have been laid before you already; nor ſhall I enter into the Examination of Precedents; a great many have been laid before you, and a great many of them have been reverſed, moſt of them; and the Reaſons why they have been reverſed, becauſe the Perſons condemned, have not had the due Benefit of the Law: And if that be a good Reaſon for reverſing of ſuch an Attainder, 'tis a good Reaſon why you ſhould not do it.

I can't but take Notice, That the beginning of this Bill in the Houſe of Commons is the firſt ſtep of this kind, that hath been made in Parliament, except that of the Duke of *Monmouth*; and the Reaſon of it, I take to be this, becauſe you hear not upon Oath; you condemn not upon Oath: You, nor the Party under Accuſation have that advantage againſt a forſworn Evidence, as there is in the other Houſe; the Method has been to paſs ſuch Bills in the Houſe of Lords, and tranſmit them hither, upon which you then Judge.

I think, in this Caſe, you have no Evidence; and inſtead of two Witneſſes, yon have no Witneſs at all; for as to *Goodman*, *De non apparentibus, & non exiſtentibus eadem eſt ratio.* As to *Porter*, he hath been examined; but when you conſider that he was a Perſon engaged in this Conſpiracy, and that he had no repentance of his Crime till he was diſcovered, and then he comes to be an Evidence; how far that ſhall ſway, every Man muſt allow that I muſt ſubmit to you; but thus much I may ſay, every Man muſt allow me, that in far leſs Caſes no Man that does ſwear for himſelf, or upon his own Account, is to admitted as an Evidence. If a Robbery be committed in an Hundred, though a Man be but to pay a Groat towards it, he ſhall not be an Evidence; how much more then in Caſe, when a Man comes to ſwear to take away another Man's Life to ſave his own; for he is not in the Condition of a Freeman, who gives his Evidence without check or controle, but he is drudging on for his Pardon, as the Council told you, which depends according to the Evidence he does give or not give.

For my part, I can't go ſo far as ſome Gentlemen have done, to ſay Sir *John Fenwick* is guilty; for where there is no Law, there is no Tranſgreſſion; a Man that is guilty, muſt be guilty according to the Law: And the Law hath required and ſaid, That there ſhall be no Treaſon but what is proved by two Witneſſes, and here it appears that you have not one. The ſame Law that calls it Treaſon, ſays it ſhall be ſo proved; then if you paſs this Bill, you make that Treaſon which before was not Treaſon.

Sir, the Law does require two Witneſſes, and there is divine Authority for it too: It hath been hinted at, the Place in *Numbers*, *No Man is to die upon ſingle Evidence*; and it ſays, *Theſe are the Statutes you ſhall obſerve throughout your Generations and Dwellings*: But I will go a little further, becauſe a worthy Gentleman declared, there was no ſuch Law of God. He will find in the 19th of *Deuteronomy*, a Caſe juſt as 'tis here; for the Caſe of high Treaſon was Idolatry at that Time, and the Law ſays, *Whoſoever ſhall ſet up Idols ſhall be ſtoned to Death*; but it ſays; *no Man ſhall be condemned to die by the Mouth of one Witneſs, but by two or three Witneſſes he ſhall ſuffer*; I think this is poſitive enough. I ſhall not trouble you with more Inſtances, though I could repeat ſeveral.

Sir, the Law enjoyns Forms ſtrictly, even to the leaſt Circumſtance; if a Man be condemned to die, and after he is condemned to die, another take away the Life of that Man, 'tis Murther. I will go further; If the Officer that is to do Execution, if a Man be condemned to be hanged, drawn and quartered; if the Officer ſhoot him, it is Murther in him; ſo that Men are not left to a diſcretionary Power to act according to their Conſciences.

I take the Reaſon by which this Bill is ſupported, to be deſtructive to all human Society; for if that be admitted, that a Man ſhall act according to his Conſcience, and not according to the Rules that are preſcribed him, I know not who is ſafe; for how can an innocent Man make his defence upon that Principle? It is a ſafe Conſideration for them that take upon them that Way of Judging, becauſe they are bound by no Rules; but what hath not that done almoſt within Memory; *Felton* that killed the Duke of *Buckingham* what was his Juſtification, but he was perſuaded in Conſcience he did well in ſo doing. *Ravillack* that killed *H.* 4. in *France*, he juſtified the ſame by his Conſcience, and ſaid he had done a good Thing; and I may ſay this Argument of Conſcience hath acted all the Villany of the laſt Age, and I am afraid hath gone a great Way to diſturb the happineſs of this.

For if this be a Rule to this Houſe, How is the King bound? I thought he had been bound by Law; but if this ſhall be admitted as an Argument, 'tis enough to ſay, if this Houſe be Arbitrary, the King is. I do not reflect upon this Reign; but it will be enough to ſay, tho' he act againſt Law, and turn twenty Colledges out of Doors, his Conſcience perſuades him to it. We ſee how unbounded Liberty the Lords take, is, they are become Maſters of all our Eſtates; and I would

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be very loth for my Eſtate to depend upon the feeble Tenure of a Lord's Conſcience.

If then this be the Caſe, as it is, according to this Method, I deſire to know into what Condition we ſhall bring our ſelves?

You have been told, it is expected from you by your Country, that you ſhould exert this Authority and Power: Sir, I would have been glad that in Caſes more reaſonable, we had exerted this Authority and Power of Parliament; I wiſh it had gone to the preventing the debaſing and abuſing your Coin; I wiſh it could be exerted, that we might not ſee our ſelves cheated under countenance of an Act of Parliament; but contrary to that, you are fond of being ſprinkled with the Blood of Sir *John Fenwick*: As long as the Government is not in danger, I believe the Country would be glad that their Blood might run ſecure in their Veins, and not be tapt upon every Occaſion to ſerve a Turn, for if you break the Laws, what Man can promiſe himſelf ſecurity?

We know the Conſequence, if this Bill does not paſs; Sir *John Fenwick* may live in miſery all his Time.

But what this Precedent may make, no Man can foreſee. This Bill is againſt the Law of God; againſt the Law of the Land; it does contribute to the Subverſion of the Conſtitution, and to the Subverſion of all Government; for if there be Rules to be obſerved in all Governments, and no Government can be without them, if you ſubvert thoſe Rules, you deſtroy the Government; and therefore for theſe Conſiderations no Body will think it ſtrange, if I give my Negative to this Bill.

Mr. *Chancel. of the Excheq.* Sir, the Gentleman that ſpake laſt, hath carried the Reaſon againſt this Bill a little further than ſome others; for it ſeems now, we are not to reject the Bill for want of one Witneſs that is legal in *Weſtminſter-hall*, but it ſeems there is no Evidence at all; and by Capt. *Porter*'s not being pardoned, and yet drudging for his Pardon; as to all that have been condemned upon his Teſtimony, he hath arraigned the Evidence as not ſufficient, and hopes that will be the Judgment of the Houſe upon this Bill. I think if the Houſe reject this Bill upon that Argument, it will go further than many mean that oppoſe it.

Another Thing he ſays; he compares the Convictions that I have upon my Judgment, and of every Body elſe that ſpeaks from the Proofs that are made, that he is guilty of the Whymſy of two or three mad Men, whereas we go according to the Evidence brought at the Bar; we don't go upon the Whymſies of *Ravillack* nor *Felton*, but upon the Proofs that have been made here; and though there are not two Witneſſes, yet upon what appears in Proof, I am convinced that he is guilty; and upon that Conviction, I think, acccording to the Duty I owe my Country, and the Conſtitution of *England*, when a Bill does come to puniſh the Man whom I think guilty, I think I ought to be for the Bill. As to what is ſaid out of *Deuteronomy*, That the Law of God was againſt it, if you will argue *à Fortiori*, 'tis literally true, in the Caſe of Murther; but whether Murther or Treaſon, there is the Life of a Man concerned, and 'tis not the Puniſhment whether to be hanged, or hanged, drawn, and quartered that makes any great Difference; and give me leave to ſay, if you go to make Precedents from the Jewiſh Law, then I ſay, the Law of *England* is againſt that Law, in Caſe of Murther; and by the ſame Reaſon you may deſire leave to bring in a Bill to repeal all thoſe Laws.

Sir, if this was the eternal Law of God and Man, where was this eternal Law in *England* before *Edward 6.* Time? If it be the eternal Law that there muſt be two Witneſſes, why does it not hold in *England* even in ſome Caſes of Treaſon to this Day; I mean the Treaſon of Clipping and Coining; ſo that if Gentlemen will argue, the Nature of theſe Faults are what the Law of every Country Ordains, and that is the Law.

And the Way of Evidence and Proof too differs in every Country; and I may affirm, That there never was any Government in which there was not a Power lodged ſomewhere to be exerted upon extraordinary Occaſions, beyond the Legal Way of Proſecution.

I don't care to travel into the ſeveral Countries to ſee how their Conſtitution is, but I believe there is not one Place in *Europe* in which it is ſtrictly neceſſary there ſhould be two Witneſſes to take away the Life of a Man; but it is generally ſo, as it is here in all ordinary Caſes, but in this very Law; this laſt Law does not go upon two Witneſſes, but you have a Proviſo in it does abſolutely exempt Proceedings in Parliament: I do not infer from thence, that you ſhould not have two Witneſſes, if you proceed by way of Impeachment, I think you ought; and ſo for having Witneſſes upon Oath, *&c.* When theſe Proceedings are in Parliament, there is a direct Proviſo by which the Parliament is exempted from thoſe Rules: Upon the whole Matter, I think this Man is guilty; I think the Precedent would be more fatal, to ſay, that a Parliament can't proceed in ſuch a Caſe, than that a guilty Man ſhould ſuffer. I think this Bill comes before you with more Circumſtances, and Reaſon to juſtifie it, than any that hath been brought here before; here is a Bill found againſt him by his Country, the Evidence of his Friends having tampered with one of the Witneſſes, confirmed by a Jury, *&c.*

A Learned Gentleman ſays, he would come up to make this Paper Evidence; but can't come up to make ſuch a Law by which every Man that is concerned in that Depoſition would be affected; but here is ſomething particular in this Caſe, a Man that hath been abroad, and hath not uſed the like Artifice, I think you ought not to uſe the like Power to puniſh him that is not Guilty of the like Crime. And therefore I ſhall conclude, but I muſt take notice of one Thing; it was ſaid, That this was the firſt Precedent of this kind begun in this Houſe, but that of the Duke of *Monmouth*; but I believe, if this Bill of Attainder is not to be begun in this Houſe, 'tis not to be brought in at all; for I believe there is a Statute, That the Life of a Commoner is never to be meddled with by the Lords originally. I will not trouble you any further, I do in my Conſcience think that Sir *John Fenwick* is guilty, and therefore I am for this Bill.

Mr. *Pelham.* I did not think to have troubled you this Day; I did rather intend to have left it to others that can ſpeak better, or have not ſpoken upon this Subject; but that which hath been mentioned by ſeveral, as if they did think that we who mentioned the Law of God upon this Occaſion, did it as if we did think the Law of God was binding to you at this Day; I never thought any ſuch Thing otherwiſe than as to the Morality of it, ſo far forth as it is grounded upon Reaſon and Juſtice, and tends to the clearing of an Innocent Man; and ſo far

far we and all Mankind are bound by it; and that Law having been afterwards Confirmed in the *New-Teſtament* by our Saviour and Apoſtles, at leaſt approved of by them; and this having been confirmed by the Law of *England*; likewiſe I do not think this a fit Occaſion for you to paſs by ſo fundamental a Law as that is: And I conclude with this, That I can't ſatisfie my ſelf in my Conſcience, and ſhould think ſome misfortune might follow me and my Poſterity, if I paſſed Sentence upon Sir *John Fenwick*'s Life, upon leſs Evidence than the Law of *England* requires.

Sir *H. Croſts*. I ſhall endeavour as much as I can, to give you little trouble in this Matter; but becauſe it hath been hinted and remarked ſo particularly upon me, I muſt beg leave to diſcharge my Duty as well as my Conſcience, as to what I ſaid here the other Day.

Sir, I do very much forget my ſelf, if I did aſſert that there was no ſuch Place in Scripture that required two Witneſſes; the Thing that I ſaid, was this, That if any Gentleman could ſhew me any Rule from Scripture that required two Witneſſes more in the Caſe of Treaſon than in the Caſe of Murther and Felony, I ſhould be glad to ſee it. I do ſay that the Scripture ſhall be a Rule to me, as far as the Scripture requires; but I do take the *Jewiſh* Law not to be ſo abſolutely literally binding upon us here. And as to the Text out of *Numbers*, that very Text of Scripture is particularly and literally applicable to Murther; and if that be binding now, we have been very much miſguided by our Predeceſſors, and I think we are bound to take it in hand, to repeal all Laws that are againſt it.

Sir, he is pleaſed to deny us, in ſome meaſure, the Liberty of being guided by our Conſciences; truly, I don't know what he would have Gentlemen go by; truly, let him go by what Rules he pleaſes, I will go by the Rule of my Conſcience, and will not do any thing againſt it upon any Conſideration or Conſequence whatſoever; nor will I part from the Liberty and Power of Parliaments, for any Rule or Law of inferior Courts whatſoever.

Sir, you are told, you ought to be guided by the Rules of Law, that is not the Forms of Law, but the Rules of Law. Sir, I ſay, if theſe Rules were made to bind Parliaments, it was reaſonable they ſhould be bound by them; but if they were made only to bind inferior Courts, they were far enough from being intended to put a Cramp upon the Proceedings of Parliament; and if you ſhall ſubject your ſelves to them, you give the Lawyers ſuch a Power, that I don't doubt, but their Books will be of greater Authority than your Journals; therefore in Conſideration of that, and becauſe I would leave that which is the Right of Parliaments to my Succeſſors, I ſhall not ſubmit to that.

Therefore, I ſay, I come clear to the Point whether Sir *John Fenwick* be guilty or not, only I muſt obſerve a little back, That as to thoſe Inſtances that the worthy Member was pleaſed to make uſe of, of *Ravillack*, and of *Felton*; ſhall thoſe extraordinary Caſes, that which Men did in heat of Blood and private Malice; ſhall theſe be brought to bear a Parallel with what is done in Parliament for the Juſtice of the Nation? I don't doubt but there are Men enough, in their Conſciences, at leaſt with pretence of it, will juſtifie the Deſtruction of your Government and Religion, and every Thing elſe: All thoſe Men that deny the Right of your Government, have Conſcience and Juſtice enough to ſubvert it if they could; and therefore I do not ſo much wonder, that many Men without Doors have argued in that Nature.

But I ſay, my Conſcience is the Rule I muſt go by; and to me the Queſtion is, only whether Sir *John Fenwick* be guilty, or not guilty, and I am called to give my Judgment in it; and I think I am bound by the Law of Nature, by the Law of the Nation, and I ſee nothing in the Law of God that prohibits me, to give my Judgment according to the Evidence, and the Opinion I have in my Conſcience of the Truth of it.

If there be no ſuch Rule that requires two Witneſſes binding upon me; if I may go upon one Witneſs; if I believe he ſpeaks true, and that the Perſon is guilty, then I am bound to act for the Preſervation of the Nation, and all our Poſterity: They that made this Attempt, made it upon you and your Poſterity for ever; 'tis not ſo ſmall a Matter as ſome repreſent it; 'tis not the Perſon ſo much as the Nature of the Fact we are to conſider; and we are not to let Men eſcape Puniſhment according to their Greatneſs or their Smallneſs; but according to the Nature of the Fact, and their Guilt. I think I have that freedom, and I am ſo little bound by thoſe Rules that have been urged, that if both Witneſſes were here, and gave Teſtimony againſt him, if I did not believe him to be guilty, I would loſe my Life rather than Vote him ſo; but on the contrary, if here be ſufficient Evidence to convince me, though not according to the Rules of inferior Courts, I will not ſubject the freedom of Parliaments to thoſe Rules.

Sir, you have been told formerly, and I think it a Matter of that Weight, I beg leave to urge it again, becauſe 'tis a great Reaſon that guides me in this Matter; if you lay it down for a Doctrine in this Houſe (for a Reſolution here taken, is as much a Rule as a Law, for it ſhall be brought as a Precedent) and therefore, if it ſhall be laid down as a Rule here, That you will never attaint any Man, or find him guilty, but upon two Witneſſes; I think the Government, and all you have, ſtands upon a tottering Foundation: He muſt be a very ordinary States-man that can't lay his Plot ſo, as you ſhan't reach him by two Witneſſes.

Therefore I ſay, I think it becomes the Wiſdom of Parliament, not to declare themſelves bound in that reſpect; I would have them bound by Juſtice, but not by the common Rule of the Law.

Sir *Robert Cotton*. Sir, I do find that Gentlemen do very much inſiſt in this Caſe, That if a Gentleman does believe that Sir *John Fenwick* is guilty, he muſt give his Vote for the paſſing of this Bill; if that be ſo, I am glad that Opinion did not take place in the laſt Reign, if it had, I am of Opinion I ſhould not have been here now; and I believe my Lord *Warrington*, who was very inſtrumental in promoting this Revolution, would not have died in his Bed. My Lord and I were accuſed of a Crime, which I believe, if proved by two Witneſſes, had been Treaſon: I have heard ſome Gentlemen ſay in this Houſe, they did believe my Lord *Warrington* was guilty (though he was not guilty of the Fact as it was laid.) There was a Man ſwore, *&c.* and there was ſome corroborating Evidence; but as to Mr. *Fley*, and my ſelf, there was none but this particular Perſon, and they indicted us of Miſdemeanour; though it would have been Treaſon, if there had been two Witneſſes;

ſes: Now if the ſame Fact was Treaſon when proved by two Witneſſes, and but Miſdemeanor when proved by one, Methinks we are doing an extraordinary Thing: We are going after the Fact committed, to make that which is but a Miſdemeanor, to be Treaſon. And for theſe and other Reaſons, I can't agree to the paſſing of this Bill.

Lord Norris. Sir, though I had always an Apprehenſion of the ill Conſequence of this Bill, yet never ſo much as now; for this Gentleman hath given Arguments that ſhake me more than all that I have heard before; for he ſays, there are a great many Men, if they may proceed according to their Conſciences, will ſubvert this Government, and bring in King *James* and Arbitrary Power; and he tells you, That every Precedent in this Houſe, is equal to a Law, and will juſtifie the like for the future. I am ſure I am very unwilling to make a Precedent that ſhall juſtify Men in ſuch ill Actions, in ſaying their Conſciences prompted them to it.

Then a Queſtion was put for bringing in Candles, which paſſed in the Affirmative, and they were brought in.

Mr. *Hamond.* I don't think the Power of Parliaments in queſtion in this Caſe; but then, as all other Powers, it muſt be founded upon Juſtice, and never uſed but upon extraordinary Occaſions, and when Criminals are not to be met with otherwiſe. The Power of Parliament is not leſſened if this Bill does not paſs: But the Queſtion is, whether this Power ſhould be exerted in this Caſe? What Gentlemen ſay of being guided by Conſcience, hath no Weight with me, further than that is governed by the Law of the Land; if it be to be admitted in the Caſe of Life and Blood, why not in *Meum & Tuum?* Why was he brought to the Bar then, if according to our private Judgement we are to determine this Matter? No Man thought but he was guilty.

I beg leave to mention one thing that is come to my Knowledge; after the Tryal and Condemnation of Mr. *Cook*, I had an Order ſent me, that I might ſee him, and I went to him by Vertue of that Order; and the greateſt Part of the Time I ſpent with him, he took up in declaring againſt the Evidence of *Goodman*, and that he would receive the Sacrament upon it, and give it in Writing, as his dying Words. I ſaw alſo three poſitive Witneſſes confront him at his Tryal; and when I heard him ſay this, it weighed ſo much with me, that I have very great ground of Suſpicion, That *Goodman* was perjured in the Caſe of *Cook*.

Here hath been Popular Expreſſions of Plots, and Jacobites, that no Man can apply to this particular Caſe, or ſay this is a Caſe wherein we ought to uſe this extraordinary Power; he was in the Hands of the Law, and no Body can ſay, that the Government muſt ſink, if he does not die. If we go from the Rules of Juſtice, I believe it will give a great Blow to the Government.

Mr. *Vernon.* Sir, I riſe up only upon what that worthy Gentleman hath offered unto you; for I did not think to trouble you with any thing of that Nature. But if you will give me leave to acquaint you with what I believe, who have been later with him than this Gentleman, and much oftner. Sir, he does tell me, that he is very far from denying what hath been ſworn againſt Sir *John Fenwick* and himſelf, concerning the Conſultation to bring over the *French*, for he hath a very particular remembrance of it; and if that Gentleman was to ſpeak with him now, he would ſatisfie him, I believe, in that Point: And ſince I am up, I think every Man that ſpeaks upon this Occaſion, ſhould likewiſe give ſome Account of himſelf, in what manner, and for what Reaſon he diſcharges his Conſcience here; I hope I may uſe that Word, ſince Gentlemen make uſe of Conſcience for his Acquittal; and a Man ought to have a very good Conſcience for his Condemnation.

As to Sir *John Fenwick*'s Innocence, I wiſh he had given no Occaſion to have it called in Queſtion; and ſince he did fall under this Accuſation, I wiſh he or his Council for him, would have taken ſome Pains to have made his Innocency appear; but I don't find the Queſtion is, Whether Sir *John Fenwick* is guilty, but whether there be any Evidence of his Guilt? And I ſhall tell you, in ſhort, my Opinion of that; I take the Proof of the Fact to be in general, ſuch a Demonſtration as the Nature of the Thing is capable of; and that is ſufficient, and capable to convince a reaſonable, honeſt, unprejudiced Man, of the Truth of what is aſſerted: And there is no manner of Doubt left, Whether it is ſo or no? Nor Appearance of any Poſſibiliiy, that it could be otherwiſe. I think there hath been that Proof in this Caſe, and nothing attempted to diſprove it, and nothing hath been proved on Sir *John Fenwick*'s Behalf, that any Wrong hath been done him; and therefore in ſhort, my Senſe is, That whereas ſome Gentlemen think him guilty, but the Matter not proved; I think him guilty, becauſe 'tis proved, and there hath been no Offer made to diſprove it.

Mr. *Bromley Warr.* Some Gentlemen have ſpoke of the Power of Parliaments, but I ſhall ſay nothing to their Power, which I have learned from my Lord *Coke*, is ſo Tranſcendent and Abſolute, that it can't be confined within any Bounds: But the more Juſt and Honourable it ought to be in its Proceedings, to give an Example to inferiour Courts; and though their Power can't be deny'd, yet the Exerciſe of it hath been often cenſured and condemned; and Acts that have paſſed in one Parliament, have been in the ſame Reign repealed; and ſometimes, ſeveral branded; *Id poſſumus, quod jure poſſumus.* 'Tis certain, here is a defect of legal Evidence: We are not tied here to the Forms of *Weſtminſter-Hall*; but certainly, with Submiſſion, we ought to tie our ſelves up to the Rules of *Weſtminſter-Hall*, eſpecially when they are founded upon Common Juſtice, which is the ſame, is not mutable, and ought to be univerſal.

By the Law of the Land, no Perſon ought to be convicted in Caſes of Treaſon; but upon two Witneſſes; the Law of God is the ſame. However, if you will paſs this Bill, all Perſons muſt acquieſce; and there is no diſputing of your Power afterwards. It hath been an Argument uſed to Day, That the Security of the Government requires the paſſing of this Bill, which I think to be a good one too, if they can make it appear, that unleſs you proceed in this Way, the Government is in Danger; though I muſt obſerve, it was not that Conſideration, but the Vindication of an honourable Perſon's Reputation, that brought this Matter firſt before you.

It does not appear to me, That Sir *John Fenwick*'s Life or Death, can endanger the Government. You have been told of a Deſign that he hath been engaged in, and is carried on at this Time: That an Invaſion from *France* ſeems to threaten us: The former Deſign hath been happily diſcovered and defeated; and 'tis not probable that Sir *John Fenwick* ſhould have any great ſhare in any that is carrying on at preſent: And as far as I can learn, he is not ſo conſiderable a Man in his own Perſon or Intereſt, that we need fear him.

An honourable Perſon ſaid, if we do not paſs this Bill, they that ſent us here, would give us no Thanks: 'Tis not a good way of arguing; but I believe, if thoſe look forward, they will thank us. Sir, in the Act for declaring the Rights and Liberties of the People, you have it ſaid, That the late King *James*, by the Aſſiſtance of divers evil Councellors, *&c.* How comes it to paſs, that we have never attainted any of them? And if we are for proceeding in this way of Attainder, becauſe it pleaſes them that ſent us hither, I dare ſay, the Attainting one of thoſe Men, would gratifie thoſe that ſent us hither, more than the Attainting Twenty ſuch as Sir *John Fenwick*. It was pretty well known what ſhare ſome Gentlemen had in bringing in of Popery and Arbitrary Power; and I will take the Liberty to ſay, That there is never a Gentleman in this Houſe, but believes them to be the worſt of Criminals.

Upon the whole Matter, I do not think you have any occaſion to exert a Power, that no Body denies; I ſee no Security this will be to the Government, and conſequently, no Neceſſity of it: I think you are making a moſt dangerous Precedent, and that it will be of ill Conſequence to you, and therefore I am againſt this Bill.

Mr. *Smith*. Sir, I will be as ſhort as I can, and if it had not been for ſomething in this Day's Debate, I ſhould not have troubled you. As to what was ſaid by the Gentleman that ſpake laſt, of making Examples of ſome that had been Criminal in the laſt Reign; how that came to happen, that no ſuch Examples were made, I ſhall not now entertain you; but I believe moſt of the Gentlemen in the Houſe, know pretty well.

But I take the Matter before you is, what Evidence you have to prove Sir *John Fenwick* to be guilty, and whether there be not an Extraordinary Occaſion at this Time, to exert the Legiſlative Power.

I ſhall not enter into the Matter of Precedents, thoſe are out of my Province, but I have read ſome; however it ſhall not paſs upon me for a Rule, becauſe ſome Bills have been reverſed, no others ſhall be brought in; it is poſſible that the reverſing of them, may be worſe than the firſt bringing of them in.

But to apply my ſelf to the Evidence, I can't but obſerve one Thing that ſeems this Day extraordinary: We are told by ſome Gentlemen, they are againſt our Proceeding upon this Bill, becauſe it does not *quadrare* to the Rules of *Weſtminſter-Hall*; and at the ſame time, Gentlemen take Liberty to make Exceptions here againſt that Evidence that *Weſtminſter-Hall* has allowed: That they ſhould take Exceptions to that Evidence which the Law of *England* allows to be good! For it is notorious, it hath been admitted in *Weſtminſter-Hall*; And Gentlemen might have as well have told you, That thoſe Men that ſuffered, died innocent, as to have denied it; and I think there is a further ſtrengthening of his Evidence; for there is not one Man, who hath died upon his Evidence, but hath acknowledged himſelf guilty of what he hath charged him with.

As to the Matter of the other Evidence. Sir, I do not ſay that it is Evidence that will come at *Weſtminſter-Hall*; but at the ſame time, give me leave to tell you, They ſeem to lay a little ſtreſs upon it, when they tell you, they believe it was falſe Evidence; and inſtance in what *Cook* ſaid to a Gentleman of this Houſe, after his Condemnation; but I think thus far I may ſay, That when you ſent ſome of your Members to examine Sir *John Freind*, he did own all thoſe Perſons to be at that Place, and that is a much better Argument for the Validity of *Goodman*'s Teſtimony: But as to the Matter before you, ſome Gentlemen have made it a Queſtion, Whether Sir *John Fenwick* be ſo conſiderable a Man, as you ſhould proceed in this extraordinary manner with? Though they all ſay, you may do it; yet at the ſame time they tell you, this was never put in execution; but they were in the wrong that did it.

Now, Sir, the Queſtion is, Whether you ſhould make uſe of this Power at this time? Say ſome, The Plot is over; I wiſh it was: But when a Conſpiracy hath been laid ſo deep and general as this was, 'tis not the Hanging of one or two that will make us ſafe: When 'tis apparent to you, here is all the Artifice in the World; all the Endeavours in the World, by Sir *John Fenwick*'s Friends, to remove *Goodman* out of the Way; 'tis ſome Argument that he had ſomething to ſay to him: And when we ſee Priſons broke open daily; we have known Perſons murthered in the Streets for giving Evidence. Very notorious is the Caſe of *Dodſworth*; you have Plots all about you, and yet can you think there is no occaſion to make Uſe of this Extraordinary Power.

I would have as great a Conviction upon my Conſcience as I could, but 'tis very hard a Man muſt throw his Conſcience aſide in the Caſe; 'tis very hard to believe, That if there be two Witneſſes produced, though I don't believe the Witneſſes, yet I am ſafe if I condemn the Man; and if there be but one Witneſs, I am to acquit the Man, though I believe him to be guilty.

And though they go to Scripture, to tell you there muſt be two Witneſſes, yet they don't go ſo far as to tell you there have been very extraordinary Things done, even by God himſelf, for the preſerving a Community.

And there is the Reaſon of it, that one Witneſs may take away a Man's Life in one Caſe, and not in another. There was a Thing ſaid, that was one Thing that occaſioned my ſtanding up: A Gentleman ſaid, truly, it ſeemed to him to be a better way to put an End to the Plot, to have an Act of Indempnity, than the Conviction of Sir *John Fenwick* would be. Sir, there ſeems very little Reaſon for Acts of Indempnity, when we have ſeen an Act paſſed ſo lately, which has not reſtrained Perſons, nor brought them to a Senſe of their Duty; and we have heard Perſons own at your Bar, That the Fact was committed juſt after the Act of Indempnity.

Sir, I do heartily, according to my Conſcience, Vote for this Bill.

Mr. *Harcourt*. Sir, I am ſenſible it is very difficult to ſay any Thing, and not ſeem tedious at this Time of Night; but I take it to be my Duty not to be ſilent in this Matter.

All the Arguments that I remember have been made uſe of in any former Debate, or in this Day's, may be reduced in ſhort, to theſe two Heads; the Danger of the Government, and Gentlemen's private Opinion.

Sir, as to the Danger of the Government, if any Body will convince me there is ſuch danger, (I promiſe him, if it be worth his while ſo to do) I will be his Proſelyte, and Vote for this Bill: But, to tell me the Government is in Danger, and that the Fate of *England* and *Europe* depends upon this Bill, is certainly rather offered to amuſe, than to convince.

It hath been asked, Can the Circumſtances that Sir *John Fenwick* is in admit of any Danger to the Government, which hath Power over his Liberty every Day, and may reſtrain him of his Liberty during his Life? A Man, by the Account I have had of him, of little Intereſt, not worth Ninepence. (I have no Acquaintance with him, and ſo I may eaſily miſtake his Circumſtances.) But, Sir, whatever his Circumſtances are, he is in ſafe Cuſtody, and no doubt there he will be kept; and to ſay the Government is in danger by ſuch a Man, ſure, that can't be thought by any Man living: And God forbid this ſhould be the Caſe of the Government, that it can't ſupport it ſelf without taking away this unfortunate Gentleman's Life, contrary to the Rules of Law.

For the Argument of private Opinion, 'tis almoſt as dangerous as the Precedent you are making. I will not urge it from the Caſe of the People, *Enthuſiaſts* and Madmen; but I will urge it in the Caſe of Men that ſate in Judgment: if Opinion is to juſtifie the Condemning of a Man, let us never more call the Verdicts againſt Mr. *Corniſh*, Mr. *Sidney*, Lord *Ruſſel*, and others, Murthers. Ask the Jury, no doubt none of them are ſo ſilly, but in his Opinion they were guilty; but if Opinion may condemn a Man without Proof, why not acquit him as well where there is Proof? Such a Practice, I am ſure, would never be endured.

The propereſt Method, I think, was propoſed by the Gentleman that began the Debate; and I beg leave to follow the ſame Steps, to conſider his guilt, How it appears to us, and whether there be any Reaſon for this extraordinary Manner of Proceeding.

The Recital of that Bill are the Arguments for it; and thoſe we ſend up to the Houſe of Lords, for the Paſſing of this Bill: And firſt, it ſays, That Sir *John Fenwick* was indicted by the Teſtimony of *Porter* and *Goodman*, &c. It ſays that ſeveral Days were appointed for his Tryal; and at one of thoſe Days the Tryal had come on, if it had not been for the Diſcovery that he pretended to make; but it does not ſay it was put off at any other Days or Times, for that Reaſon: But it goes on, and ſays, he hath made ſeveral Reflections, *&c.* inſtead of making an ingenuous Diſcovery; and then it recites how that *Goodman* is withdrawn.

I would beg leave to put Gentlemen in mind of what was a great Inducement to bring this Bill in: It was ſaid, That Sir *John Fenwick*, and his Relations had done it; That they would prove that *Goodman* was withdrawn by his Means. Give me leave to ſay, That there was no Proof of it, unleſs the Hearſay of *Clancy*, and the Actions of my Lady *Fenwick* are to be Evidence, contrary to the known Laws of *England*, to affect this unhappy Gentlemen in the Caſe of his Life. I ſay, if any Gentlman had been of another Opinion, no doubt, he would have offered that Amendment to the Committee.

As to the Diſcovery that Sir *John Fenwick* hath made, it does not appear to me, whether it be true or falſe: It is one Thing to give a Vote to clear a Gentleman's Reputation, and another Thing to carry it ſo far, as to give Judgment, That the Perſon that made thoſe Reflections ſhall die, and that before any Proof of their Falſehood.

Here is an Indictment found, and here is an Evidence withdrawn, that is all I am ſatisfied in: And ſuppoſing the Perſon guilty, it is no manner of Inducement from theſe Arguments, to proceed in this extraordinary manner.

But I would conſider the Matter of the Amendment made at the Committee (of which Treaſons he the ſaid Sir *John Fenwick* is guilty.) I can't ſay that; and therefore I can't vote for the Bill. If he be guilty, it does not appear ſo by legal Evidence, and there I am to judge him as he appears to me an innocent Man. The Law requires two Witneſſes to convict a Man of this Crime. 'Tis the greateſt Crime, and the Law is ſo merciful, that it won't expoſe a Man to ſuch great Penalties, without demonſtrative Evidence.

The firſt Act of Parliament that requires two Witneſſes is, 1 *Edward* 6. The next is, 5 *Edward* 6. And upon that Act, give me leave to take Notice: That Act goes a little further than the Firſt; for the 5 *Edward* 6. does not only ſay there ſhall be two Witneſſes; but it goes on, and ſays: —— which two Witneſſes; (they are there called Accuſers, but mean the ſame Thing) ſhall be produced in Perſon before the Party at his Arraignment; and ſhall there before his Face, maintain and avow what they have to ſay. So the Parliament particularly provided, That there ſhould not only be two Witneſſes; but that they ſhould appear in proper Perſon, in open Court.

I beg leave to obſerve, That after the making of the firſt Act, in the 2 or 3 Year of *Edward* 6. there was an Attainder of Sir *Thomas Seymour*, in Parliament, without hearing of him; and that very ſelf ſame Parliament, within two Years afterwards, ſeems ſo to have reſented that Matter, that they made that Proviſion I have mentioned, in the 5 *Edward* 6. And to ſecure, That that ill Precedent ſhould do no harm, they put in that Clauſe. If this Act paſſes, I wiſh we do not repent in it leſs time than that Parliament did the Attainder of Sir *Thomas Seymour*. Let us be guided by the Reaſon, the Juſtice, and the Diſcretion of that Act; though we are not bound in our Legiſlative Capacity, by the Power of it; I can't but obſerve, that from the making of that Act, no Perſon has been attainted in any other manner, till the Duke of *Monmouth*. So great a Veneration has that Law always had in all Reigns, though multitude of Conſpiracies have happened in them all. I do not think it ſo material that there ſhould be two Witneſſes, as that theſe Witneſſes ſhould be heard Face to Face, and croſs examined. It hath been told you, that 'tis Natural Juſtice and Reaſon, that there ſhould be

be two Witneſſes: A Gentleman asked you, where that natural Juſtice was before the Statute of *Ed.* 6. Sir, the Statute of 25 *Edw.* 3. ſays, That every Perſon that is Attainted, ſhall be provablement Attaint; and ſomewhat may be from thence inferr'd more than that the Crime ſhould be prov'd, for ſo muſt every Crime. But as to the Proof required by that Act, and the Acts of *Ed.* 6. all thoſe Acts, by very learned Opinions, have been thought declarative of the common Law; but that's ſcarce worth the Enquiry, ſince 'tis certain how the Law ſtands at this Day.

An honourable Gentleman took notice, That ſuch Evidence as we have had, and ſuch Proceedings as theſe, would not be reaſonable in Caſe of Impeachment; but diſtinguiſhed between that proceeding and this; but certainly, the Reaſon is the ſame: 'Tis true, the ſame Perſons that accuſe in one Caſe, give their Judgment in the other; but in each Caſe, ſuch Priviledges as are juſt and reaſonable, ought to be allowed to the Party accuſed.

I ſhall add no more, but that we are making a Precedent which can't be made without breaking through all the Fences of the Law; and when 'tis made, we know not who may ſuffer by it.

Sir *Rich. Temple.* As to the Evidence you have before you, I appeal to any Man, whether at the common Law, if there was but one Witneſs againſt a Man, Whether he was not at liberty of demanding Tryal by Battle? Thoſe Acts that have been made ſince, are made certainly to provide, That in no Caſe whatſoever, a Man ſhould be ſo much as accuſed without two Witneſſes of the Treaſon.

As to what hath been ſaid of the particular Evidence before you; what hath ben obſerved here, is a good Objection in the Courts below. I do not ſay it does diſable a Man from being an Evidence, becauſe he his not pardoned, but he is not ſo good an Evidence as if he was pardoned: But that I ſtand upon is this; Shall you come here and make a Precedent in this Place to condemn a Man to the higheſt Penalties, upon leſs Evidence than you will allow any Body elſe to do it? That is what was never done in Parliament before. Will you make a Precedent in Parliament, that at any Time they may bring in a Bill here, and judge a Man to Death for Treaſon upon one Evidence?

As to this Bill it ſelf, conſider what a Precedent you will make. There is nothing that any Bill was condemned for in Parliament, that is not in this Bill. All Mankind muſt perceive, That you have but one Evidence, and ſuch a one as I have told you. And whatever any Man's private Perſuaſion is, 'tis the Proof muſt govern you. Then this is a Law *ex poſt Facto*, and that hath always been condemned; you make that Evidence that was not ſo before. Sir, this is, beſides making a Law in a particular Caſe, againſt the common Law of *England*, and the Right that every Subject has. It is making a Law to hang a Man without a Tryal; 'tis making a Law here, that was introduced here upon a Pretence to make him an Evidence: Every one ſaid, That they did not ſeek his Blood, and if that be the ſecret Inducement in this Caſe, 'tis a dangerous Precedent: The Earl of *Exeter*, when he brought the Rack into the *Tower*, every Body knows the Fate that came upon him afterwards.

Let any Body ſhew me there was any Reaſon for reverſing any Act of Parliament; they are all againſt this Bill.

Then to the Neceſſity of it, I can't imagine any Thing that hath been ſaid to you upon that, is a ground for this Bill. Pray conſider firſt, how this Matter came before you; it was for an honourable Perſon's Vindication, and it was not tranſmitted to you by the King, but by the honourable Secretary: He told you, That if you had a Mind to ſee theſe Papers, and required it, he had leave to let you have them; but if it had been a Thing of this Conſequence, That the Government had been in the utmoſt Danger, Would it have been tranſmitted only at the Requeſt of a private Gentleman, and left unto you, whether you would proceed upon it or no?

But 'tis obſerved, That the Plot may go on ſtill; pray if this Gentleman he cut off, does that cure it? You are ſecure of him now, that he can't Act in it; ſo that I have not heard the leaſt ground to convince me, That the Government would be in leſs Danger, if this Gentleman was cut off.

Sir, we are told here of going according to our Conſciences; give me leave to ſay to you what was Inſtanced in the other Day, That in the worſt of Times, when they did not ſtick at murthering of the King, yet they ſtuck at this. They would not allow any Man to ſuffer upon one Witneſs: And they did not admit of Depoſitions againſt my Lord *Mordent*, and my Lord *Mordent* ſaved his Life by it.

You have depoſed King *James* for breaking in upon the Law; and did any Body believe that Mr. *Hampden* was not guilty of the Treaſon he was charged with; He owned it before this Houſe; and yet he was tryed only for Miſdemeanour, there being but one Witneſs againſt him: and they that ſtrained all other Laws, ſtuck at this, and would not violate this Law; ſo that I think there is no Neceſſity for making ſuch a Precedent, and I think it would be the worſt of Precedents.

Mr *Boſcawen.* I have obſerved upon this Debate, That ſome Perſons deny that 'tis juſtifiable at any Time, to proceed upon Bills of Attainder, and yet they don't diſpute the Power of Parliaments; but at the ſame Time ſay, they ought to go according to the Rules of *Weſtminſter-hall*.

Another ſays, 'tis the ſame Thing whether we proceed by Way of Impeachment, or Bill of Attainder; I think him much out of the Way; for in that Caſe, the Lords only are Judges, and you are the Proſecutors; and you don't uſe your legiſlative Power in that.

A worthy Friend of mine ſaid, he had often been miſtaken, in his own Conſcience; when he thought himſelf very much in the Right. That might be ſo, and if there was any room rationally to ſuppoſe, That Sir *John Fenwick* was not guilty, I ſhould be of Opinion to be of the more favourable Side; but I take it, there is no room for any Man to believe but he is guilty.

Now I would examine what grounds we have to believe him guilty. Upon Tryals, when they charge a Jury with a Priſoner, one Part of their Charge is to enquire, whether he fled for it or no? 'Tis notorious, That Sir *John Fenwick* fled for this, which is no ſmall Argument of his Guilt. Another is, That he was here at the Bar, and did not deny the Fact; if he had confeſſed it, no doubt but you would have concluded him guilty; and when he does not deny it, this is next Door to it.

It hath been told you, many Bills of Attainder have been reverſed as unjuſt; It hath been as notorious, That the Verdicts of twelve Men, and when Men have been tryed by their Peers, have been reverſed too, I will Inſtance in two or three. The firſt I begin with, was that of the Duke of *Somerſet*; but no Body could ſay, but he was guilty of the Fact, for he confeſſed it: But there was a powerful Enemy, the Duke of *Northumberland*. The

next is, the Duke of *Norfolk*, who was attainted in Queen *Elizabeth*'s Time; and they were not by Parliament, and yet both were reverſed. And I think, as this Matter ſtands now, ſome Gentlemen are of Opinion, by the Evidence they have heard, That he is guilty: But I think no Body hath ſaid, That it appears to him by the Evidence he hath heard, That he is Innocent. Now I deſire to know, whether every Man muſt not uſe his Conſcience to Judge, whether there be ſufficient Evidence? I acknowledge there is not ſufficient Evidence to convict him in *Weſtminſter-hall*; but there is more to ſatisfie my Conſcience, and the World abroad, than if *Goodman* was here; beſides his not denying it, you have the Evidence of the Perſons that died, who owned the ſame Thing: And I mention that, the rather, becauſe they confeſſed it to Perſons ſent from this Houſe; and did not only confeſs themſelves to be guilty, but acknowledged, That there was ſuch a Conſpiracy: and Sir *William Parkins* acknowledged in particular, That he was to raiſe a Troop of Horſe, and that the *French* were to be invited over: Is this nothing, for the legiſlative Power, that is to ſecure the Peace and Welfare of the Government?

Gentlemen ſay, there is a great deal of Danger in this Matter: Some, If you acquit him; others, if you condemn him. If you are ſatisfied he is guilty; by this Bill, you ſet up a Land-mark, that others may take care they do not come into this Predicament. On the other Hand, if you reject this Bill, you will give advantage to your Enemies; when they ſhall ſee a Man that is ſo notoriouſly concerned in calling in a *French* Army, the worſt of your Enemies, to be Scot-free. If he be guilty, what Danger is there of the Precedent? When a Perſon in the like Nature, that hath fled for it, that does not deny it: When living Perſons confeſs it, and dying Perſons confirm it, then there will be danger to ſuch a Perſon.

Upon the whole Matter, I think there is no Man that ever I heard That does not believe him to be guilty; and 'tis ſtrange you ſhould want Evidence, and yet every one think him guilty; and I think no Man muſt be acquitted or condemned, but according to a Man's Conſcience.

An honourable Perſon ſaid *Porter* was no good Witneſs: If *Goodman* was here, he would not be ſo much; and yet we muſt acquit him becauſe *Goodman* is not here: And therefore, upon the whole, I think you will give your Enemies a great Advantage, if you acquit him; and if you condemn him, you will do your ſelves right.

Mr. *Cooper*. Sir, being concerned in Proſecutions of this Nature without Doors, I have hitherto declined concerning my ſelf in any Debate of this Evidence, though unconcerned in the Conduct of the Evidence againſt Sir *John Fenwick*; but being to give my Opinion and Vote as a Judge, I ſhall crave leave to give my Senſe of this Matter.

I would beg leave in the firſt Place, to make uſe of a Diſtinction, which, I think, will ſerve to anſwer ſeveral of the Arguments that have been made uſe of: I think there are two Things to be conſidered; Firſt, his Crime, and the Proof of that Crime, and then the other Matters done by him ſubſequent, *&c.*

The Crime and Proof of it that hath been given againſt him at your Bar is, the ground by which, I think, before God and Man, I ought to give my Affirmative to this Bill, by which you judge him to die. What he hath done ſubſequent, convinces me in my Judgment, That we are here in a proper Method and Courſe of Proceeding againſt him; therefore let no Man ſay, That you have condemned him becauſe he hath protracted his Tryal: No, you have condemned him for having been guilty of high Treaſon, manifeſtly proved againſt him: Then let them not ſay on the other Hand, Will you condemn any Man that is at any Time guilty of high Treaſon? No; but when a Man is guilty of the worſt of Treaſons, and this would have been manifeſtly proved againſt him in the ordinary Courſe of Proceedings; but that he undertaking to atone for his Crime, and ſerve his Country, hath protracted his Tryal till one of the Evidences is gone: And then, though he pretended to have a reſerve, which he would make known to the King's Perſon, yet when he thinks he is out of the ordinary Reach of Juſtice, he ſets the Juſtice of his Country at defiance. Theſe are grounds, not why he is to die, but to juſtifie our Proceeding in this Manner.

Sir, I would beg leave in a few Words, to take notice of a few Things ſaid in this Matter; Gentlemen are afraid, That this will be made uſe of by Poſterity, to the diſadvantage of honeſt Men: And you have been told, That Precedents have begun with the Puniſhment of the guilty, and then have been carried on to the Puniſhment of thoſe that have not been ſo. 'Tis true, there hath been a very bad uſe made of very juſt Acts in relation to the Publick: But what do Gentlemen infer from that? Muſt we have no ſuch Thing as Juſtice? Muſt not the Guilty be puniſhed becauſe the ſame Methods may be made uſe of for the Puniſhing of honeſt Men?

I am not afraid of what uſe Poſterity will make of it; if there come Times of Violence when there are no Parliaments, they will not want this Precedent. There are others that have been cited, that will much more juſtifie thoſe Proceedings; nay, this may protect the Innocent: If a Bill come to be proceeded in againſt another, he may ſay, Sir *John Fenwick* was heard perſonally, and by his Council: That the Evidence was produced before him, and confronted with him. An Innocent Man may ſay, There was that extraordinary in his Crime, which is not in mine. He would have introduced a foreign Army, and afterwards have aggravated his Crime, by endeavouring to abuſe the King, and creating a Jealouſie between the King and his Miniſters.

Sir, in the next Place it is ſaid, That here is not legal Evidence, which I think is a Miſtake: And ſay ſome, Though here is an Evidence that really convinces them in their Conſciences (I am not aſhamed to make uſe of that Word) yet they are not for paſſing this Bill, becauſe there is not a legal Evidence: With Submiſſion, that is a Miſtake; before 1 *Ed. 6.* one Witneſs was a good Evidence in high Treaſon; but there was variety of Opinions touching Treaſon before that Time; but neither the 1 nor 5 *Ed. 6.* in the Penning or Wording of them, nor in the Reaſon of them, were intended to extend to the High Court of Parliament; ſo that, for ought that hath been ſaid, though one Witneſs corroborated by Circumſtances, as this Caſe is, and the Confeſſion of the Party, would not be legal Evidence below; yet, with ſubmiſſion, it is a legal Evidence in Parliament, even according to the ſtrict Rules of Law, becauſe no Law hath made two Witneſſes requiſite in this Caſe; ſo that 'tis a convincing Evidence: I think it may be juſtified to be a legal Evidence, and as it convinces me that I can't reſiſt the belief of it, I muſt be for

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this Bill; notwithſtanding what ſome Gentlemen have ſaid, by Way of endeavouring to explode Conſcience as a Rule not to walk by in this Caſe. One Inſtance given againſt it was, becauſe a Hangman has not a diſcretionary Power to execute a Man according to his Conſcience, and put him to what ſort of Death he pleaſes; as if we had not a better and more legal and diſcretionary Power in the High Court of Parliament, than the Hangman has.

But we are told of ſeveral Inſtances, where mad, and hair-brain'd Men have made uſe of their Conſcience, to palliate their Extravagancies: No doubt it hath; and let me tell you, Religion hath been made uſe of, as a pretence to the worſt of Villanies in all Ages; and yet I hope they will not argue that there ought to be no Religion neither, for a Guide to Men's Actions.

When Men come to be Judges, I would know what Rule they can have better than a ſedate, well informed Conſcience? Below, when a legal Evidence is given; yet the Jury are not bound to go by that legal Evidence; they are, when they have heard it, Judges of the Fact, and are to go by no other Rule, than what is ridiculed here, even the Rule of their own Conſcience.

It was ſaid early in the Debate by a Member of great Reputation; That this (except *Monmouth*'s Caſe) is the firſt Precedent of a Bill of Attainder, that began in this Houſe. It ſeems the antient Way was, for the Lords to give the Witneſſes their Oaths, and when they thought fit, they ſent down a Bill, and the Commons were to proceed upon it: But I think, with ſubmiſſion, this is a much better Way; and I had much rather give my Conſent upon hearing convincing Evidence, and that the Party has nothing to ſay for himſelf, than upon any Bill tranſmitted from the Lords; and no other Evidence, than that they thought fit to paſs it.

Some Gentlemen have ſet a great Weight, or rather miſtaken the Argument: Say they, Sir *John Fenwick* is not a Man ſo conſiderable as to endanger the Government. Admit that thoſe that have ſpoke for the Bill, have not made that uſe of the Argument; but this is that I lay my finger upon in particular; 'tis plain he was to be General, and knew a great many of the Officers. I am ſatisfied he hath not made that Atonement to his injured Country, that he ought to have done. I am ſatisfied that unleſs this Bill proceed ſteadily againſt him, you will have none of that Diſcovery——

[*Here he was interrupted by the Noiſe of ſome Gentlemen, ſhewing diſſatisfaction at that Way of Arguing.*]

Mr. *Cooper* proceeds. Don't let Gentlemen pervert this Argument, and ſay, Will you hang a Man if he don't confeſs? No; but when I have heard Proof, that he is guilty of the worſt of Treaſons, and hath aggravated his Crime in that manner which he hath done, he deſerves to die; unleſs he will merit his Life by a Diſcovery of what he knows. I think it of the higheſt Importance to you, that can be, that you ſhould come to the further Knowledge of the other Branch of the Conſpiracy; the Meeting of the French King's Forces in *England*. I think you are in a proper Method, and perhaps may have a better Iſſue of this Bill than his Death: But if not, he will but pay the Debt, which he owes to the Juſtice of his Country.

Mr. *Paget*. Sir, I can't believe but I ſhall be heard, as to the little I have to ſay, with ſome uneaſineſs, after ſo long a Debate. But, Sir, ſince I did take the Liberty to give my Opinion, why I was againſt this Bill before; I think it as reaſonable to give you my Reaſons, why I don't ſtand convinced by the Arguments I have yet heard. And that I may the better give you my Reaſons, I ſhall, as well as I can remember, repeat ſome of the Arguments that have been urged for the Paſſing of it.

If I miſtake not, ſome of the Arguments have run upon the Power and Prerogative of Parliaments; ſome upon what was proper Evidence in this high Court of Parliament, other than what would be in other Places; others upon the Extraordinarineſs of the Occaſion.

As to the Firſt of theſe Arguments; ſince Gentlemen much more experienced in Rules of Parliament, do not think fit to deliver their private Opinion, what Rules Parliaments may in Reaſon be ſuppoſed to have; I ſhall not ſay any Thing to that.

As to the Arguments of what Evidence ſhall be ſufficient to adjudge a Man to Death in this Houſe: I confeſs, I ſhall at all Times be very careful, how I give my Opinion in Matters of Life and Death; becauſe I think the greateſt Caution is to be uſed in that Caſe. And for this Reaſon, I can't conſent to give my Opinion in one Caſe, that I ſhall think fit to retract in any Caſe afterwards.

If I underſtand the Meaning of the Houſe, 'tis not in favour to Sir *John Fenwick* himſelf, that Gentlemen oppoſe this Bill; but for fear of uſhering in a Precedent, that may be made uſe of againſt a better Man.

I confeſs, here is a worthy Member that ſpake laſt, ſaid ſomething in his Argument that hath ſome weight with me. I did apprehend by the general Debate of the Houſe, That the Parliament had no Rules at all, but what they would fix to themſelves; But I have a great Regard for his Opinion. But if he ſays true, The Evidence before you is not legal Evidence in *Weſtminſter-hall*; but 'tis legal Evidence according to the Rules of Proceeding in the high Court of Parliament: But I think truly, if they may be preſumed to have any Rules to go by, nothing is ſo plain to me, as that a Rule of their own of ſo late date, as the Act for regulating Tryals in Caſes of Treaſon, ſhould be a Rule to them: And 'tis ſaid in that Act, That after ſuch a Day, no Perſon ſhall be brought to Tryal in any Caſe of Treaſon, *&c.* but he ſhall be condemned upon the Evidence of two Witneſſes; and I muſt needs ſay, that Act that was paſſed laſt Seſſions, is ſo much for the Liberty of the People of *England*, that I think it will be very hard to repeal that ſubſtantial Part of the Law ſo ſoon after it was made.

As to the Extraordinarineſs of the Caſe, I am ſenſible what ſtreſs hath been laid on that Argument, as if the Strength of this Government did in ſome Meaſure depend upon your Diſpoſal of this Matter one Way or the other; and ſince that is the Caſe, I ſhall ſpeak tenderly of it; for I do as much abhor Acts of Treaſon againſt the Government, as any Man that hath ſpoke for this Bill: I think, as the Crime is to be diſtinguiſhed from all others, as being a more than ordinary Crime; ſo I think the Perſon that is concerned, muſt be extraordinary: And I think, with ſubmiſſion, there is ſome difference between Principals and Seconds in an Act of Treaſon. When you can't come at a

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Man being the Head of a Rebellion, it may be reasonable to proceed by Bill of Attainder: but I think 'tis not to be used upon all Occasions, or when you may come at a Person another Way; which I think, is the Case of this Gentleman. I am of Opinion, that there does not depend more upon Sir *John Fenwick* now, than when he was first taken. Why he was not tryed, I shall not examine the Reason; I suppose it was because he gave some Assurance of his Confession: truly, I have heard no other Reason for proceeding against him now, but those Papers which have been adjudged scandalous, and are so to all intents and purposes, I do think truly: But the Liberty of the People of *England* is very much concerned in the Revocation of that Act, which was promoted for the Liberty of the People; and none of the Arguments that have been used can convince me, That I ought to give Judgment upon less Evidence than is provided by that Act.

Mr. *Sloane*. Sir, I hardly thought I should have needed to have troubled you with my Thoughts in this Matter, but that this honourable Gentleman that spake last, has gone so far in his Reason, as to speak to Matter of Law; he seems to extenuate the Fault of Sir *John Fenwick*; and gives it as a Reason why he should not be attainted by this Bill, for that he was none of the Principals but only an Accessary; there is no Gentleman of the Gown, but will tell you, That there is no Accessaries in Cases of Treason, but they are all Principals, and equally guilty; and there is no Evidence in this Case to make him Accessary, but he is either Principal or nothing.

When I have made this Observation, give me leave to tell you my own Thoughts; as every Man is to be saved by his own Faith, so may my Salvation depend, upon my Opinion according to my Conscience in this Matter, which is for passing this Bill.

The last Time I gave you my Reasons why I was for this Bill; and yet I have not heard them answered, though a Gentleman said I answered my self; but I will state the Case, and desire him to reply to me. I did say then, Sir, and do so again, That I do not think those scandalous Papers any Reason to provoke you to pass this Bill; and I do think, if he should be threatned, it would be a Blemish upon his Confession. Another Thing I put out of the Case, That he is a Man so dangerous to the Government, that if he escape, we are all undone. I do take him, that in his Person, Interest and Friends, he is not so; and would not have that be a Motive for the passing of this Bill: But take it upon the Evidence that is before us, and in the Nature of our Proceedings; Then I will say, we have great Reason to proceed upon this Bill, for the Preservation of the Government, and for this Reason; whereas it is insisted on one side, That here are the Laws and Liberties of *England* at Stake, and no Body knows whose Case it may be next. Sir, if we don't go upon good Grounds and Reasons, that we don't fear any Bodies following, God forbid we should make this a Precedent: But pray turn the Tables on the other side, and see what the Case will be; that here is a Gentleman that every Body of the House does believe guilty; that he hath been in a Conspiracy to bring in the French, and depose the King; and the Man came before us, and we had no Power to reach him; What will be the Precedent on the other Side? It will be easie to take off one of the Witnesses by Men of great Estates, and then there is no coming at them, even by the Parliament themselves: This Parliament was of Opinion, That they could not come at Sir *John Fenwick*, though they were of Opinion that he was guilty.

But now, Sir, to that which is the Question, 'Tis allowed by every Body, you may do what you please; but without straining your legislative Power, I shall offer my Thoughts and Reasons for it, upon these three Points; That the Fact is Treason; that he is plainly guilty; and that we have a plain Jurisdiction in this Case, in the ordinary Methods and Proceedings of Parliament.

Sir, the Fact is Treason, the Meeting at several Times, and conspiring, and consulting to bring in a french Power to depose the King: You have been told by several Persons, and the Council at the Bar, That such Meetings without some other Overt-Act, is not Treason; but I affirm, the contrary, for that is an Overt-Act of compassing the Death of the King; and Sir *Bartholomew Shower*, who did insist upon it at the Bar, did otherwise act his Part upon it at the Tryal of Mr. *Cook*; for he offered it at first, but afterwards he deserted it as a Thing he could not stand upon; for 'tis the Opinion of all the Judges, upon a late Resolution.

Then, Sir, the Fact being Treason, is no Act *ex post Facto*. We are not making that Treason which was not so, but we are only judging of the Fact that was Treason before; though if it was a doubt whether it was Treason or no, the Parliament hath a Power by 25 *Ed.* 3. to judge that Treason, that the Courts below have no Power of.

The next Thing is, Whether there be sufficient Evidence of his Treason before us? I will put out of the Case, as no conclusive Evidence at all, what *Goodman* hath said upon his Oath (further than that there was such a Witness that did and could swear such a Thing, and that he was examined before the Jury;) and this I will take upon me to say; (and I will give my Reason for my Opinion) That the Parliament is not obliged to two Witnesses by any Law now in being.

It hath been told you, That from the Time of *Ed.* 3. one Witness was sufficient till the Statute of *Ed.* 6. Now I will prove to you, from the Statute of *Phil.* and *Mary*, That by the common Law, and all the Time between the Reign of *Ed.* 3. and *Ed.* 6. one Witness was sufficient for this Treason. For that Statute of *Phil.* and *Mary* does say, That any Person that shall bring from beyond Sea, any false and counterfeit Coin, or be accused or impeached of any Offence concerning the Impairing, Counterfeiting, or Forging of any Coin current within this Realm, shall, and may be indicted, arraigned, convicted, or attainted by such-like Evidence, and in such-like Manner as was accustomed before the first Year of K. *Ed.* 6. Now, What was the Reason of that Statute before the Statute of *Ed.* 6.? Those Counterfeits were to be tryed by one Witness; and therefore at this Day all the Counterfeiters, and Utterers of false Coin, have been attainted by one Witness.

'Tis said again, That there is the Law of Nations, and the Law of God to the contrary, Gentlemen have said several Times already, That in Murther and Felony, one Witness is sufficient, which saving some little Parts of the Judgment as to the Forfeiture and Attainting of the Blood, is the same Penalties. We are not in the Land where that Law was in Force; for by that Law, as to common

common Felons, there was Reſtitution only: But I would put a Gentleman that ſits by the Bar this Caſe, by the ſame Law of *Deuteronomy* and *Numbers*, that he hath quoted; Adultery is Death: Will you be contented, that That ſhould be ſo here? They are either all of them in Force, or none of them in Force?

I do ſay, That by the Statute of *Ed.* 3. and ever after till the Statute of *Ed.* 6. one Witneſs was ſufficient to convict any Man of Treaſon. And I do ſay; That the Statutes of *Ed.* 6. does not conclude the Parliament from any Method of ptoceedings.

The Statute ſays, That no Man ſhall be indicted, *&c.* nor ſhall they proceed upon ſuch Indictment; from which Words in the Statute, I do plainly make it appear to any Gentleman that will read it, 'Tis confined only to the Courts of *Weſtminſter-hall:* For certainly, you can't call a Bill of Attainder, to be a Proceeding upon an Indictment. What I ſay, is only to diſcharge my own Conſcience, and to ſalve the tender Conſciences of them that hear me; and therefore, I deſire them never to ſay, That there ought to be two Witneſſes, before they anſwer what I have ſaid upon that Statute.

Then, Sir, you have need but of one Witneſs, and you have had Capt. *Porter* before you; who, I think, nothwithſtanding all that hath been ſaid, is a credible Witneſs. A Gentleman made ſome Objections to his Credit, and told you, he was not to be believed, becauſe he was in the ſame Conſpiracy, and had been in ſuch a villainous Action: But, Sir, the ſame Gentleman hath often confined you to the Rules of *Weſtminſter-hall*; and he hath told you, 'Tis a wrong Place here, and that a Man has not ſo good a Tryal here, as in *Weſtminſter-hall.* Why? the Thing that was ſpoke of, of his being concerned in the Aſſaſſination, and of his being a fellow Conſpirator with them, which is now urged as an Objection before you, is no Objection in *Weſtminſter-hall*?

I would only take notice of another Objection this Gentleman made to the Witneſs, which he ſaid he had from the Bar; which was, That Capt. *Porter* was not pardoned, and he was now drudging for his Pardon; but that is ſo far from what ought to be quoted, that he that ſaid it, ought to be reprimanded for it.

He made another Objection againſt his being a good Witneſs, and compared it to the Caſe of an Hundredor; but he did not remember, that the Man that was robbed is a good Witneſs; and the Reaſon is, becauſe of the Neceſſity of the Thing, and that no others can be; and the Defendant in an Hundred can't be a Witneſs, becauſe there may be others; and that is the Reaſon of this Caſe.

And for the Precedents in *Richard* 3d's and *Henry* 4th's Time, no Gentleman can inſiſt upon them conſidering the difference of the Crown, and the one Attainted the other; and they were not reverſed upon the Point of Juriſdiction, but becauſe of the different Rights of the Kings; and no Body had pretended to Anſwer the Caſe of the Regicides, they were not left to the Law; I mean ſuch as were actually Tryed before the Parliament: But the Parliament paſſed different Judgments on them; and ſome of them were in Cuſtody. What was told you of *Cromwell*'s Caſe and others, they go upon the ſame Reaſon; That they were not heard though they were in Cuſtody.

Col. *Wharton.* A Gentleman lately told you, we had lately paſſed an Act for Tryals in Caſes of Treaſon, and how we are in this Proceeding, about doing ſomething that is contrary to it; that is a Thing that would ſtick with me, if I could not anſwer it, but I appeal to every Gentleman in this Houſe, whether that Act hath any ſort of Relation to Tryals in Parliament; for that is only to direct the Courts in *Weſtminſter-Hall.*

I have only this to ſay, I think the Evidence very full before you; I think you have had one very good Witneſs, and the Council for the Priſoner, had liberty to confront him: If he had not been guilty, the Priſoner at the Bar would have deny'd it; I am convinced of the Truth of it, and my Conſcience is to make a Judgment upon it, and that is all we can go by here.

Mr. *Jefferys.* A worthy Gentleman of the long Robe hath taken Pains to find out Precedents to juſtifie our Proceedings; and another ſays there is no Act to circumſcribe our Proceedings; but ſince Gentlemen differ ſo much, it gives me a great deal of Caution. This I know, there is a Law of the Land, by which Perſons ought to be governed: I take this to be an extraordinary Method of Proceedings, and I hope the Lords will take more Care of the Matter, than the Commons.

Mr. *Edward Harley.* Sir, I can't ſatisfie my ſelf to be for this Bill, and in a few Words, I ſhall give my Reaſon for it: It hath been ſaid, That the Parliament is unlimited; I do agree that we are not tied to the Rules of *Weſtminſter-Hall*; I ſhall only mention the Reaſon why two Witneſſes are required in Caſes of High-Treaſon. If any will look into the Hiſtory of *England*, they will find it hath been often the Deſign of the Crown, to trump up Plots upon the Subject; and therefore theſe Acts took particular Care there ſhould be two Witneſſes to prove the Fact; this is the Reaſon of the Law, and I think, upon it the Liberty of the Subject is founded, and therefore I can't be for this Bill.

Then the Queſtion for paſſing this Bill was put, and the Houſe divided.

Ayes 189. Noes 156.

The Writ for Executing Sir *John Fenwick* being under the whole Broad-Seal, and incloſed in it,

Gulielmus tertius Dei Gratia, Angliæ, Scotiæ, Franciæ & Hiberniæ, Rex, Fidei def. &c. Vic. Com. London, & Vic. Com. Midx. Salutem: Cum Johannes Fenwick, Bar. per quendam actum ad ſeſſionem preſentis noſtri Parliamenti apud Weſtminſt. ſuper viceſimum diem Octobris Anno Regni noſtri octavo per prorogationem tent. Edit. de alta proditione per ipſum perpetrat. & Commiſſ. attinctus fuit, & executio ſuper inde adhuc reſtat faciend. & quia pro certis cauſis & conſiderationibus nos ſpecialiter moventibus totam executionem Actus attincturæ prædict. ſuper dict. Johannem Fenwick præter amputationem Capitis ſui omitti volumus, ideo præcipimus vobis & per preſentes firmiter injungendo mandamus quod in & ſuper viceſimum tertium diem inſtantis menſis Januar. inter horas

ras nonam & undecimam ante meridiem ejuſdem diei dictum Johannem Fenwick in Goala noſtra de Newgate *ſub Cuſtodia veſtra nunc exiſtent. à goala prædict. uſque ad* Tower-Hill, *ducatis & Caput ipſius Johannis Fenwick ad tunc & ibidem amputari & à Corpore ſuo omnino ſeparari facietis. Teſte meipſo apud Weſtmonaſt. decimo octavo die Januar. Anno Regni noſtri octavo.* Chute.

The Label.

Vic. Com. Lond. & Midx. de executione faciend. John Fenwick, Bar. authoritate Parl. Attinct. Chute.

The TRYAL of Captain THOMAS VAUGHAN.

Die Sabbati, triceſimo primo Octobris, *Annoque Regni Regis* Willhelmi *Octavo, Annoque Domini.* 1696.

The Court being ſate, at which were preſent, Sir Charles Hedges, *Judge of the High Court of Admiralty, the Lord Chief Juſtice* Holt, *the Lord Chief Juſtice* Treby, *the Lord Chief Baron* Ward, Mr. *Juſtice* Turton, *and others of his Majeſties Commiſſioners. The Court proceeded on this manner.*

Cl. of Arr. MAKE Proclamation.

Cryer. O Yes, O yes, O yes. *All manner of Perſons that have any Thing more to do, &c. and were adjourned to this Hour, draw near, and give your Attendance.* God ſave the King.

Then the Grand Jury were called over, and the Appearances mark'd. And Witneſſes being Sworn in Court to give Evidence to them, againſt Thomas Vaughan, *they withdrew to hear the ſame.*

Then the Keeper of Newgate *was ordered to bring his Priſoner* Thomas Vaughan *to the Bar.* (Which he did.)

Cl. of Arr. Tho. Vaughan, Hold up thy Hand. (*Which he did.*) Thou ſtandeſt Indicted, *&c.*

How ſay'ſt thou, *Tho. Vaughan,* Art thou guilty of the High-Treaſon whereof thou ſtandeſt Indicted, or not guilty?

T. Vaughan. Not guilty.

Cl. of Arr. Culprit, How wilt thou be try'd?

T. Vaughan. By God, and this Country.

Cl. of Arr. God ſend thee a good Deliverance.

And then the Court proceeded to the Tryal of the Pirates, and gave notice to Mr. Vaughan *to prepare for his Tryal on* Friday *next, the 6th of* November, 1696.

Die Veneris, ſexto Novembris. *Annoque Regni Regis* Willhelmi *Octavo, Annoque Domini,* 1696.

Cl. of Arr. CRYER, make Proclamation.

Cryer. O Yes, O yes, O yes, *All manner of Perſons that have any Thing more to do at this Seſſions of* Oyer *and* Terminer, *adjourned over to this Day, draw near and give your Attendance. And you Sheriffs of the City of* London, *return the Precepts to you directed, upon Pain and Peril which will fall thereupon.*

Then the under Sheriff returned the Precepts.

Cl. of Arr. Make Proclamation.

Cryer. O yes, *You good Men of the City of* London, *ſummoned to appear this Day, to try between our Sovereign Lord the King, and the Priſoner at the Bar, anſwer to your Names, as you ſhall be called, every one at the firſt Call, and ſave your Iſſues.*

The whole Pannel was called over, and the Appearances of thoſe that anſwered, recorded, and the Defaulters were again called over.

Mr. *Phipps.* Will your Lordſhip pleaſe to order, that two Men may be brought from the *Marſhalſea,* in the behalf of the Priſoner?

L. C. J. Holt. You ſhall have an Order.

Then the Court went on the Tryal of the Six Pirates, and after the Tryal was over, Thomas Vaughan *was called to the Bar.*

T. Vaughan. My Lord, my Irons are very uneaſie to me, I deſire they may be taken off.

L. C. J. Holt. Ay, ay, take them off.

Mr. *Phipps.* If your Lordſhip pleaſe, we have ſome doubts as to the Indictment.

L. C. J. Holt. If you have any Exceptions, you ought to have made them before the Priſoner pleaded to it.

Mr. *Phipps.* I thought you had allowed it, my Lord, in former Caſes.

L. C. J. No, we did not allow it as of Right due to the Priſoner; the Exceptions ſhould have been made before the Plea. You were indulg'd in being heard at firſt in the Caſes of *Rookwood, Cranburne,* and *Lowick,* but it was not the Intent of the Act, to alter the Method of the Proceeding; and ſo upon conſideration hath it been determined. The Priſoner hath Time given by the

the Act to make any Exception to the Indictment before he pleaded, but you may move what you will afterwards in Arreſt of Judgment, if it be material.

Cl. of Arr. *Thomas Vaughan*, Thoſe Men that you ſhall hear called, and perſonally appear, are to paſs between our Sovereign Lord the King and you, upon Tryal of Life and Death; if therefore you will challenge them, or any of them, your Time is to ſpeak unto them as they come to the Book to be ſworn, before they be ſworn.

Mr. *Phipps*. There was one Man here that deſired to be excuſed, becauſe he was on the Grand Jury; therefore it ſeems there are ſome returned upon this Jury that were on the Grand Jury, which I think ought not to be.

L. C. J. Challenge them then.

Mr. *Phipps*. We do not know the Men.

Then the Pannel was called over, and a great many Challenges made, and the Twelve Men that were Sworn, were theſe.

Edward Leeds	*Caleb Hook*
Nath. Green	*Joceline Roberts*
Hen. Sherbrook	*Tho. Parker*
Jo. Sherbrook	*Peter Gray*
Tho. Emms	*Roger Poſton*
Peter Parker	——*Woolley.*

Cl. of Arr. *Cryer*, Make Proclamation.

Cryer. O yes, *If any one can inform my Lords, the King's Juſtices and the King's Serjeant, the King's Attorney-General, the King's Advocate, in his High Court of Admiralty, before this Inqueſt be taken of the High-Treaſon, whereof* Thomas Vaughan, *the Priſoner at the Bar, ſtands indicted, let them come forth, and they ſhall be heard, for now the Priſoner at the Bar ſtands upon his Deliverance; and all others that are bound by Recognizance to give Evidence againſt the Priſoner at the Bar, let them come forth and give their Evidence, or elſe they forfeit their Recognizance.*

Cl. of Arr. *Thomas Vaughan*, Hold up thy Hand. *(Which he did.)* You that are ſworn, look upon the Priſoner, and hearken to his Cauſe. He ſtands Indicted by the Name of *Thomas Vaughan*.

Whereas, *That before and until the 8th Day of* July, *in the 7th Year of the Reign of our Sovereign Lord King* William III. *there was open War between our ſaid Lord the King, and* Lewis *the* French *King. And that the ſaid War continued on the ſaid 8th Day of* July, *in the 7th Year aforeſaid, and doth ſtill continue. And that for all the Time aforeſaid, the ſaid* Lewis *the* French *King and his Subjects, were, and at preſent are Enemies of our ſaid Lord the King that now is: And that at the Time of the ſaid War, and before the ſaid 8th Day of* July *in the 7th Year aforeſaid, the ſaid* Lewis *the* French *King, ſet out, amongſt others, a certain ſmall Ship of War called the* Loyal Clencarty, *of which* Thomas Vaughan, *a Subject of our ſaid Lord the King that now is, was Commander, with ſeveral* French *Subjects, Enemies of our ſaid Lord the King, to the Number of* 15 *Perſons, in a Warlike manner to take and deſtroy the Ships, Goods, and Moneys of our ſaid Lord the King, and his Subjects, and againſt our ſaid Lord the King, to wage War upon the High-Seas, within the Juriſdiction of the Admiralty of* England. *And that at the Time of the ſaid War between our ſaid Lord the King, and the aforeſaid* Lewis *the* French *King,* Tho. Vaughan, *late of* Galloway, *in the Kingdom of* Ireland, *Mariner, being a Subject of our ſaid now Lord the King, as a falſe Rebel againſt the ſaid King his Supreme Lord, and not having the Fear of God before his Eyes, nor conſidering the Duty of his Allegiance, but being moved and ſeduced by the inſtigation of the Devil, and altogether withdrawing the cordial Love, and true and due Obedience which every true and faithful Subject of our ſaid Lord the King, ought, by Law, to have towards the ſaid King; and the ſaid War, as much as in him lay, againſt our ſaid Lord the King, deſigning and intending to proſecute and aſſiſt. The ſaid* Tho. Vaughan *on the ſaid 8th Day of* July *in the ſaid 7th Year of the King, being a Soldier aboard the Ship of War called the* Loyal Clencarty, *in the Service of the ſaid* Lewis *the* French *King, And being then on the High-Seas, within the Juriſdiction of the Admiralty of* England, *about Fourteen Leagues from* Deal, *did then and there by Force and Arms, falſely, maliciouſly, wickedly, and traiterouſly, aid, help, and aſſiſt the Enemies of our ſaid Lord the King, in the Ship of War called the* Loyal Clencarty. *And afterwards the ſaid* Thomas Vaughan, *in the Execution and Performance of his ſaid aiding, helping, and aſſiſting, maliciouſly, falſely, and traiterouſly ſailed a Cruiſing to ſeveral Maritime Places within the Juriſdiction aforeſaid, by Force and Arms to take the Ships, Goods, and Money of our ſaid Lord the King, and his Subjects, againſt the Duty of his Allegiance, the Peace of our ſaid Lord the King, and alſo againſt a Statute in that Caſe made and provided.*

And the ſaid Jurors for our ſaid Lord the King, upon their ſaid Oaths, farther repreſent, That the aforeſaid Thomas Vaughan, *as a falſe Traytor againſt our ſaid Lord the King, further deſigning, practiſing, and, with his whole Strength, intending the common Peace and Tranquillity of this Kingdom of* England *to diſturb. And War and Rebellion againſt the ſaid King upon the High-Seas within the Juriſdiction of the Admiralty of* England, *to move, ſtir up, and procure. And the ſaid Lord the King, from the Title, Honour, Royal Name, and Imperial Crown of his Kingdom of* England, *and Dominions upon the High-Seas, to depoſe and deprive, and miſerable ſlaughter of the Subjects of the ſaid Lord the King, of this Kingdom of* England, *upon the High-Seas, and within the Juriſdiction aforeſaid, to cauſe and procure, on the ſaid* 8th *Day of* July, *in the ſaid 7th Year of the King, upon the High-Seas, about Fourteen Leagues from* Deal, *and within the Dominion of the Crown of* England, *and within the Juriſdiction of the Admiralty of* England *aforeſaid, falſely, maliciouſly, deviliſhly, and treacherouſly by Force and Arms, with divers others falſe Rebels and Traytors, (to the Jurors unknown) War againſt our ſaid now Lord the King, prepared, promoted, levyed, and waged. And that the ſaid* Thomas Vaughan *in performance of his ſaid War and Rebellion, then and there by Force and Arms, maliciouſly, wickedly, and openly aſſembled and joined himſelf with ſeveral other falſe Traytors and Rebels (to the Jurors unknown) to the Number of Fifteen Perſons, being Armed and Provided in a Warlike Manner, with Guns and other Arms, as well offenſive as defenſive. And the ſaid* Thomas Vaughan, *then and there being aboard the ſaid Ship of War, called the* Loyal Clencarty, *aſſembled with the other falſe Rebels and Traytors as aforeſaid, maliciouſly, wickedly and trayterouſly ſailed a Cruiſing to ſeveral Maritime Places, with the aforeſaid Ship of War, called the* Loyal Clencarty, *with an intent to take, ſpoil, and carry away the Ships, Goods, and Money, of our ſaid Lord the King, and his Subjects, by Force and Arms, upon the High and open Seas, within the Juriſdiction aforeſaid; againſt the Duty of his Allegiance, the Peace of our*

ſaid Lord the King, his Crown and Dignities; and likewiſe againſt the Form of a Statute in this Caſe made and provided.

Thomas Noden, } Jurors.
Samuel Oldham, }

Upon this Indictment he hath been Arraigned, and upon his Arraignment he hath pleaded not guilty, and for his Tryal he hath put himſelf upon God and his Country, which Country you are. Your Charge is to enquire whether he be guilty of the High-Treaſon whereof he ſtands indicted, or not guilty. If you find him guilty, you are to enquire what Goods or Chattels, Lands or Tenements he had at the Time of the High-Treaſon committed, or at any Time ſince. If you find him not guilty, you are to enquire whether he fled for it. If you find that he fled for it, you are to enquire of his Goods and Chattels as if you had found him guilty. If you find him not guilty, nor that he did fly for it, you are to ſay ſo, and no more, and hear your Evidence.

Mr. *Whitaker.* May it pleaſe you, my Lord, and you Gentlemen of the Jury, The Priſoner at the Bar, *Thomas Vaughan*, ſtands indicted for High-Treaſon, That whereas on the *9th* of *July*, there was a War between his Majeſty the King of *England*, and *Lewis* the *French* King; amongſt other War-like Preparations, that the *French* King did make, he did ſet forth a Ship called the *Loyal Clencarty*; That the Priſoner at the Bar, as a falſe Traytor, did liſt himſelf aboard this Ship; And on the High Seas, about Eleven Leagues from *Deal*, did traiterouſly aid the King's Enemies, to take the King's Ships. This is ſaid to be againſt the Duty of his Allegiance, and the Peace of our Sovereign Lord the King, his Crown and Dignity. He ſtands further Indicted, for that he, the ſaid *Thomas Vaughan*, with ſeveral other falſe Traytors, did levy War, and Arm themſelves with Arms, Offenſive and Defenſive, and was cruiſing on the High-Seas, off of *Deal*, with an Intent to take the King's Ships, and to kill and deſtroy the King's Subjects, againſt the Duty of his Allegiance, and the Peace of our Sovereign Lord the King, his Crown and Dignity. To this Indictment he has pleaded not guilty. We ſhall call our Witneſſes, and prove the Fact, and doubt not but you will do your Duty.

Dr. *Littleton.* Gentlemen of the Jury, you have heard the Indictment opened, and alſo what ſort of Crime the Priſoner at the Bar ſtands charged with, *viz.* That he being a Subject of the Crown of *England*, has, together with his Accomplices, armed himſelf in a Military Way, to murther and deſtroy his fellow-Subjects, and as much as in him lay, to ruin his Native Country, by ruining the Trade and Traffick, which is the great Support and Riches of the Nation. And that his Crime might be conſummate, he, with his Accomplices, has done what in him lay, to dethrone, and diſpoſſeſs his ſacred Majeſty, as well knowing it was in vain to expect to make the Nation unhappy, as long as we enjoy ſo great and good a Prince. So that you are to look on the Priſoner as an Enemy and Traytor to his own Country; and not only ſo, but as one of the worſt and moſt dangerous Enemies: Since he being a Subject of theſe Iſlands, was the better able to ſpy out our Weakneſſes and Defects, and thereby to do us the greater Miſchief. It is not to be expreſs'd what Ruin and Deſolation it would have cauſed to this Nation, had this Man and his Accomplices brought their wicked Intentions to effect; and all this was done to aid and aſſiſt the Grand Enemy of *Chriſtendom*; and of our own Country in particular, the *French* King. Therefore as you are Lovers of your King and Country, and your fellow-Subjects, whom the Priſoner and his Accomplices would have deſtroyed; I am ſure you will take care to do the Nation Juſtice, and that he be brought to condign Puniſhment. Gentlemen, there is one Thing further that I muſt not omit, *viz.* That the Priſoner at the Bar being in Cuſtody for theſe very Crimes about a Twelve-month ſince, did not think fit to truſt to his Innocency, nor to his pretended *French* Extraction, but the Day before he was to be Tryed, he thought fit to break Priſon, withdraw from Juſtice, and run his Country: Which though not a Confeſſion and full Proof, yet is a great Evidence of his Guilt.

Mr. *Sol. Gen.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, the Priſoner at the Bar, *Thomas Vaughan*, ſtands Indicted for two Sorts of Treaſon. The one is for levying War againſt the King, the other is for aiding and abetting the King's Enemies. And to prove the firſt, the levying of War, we ſhall prove that he was a Captain of a *French* Ship, call'd the *Granado* of St. *Maloes*, and that with that Ship, he took and carried away many of his Majeſty's Subjects, and took ſeveral Merchant Ships, and carried them to *France*. We ſhall likewiſe prove that he was Captain of another *French* Ship, called the *Loyal Clencarty*, with which he was cruiſing off of *Deal*, where we had ſeveral Ships lying at the ſame Time: And there he being on Board the ſaid Ship *Clencarty*, was taken Priſoner, with a Commiſſion, by which he was conſtituted Captain of the *Loyal Clencarty*, under the Hand of *Lewis* the *French* King.

And to prove him aiding and abetting to the King's Enemies, we ſhall prove againſt him this particular Fact; that he and his Accomplices did in the Year 1692, come to *London*, and went to *Tower-Wharf*, to enquire what Veſſels were ready to go down the River; and there was one laden with Piece Goods, and he put himſelf, and ſeveral other of his Accomplices into this Veſſel, to go down the River; but they had contrived the Matter, and brought it ſo to paſs, that they fell on thoſe Men who had the Government of the Ship, and carried away this Veſſel to *France*. Now if this be true, the Priſoner is certainly guilty of aiding the King's Enemies: And to prove he was guilty of this, we will prove to you, that even in *France*, where he was at perfect Liberty, he owned he was the Contriver of all this, and that he had a thouſand Pound for his Share of what was taken from our Merchants. If we prove theſe two Facts againſt him, I doubt not but you will find him guilty. We will call our Witneſſes.

Cl. of Arr. *T. Eglington, Rich. Crouch, Samuel Oldham, John Bub, Noden* (Who appeared, and were ſworn.)

T. Vaughan. With Submiſſion to your Lordſhips, and the honourable Bench, I beg that they may be put aſunder, out of hearing of one another.

L. C. J. Let it be ſo, though you cannot inſiſt upon it as your Right, but only a Favour that we may grant.

Mr. *Cowper.* Set up *Richard Crouch.* Is your Name *Richard Crouch?*

R. Crouch. Yes, Sir.

Mr

Mr. *Cowper*. Give my Lord and the Jury an Account of what you know of the Ship *Coventry* taking of the *Clancarty*, and what you know concerning the Priſoner at the Bar in taking of her.

R. Crouch. We weighed our Anchor about four a Clock.

Mr. *Cowper*. Where were you?

R. Crouch. At the *Nore*.

Mr. *Cowper*. In what Ship?

R. Crouch. The *Coventry*. After we had been under Sail a matter of an Hour, we came to an Anchor with a little Wind; ſo, Sir, this *Thomas Vaughan* met with a Couple of Pinks, they were ſmall Veſſels that he deſigned to take; but he ſaw us, and ſo lay by all Night.

Mr. *Cowper*. Who lay by?

R. Crouch. *Thomas Vaughan*, the Priſoner at the Bar.

Mr. *Cowper*. In what Veſſel was he?

R. Crouch. In a Two-and-twenty-Oar Barge, he lay by at the *Gunfleet*; the next Morning we weighed Anchor at Day-light; we ſaw him, and chaſed after him; and we made them, and he made us, and we made what haſte we could, and coming up we fired a Gun at him, and then we fir'd another, and then he went aſhore.

Mr. *Cowper*. What, do you mean that he run his Veſſel on the Sands?

R. Crouch. Yes, and then we fired another Gun at him, and then he got off again; and then we fired another Gun, and could not bring him to, and then he got off the Sands again; and when we came up to him, we Manned our Long-Boat, and Pinnace, and Barge, and had him at laſt. When he came on Board, he ſaid I cannot deny but I am an *Iriſh*-man, and that my Deſign was to burn the Ships at the *Nore*.

Mr. *Cowper*. Did he himſelf confeſs it?

R. Crouch. Yes he did, that is the Man, I know him well enough.

L. C. J. When you took him, in what Ship was you?

R. Crouch. In the *Coventry*.

L. C. J. Out of what Ship was he taken?

R. Crouch. The Two-and-twenty-Oar Barge.

L. C. J. What Ship did it belong to?

R. Crouch. I reckon it was my Lord *Barclay*'s Barge.

L. C. J. Who did it belong to then?

R. Crouch. To the King of *France*.

L. C. J. What Company was there in her, how many Men had ſhe aboard?

R. Crouch. About five and twenty Hands.

Mr. *Cowper*. Did you ever hear him ſay any Thing of a Commiſſion he had?

R. Crouch. I heard he had a *French* Commiſſion, but I did not ſee it.

Mr. *Cowper*. Did you hear him ſay any Thing of it?

R. Crouch. No.

Mr. *Cowper*. But he told you his Deſign was to burn the Ships at the *Nore*?

R. Crouch. Yes.

Mr. *Cowper*. What Ships?

R. Crouch. The *Engliſh* Ships; there were ſeveral Ships there then.

L. C. J. Were there no *Frenchmen* aboard the Barge.

R. Crouch. No, that I can tell.

Mr. *Lechmere*. From whence did he come, from *England*, or *France*?

R. Crouch. From *Calice* in *France*.

L. C. J. Prithee hear me, this Two-and-twenty-Oar-Barge, did it belong to any other Ship?

R. Crouch. No, not that I can tell.

L. C. J. Did he call that Veſſel the *Loyal Clancarty*?

R. Crouch. Yes, my Lord.

Then Edmund Courtney *was called.*

Mr. *Sol. Gen*. Mr. *Courtney*, pray tell my Lord and the Jury what you know of the going away of a *Cuſtom-Houſe* Boat?

Ed. Courtney. I will tell you, if you pleaſe.

Mr. *Phipps*. My Lord, I think they ought not to examine to that, becauſe it is not laid in the Indictment. The carrying away of the *Cuſtom-Houſe* Barge is not mentioned in the Indictment, and by the new Act for regulating Tryals in Caſes of Treaſon, no Evidence is to be admitted or given of any Overt-Act, that is not expreſsly laid in the Indictment.

L. C. J. Nothing elſe? Suppoſe a Man be indicted for levying War againſt the King, or adhering to the King's Enemies, can't they prove any Act that makes out a levying of War, or an Adherence to the King's Enemy?

Mr. *Phipps*. With Submiſſion, not by that Act, my Lord, unleſs it be laid in the Indictment.

L. C. J. Levying of War is the Treaſon; may they not prove that levying of War, without being confined to any ſpecial or particular Act?

Mr. *Phipps*. With Submiſſion, by the 25 of *Edward* the III. Levying of War, as well as imagining the Death of the King, muſt have the Overt-Acts, that are to prove it, expreſs'd in the Indictment.

L. C. J. Levying War is an Overt-Act.

Mr. *Soll. Gen*. The Buſineſs of Overt-Acts is, where the Compaſſing and Imagining the King's Death is a Crime and Queſtion, and this muſt be diſcovered by Overt-Acts. But if Treaſon be falſifying of the King's Money, this is Treaſon, but there can be no Overt-Act of that, for that is an Overt-Act it ſelf; but there muſt be an Overt-Act to prove the Compaſſing and Imagining the Death of the King, and in no other Sort of Treaſon.

L. C. J. Levying of War that is an Overt-Act, ſo is Adhering to the King's Enemies. Now Compaſſing and Imagining the Death of the King is not an Overt-Act in it ſelf, but is a ſecret Imagination in the Mind, and a Purpoſe in the Heart; but there muſt be external Acts to diſcover that Imagination and Purpoſe.

Mr. *Phipps*. What is the Meaning of the New Act then, that there ſhall be no Evidence of any Overt-Act, but what is laid in the Indictment?

L. C. J. What Overt-Acts are there in Clipping and Coyning?

Mr. *Phipps*. That is not within the new Act of Parliament.

L. C. J. That is moſt true, the one is excepted, the other is not comprehended; but the Queſtion is upon the Statute of 25. *Ed.* 3*d*. to which the late Act doth refer. Now proving the Adherence to the King's Enemy, is proving an Overt-Act. Suppoſe it be the Killing of the Chancellor, or Treaſurer, or Judge in the Execution of his Office, What Overt-Acts will you have then? Adhering to the King's Enemies, is a Treaſon that conſiſts in doing an Overt-Act.

Mr. *Phipps*. Yes, my Lord, I take it that it is for the new Act, by ſaying *that no Evidence ſhall be admitted of any Overt-Act that is not expreſsly laid in the Indictment*, muſt be intended of ſuch Treaſons,

of which by Law Overt-Acts ought to be laid. Now the Killing the Chancellor, or Treasurer, or Judge, in the Execution of his Office, are not such Treasons of which it was necessary to lay any Overt-Acts in the Indictment, and so not within the Meaning of this new Law. But levying War, and adhering to the King's Enemies, which are the Treasons in this Indictment, must by the express Purview of the 25 *Ed.* 3. be proved by Overt-Acts, which are to be alledged in the Indictment.

Mr. *Sol. Gen.* The new Act does not alter the Law in this particular, what was Law before, is Law now, it leaves the Overt-Acts as they were before; and it says not that an Overt-Act need to be expreſt, where it was not needful before. Now if a Man be Indicted for compassing the Death of a private Person, there ought to be some Overt-Act to prove his Design; but if there be an Indictment for Murther, there needs no other Overt-Act to prove it, but the Murther it self.

L. C. J. But the Force of the Objection lies in this, *viz.* To say a Man levyed War, or adhered to the King's Enemies, is no good Indictment; but it is necessary to alledge in what manner he levyed War, or adhered to the King's Enemies; as that he appeared in such a War-like manner, or did adhere to and assist the King's Enemies, by joyning Forces with them, or otherwise assisting them, or confederating with them, that must be specified. But if you Indict a Man generally for adhering to the King's Enemies, and not say how and in what manner he did adhere to them, that is not a good Indictment; therefore if you particularize what Enemies, and how and in what manner he adher'd to them, no Evidence can be given of any other Kind of adherence, but that which is so specified in the Indictment.

Mr. *Sol. Gen.* Then we must put all our Evidence into the Indictment.

Mr. *Phipps.* So you must, as to the Overt-Acts.

Mr. *Sol. Gen.* That will be the same Thing as to put in all our Evidence, if we must give Evidence of no Overt-Act but what is expreſt in the Indictment. But I do not take it, that the Act requires all Overt-Acts to be put in the Indictment.

Mr. *Phipps.* The Act says so. Suppose you had left out the Overt-Act, would the Indictment have been good?

Mr. *Sol. Gen.* We did not intend to put in all the Overt-Acts, but only what related to that Part of the Treason.

Mr. *Phipps.* The Treason must be proved by Overt-Acts, and the Overt-Acts that prove the Treason, must be mentioned in the Indictment.

Mr. *Sol. Gen.* What! the Overt-Acts of the Treasons before mentioned, as Counterfeiting the King's Money, and the like, are all to be mentioned?

L. C. J. Consider, if you can make that a good Indictment, to say, that the Prisoner adhered to the King's Enemies, without mentioning any Overt-Acts to manifest such an adherence, then your Answer to Mr. *Phipps* is full; but if it be not a good Indictment, without alledging particular Acts of Adherence, then it necessarily follows, that if Particulars are alledged, and you do not prove them as is alledged, you have failed in the Indictment, and so his Objection will lie hard upon you.

Mr. *Sol. Gen.* My Lord, we framed our Indictment according to the Letter of the Statute.

L. C. J. In compassing the Death of the King, you must shew how that is manifested by the Overt-Acts.

Mr. *Sol. Gen.* But compassing and imagining must be discovered by some Overt-Acts.

L. C. J. *Treby.* This is a doubt I have often thought of, I thought it most natural that the Word Overt-Act should relate to the first Article, viz. *compassing and imagining of the King's Death:* For Overt-Act seems to be opposed to something of a contrary Nature: Act is opposed properly to Thought, Overt is properly opposed to secret. And that sort of Treason consisting in secret Thought and Internal Purpose, cannot be known, tryed, and judged of, without being disclosed and manifested by some external open Act. Wherefore it is pertinent and reasonable, in order to attaint a Man of such Treason, that the Indictment should charge and set forth the Act, as well as the Thought. And so it hath been used to be done.

But, such order or manner doth not seem so natural or necessary, in framing Indictments for other Treasons, where the Treason consists in visible or discernible Facts; as levying War, *&c.*

Nevertheless I think an Overt-Act ought to be alledged in an Indictment of Treason for adhering to the King's Enemies, giving them Aid and Comfort. And the Overt-Act, or Acts, in this Case, ought to be the particular Actions, Means, or Manner by which the Aid and Comfort was given.

My Lord *Cook* declares his Opinion to this purpose. His Words (which I read out of his Book here) are these. *The Composition and Connection of the Words are to be observ'd,* viz. [thereof be attainted by Overt Deed] *This,* says he, *relates to the several and distinct Treasons,* before expres'd, *and especially to the Compassing and Imagining of the Death of the King,* &c. *for that it is secret in the Heart,* &c. Now the Articles of Treason, before expreſt in the Statute of 25 *Ed.* 3. are four. 1. Compassing, *&c.* 2. Violating the Queen, *&c,* 3. Levying War, and 4. This of Adhering, *&c.* (And yet it is hardly possible to set forth any Overt-Act concerning the 2d. otherwise than the Words of the Statute, That Article expressing so particular a Fact.)

I do observe also, that these Words [*Being thereof Attainted by Overt Fact*] do, in this Statute, immediately follow this Article of Adhering, *&c.* And it would be a great Violence to construe them to refer to the first Article only, and not to this last, to which they are thus connected. If they are to be restrained to a single Article, it were more agreeable to the strict Rules of Construing, to refer them to this of Adhering only.

L. C. J. That which I insist on is this, whether the Indictment would be good, without expressing the special Overt-Act. If it be, then this is a surplusage, and we are not confin'd to it; but if it be not a good Indictment without expressing it, then we are confin'd to it.

Mr. *Phipps.* I believe Mr. Sollicitor never saw an Indictment, of this Kind, without an Overt-Act laid in it.

L. C. J. Can you prove the Facts laid in the Indictment? For certainly the Indictment without mentioning particular Acts of Adherence, would not be good.

Mr. *Cowper.* Yes, my Lord; and as to the Evidence before you, we would only offer this; whether in this Case, if the Indictment were laid generally, for Adhering to the King's Enemies in one Place, and in another Place levying of War, and nothing more particular, it would be good; I doubt it would not. But when there is laid a particular Act of Adhering, we may give in Evidence

matter

matter to ſtrengthen the direct Proof of that particular Act of Adhering to the King's Enemies, tho' that matter be not ſpecially laid in the Indictment: For the Act goes only to this, That the Priſoner ſhall not be convicted, unleſs you prove againſt him the Overt-Acts ſpecially laid in the Indictment; But whether it ſhall not be heard, to make the other Overt-Act which is laid, the more probable? Now we have laid a ſpecial Overt-Act in the Indictment; and we have produced Evidence of it, and we would produce likewiſe collateral Evidence, to induce a firmer Belief of that ſpecial Overt-Act, by ſhewing you that he hath made it his Practice, during the War, to aid and aſſiſt the King's Enemies; But if the Jury do not find him guilty of the ſpecial Overt-Acts laid in the Indictment, they cannot find him guilty by the Proof of any other Overt-Act not laid in the Indictment. But if we prove he has made this his Practice, in other Inſtances, during the War, whether that Proof ſhall not be received?

Mr. *Phipps.* My Lord, I deſire the Act may be read. It expreſsly contradicts what Mr. *Cowper* ſays; for it ſays, That no Evidence ſhall be given of any Overt-Act, that is not expreſsly laid in the Indictment. [*The Act was Read.*]

L. C. J. That is, you may give Evidence of an Overt-Act, that is not in the Indictment, if it conduce to prove one that is in it. As if conſulting to kill the King, or raiſe a Rebellion, is laid in the Indictment, you may give in Evidence an acting in purſuance of a Conſult, that is an Evidence that they agreed to do it, tho' that doing of the Thing is, of it ſelf, another Overt-Act, but it tends to Prove the Act laid in the Indictment.

Mr. *Phipps.* The Overt-Act laid in this Indictment, is his Cruiſing in the *Clancarty*; and this Overt-Act you would prove, is no Evidence of that; nor relates to it, but it is a diſtinct Overt-Act of it ſelf.

L. C. J. You cannot give Evidence of a diſtinct Act, that has no relation to the Overt-Act mentioned in the Indictment, tho' it ſhall conduce to prove the ſame Species of Treaſon.

Mr. *Cowper.* We would apply this Proof to the Overt-Act laid in the Indictment.

L. C. J. Any Thing that has a direct tendency to it, you may prove.

Mr. *Cowper.* We have laid the Overt-Act, that he did voluntarily put himſelf on Board this Veſſel of the *French* King, the *Loyal Clancarty*, and did go to Sea in her, and Cruiſe, with a Deſign to take the Ships of the King of *England*, and his Subjects. Now Part of the Overt-Act, is his Intention, in the Act of Cruiſing, we do not charge him with taking one Ship, ſo that his Intention is a Member of the Overt-Act, and it muſt be proved, to make his Cruiſing Criminal, that he deſign'd to take the Ships of the King of *England*. Now we think it a proper Intention, to ſhew, that during this War, before and after the Time of the Treaſon laid in the Indictment, he was a Cruiſer upon, and Taker of the King's Ships, and this fortifies the direct Proof given of his Intention.

L. C. J. I cannot agree to that, becauſe you go not about to prove what he did in the Veſſel call'd the *Loyal Clancarty*; but that he had an Intention to commit depredation on the King's Subjects: So he might, but in another Ship. Now, becauſe a Man has a Deſign to commit depredation on the King's Subjects in one Ship, does that prove he had an Intention to do it in another?

Mr. *Phipps.* He was Cruiſing in the *Clancarty*, that is the Overt-Act laid in the Indictment; and the Overt-Act you would produce, is his being in another Veſſel.

L. C. J. Go on, and ſhew what he did in the *Clancarty*. You the Priſoner, will you ask this Man any Queſtions?

Mr. *Phipps. Crouch*, you ſaid, that the Priſoner did ſay he could not deny but he was an *Iriſh*-man; how came you to talk about it?

R. Crouch. He ſaid, I cannot deny but I am an *Iriſh*-man.

L. C. J. Did he ſay he was an *Iriſh*-man? What were the Words he uſed?

R. Crouch. He told the Lieutenant he was an *Iriſh*-man.

Mr. *Phipps.* What Diſcourſe was there? How came he to ſay that?

R. Crouch. I went by only, and heard the Words ſpoken to the Lieutenant.

L. C J. Did he ſpeak Engliſh?

R. Crouch. Yes, my Lord.

L. C. J. If he ſpoke Engliſh, that is ſome Evidence he is an *Engliſh*-man, tho' the contrary may be proved by him.

T. Vaughan. That would no more prove me an *Engliſh*-man, than if an *Engliſh*-man were in *France*, and could ſpeak *French*, would prove him a *French*-man, becauſe he could ſpeak *French*.

L. C. J. You ſhall be heard by and by to ſay what you will on your own behalf.

Mr. *Phipps*, Were there any *French*-men on Board the *Clancarty*.

R. Crouch. No, Sir.

Mr. *Phipps.* Mr. *Vaughan*, will you ask him any Queſtions your ſelf?

Mr. *Cowper.* Call *T. Noden.*

T. Vaughan. How did you know that there were no *French*-men aboard? Did I addreſs my ſelf to you when I came aboard?

R. Crouch. No, Sir.

T. Vaughan. Did I not addreſs my ſelf to the Captain when I came aboard? How came I to tell you I was an *Iriſh*-man?

R. Crouch. They were all *Scotch*-men, *Engliſh*-men, and *Iriſh*-men.

Mr. *Phipps.* Mr. *Vaughan*, you need not take up the Time of the Court about that Matter. Mr. *Cowper*, you may go on.

Mr. *Sol. Gen.* Did the Priſoner own that he acted by the *French* King's Commiſſion? Did you know any Thing of his having a *French* Commiſſion?

R. Crouch. Yes, I heard he had one, but I did not ſee it, but I heard ſo by the Company.

L. C. J Were there any *French*-men aboard?

R. Crouch. No, not that I know of. They were *Dutch*-men, and *Engliſh*-men, and *Scotch*-men, and *Iriſh*-men.

M. *Cowper.* Call *T. Noden* (Who appeared and was Sworn,) Do you give my Lord and the Jury an Account of taking the Veſſel, call'd the *Two-and-Twenty-Oar-Barge.*

T. Noden. Laſt Year, about *June* or *July*, to the beſt of my Remembrance, I belong'd to his Majeſty's Ship the *Coventry*, and we took the *Two-and-Twenty-Oar-Barge.*

L. C. J. How many *Dutch*-men were aboard?

T. Noden. I do not know of above one.

L. C. J. *Treby.* What were the Reſt? Were there any *French*-men?

T. Noden. Yes, there were ſeveral *French*-men aboard. I belong'd to the *Coventry.* And as we were ſailing by the *Nore*, and the *Gunfleet*, our Captain ſpy'd a ſmall Veſſel ſailing by the Sands, and

he

he ſuppos'd her to be a *French* Privateer, and he fir'd a Gun to make them bring to, and they did not obey; and at laſt fir'd a Gun, Shot and all, and they would not come to. Then the Captain order'd to man the Boat, and row after them: So the Barge, and Pinnace, and Long-boat were mann'd; and they came pretty near them. This Barge we took, was aground alſo, and they got her afloat, and ſhe run aground again: And as they were aground, moſt of them out of the Boat, our Long-boat ſtruck aground; and waded after them near half a League, and when we came to the Barge, there was this Captain *Vaughan*, and two or three and Twenty more. And there was two *Dutch*-men, and, as I apprehended, ſome *French*-men; there was in her a Blunderbuſs, and ſmall Arms, and a conſiderable Quantity of Hand-Granadoes.

L. C. J. What Veſſel was you aboard?

T. Noden. The *Coventry.*

Mr. *Sol. Gen.* What Country Man did Captain *Vaughan* ſay he was?

T. Noden. I did not hear any Thing of it. Our Captain examin'd the *Dutch*-man what Country-man the Commander was, and he ſaid he was an *Iriſh*-man; but I did not hear it my ſelf. When Captain *Vaughan* was brought aboard the *Coventry*, was put aboard the Prize we had taken.

M. *Cowper.* Had you any Diſcourſe with Captain *Vaughan.*

T. Noden. No.

L. C. J. Did they endeavour to take your Ship?

T. Noden. No, but endeavoured to get away from us.

L. C. J. What Guns or Ammunition had they?

T. Noden. I cannot tell particularly, there was ſome Convaſs Bags, every Man had a Carteridge Bag, and there were ſome Hand-Granadoes,

Mr. *Whitaker.* What Fire-Arms had they?

T. Noden. I cannot ſay how many, but they had Muskets and Piſtols, and two Blunderbuſſes.

Mr. *Cowper.* Did you underſtand whence this Ship the *L. Clancarty* came?

T. Noden. The *Dutch*-men ſaid they came from *Calis.* As near as I can gueſs, we ſpy'd them about Eleven a Clock, and we weigh'd Anchor in the Afternoon, on *Sabbath day*, and they took us to be a light Collier, and endeavour'd to board us, as the *Dutch*-man ſaid; but when they knew what we were, they endeavour'd to eſcape from us.

Mr. *Cowper.* Call *Sam. Oldham.* (Who appear'd and was Sworn.) Mr. *Oldham*, was you aboard the *Coventry*, when ſhe took the Ship call'd the *Clancarty*?

Sam. Oldham. Yes, I was.

Mr. *Cowper.* Pray give an Account what you obſerved of the Priſoner *T. Vaughan* then?

Sam. Oldham. We weigh'd our Anchor firſt at the *Boy* and *Nore*, ſo we ſaw a Prize in the Morning, the Captain ſaid it was a Prize, and we made Sail after him, and they ran on the *Goodwin-Sands:* And the Captain ſeeing the Barge run aground, we fir'd at her to bring her to; we fir'd a Second, and ſhe would not come to, but ran aground again. When ſhe was aground, by the Captain's Order, we Mann'd our Boats, and out we went after her.

Mr. *Cowper.* Did you take her?

Sam. Oldham. We went and our Long-Boat ran aground; I was in the Long-Boat, and we waded, I believe, a Mile and half after her.

L. C. J. What *French*-men were aboard?

Sam. Oldham. I cannot juſtly ſay whether there were any.

L. C. J. Were there any?

Sam. Oldham. I think one or two.

Mr. *Cowper.* Were there any *Dunkirkers* or *Walloons* aboard?

Sam. Oldham. There was a *Dutch*-man, who they call'd a *Fleming*, and I diſcours'd him.

L. C. J. How many *Outlandiſh*-men were there aboard? was there a dozen, or how many?

Sam. Oldham. I cannot ſay the Quantity.

Mr. *Cowper.* Was there more than two or three.

Som. Oldham. Yes, more than two or three.

L. C. J. What Forreigners?

Sam. Oldham. Yes. And there were two *Engliſh*-men.

Mr. *Cowper.* What did you obſerve of the Priſoner at the Bar, at the taking of the Ship?

Sam. Oldham. I did not come aboard along with the Priſoner, but with his Man, and his Man ſaid he was an *Iriſh*-man, and that he was Commander of the Boat.

Mr *Sol. Gen.* What was there Deſign in that Ship *Clancarty?*

Sam. Oldham. I cannot tell that.

Mr. *Cowper.* Did they reſiſt, in their being taken?

Sam. Oldham. I cannot tell that, I ſaw no Arms.

Mr. *Cowper.* You were in the Action, was there any reſiſtance made?

Sam. Oldham. I ſaw no reſiſtance, they offered to run, they were aground once, and got off again.

Mr. *Phipps.* You ſay there were Forreigners, what Country-men did you believe thoſe Forreigners to be?

Sam. Oldham. I cannot juſtly ſay, I believe *Dutch*-men.

L. C. J. How many *Dutch*-men were there?

Sam. Oldham. I cannot ſay.

Dr. *Oldiſh.* But you ſaid there were ſome two or three *French*-men, and that they ſpoke *French*; do you underſtand *French*?

Sam. Oldham. No Sir.

Dr. *Oldiſh.* Then how do you know they were *French*-men, and ſpoke *French.*

Sam. Oldham. They ſaid they were, they did not ſpeak *Engliſh*, ſeveral of the Ship's Company ſaid they were *French.*

L. C. J. If they were all *Dutch*-men, and appear in a hoſtile Manner againſt the King of *England*'s Subjects, they are Enemies, tho' we are in League with *Holland*, and the Reſt of the ſeven Provinces.

Mr. *Phipps.* The Indictment runs, That the *French* King, *quandam Naviculam vocat'* The loyal Clancarty; *cum quamplurimis Subditis Gallicis Inimicis Dom. Regis nunc ad numerum quindecim Perſonarum replet' preparavit.*

L. C. J. Suppoſe it doth.

Mr. *Phipps.* It is *Subditis Gallicis*, my Lord.

L. C. J. They will be Subjects in that Matter, if they act under his Commiſſion: They are Enemies to the King of *England*, and they have made themſelves the *French* King's Subjects by that Act.

Mr. *Phipps.* It appears not that they are *French*-men, my Lord.

L. C. J. If *Dutch*-men turn Rebels to the State, and take Pay of the *French* King, they are under the *French* King's Command, and ſo are his Subjects. Will you make them Pirates when they act under the Commiſſion of a ſovereign Prince? They are

are then *Subditi* to him, and ſo *Inimici* to us.

Mr. *Phipps*. It does not take away their Allegiance to their lawful Prince. They may go to the *French* King, and ſerve him, yet that does not transfer their Allegiance from their lawful Prince to the *French* King, and make them his Subjects. But however, to make them Subjects within this Indictment, they muſt be *Gallici Subditi*; ſo they muſt be *French* men as well as Subjects.

L. C. J. Acting by Vertue of a Commiſſion from the *French* King, will excuſe them from being Pirates, tho' not from being Traitors to their own State, but to all other Princes and States againſt whom they do any Acts of Hoſtility, they are Enemies: And their ſerving under the *French* King's Commiſſion, makes them his Subjects as to all others, but their own Prince or State. And tho' they be not *French*-men, yet they are *Gallici Subditi*; for it's the *French* Subjection that makes them to be *Gallici Subditi*.

Mr. *Phipps*. Pray, my Lord, ſuppoſe a Subject of *Spain* ſhould go over to the *French* and fight againſt *England*; I take it, he may be termed an Enemy of the King of *England*, tho' his Prince be in League with ours, but with Submiſſion, he cannot properly be ſaid to be a Subject of the *French* King: For ſuppoſe an Indictment of Treaſon againſt a Forreigner, ſhould ſay, *that he being a Subject, did commit Treaſon*; and it be proved he is not a Subject, with Submiſſion, he muſt be acquitted.

Mr. *Cowper*. There is a local Allegiance while he is in the Country, or Fleets, or Armies of the *French* King.

L. C. J. *Dutch* men may be Enemies, notwithſtanding their State is in Amity with us, if they act as Enemies.

Mr. *Cowper*. Call *R. Bub*. (He was ſworn) Was you aboard the *Coventry*, when ſhe took the *Clencarty*?

R. Bub. Yes, Sir.

Mr. *Cowper*. Give an Account what you know of the Priſoner, *Tho. Vaughan*, at the taking of that Ship.

R. Bub. We came aboard the *Coventry*, and were at the *Nore* at Anchor, our Pennant was taken down to be mended. So in the Night Captain *Vaughan*, with his Two-and-twenty-Oar Barge, rounded us two or three Times. In the Morning we weigh'd Anchor, and fell down in order to go to the *Downs*: and we came up with them, and fir'd at Captain *Vaughan*, and he would not bring to. With that our Captain order'd to have the Barge, and Pinnace, and Long-Boat, to be Mann'd, to go after him. They follow'd him, and at laſt came up with him, and came up pretty near; but could not come ſo near with the Long-Boat, but were fain to wade up to the middle a Mile and a half. We hoiſted our Colours; in order to fight them, and bore down ſtill upon them; and they would not fight our Men. And we took them out, and when they came aboard, the *Engliſh*-man that was a Pilot was to have his Freedom, to Pilot them up the River. He confeſt to the Captain, that Captain *Vaughan* intended to burn the Ships in the Harbour. And the next Day after the *Pilot* had confeſſed it, Captain *Vaughan* himſelf confeſſed it on the Deck, that he came over with that Deſign.

Mr. *Cowper*. Who did he confeſs it to?

R. Bub. To the Boat-ſwain and Gunner, as he was on the Deck, on the Lar-Board ſide, that he came on purpoſe to burn the Shipping in the Harbour.

L. C. J. Did he confeſs that himſelf?

R. Bub. Yes, my Lord.

L. C J Whereabout was this, at the *Buoy* in the *Nore*?

R. Bub. In the *Downs*, my Lord.

L. C. J. Where did the Ships lye, that were to be burn'd?

R. Bub. At *Sheerneſs*.

Mr. *Sol. Gen*. He own'd himſelf to be an *Iriſh*-man, did he not?

R Bub. Yes.

Mr *Cowper*. And that he came from *Calis*?

R. Bub. Yes.

Mr. *Cowper*. Had you any Diſcourſe with him about a Commiſſion?

R. Bub. No. But our Lieutenant and Captain had, but it was not in my hearing; I will not ſpeak further than I heard, and what I can juſtify.

Mr. *Sol. Gen*. Will you ask him any Queſtions?

Mr. *Phipps*. No.

Mr. *Sol. Gen*. Then call Mr. *Jo. Crittenden*, Marſhal of *Dover Caſtle*, (who was ſworn) Mr. *Crittenden*, Pray what did you hear the Priſoner at the Bar confeſs of his Deſign in coming to *England*?

Mr. *Crittenden*. I did not hear him ſay any Thing of his Deſign.

Mr. *Sol. Gen*. What did he confeſs?

Mr. *Crittenden*. He confeſt he was an *Iriſh*-man?

Mr. *Whitaker*. Upon what occaſion did he confeſs that?

Mr. *Crittenden*. When I enter'd him into my Book, I ask'd him what Countryman he was.

Mr. *Cowper*. What are you?

Mr. *Crittenden*. I am the Marſhal of *Dover-Caſtle*.

Mr. *Cowper*. By what Name did he order you to enter him.

Mr. *Crittenden*. *Thomas Vaughan* an *Iriſh-man*.

L. C. J. Upon what Account did you enter him;

Mr. *Crittenden*. As a Priſoner.

Mr. *Cowper*. Did he ſpeak any Thing of a Commiſſion?

Mr. *Crittenden* I did not hear him ſay any Thing of that.

Mr. *Phipps*. Have you your Book here?

Mr. *Crittenden*. Yes, Sir.

Dr. *Oldiſh*. Was he not in Drink when he ſaid ſo?

Mr. *Crittenden*. I believe he was not very ſober indeed.

Mr. *Phipps*. Did you ever after hear him ſay he was an *Iriſh*-man?

Mr. *Crittenden*. The next Day he deny'd it.

Mr. *Cowper*. When he had conſidered the Danger of it.

Mr. *Crittenden*. The next Day he was Examined by ſome of the Juſtices of the Peace.

Mr. *Sol Gen*. Was you by when he was Examined by the Juſtices?

Mr. *Crittenden*. Yes.

Mr. *Sol. Gen*. What did he then ſay?

Mr. *Crittenden*. Then he ſaid he was of *Martenico*.

Mr. *Sol. Gen*. Set up Mr. *Bullock* (who was ſworn) Mr. *Bullock*, do you know the Priſoner at the Bar.

Mr. *Bullock*. Yes.

Mr. *Sol. Gen*. Pray what have you heard him ſay of his Deſign that he came into *England* for?

Mr. *Bullock*. He came to *Dover* about the 14th of *July* 1695, as I remember: I went with ſeveral others, who were brought by the Captain of the *Coventry*, and the Lieutenant, and ſome others: And when we came thither, he there owned himſelf

ſelf an *Iriſh*-man? but when he went the next Day to be Examined, he ſaid he was of *Martenico*. He told me he had that Barge from the Duke of *Bulloign*, and came on the Coaſt, and was Chaſed into the *Flatts*, where they took him.

L. C. J. Did you ever hear him ſay he had any Commiſſion from the *French* King?

Mr. *Bullock*. I know nothing of that; it was late, and we did not examine him then; but the next Day, when he came to be examined, he ſaid he was of *Martenico*.

Mr. *Sol. Gen*. What did he ſay his Deſign was?

Mr. *Bullock*. He ſaid, that ſeeing the Boat at *Bulloign*, he bought it of the Duke of *Bulloign*; and the Duke ask'd him what he would do with her; And he ſaid, he would fit her up, and go and take a Ship at Sea, that is upon our Coaſts.

Mr. *Phipps*. We are in your Lordſhip's Judgment, whether we need give any Evidence; for we think they have not proved their Indictment: For the Indictment ſets forth, *That the* French *King fitted out the* Loyal Clencarty, *of which* Thomas Vaughan *was Commander*; *and that very many* French-*men, Subjects of the* French *King, were put on Board*. Now the firſt Witneſs ſwears, there were no *French*-men; and another ſwears there was one or two; another, that they were Forreigners, But does not believe they were *French*-men: So there is no Proof of that Part of the Indictment; nor is there any Proof that he was Captain of the *Loyal Clencarty*: So that none can ſay, it is the ſame Veſſel mentioned in the Indictment: Nor is any Act of Hoſtility proved; for all the Witneſſes ſay, that *Vaughan* never pretended to attack them, but run from them. So that all they depend on, to ſupport the Indictment, is to prove that he had a Deſign to burn the Ships at *Sheerneſs*; Which will not ſerve their turn; for the Words of the Indictment are, *ad prædandum ſuper altum Mare*. Now *Sheerneſs* is not *ſuper altum Mare*, but *infra Corpus Comitatus*, and then not within the Indictment.

Mr. *Cowper*. The Words, Ships at *Sheerneſs*, do not imply, that the Ships lay within the Town of *Sheerneſs*, but off of *Sheerneſs*, which is *altum Mare*.

Mr. *Phipps*. Then it is not in your Indictment; for that ſays, at *Sheerneſs*.

Mr. *Cowper*. No, off of *Sheerneſs*.

Mr. *Sol. Gen*. It is no Contradiction, to ſay the *Sea* is within Part of a County.

Mr. *Phipps*. The Indictment ſays, at *Sheerneſs*.

Mr. *Sol. Gen*. Off of *Sheerneſs*, is the high *Sea*.

Mr. *Phipps*. *Sheerneſs* is not the *Buoy* in the *Nore*. Then you muſt prove he was Captain at this Time: For the Indictment ſays, *Ad tunc fuit Capitaneus & Miles*.

L. C. J. One Overt-Act of Adhering to the King's Enemies, is, that he put himſelf as a Souldier on Board the Ship.

Mr. *Phipps*. You will make one Part agree with another, that the *French* King did ſet out a Ship, and gave him a Commiſſion to be Captain of her.

L. C. J. The Witneſſes have proved he acted as a Captain.

Mr. *Phipps*. He was taken, and ſure if he was taken, he muſt have his Commiſſion with him.

Mr. *Sol. Gen*. Examine the Marſhal, he took an Account of him: and by Direction of Mr *Vaughan* himſelf, he entered him as Captain; and he enter'd ſeveral Men in the Ship as *French*-men, by their own Direction. (Mr. *Crittenden* was call'd) Mr. *Crittenden*, have you got your Book in which you made the Entry?

Mr. *Crittenden*. Yes, I have it.

Mr. *Sol. Gen*. By whoſe Order did you enter them?

Mr. *Crittenden*. By the Direction of Captain *Vaughan*, the Priſoner at the Bar.

Mr. *Cowper*. How did you know he was a Captain?

Mr. *Crittenden*. Becauſe he told me he was Captain, and I enter'd him as ſuch in my Book.

Mr. *Sol. Gen*. Captain of what?

Mr. *Crittenden*. The *Loyal Clencarty*.

Mr. *Sol. Gen*. Pray read your Entry in your Book.

Mr. *Crittenden*. *Thomas Vaughan*, Captain, *Iriſh*-man, the 14th of *July* 1695; and ſo of all the reſt of the Ship's Crew.

Mr. J. *Turton*. Did you write theſe in the preſence of Captain *Vaughan*?

Mr. *Crittenden*. Yes, in the ſame Room where he was.

Mr. *Phipps*. Did you write it by his Direction?

Mr. *Crittenden*. For his own Part, by his Direction; and for the reſt, by their Direction.

L. C. J. Take all the Circumſtances together, it is great Evidence, conſidering what they were about, and what Veſſel they had. Mr. *Crittenden*, can you tell how many *French*-men were there.

Mr. *Crittenden*. I will tell you preſently (he counts them in his Book) there were thirteen.

Mr. *Sol. Gen*. Did Captain *Vaughan* hear any of them bid you enter them as *French*-men?

Mr. *Crittenden*. I cannot be poſitive in that, I ſuppoſe he did, he was in the ſame Room.

L. C. J. Do you expect Witneſſes from *France*, to teſtify where they were Born and Chriſten'd?

Mr. *Phipps*. One Witneſs ſays there was not one *French*-man there.

L. C. J. Not to his Knowledge.

Mr. *Sol. Gen*. What do you know of his having a *French* Commiſſion?

Mr. *Bullock*. I did not ſee it.

Mr. *Whitaker*. Did he own his having any *French* Commiſſion?

Mr. *Bullock*. I cannot tell.

Mr. J. *Turton*. He own'd himſelf a Captain.

Mr. *Phipps*. He might be a Captain in another Ship, but not in this Ship; they ought to prove he was Captain at that Time, in that Ship, by the *French* King's Commiſſion.

L. C. J. All the Witneſſes ſay he acted as a Captain at that Time.

Mr. *Cowper*. He own'd himſelf the Captain of the *Loyal Clencarty*.

Mr. *Bar. Powis*. What can be plainer, than that he owned himſelf Captain?

Dr. *Oldiſh*. This ſeems to me a very ſtrange Proof, to be built only upon the Sayings of theſe Perſons, that they were *French*-men, and this to a Man who had no Authority to examine them, when it might have been eaſily proved in a regular Way, in Caſe they had been ſo; they might have been examined before a Magiſtrate, and thereby it would have appeared whether they were *French* or no. And 'twas abſolutely Neceſſary in this Caſe, becauſe of the Contrariety of the Witneſſes; for the firſt Witneſs ſaid, there was no *French*-men aboard; the next ſaid there were two *French*-men and a *Dutch*-man; and *Crittenden* ſaid, there were thirteen. Now how can theſe be reconciled, unleſs there had been a legal Examination of the Parties? But the Thing we would chiefly go on is this,

this, I think they have fail'd in the Foundation of the Treaſon; that is, to prove the Priſoner a Subject of this Crown; neither is there the leaſt Colour of Proof thereof. At Night he came to Mr *Crittenden*, and is in Drink; there he ſays he is an *Iriſh*-man; the next Morning, when he is examin'd before the Juſtices, then he comes in a Kind of Judgment, and then ſuch a Confeſſion would be of Moment; but then he confeſſes himſelf to be a *French*-man of *Martenico*. Now, my Lord, what Credit is to be given to theſe Confeſſions; when before the Marſhal he ſhall ſay, I am an *Iriſh*-man; and the next Day, when he is on Examination, he declares himſelf a *French*-man; in one Confeſſion he is in Drink, in the other Sober? Now, my Lord, I ſay, what Proof is here? Here then the Foundation of the Treaſon fails: For the Indictment is, *That he being a Subject of the King of* England, *levies War*. Now, my Lord, if this Quality be not proved, all the Reſt of the Indictment falls to the Ground: for it is impoſſible for him to commit Treaſon, where he is not a Subject, becauſe there can be no Violation of Allegiance. So that if he be a *French*-man, as he declared before the Juſtices, he cannot be guilty of Treaſon. So that here they have fail'd in the Foundation of all; that is, to prove him a Subject of *England*. And becauſe they affirm him to be ſo, it lies on thoſe that affirm it, to prove it. But perhaps now they will ſay, that theſe little Confeſſions of his will throw the Burthen of Proof on him. By no Means; when here is a ſtronger Preſumption on the other Side; a meer extrajudicial Saying to Seamen, that he is an *Iriſh*-man, cannot ballance his Confeſſion Examined before the Juſtices, wherein he ſays he is a *French* man; and ſo can never throw the Burthen of Proof on him. Therefore it lies on them that aſſert this, to prove it. But, my Lord, tho' it doth not lie on him, yet we will prove him to be a *French*-man, and Born at *Martenico*, by thoſe that were at the Chriſtening of him, and have known him from Time to Time ever ſince. And becauſe they ſay he can ſpeak *Engliſh*, if you pleaſe to examine him, you ſhall hear him ſpeak natural *French*; ſo that That cannot prove him to be a natural *Iriſh* man.

Mr *Phipps*. Such a Saying of a Foreigner will be of no great Weight; becauſe if a Man go into a foreign Country, he may ſay he is that Country man to get the more Favour.

L. C. J. What, to hang himſelf?

Mr *Phipps*. No, my Lord, a Man that comes into a ſtrange Country, may very well think he ſhall find better Uſage, by pretending to be of that Country, than by owning himſelf to be a Foreigner. But we will prove *Vaughan* to be a *French*-man. Call *Robert French*. (Then *Robert French* was ſworn.) Mr *French*, Pray give the Court and Jury an Account, whether you know Mr *Vaughan*, the Priſoner at the Bar, and how long you have known him, and what Countryman you take him to be, and the Reaſon why.

Rob. French. I have known him this fourteen Years.

Mr *Phipps*. Where did you ſee him then?

Rob. French. I ſaw him in Saint *Chriſtophers*.

Mr *Phipps*. Pray give an Account how you came to know him.

Rob. French. About ſixteen Years ago I was at *Mount-Surat*, and I came to St. *Chriſtophers*, and there I chanc'd to come into *Engliſh* Ground, among the Factors; and ſo they brought me to the *French* Ground; and coming there, I was in Company with ſeveral others that Night, and it happened I was told there was one Mr *Vaughan* there; and I coming acquainted with him, he ſhewed me this Youth (he was a Youth then;) He told me he was his Son, and recommended him to me, becauſe he look'd on me to be a Man in Truſt and Buſineſs.

Mr *Phipps*. From that Time what has he been reputed?

Rob. French. A Sea-faring Man.

Mr *Phipps*. But what Countryman?

Rob. French. To be Born in *Martenico*.

Mr *Phipps*. In whoſe Dominions is that?

Rob. French. In the *French* King's Dominion.

Mr J. *Turton*. What Occaſion had you to Diſcourſe of the Place of his Birth?

Rob. French. Becauſe his Father was look'd upon to be a *French*-man?

Mr J. *Turton*. His Father was a *French*-man?

Rob. French. Yes, my Lord, and lived at *Martenico*.

Mr *Cowper*. How old might he be at that Time?

Rob. French. About fifteen or ſixteen.

Mr *Cowper*. How came you to be talking of his Birth, and with whom?

Rob. French. One that was talking with me, told me, his Name was *Vaughan*, and that he was Born there.

Mr *Cowper*. What introduc'd this Diſcourſe? How came he to tell you this, that he was born in that Place?

Rob. French. His Father told me ſo.

Mr *Cowper*. You were talking of one *Vaughan* of his Name: How many were in Company when there was this talk?

Rob. French. There were many of them.

Mr *Cowper*. Name them.

Rob. French. It is ſo long ago I cannot remember them.

Mr *Cowper*. Name as many as you can of them, as many as you do remember.

Rob. French. One Mr *Bodiken*, a Factor.

Mr *Cowper*. Who elſe?

Rob. French. Several others.

Mr *Cowper*. you named one *Vaughan* before.

Rob. French. Yes, I did.

Mr. *Cowper*. But you had forgot him now.

Rob. French. No, there was one *Vaughan*.

L. C. J. Were there any more?

Rob. French. Yes, there was, I remember the Company that went along with me.

L. C. J. Who were they?

Rob. French. There were ſeveral Paſſengers that went over with me.

L. C. J. How came you to talk of this Man's Nativity?

Rob. French. Becauſe his Father ſaid, he had not been out of the Iſland in twenty Years; (at which the People laught.)

Mr *Cowper*. What Place was this Diſcourſe in?

Rob. French. At St. *Chriſtophers*.

Mr *Cowper*. How did his Father's ſaying, he had not been out of that Iſland in twenty Years, prove his Son was Born there?

Rob. French. Becauſe he recommended him to me as a Sea-faring Man.

Mr *Cowper*. What is that a Reaſon of? What is that to his being Born at *Martenico*?

Mr J. *Turton*. What Countryman are you?

Rob. French. I am an *Iriſh*-man Born.

L. C. J. His Father acknowledg'd himſelf to be an *Iriſh*-man Born, did he not?

Rob. French. No, my Lord, he did not ſay where he was born: I do not know.

Mr Juſtice *Turton.* Have you continued any Acquaintance with Mr *Vaughan* ſince? How long did you ſtay at St. *Chriſtophers?*

Rob. French. I ſtay'd but Four and twenty Hours, to take in Water.

L. C. J. How long was it after this, before you ſaw this Gentleman, Captain *Vaughan?*

Rob. French. I never ſaw him ſince, till I ſaw him in *London.* (*Then the People laughed.*)

L. C. J. Pray Gentlemen have Patience. How do you know now that this is the ſame Man, that you ſaw fourteen Years ago? For there muſt be a great Alteration in a Man in fourteen Years time, from what was at that time, being but fifteen Years of Age.

Rob. French. I believe in my Conſcience this is the Man.

L. C. J. Can you take it upon your Oath he is the Man?

Mr Bar. *Powis.* In what Language had you this Diſcourſe?

L. C. J. How long were you in Company with him and his Father?

Rob. French. I believe five or ſix Hours.

Mr Bar. *Powis.* In what Language was this Diſcourſe with his Father?

Rob. French. My Lord, he ſpoke *Engliſh*, a ſort of broken *Engliſh.*

L. C. J. Where do you live your ſelf?

Rob. French. I live in *Ireland.*

L. C. J. How long have you lived there?

Rob. French. Nine or Ten Years.

L. C. J. Whereabout in *Ireland?*

Rob. French. In *Connaught.*

L. C. J. Nine or Ten Years?

Rob. French. Yes, my Lord.

Dr *Littleton.* Did not Captain *Vaughan*, nor his Father ſpeak *Iriſh* to you in that ſix Hours?

Rob. French. No, my Lord.

Mr Juſtice *Turton.* How long have you been in *England?*

Rob. French. Not above two Months.

Mr Juſtice *Turton.* Did you hear of Captain *Vaughan* being to be try'd?

Rob. French. No, my Lord.

Mr Juſtice *Turton.* How did he come to hear of you then?

Rob. French. I heard he was in Town.

L. C. J. It is a ſtrange Thing, you have a moſt admirable Memory, and Captain *Vaughan* has as good a Memory as you; that you ſhould never have any intercourſe for fourteen Years, and yet ſhould remember one another after ſo long a Time; it is a wonderful Thing too, that when he could not know you were in Town, yet he ſhould call you a Witneſs on his Behalf, ſure he muſt have the Spirit of Prophecy.

Rob. French. He did not ſend to me at all.

L. C. J. How did you come to be here then?

Rob. French. I will tell you. It was my Cuſtom always to go and ſee Priſoners, and I heard there were Priſoners in *Newgate*, ſo I went to *Newgate*, and I met with one *Dwall*, and I asked him of another Gentleman that was there; and I went to the other Side by Chance, and I met with Captain *Vaughan.*

L. C. J. What was thy Deſign? Why didſt thou viſit *Newgate?*

Robert French. Becauſe it was my Cuſtom, becauſe it was an Act of Charity.

L. C. J. Did you go to *Newgate* out of Charity?

Rob. French. I went to ſee my Friend, and carried a Letter to him. I went out of Charity.

Mr. *Phipps.* You were in the *Weſt-Indies*, upon the *French* Ground; don't they ſpeak *Engliſh* on the *French* Ground, and *French* on the *Engliſh* Ground?

Rob. French. Yes.

Mr. *Cowper.* So they do here. Did you ever ſee Captain *Vaughan* before that Time?

Rob. French. No.

Mr. *Whitaker.* Did you viſit lately any other Priſoners in *Newgate*, beſides Captain *Vaughan?*

Rob. French. Yes.

Mr. *Whitaker.* Give their Names.

Rob. French. I have viſited Mr. *Noland*, and another Gentleman that is with him, and I went into the Houſe and drank with him there.

Mr. *Whitaker.* What is that other Gentleman's Name?

Rob. French. I do not remember his Name at preſent, but he is a Companion of Mr. *Noland's.*

Mr. *Whitaker.* Do you know him if you ſee him?

Rob. French. I, I would.

L. C. J. *Treby.* How long have you been in *England?*

Rob. French. But two Months.

L. C. J. *Treby.* Have you uſually viſited Priſoners in former Years?

Rob. French. My Lord, where-ever I have been, it was my Cuſtom to do ſo.

L. C. J. *Treby.* But how doth it conſiſt, that you, who are an *Iriſh*-man, ſhould come hither to viſit Priſoners in *Newgate?*

Rob. French. I can prove under my Lord-Mayor of *Dublin's* Hand, that I came here upon Buſineſs; and I went to the Priſon to viſit the Priſoners for Charity-ſake, and did beſtow it according as I was able.

L. C. J. You had beſt ſtay there, and not go away, for we may have Occaſion to ask you ſome Queſtions.

Mr. *Cowper.* Do you not uſe, out of Charity, to be Evidence for them?

Rob. French. No, never before in my Life.

Mr. *Whitaker.* What other Priſons have you viſited, beſides *Newgate?*

Rob. French. I did viſit none.

L. C. J. *Treby.* Had you no Charity for other Priſons?

Mr. Bar. *Powis.* When you ſo viſit Priſons, on what Account is it? Is it to give Ghoſtly Advice?

Rob. French. Upon a charitable Account, my Lord.

L. C. J. Ghoſtly Advice, is Charity.

Mr. *Phipps.* Where is Mr. *Lefleur?* (He did not appear.) Call Mr. *Gold*, (*who appeared.*)

Cl. of Arr. That Man is attainted, but pardoned.

Mr. *Phipps.* Mr. *Gold*, how long have you known Captain *Vaughan?*

Mr. *Gold.* I never knew Mr. *Vaughan*, before I ſaw him in the *Marſhalſea.*

Mr. *Phipps.* Is Monſieur *Lefleur* here? Is Mr. *Deherty* here? (*Mr.* Deherty *appeared and was ſworn.*)

Mr. *Phipps.* Do you know Mr. *Vaughan*, the Priſoner at the Bar?

Mr. *Deherty.* Yes.

Mr. *Phipps.* How long have you known him?

Mr *De-*

Mr *Deherty*. Five Years.

Mr *Phipps*. What has he been reputed all along, ſince you have known him?

Mr *Deherty*. A *Frenchman*.

Mr *Phipps*. Did you know him in *France*?

Mr *Deherty*. Yes, and he was reputed a *Frenchman* there.

Mr *Juſtice Turton*. What Occaſion had you to enquire into that, the Place of his Nativity?

Mr *Deherty*. I did not enquire at all, but one that was his Servant, was my Comrade a great while.

Mr *Phipps*. Now we will prove where he was Chriſtened, by one that was at his Chriſtening, Mr. *Daſcine*. (He appeared, and ſtood up, being ſworn, and ſpoke in *French* to the Court, pretending he could not ſpeak *Engliſh*)

L. C. J. If he cannot ſpeak *Engliſh*, there muſt be an Interpreter.

Mr *Soll. Gen*. They muſt find an Interpreter, he is their Witneſs.

Then a Perſon in Court ſtood up, and told the Court he could ſpeak Engliſh *as well as he, that he had been a Bailiff's Follower for ſeveral Years.*

L. C. J. You can ſpeak *Engliſh*, can you not?

Mr *Daſcine*. I will ſpeak as well as I can.

King's Meſſenger. I am a Meſſenger to the King, do you know me?

Mr *Daſcine*. Yes.

L. C. J. Prithee ſpeak *Engliſh*.

Mr. *Daſcine*. As well as I can, my Lord, I will ſpeak.

Mr. *Phipps*. Are you ſworn?

Mr. *Daſcine*. Yes, my Lord.

Mr. *Phipps*. Do you know Captain *Vaughan?*

Mr *Daſcine*. In 1669, I was in St. *Chriſtophers*; I went from *Rhoan*, and from thence I went with Hats and Cloth to *Crebeck*, and had a Letter to one *Thomas Williams*, a Factor in *Martenico*. And after I had done, as I was coming away, Mr *Williams* deſired me to go to a Chriſtning, a Mile and half from *Port-Royal*. He told me, there was one Mr *Vaughan* had a Plantation there, and deſired him to be Godfather. And about two Days after, I went from *Port-Royal* to St. *Chriſtophers* again, and I came to *Rhoan* again in a Ship called St. *Joſeph*. So in 1677, I went to St. *Chriſtophers* again, and from thence to *Matenico*, to Mr *Williams*; I asked him, what is become of that young Man we were at the Chriſtening, and ſo he ſhewed me him that is here (pointing to the Priſoner.)

L. C. J. That was in 1677.

Mr *Daſcine*. In 1677. So I came from *Port-Royal*; I went to St. *Chriſtophers*, and ſo took Sail, and came to *France* again. And 13 Years ago I went to St. *Chriſtophers* again, and to *Mountſerat*, and *Martenico*; and ſo when I was at *Martenico*, and asked Mr *Williams* of this young Man, that I was at his Chriſtening, and he ſaid, he is at ſuch an Houſe, and I ſaw him there.

L. C. J. Thirteen Years ago.

Mr *Daſcine*. And we went and drank Punch together, and I came back for *Rhoan*.

L. C. J. When did you ſee him ſince that?

Mr *Daſcine*. Never till I ſaw him here a Priſoner.

L. C. J. How do you know he is the Man?

Mr *Daſcine*. He has a Bruiſe in his Side.

Mr *Phipps*. What was the Gentleman's Name, at the Chriſtening of whoſe Child you were?

Mr *Daſcine*. *Thomas Vaughan*.

Mr *Phipps*. What was the Child's Name?

Mr *Daſcine*. *Thomas Vaughan*.

Mr *Phipps*. When you went the next time to *Martenico*, did Mr. *Williams*, you ſpeak of, that was the Godfather, preſent this Perſon, Captain *Vaughan*, to you, as the Man who was then Chriſtened?

Mr *Daſcine*. Yes, the next time.

Mr *Phipps*. Now, is Captain *Vaughan*, that ſtands at the Bar, that very Gentleman?

Mr *Daſcine*. I am ſure it is he.

L. C. J. You ſay this Meeting was about 1669.

Mr *Daſcine*. Yes.

Mr *Soll. Gen*. Pray what was the Reaſon you were ſo inquiſitive to know what became of that Perſon that was Chriſtened when you was there?

Mr *Daſcine*. Becauſe I being at the Chriſtening, I ask'd him how the Child did.

L. C. J. How came you to take ſuch extraordinary Obſervation of that Child? Was he ſuch a remarkable Child?

Dr *Newton*. Where were you born?

Mr *Daſcine*. In *France*.

Mr *Whitaker*. What are you?

Mr *Daſcine*. A Barber by Trade.

L. C. J. What Employment have you?

Mr *Daſcine*. An Officer in the *Marſhal*'s-Court ſometimes.

Mr Juſtice *Turton*. What was this Man's Father, what ſort of Man was he?

Mr *Daſcine*. A tall Man.

Mr Baron *Powis*. What was his Father's Name?

Mr *Daſtine*. *Thomas Vaughan*.

Mr Juſtice *Turton*. Was his Father living when you was there the ſecond time?

Mr *Daſcine*. The laſt time I was there I did not ſee his Father, but I ſaw his Father the ſecond time?

Mr Juſtice *Turton*. But you ſaw Mr *Williams*, his Godfather?

Mr *Daſcine*. Yes.

Mr *Phipps*. Call *Simon Danneaun*.

Tho. Vaughan. My Lord, he is ſick, and not able to come out of his Bed.

Mr *Phipps*. Call *Francis Harvey*. (*Who was ſworn.*)

Mr *Phipps*. Do you know Captain *Vaughan?*

Francis Harvey. Sir, In the Year 1693, I was in *France*, with one Captain *Bontee*, who was taken Priſoner in *Auguſt* the ſame Year; and my Captain he had the Liberty to go up to *Paris* with a Guard, for his Pleaſure, and to learn the Speech. And, as it happened, we came to lodge in a Street, called *Dolphin-ſtreet*, at the Sign of the *Crown*. And there was ſome Gentlemen, that were there to learn the Speech, that were my Countrymen; and there was a young Man there, and he was acquainted over the Way, where this Gentleman, Captain *Vaughan*, lodged; He lodged at his Aunt's, that ſold Silks, her Name was Madam *Wotton*; I ſaw this Gentleman there; I am ſure it is he; and with that I came acquainted with him, as well as the reſt.

Mr *Phipps*. What was he reputed there?

Fr. Harvey. A Captain of a Ship.

Mr *Phipps*. What did he go for there? A *Frenchman*, or an *Engliſhman*, or an *Iriſhman?*

Fr. Harvey. He went for a *Frenchman*, as I heard; One time his Aunt, ſhe ſaid, that he was born in the *Weſt-Indies*, at *Martenico*, and that he was her Siſter's Son, that lived in *Martenico*.

Mr *Soll. Gen*. You ſay he was a Captain of a Ship; what Ship?

Fr. Harvey. That I cannot tell.

Mr *Soll. Gen.* When was that?

Fr. Harvey. In 1693.

Mr *Phipps.* Is Mr *Lefleur* here?

Cl. of Arr. He is a Priſoner in the *Savoy*; he was taken in the ſame Ship with Mr *Vaughan*.

Mr *Phipps.* It is reaſonable he ſhould have been here, to give an Account of the Priſoner.

L. C. J. Then they ſhould have taken care to have had him here. Have you any more Witneſſes?

Mr *Soll. Gen.* I think we have given ſufficient Evidence that he is an *Iriſhman*: But now we ſhall ſhew you, that all your Witneſſes have given a very extravagant Evidence to prove that he is a *Frenchman*. All he hoped for was, that the Proſecutors for the King could not be able to prove him an *Iriſhman*; He believed there were but three Men could prove him ſo; that was *David Creagh* and two more; and ſo he writes to *David Creagh*, and tells him, *That his Life was in his Power, and he hoped he and the other two would not diſcover it.* This *David Creagh* was his Neighbour in *Ireland*; We will call him to prove that Captain *Vaughan* was born at *Galloway* in *Ireland*.

Mr *Whitaker.* And here is his Letter under his Hand. Bring *David Creagh*, (*Who was ſworn*)

Mr *Cowper.* I deſire, before he give his Evidence, he may look upon thoſe that have given Evidence about the Priſoner, one by one. (Then he look'd upon *Robert French.*) Mr *Creagh*, do you know him.

Dav. Creagh. No. (*Then he looked upon the reſt.*)

Mr *Cowper.* Have you had any of theſe Men come to you on a Meſſage?

D. Creagh. No, Sir.

Mr *Soll. Gen.* Do you know *Thomas Vaughan*, the Priſoner at the Bar,

D. Creagh. Yes, I do.

Mr *Soll. Gen.* How long have you known him?

D. Creagh. About two Years.

Mr *Soll. Gen.* Was that your firſt Acquaintance with him?

D. Creagh. Yes.

Mr *Soll. Gen.* What Place was he born at, as you have heard?

D. Creagh. At *Galloway* in *Ireland*.

Mr *Soll. Gen.* From whom did you hear it?

D. Creagh. From all Perſons that I have heard ſpeak of him.

Mr *Soll. Gen.* Did he ever own to you that he was born there?

D. Creagh. Yes, oftentimes in my Company.

Mr *Soll. Gen.* Did you ever receive a Letter from him about your giving Evidence in this Matter?

D. Creagh. Yes, Sir.

Mr *Soll. Gen.* Do you know this Letter? (*which was ſhown him.*)

D. Creagh. Yes, Sir.

Mr *Soll. Gen.* Do you know his Hand?

D. Creagh. Yes, I partly know it.

Mr *Whitaker.* Did you ever ſee him write?

D. Creagh. This is the Letter I received from him.

L. C. J. Read it. Do you think it is his Hand.

D. Creagh. I cannot ſwear it; but I believe it is his Hand.

Mr *Phipps.* Have you ſeen him write?

D. Creagh. I have ſeen him write ſeveral times.

L. C. J. Do you believe it is his Hand?

D. Creagh. Yes, my Lord, but I cannot ſwear it.

Then the Letter was read.

To Mr *David Creagh*, in *Newgate*, Theſe.

Mr *Creagh*,

I *Have ſome Aſſurance that Mr* Whitaker *has no Witneſs to prove me a Subject of* England, *but you, and Two more, which I am glad of with all my Heart: I hope I may have none againſt me that wiſh me worſe than you and Captain* Etherington. *If Mr* Whitaker *has not ſworn you yet, I hope you will not appear againſt me. I declare, if I had more than my Life, I would lay it in your Hand. I am like to be ſent to* Newgate *this Day, and it is like you and ſome more will be ſent here, that we may not talk together. The* Dutch Dogs *took from me Eleven Hundred Dollars in Money, which certainly troubles me more than the Thoughts of Death, which I value not a Straw; but I hope in four or five Days to be ſupplied. I fear they will keep me cloſe. I have all the Liberty imaginable here to write, and my Friends ſuffered to ſee me. I can ſay nothing that is comfortable, but that I am very well in Health, and nothing concerned, if my Money come in time.*

Friday *Morning.* T. Vaughan.

Mr *Phipps.* Is that Letter proved? That is not to the Purpoſe. Nor of any Weight conſidering who proves it.

L. C. J. No, that none could prove him a Subject, but he and two more?

Mr *Soll. Gen.* We will produce only one Witneſs more, call Mr. *Jo. Rivet.* The Court being informed by ſome Gentlemen then on the Bench, that there was a Gentleman then in Court one Mr *Rivet*, who being of *Galloway*; could probably give ſome Account of the Priſoner, he was immediately called, and required to depoſe what he knew.

Jo. Rivet. My Lord, I am ſorry I am called, where Life is concerned, when I came hither only out of Curioſity; but the Service I owe to this Government, obliges me to ſpeak what I know, now I am called to it. (*Then he was ſworn.*)

Mr *Soll. Gen.* Do you know the Priſoner at the Bar? What Countryman is he?

Jo. Rivet. I have known him a great many Years, we were Children together in the ſame Town, we lived in *Galloway* in *Ireland*. I knew his Father, and Mother, and Brothers, and Siſters; and I remember him a Child, as long as I can remember any Thing, I cannot determine to a certain Number of Years; and I remember him not only a School-boy, but alſo an Apprentice to one Mr *Coleman*. And I wonder very much at what Mr *French* ſays, for by the Name and Place of his Birth, he muſt have ſworn what he knows to be otherwiſe: For the *French*'s are a Family in *Galloway*; his Father was an honeſt Gentleman, and went over into *Ireland* in the Rebellion in 1641. and he there married a Woman, a Native of *Galloway*, and had ſeveral Children, one of which, in the latter End of King *Charles*'s Reign, turned Papiſt, and I believe the Grief for it haſtened his Father's Death. I own part of the Evidence may be true, about his being in the *Weſt-Indies*, but his Mother, I believe, was never out of *Ireland* in her life.

Dr. *Oldiſh.* What was his Father's Name?

Jo. Rivet. John.

L. C. J. You ſay, you knew this very Gentleman an Apprentice to one *Tho. Coleman* at *Galloway*.

Jo.

Jo. Rivet. I did ſo, my Lord.

L. C. J. How long is it ſince you ſaw him?

J. Rivet. I cannot be poſitive, I think at the Reduction of *Galloway* in 1691. I cannot ſay whether at or after; but I ſaw him about that time, and knew him, and have known him from a Child; I knew him a School-boy, and knew his Brothers.

Mr Juſtice *Turton.* What Year did you know him firſt?

J. Rivet. I dare not be poſitive, I remember him particularly well.

L. C. J. Are you ſure this is the Man?

J. Rivet. I know him as well as any Face I ever ſaw. I came accidentally into Court out of Curioſity; and one that knew me, that was of *Galloway*, gave Account to the King's Council, and ſo I am called to give Evidence.

L. C. J. Do you know this *Robert French?*

J. Rivet. I cannot ſay I know him, for I ſee him but in the Dark; if I ſaw him in a better Light, it may be I may. (*Then* Robert French *was ſet up for Mr* Rivet *to ſee him)* I think I recollect the Face, I am not certain.

L. C. J. Do you know this Gentleman?

Rob. French. No, my Lord.

L. C. J. Where did you live?

Rob. French. In *Connaught.*

L. C. J. Did you know *John Vaughan* of *Galloway?*

Rob. French. I have heard of him, my Lord.

Mr Baron *Powis.* What Trade was the Priſoner's Father?

Jo. Rivet. He had the Market ſeveral Years, he lived very well, and kept a Publick Houſe in the Town.

Mr *Phipps.* Did you know any other *Tho. Vaughan* but this?

Rob. French. No, not in *Galloway.*

Jo. Rivet. This may be a Confirmation of what I ſay; if it be the ſame Gentleman, his Hair is reddiſh.

L. C. J. Pull off his Peruke (*which was done.*)

T. Vaughan. My Hair is not red.

L. C. J. How are his Eye-Brows?

T. Vaughan. A dark brown, my Lord, the ſame as my Wig.

Mr Bar. *Powis* Let ſome Body look on it more particularly, (then an Officer took a Candle, and look'd on his Head, but it was ſhaved ſo cloſe, the Colour could not be diſcerned.)

Mr *Phipps.* We can give an Anſwer to this, my Lord; we ſhall prove, that there was one *John Vaughan* at *Galloway*, and he had a Son *Thomas*, that died ten Years ago. As for Mr *Rivet*, he is a meer Stranger to us, we know nothing of him; and by what I can perceive, he comes in as a Volunteer, not ſub-pena'd by either Side. And for Mr *Creagh*, we ſhall ſhew he is not to be credited in any Thing, for we ſhall prove him guilty of Felony, and that he ſwore, that if his Brother would not ſupply him with Money, he would ſwear Treaſon againſt him, and ſhop him in *Newgate*; and that he ſhould not come out till he came upon a Sledge; and if ſo, there is no Body ſurely can believe he will ſtick at Perjury, or Forgery, or any Thing elſe which may be for his Advantage; Call Mr *Chriſtopher Creagh.* (who was ſworn.)

Mr *Phipps.* Pray do you know *David Creagh?*

C. Creagh. Yes.

Mr *Phipps.* Is he any Relation to you?

C. Creagh. Yes, he is my Brother.

Mr *Phipps.* Give the Court and the Jury an Account what you know of your Brother.

C. Creagh. It is an unnatural Thing to come on this Occaſion, and I am ſorry I am called upon this Account.

David Creagh. Speak what you have to ſay.

Mr. *Phipps.* What do you know of your Brother, whether you have not found him guilty of ſtealing any Thing?

C. Creagh. My Lord, I am upon my Oath, I have known ſomething of it, he has ſtolen ſome Gold from me.

L. C. J. You pretend to be ſo very nice, you are to anſwer to what you know of his Reputation in general, and of his Way of living.

C. Creagh. His Reputation has been but very ſlender, I am very ſorry for it; ſeveral in the Court can give Account of it, as well as I. He ſerved a Relation of his in *New-Caſtle*, he ſerved there ſome Time, and came to Town, and came to me, and depended upon me, and I ſubſiſted him; and he took an Opportunity one Day, when I and my Wife were gone abroad, and no Body at home but the Maid, and went up Stairs, where my Wife's Room is, and there being a Saſh-Window, he opens it, and took out of my Wife's Cloſet ſeveral Pieces of Gold.

L. C. J. How did you know that he did it?

C. Creagh. I found it out afterwards; he was my Brother and therefore I did not proſecute him. I did not know he had it, till afterwards, that I found to whom he had diſpoſed of the Gold. I enquired who was in the Houſe, and thought the Maid had it; and ſhe ſaid none had been there, but my Brother; and he at laſt owned the Fact, and I had it again.

L. C. J. Have you any more to ſay of your Brother?

Mr *Phipps.* Did he ever threaten to ſwear againſt you?

T. Vaughan. Or me?

C. Creagh. He has been confined in *Newgate* Eighteen Months, and I ſubſiſted him in Charity, I allowed him all along; and he has been ſending to me by ſeveral Meſſages, that if I ſubſiſted him not with more Money, than I did allow him, he would ſwear me into a Plot.

L. C. J. Did he tell you ſo?

C. Creagh. No, but he has ſent me Word ſo.

L. C. J. Is the Man here that he ſent this Word by?

C. Creagh. Yes, the Man is here.

Mr *Phipps.* Let him ſtand up.

L. C. J. Where do you live?

C. Creagh. In *Watlin-ſtreet*, I am a Merchant; I declare it is not in Favour or Affection, but only in Conſcience, that I declare this.

D. Creagh. This is only to hinder me from giving my Evidence againſt a Merchant that I have taken up.

T. Vaughan. What Character had he in *Spain?*

Then David Creagh *ſpoke but was not heard.*

L. C. J. What do you ſay of the Gold?

C. Creagh. He had it, my Lord.

D. Creagh. Why did you not proſecute me then, if I had it?

L. C. J. You are not ſure he took the Gold.

C. Creagh. I was ſo ſure he had it, becauſe I had it from him again by another hand.

L. C. J. Did he tell you ſo, that he had it?

C. Creagh.

C. Creagh. No, but I had a Letter about it.

L. C. J. Where is that Letter?

C. Creagh. I have it not here.

L. C. J. Give not an Evidence of a Letter, without the Letter were here, it ought to have been produced.

Mr *Phipps.* Call *Chriſtopher Heyden (he was ſworn.)* Do you give the Court an Account what *David Creagh* has ſaid to you of ſwearing againſt any Body.

C. Heyden. Several Times, when my Maſter has ſent me to him, to pay him Five Shillings a Week, or Five and Six-pence a Week to ſubſiſt him.

Dr *Oldiſh.* Who are you Servant to?

C. Creagh. He is my Servant.

C. Heyden. This *David Creagh* has often told me, that I ſhould tell his Brother, that if he would not ſupply him with more Money, he would ſwear againſt him. When I came to the *Seſſions Houſe*, when the Pyrates were tried the firſt time, I was going through the *Bail-Dock*, where this *David Creagh* called to me; and I asked him what he did there? He ſaid he was to be Evidence againſt Captain *Vaughan.* No certainly, ſaid I, you do not know him; do you? Says he, here's the Thing, it had been better for me, that I had been an Evidence againſt him before this, and I am forced to be an Evidence againſt him, to ſave my ſelf: And he bid me tell his Brother, God damn his Soul to all Eternity, if he did not ſend him Supply that Day, he would have him in *Newgate*, and that he ſhould not come out again, till he came out upon a Sledge.

L. C. J. Did he ſay ſo?

C. Heyden. Yes, my Lord.

D. Creagh. How long is it agone, Mr *Heyden?*

C. Heyden. It was the Day the *Pyrates* were tryed; more than that, here was Mr *Wroth*'s Man was with me at the ſame time; and becauſe he ſhould not hear what you ſaid, you took me to the Door.

Mr *Phipps.* Is *Daniel Bryan* here? *(He appeared and was ſworn.)*

Daniel Bryan. I was ſubpena'd here for I know not what: For I know not Captain *Vaughan.*

Mr *Phipps.* Give me leave to ask you a Queſtion. Do you know, or have heard of *David Creagh?*

Daniel Bryan. Yes, Sir.

Mr *Phipps.* Will you give an Account of what he has ſaid of Swearing againſt any Body?

Daniel Bryan. He has threatened his Brother ſeveral times, that if he would not ſend him relief, he would bring him in for ſomething, and would inform againſt him.

Mr *Phipps.* Did he ſay he would ſwear againſt him?

Daniel Bryan. He did ſay he would inform againſt him.

Mr *Phipps.* What did you hear him ſay of ſwearing againſt any one?

Daniel Bryan. He ſaid, he had rather others ſhould periſh, than himſelf.

Mr *Whitaker.* This Man was Condemned for the ſame Crime.

Mr *Phipps.* Mr *Vaughan*, have you any other Witneſſes? Call *Creighton (who was ſworn.)* What Countryman are you?

Creighton. A *Connaught* Man, I was born in *Galloway*, I believe Mr *Rivet* knows me.

Mr *Phipps.* Did you know one *John Vaughan*, that lived at *Galloway?*

Creighton. I knew him very well.

Mr *Phipps.* Do you know the Priſoner at the Bar?

Creighton. No.

Mr *Phipps.* Do you remember, that That *John Vaughan* had a Son *Thomas*, and what became of him?

Creighton. Yes, he had a Son *Thomas*, but I underſtood that he went ſomewhere into the Country, and there died, and it was ſpread all about the Town.

Mr *Phipps.* Do you know what he died of?

Creighton. I cannot tell.

L. C. J. How long ago did he die?

Creighton. About ten Years ago. I knew all the Brothers.

Mr *Phipps.* Did you know that *Thomas Vaughan?*

Creighton. I knew him very well.

Mr *Phipps.* Is that Gentleman, the Priſoner, he?

Creighton. No.

Mr *Phipps.* Do you believe that is not the Man?

Creighton. I believe not.

Mr *Phipps.* Did you ever know any other *Thomas Vaughan?*

Creighton. No.

Mr Juſtice *Turton.* Had not *John Vaughan* a Son Apprentice at *Galloway* to one *Thomas Coleman?*

Creighton. No as I know of.

Mr Juſtice *Turton.* How old was that Son, *Thomas Vaughan*, when you knew him?

Creighton. I was born at the next Door to that *Thomas Vaughan* that was reputed to be dead.

Mr Juſtice *Turton.* Was not that *Thomas Vaughan* Apprentice to Mr *Coleman?*

Creighton. I cannot certainly tell.

Mr Juſtice *Turton.* How old was that *Thomas Vaughan* when he went away from *Galloway?*

Creighton. I cannot tell.

Mr Juſtice *Turton.* What is your own Age?

Creighton. My Age is about Five and Twenty.

L. C. J. You have not ſeen him in Ten Years?

Creighton. No, my Lord.

L. C. J. Can you take it upon your Oath, this is not the Man you ſaw ten Years ago, that *Thomas Vaughan* that you knew?

Creighton. Yes, my Lord.

L. C. J. How old was he when you were acquainted with him?

Creighton. I cannot tell certainly; I believe he might be about fifteen.

L. C. J. How long is that ſince?

Creighton. Ten Years.

L. C. J. What is your Name?

Creighton. Creighton.

Mr. *Cowper.* You ſay you knew him ten Years ago; Pray what ſort of Perſon was he, and how did he differ from this Man?

Creighton. He was better Set, and not quite ſo Tall as this Man, and full of the Small-pox; he was the quarrelſomeſt Boy in the whole Town.

Mr *Soll. Gen.* You ſay he was not quite ſo Tall as this Man.

Creighton. No, he was not quite ſo Tall.

Mr. *Soll. Gen.* Do you think he might not grow ſince? This was Ten Years ago, when he was but fifteen Years old.

Mr *Cowper.* You knew him at fifteen; How long had you known him?

Creighton. From my Infancy, till he departed the Town.

Mr

Mr *Cowper*. During all that Time what Employment was he in? Tell ſome Circumſtances.

Creighton. I think this *Vaughan* went to one Mr *Ruſſel*'s School.

Mr *Cowper*. What to do?

Creighton. To learn to write and read.

Mr *Cowper*, And was he not an Apprentice in that time?

Creighton. I cannot tell.

Mr *Cowper*. Were you acquainted with him?

Creighton. Yes.

L. C. J. You lived next Door to him, Sure you muſt be acquainted with him?

Creighton. He was a fighting Boy, for I remember he did once thraſh my Coat ſoundly.

L. C. J. Where do you live now?

Creighton. At the *Caſtle* and *Falcon* in *Alderſgate-ſtreet*.

L. C. J. What Trade are you?

Creighton. A Shoemaker.

Mr Baron *Powis*. How long have you lived here?

Creighton. This Ten Years.

Mr Baron *Powis*. What did that *Thomas Vaughan* die of, that you ſay was dead before you came away, as it was reported up and down?

Creighton. I cannot tell.

Mr *Cowper*. Juſt now you ſaid he went away from *Galloway*, and it was reported then that he was dead ten Years ago; now you ſay you have been in *England* ten Years.

Creighton. I came into *England* about ten Years ago.

Mr *Cowper*. Did you hear it at *Golloway* before you came away?

Creighton. I heard it at *Galloway* before I came to *London*, and there are many can teſtifie that there was a Report that he was dead.

Mr Juſtice *Turton*. How long was he gone from *Galloway* before you came away?

Creighton. I cannot ſay to an Hour; I heard he was dead.

L. C. J. Well, well, he went away from *Galloway*.

Mr Juſtice *Turton*. Have you not been here twelve Years?

Creighton. I think not; I came a little before the Revolution.

Mr Juſtice Turton. That is eight Years ago. Juſt now you ſaid you had been here ten Years.

Mr *Phipps*. Call *John Kine*. (*who was ſworn*) *John Kine*, Did you know one *John Vaughan* in *Galloway*?

John Kine. Yes, I lived with him.

Mr *Phipps*. What Children had he?

John Kine. Four Sons.

Mr *Phipps*. Had he any one of thoſe Sons that was named *Thomas*?

John Kine. Not of thoſe four.

Mr *Phipps*. Had he a Son *Thomas*?

John Kine. Yes, he had; he died about ten or eleven Years old of the Small-pox.

Mr *Phipps*. You ſay you lived with this *John Vaughan*; look upon the Priſoner at the Bar, is he any of thoſe Sons?

John Kine. No, Sir, I never ſaw this Man till now.

Mr *Phipps*. How long did you live with him?

John Kine. About Eight or Nine Years.

Mr *Phipps*. But how long have you been come away from him?

John Kine. About Ten Years.

Mr Juſtice *Turton*. How well do theſe two Witneſſes agree together? The other ſaid he died at fifteen, and was pitted with the Small-pox. This Man ſays he died at ten, and of the Small-pox.

L. C. J. Where do you live now?

John Kine. I live in the City.

L. C. J. How long have you lived there?

John Kine. Twelve Years.

L. C. J. How long was this *Thomas Vaughan* dead before you came hither?

John Kine. Really I cannot be poſitive, I believe about eight or nine Years.

L. C. J. Did *Thomas Vaughan* die of the Small-pox?

John Kine. Yes.

L. C. J. That you are ſure of.

John Kine. I am ſure that was the Diſeaſe he died of.

L. C. J. You know him well, I believe.

John Kine. Yes, my Lord.

L. C. J. How old was he when he died?

John Kine. About ten Years.

L. C. J. Where was he buried?

John Kine. At *Galloway*.

Mr Juſtice *Turton*. Why does not the Officer take Care? There is one talking with the Witneſs. Can you now reconcile your Evidence? (To the Priſoner's Council.)

L. C. J. Have you any more Witneſſes?

Mr *Phipps*. No, my Lord.

Mr Juſtice *Turton*. What were the Names of all the Sons?

John Kine. The eldeſt was *John Vaughan*, the other *William Vaughan*, another *Edward Vaughan*, and another *James Vaughan*; that was all that he has alive.

Mr *Whitaker*. There is never a *Thomas Vaughan* among theſe.

Mr *Cowper*. *Thomas* died up and down in ſeveral Places.

Mr *Phipps*. Mr *Rivet*, Do you know the Sons of that *John Vaughan*?

Mr *Rivet*. He had all theſe Sons, *John*, *William*, *Thomas* and *James*. He ſpeaks of a Son *Edward*, I cannot exactly remember whether there was ſuch a Son or no; though I have a rude Idea of it, but am not certain. I knew this *Thomas*, I went to School with him, and I ſaw him in the Year 1691. about the Surrender of *Galloway*.

Jury-man. Is that Man at the Bar the ſame *Thomas Vaughan*?

Mr *Rivet*. I am poſitive of that.

L. C. J. You ſaw him at the Surrender of *Galloway*?

Mr *Rivet*. I did; it was about that time.

Thomas Vaughan. I am a Subject of the moſt Chriſtian King, and I deſire, though I ſpeak *Engliſh*, that I may be examined in *French*, in a Matter that touches me ſo near. And you may ſee by my Commiſſion, my Lord, that I am a *French*-man; which I deſire may be read.

L. C. J. We ſhall not trouble you with that.

Thomas Vaughan. I can ſhew you my Commiſſion, wherein the King, my Maſter, declares me to be a Subject of *France*.

Dr *Oldiſh*. Mr *Vaughan*, I think, you need not trouble the Court to read the Commiſſion; the Commiſſion is the ſame as for all other Subjects of the *French* King, wherein he is look'd upon as a Natural born Subject of *France*; and ſo he owns himſelf upon his Examination before the Judge of the Admiralty.

L. C. J. Have you any more to ſay? As to the Examination, who can prove that?

Mr *Cawley*.

Mr *Cawley*. I can prove that, my Lord. (*Mr* Cawley *was ſworn.*)

L. C. J. Is that *Thomas Vaughan*'s Examination?

Mr *Cawley*. Yes, my Lord, it is ſigned by him; and taken before Sir *Charles Hedges* the 25th of *July*, 1695.

L. C. J. Read it. Then Mr *Cawley* read the Examination of *Thomas Vaughan*.

The 27th of *July*, 1695.

Officium Domini contra Thomas Vaughan *Capuem' Navicule*, The Loyal Clencarty.

The Examination of *Thomas Vaughan* late Commander of the Ship, the *Loyal Clencarty*, aged Twenty Six Years, taken before the Right Worſhipful Sir *Charles Hedges*, Kt. Judge of the High Court of Admiralty of *England*.

THIS *Examinate ſaith, That he was born at* Martenico *within the Dominions of the* French *King, and is his Subject, but refuſes to anſwer of what Parents he was born; That he came laſt from thence about four Years ago as Commander of a Ship called the* Hare, *which had been before taken from the* Engliſh, *and came in her to* Nants *in* France, *and hath ever ſince been in* France, *or cruizing in* French *Ships; That he hath been a Commander ever ſince he was Sixteen Years of Age, and hath Commanded ſeveral* French *Privateers, and was Cammander of a Privateer of St.* Malo, *called the* Granada *of 36 Guns, which about two Years ago took the* Diamond, *and the Examinate was never till now taken. Being asked, Whether he ever lived in* England, *or in* Ireland? *he refuſes to anſwer. Being asked, Whether he knew any Thing of the taking and carrying of a* Cuſtom-Houſe-Boat *from the* Downs *to* Bulloigne? *Or, Whether he was then in* London, *or did give directions to any Perſons, or knew of her being carried off? he anſwered nothing, but ſaid, That if any Perſon would prove it againſt him, he was preſent to anſwer it: But ſaith, That in* France *he heard of her being brought to* Bulloigne; *and he the Examinate bought her at* Bulloigne *of the Men that carried her away, and that ſhe coſt him* 900 *and odd Livres, and was then called the* Elizabeth *and* Anne, *or* Michael *and* Anne, *but which doth not remember; That he the Examinate ſtill hath the ſaid Veſſel at* Bulloigne; *That he cannot tell the Names of the Perſons he bought her of, and that took her away, but believes they had a Commiſſion; That ſomething above three Weeks ago the Examinate went with a Commiſſion from the* French *King on Board a Two-and-twenty-Oar Barge, called the* Loyal Clencarty *then at* Bulloigne *as Commander thereof, and on* Monday *laſt was a Fortnight was taken by the* Coventry *Man of War at the* Buoy in the Gunfleet; *And that the Commander of the* Coventry *took away this Examinate's Commiſſion; being asked upon what Deſign he came out with the Barge, replied that it was not to take the Air; That the Barge formerly belonged to the Lord* Danby, *and was taken by a* French *Privateer about a Year ago; That before he came out, he met with two* Engliſh *Seamen upon the Court of Guards at* Bulloigne, *who told the Examinate, That they had been taken Priſoners, and the Examinate took them in upon Charity; and afterwards met another* Engliſh *Man, who told the Examinate that he had been taken in Land-Service, and believes it was before Fort* Kenoque; *and the ſaid Perſon ſitting upon a Stone at* Bulloigne, *and not knowing what to do with himſelf, the Examinate took him on Board for charity, and deſigned to put the ſaid three Perſons aſhore in* England. *Being asked whether he did not put in a Claim for the ſaid* Cuſtom-Houſe-Boat *by reaſon of her Captain? Or, whether the Perſons that took her had any Commiſſion from him? He the Examinate anſwered, That they that took her muſt anſwer for what they did, and he muſt anſwer for his Actions only.*

Eodem die Capt'
coram me.
C. Hedges. Thomas Vaughan.

L. C. J. Mr *Vaughan*, Have you any more to ſay?

Tho. Vaughan. It is very hard Circumſtances I am under; if an *Engliſh* Man was in *France*, under the ſtraights that I am here, it would be very hard for him to prove himſelf an *Engliſh* Man.

L. C. J. You have had a very fair Tryal, and you ſhall have Juſtice, be it for you, or againſt you.

Thomas Vaughan. I hope your Lordſhip will do me Right.

L. C. J. Gentlemen of the Jury, The Priſoner at the Bar, *Thomas Vaughan*, ſtands Indicted for High-Treaſon, for adhering to the King's Enemies, *viz.* That he put himſelf as a Soldier in the Service of the *French* King, in a Veſſel called the *Loyal Clencarty*, with diverſe other Perſons on Board her, that were Subjects to the *French* King, and Enemies to the King of *England*, with a Deſign to burn the King's, and his Subjects Ships; and for that purpoſe went in that Ship. That the Priſoner was on Board the Ship, and with ſuch a Deſign, is proved, without all Contradiction, by ſeveral Witneſſes that have been produced; that is, that the Two-and-twenty-Oar Barge, which is the ſame called the *Loyal Clencarty*, lay hovering about the *Buoy in the Nore*; thoſe Men in the *Coventry* imagined they had ſome Deſign of Miſchief to the Ships, and they made after him with the *Coventry*. It was apprehended by Captain *Vaughan* and his Crew, that the *Coventry* would be too hard for them, and ſo they did ſubmit, and were taken. And being examined on what Account he came on our Coaſts, it is confeſt by him, That he came with a Deſign to burn our Ships. You may obſerve what ſort of Men were a Board. You have heard it proved to you, that *Crittenden*, the Marſhal of *Dover*, entered thoſe Perſons taken a Board the *French* Veſſel, of what Nation, and what Quality they were; and there were about a Dozen of theſe *French* Men, for they were entered as ſuch. Now for a Subject of *England* to join with the King's Enemies, in purſuit of a Deſign to burn or take any of the King's, or his Subjects Ships; that is, an Adherence to the King's Enemies. But it appears, not only that Captain *Vaughan* was in their Company, but that he was their Commander; which commanding the Veſſel, on Board which were *French* Subjects Enemies of the King and the Kingdom of *England*, is High-Treaſon, and the particular Fact of Treaſon for which he is indicted. And it appears that he had a Commiſſion from the *French* King to Command this Veſſel, the *Loyal Clencarty*.

Now

Now the Priſoner having this Commiſſion to be Commander of this Veſſel, though they who ſerved under him were not Native *French*-men but other Foreigners, yet their ſubjecting themſelves to him, acting by Virtue or Colour of that Commiſſion, makes them to be the *French* King's Subjects, during their continuance in that Service; for otherwiſe all Prizes, which they ſhould take, would make them to be Pirates; which none will pretend to maintain, when they acted by a Commiſſion from a Sovereign Prince, that was an Enemy. And if they ſhall cruize upon our Coaſts with a Deſign to take, or deſtroy any of the King's, or his Subjects Ships, they are Enemies, though they were the Subjects of a Prince, or State in Amity with the King of *England*. But at this Time there is no neceſſity of entring upon this Queſtion, becauſe it is proved that diverſe, who were on Board this Veſſel were *French*-men, the joyning with whom, in Proſecution of ſuch a Deſign, is that kind of High-Treaſon of adhering to the King's Enemies. So that if Captain *Vaughan* was a Subject of *England*, he is proved guilty of High-Treaſon, if you believe the Evidence.

But now it is inſiſted on by Mr *Vaughan* and his Council, That though he was exerciſing Hoſtility againſt the King of *England*, and deſigning Miſchief to his Subjects; yet, ſays he, I was not a Subject of *England*, I was Born a Subject to the *French* King. If that be true, then is he not guilty of High-Treaſon; he is an Enemy, but not a Traytor: And that is the Point you are now to conſider of, whether he be a Subject of *England* or *France?*

Now as to that, he being taken under ſuch Circumſtances, and ſpeaking *Engliſh*, it is reaſonable to be preſumed that he is a Subject of *England*, unleſs he proves the contrary. But then you have heard by ſeveral of the Witneſſes, That when he was at firſt taken, he acknowledged himſelf to be an *Iriſh*-man; and he did not only acknowledge it to them that aſſiſted in apprehending him, but being carried to *Dover*, when the Marſhal entered him in his Book as a Priſoner, he entered him not as a *French*-man, but he declared at that Time he was an *Iriſh*-man. It may be he did not conſider the Conſequence of it, for the next Day he was carried before the Mayor of *Dover*, and then having conſidered better of it, that it was not for his Intereſt to acknowledge himſelf an *Iriſh*-man, he ſaid he was born a Subject to the *French* King, and at *Martenico*. There were *Scotch*-men and *Iriſh*-men taken at the ſame Time, and they were entered as of the Nation they belonged to, and ſo were diverſe entered as *French*-men. So that unleſs he hath given ſufficient Evidence to the contrary, this is ſufficient to induce you to believe him an *Iriſh*-man Born.

But he has endeavoured to take off this Evidence that hath been given. Firſt, he ſays, It was when he was in Drink that he did confeſs himſelf to be an *Iriſh*-man; but when he was ſober, he ſaid he was a *French*-man. And beſides that, he calls a Witneſs, whoſe Name is *Robert French*, to give an Account of him. And *French* ſays, That about fourteen Years ago he was at St. *Chriſtophers*, on *French* Ground, and he did then ſee this *Thomas Vaughan*, he did take him then to be about the Age of fifteen, He ſays he ſtay'd there about four and twenty Hours, and that he was in the Company of this *Vaughan* and his Father about five or ſix Hours. He ſays his Father told him at that Time, that this Young Man, who was then about fifteen Years of Age, was born at *Martenico*. He ſays farther, That his Father Did recommend this Son to him to be a Sea-faring Man, being the Imployment he intended him for; and he is ſure this is the Man. This *Robert French* was ask'd, whether he ever ſaw this *Vaughan* from the Time he firſt ſaw him at St. *Chriſtophers* until this Time; He ſays he never ſaw him ſince that Time, till about two Months ago. He gives you this Account how he came to meet with him; he ſays he came to Town, and being a charitable Man, he uſed to viſit the Priſons; and he came to *Newgate* to one *Knowles*, and there he ſaw Captain *Vaughan*; and though he had not ſeen him for fourteen Years before, yet he knew him again, and is poſitive that he is the ſame Perſon.

Another ſwears he knew the Priſoner about five Years, and he was reputed a *French*-man.

There has been another Witneſs produced which is that *Daſcine*, who came up as a *French*-man, and talked *French*, pretending he could not ſpeak *Engliſh*; but on examination it was diſcovered that he had an Imployment in *England*, and was a Bayliff's Follower, and it appears he can ſpeak *Engliſh* very well; and notwithſtanding his pretence has given his Evidence in *Engliſh*. And he tells you, That he about the Year 1669 did go to St. *Chriſtophers*, and afterwards to *Martenico*, and there he went to one *Williams*, who had a Friend whoſe Name was *Vaughan*, at whoſe Houſe there was a Chriſtning to be of his Son, to whom *Williams* was to be Godfather; and this Witneſs was carried thither, and the Child was Chriſtned *Thomas*. He tells you he went over again to St. *Chriſtophers*, and to *Martenico* in the Year 1677, and that then he enquired for this Child, and did ſee him. Then he ſays, after that, he went over again to St. *Chriſtophers* and to *Martenico* about thirteen Years ago, and then ſaw him again, and, I think, never ſaw him ſince until very lately; and this Priſoner, he undertakes to tell you, is the very Perſon.

But then one *Harvey* tells you he ſaw him in *France* in the Year 1693. and there he was taken to be a *French*-man, and he lived with a Woman that ſold Silk that ſaid he was her Nephew, her Siſter's Son, and that he was Born at *Martenico*. This is the Evidence he gives you to induce you to believe he is a *French*-man.

Now in the firſt Place, before I open the Evidence in Anſwer to it, I deſire you to obſerve the Weight and Import of this Evidence that hath been produced by the Priſoner. Firſt, for this *French* that ſays he ſaw Captain *Vaughan* fourteen Years ago, when he was about fifteen Years of Age; he had no former Acquaintance with him, ſtay'd in his Company but ſix Hours, and came away within four and twenty Hours after his arrival, and never ſaw him again in fourteen Years; it is a ſtrange Thing that he ſhould know him again ſo well as to be poſitive that he is the ſame Perſon, for in fourteen Years there is a great Alteration in a Man: For a Man that has known one at the Age of fifteen, and not ſeen him in fourteen Years after, though before he was very well acquainted with him, cannot ſo eaſily know him again. But however he is poſitive, upon his Oath, that he is the ſame Perſon that he ſaw at *Martenico*.

Then as for *Daſcine*, you may conſider him that he ſhould take notice of a little Child that he ſaw Chriſtned ſeveral Years before, and that he ſhould now remember him when he had not ſeen him in thirteen Years; ſure he had a great liking to this Child, that when he went to *Martenico* many

Years after he ſhould be ſo inquiſitive after him; I muſt leave theſe Things to you to conſider of: That he might have an *Aunt* in *France* that is very poſſible too.

But now conſider how this Evidence hath been endeavoured to be anſwered; two Witneſſes have been produced to contradict that which they have ſworn. The firſt is *David Cray*, who tells you he has known the Priſoner for two Years, and ſays he was always reputed to be an *Iriſh*-man, and Born in *Galloway*; he has often diſcourſed with him about his Country, and he told him that he was an *Iriſh* man, and Born at *Galloway*. Then you hear what a Letter is produced writ to *Cray* when he was to come upon his Tryal, he mentions what his Defence was, and that it was impoſſible that any could do him any harm but he and two more. *Cray* ſwears it is his Hand; that he hath ſeen him write, and he believes it is his Hand.

Then there is a Gentleman, Mr *Rivet*, that came here by chance, who is a *Galloway* man, he ſaith he knew the Priſoner's Father, who was reputed to come thither about the Time of the Rebellion in *Ireland*, in 1641. and lived at *Galloway*; and that this Priſoner, Mr *Vaughan*, was his Son, and he knew him of a Child, was well acquainted with him, lived hard by him, remembers him an Apprentice in *Galloway*, and tells you to whom, and ſays he is ſure this is the very Man; and that he ſaw the Priſoner in 1691, about the Time of the Reduction of *Galloway*; and he is confident that the Priſoner is the Son of *John Vaughan* at *Galloway*, and he gives you a particular Account of him and his Family; *viz.* of the Reputation and Manner of living of his Father, and what other Brothers he had; ſo that there is no Objection againſt his Credit, and it is hard to believe, ſince he is ſo poſitive and circumſtantial, that he can be miſtaken.

But the Priſoner and his Council have endeavoured to anſwer all this Evidence; and firſt they have called *Cray*'s Brother to prove that he is an ill Man, for that he came into this Town where his Brother lives, who ſubſiſted him and took him into his Houſe, and one Day when he and his Wife went abroad, he made bold with ſome of his Money; but they thought the Maid had it, and he charged her with it, but to his ſatisfaction it did afterwards appear that *David* had it.

Then there is another, *Chriſtopher Hyden*, *Chriſtopher Cray*'s Servant, who ſays, he heard *D. Cray* ſay he was forc'd to be an Evidence againſt *Vaughan* to ſave himſelf; and that he uſed to threaten his Brother, that if he would not give him more Money he would ſwear againſt him. *Bryan* ſaith much to the ſame purpoſe. Theſe are produced to take off the Credit of *D Cray*'s Teſtimony.

But then Gentlemen, as to the Place of the Priſoner's Birth, two other Witneſſes are produc'd to give you ſatisfaction that this Captain *Vaughan* was not the Son of that Mr *Vaughan* of *Galloway*, whoſe Evidence I will open to you, and then you will ſee how coherent they are in their Teſtimony. The firſt is *Creighton*, a Shoemaker, he ſays he knew *Thomas Vaughan*, the Son of *John Vaughan* of *Galloway*, about ten Years ſince; he was a *Galloway*-man Bred, and lived the next Door to *John Vaughan* that had a Son *Thomas*. He ſays he has been here about ten Years in *England*. He ſays he thinks that *Thomas Vaughan*, the Son of *John Vaughan*, was about the Age of fifteen Years, but that this Priſoner is, not he, for that *Thomas Vaughan* was disfigured with the Small-pox; he remembered him well, he had reaſon for it, for he once baſted him ſoundly, and that he went away from *Galloway* when he was about fifteen Years of Age, and was reported to be Dead; and if it were ſo this Priſoner cannot be the Perſon.

The other Witneſs is as poſitive as *Creighton*, for he ſaith, He knew this *John Vaughan* of *Galloway*, and his Son *Thomas*; and that *Thomas Vaughan*, Son of *John Vaughan*, died about ten Years ſince of the Small-pox. So that they have found two *Thomas Vaughans*; one tells you of one that was fifteen Years Old, and was disfigured with the Small-pox; and the other tells you of *Thomas Vaughan* who died of the Small-pox when he was ten Years of Age.

You are therefore to conſider the Evidence on both Sides. The Queſtion principally is, Whether the Priſoner be a Subject of the King of *England?* If you are ſatisfied that he is not an *Engliſh* Subject, but a *French*-man, then he is not guilty of this High-Treaſon; but if you are ſatisfied, by the Series of the whole Evidence, that he is an *Iriſh* man, and that he had a Commiſſion from the *French* King, and that he cruized upon our *Engliſh* Coaſts, in Company with the King's Enemies, with a Deſign to take, burn, or deſtroy any of the King's or his Subjects Ships, you are to find him guilty of the high Treaſon whereof he ſtands indicted, otherwiſe you are to acquit him.

Cl. of Arr. Swear an Officer to keep the Jury; (*which was done.*)

After a ſhort ſtay, the Jury returned into Court, and gave in their Verdict.

Cl. of Arr. Gentlemen, anſwer to your Names. *E. Leeds.*

Mr. *Leeds.* Here.

Cryer. Vous avez, and ſo of the reſt.

Cl. of Arr. Gentlemen, are you all agreed of your Verdict?

Jury. Yes.

Cl. of Arr. Who ſhall ſay for you?

Jury. Our Foreman.

Cl. of Arr. Thomas Vaughan, Hold up thy Hand. (*which he did*) Look upon the Priſoner. How ſay you, is he guilty of the High-Treaſon whereof he ſtands indicted, or not guilty?

Foreman. Guilty.

Cl. of Arr. What Goods or Chattels, Lands or Tenements had he at the Time of the Treaſon committed.

Foreman. None to our Knowledge.

Cl. of Arr. Then hearken to your Verdict as the Court hath recorded it: You ſay that *Thomas Vaughan* is guilty of the High-Treaſon whereof he ſtands indicted, but that he had no Goods or Chattels, Lands or Tenements at the Time of the High-Treaſon committed, or at any Time ſince to your Knowledge, and ſo you ſay all.

Jury. Yes.

Tho. Vaughan. My Lord, let me beg one Favour, that I may be uſed like a Gentleman, that I may be ſent to a Chamber, and not to a Dungeon, and that my Friends may come to me.

L. C. J. Captain *Vaughan*, they ſay you once made an eſcape, and therefore the Keeper muſt keep you with Humanity, but with all Security.

Tho. Vaughan. I deſire I may be kept like a Chriſtian.

L. C. J. The Keeper muſt do his Duty.

Cl. of Arr. Thomas Vaughan, hold up thy Hand, (*which*

(*which he did*) Thou ſtandeſt convicted of High-Treaſon againſt our Sovereign Lord the King; What haſt thou to ſay for thy ſelf why Judgment ſhall not paſs againſt thee to dye according to the Law?

Tho Vaughan. I am altogether a ſtranger to the Law, my Lord, I refer my ſelf to my Council.

L. C. J. Well, then you refer your ſelf to your Council. You have had a fair Tryal, and have no reaſon to complain of it: If your Council have any Thing to ſay in arreſt of Judgment they ſhall be heard.

Mr. *Phipps.* My Lord, the Indictment has two ſorts of Treaſon laid in it; the one for adhering to the King's Enemies, the other levying of War; and, with ſubmiſſion, I take it that the firſt is not well laid, for it ſays that the Priſoner did adhere to the King's Enemies, but ſays not againſt the King. Now every Body knows that the *French* King is in War, not only with *England* but *Holland*, and *Spain*, and the Emperour: But if a Man joyn with the *French* againſt any of them, he adheres to the King's Enemies, and yet it cannot be ſaid to be againſt the King; therefore they ought to have laid it that he did adhere to the King's Enemies *contra Dominum Regem*; it muſt be aiding and comforting them againſt the King that makes the Treaſon.

L. C. J. It does ſay ſo.

Mr. *Phipps.* No, my Lord, it only ſays that Captain *Vaughan* did adhere to the King's Enemies, and does not ſay it was againſt the King; and if that be Treaſon, is what we deſire to know.

L. C. J. If he adhere to the King's Enemies, it muſt be againſt the King, though he aſſiſt them only againſt the King's Allies, for thereby the King's Enemies may be more encouraged and enabled to do miſchief or Damage to the King: Suppoſe you aſſiſt the *French* King againſt the King of *Spain*, that is now in Alliance and League with the King of *England*, and the *French* in actual Enmity, that is to adhere to the King's Enemies againſt the King.

Mr *Phipps.* Would that be Treaſon my Lord?

L. C. J. Yes certainly, though that is not a Point in this Caſe, and ſo not neceſſary to be determined now; for the Act of Parliament of 25 of *E.* 3. defines Treaſon in adhering to the King's Enemies, and expreſſes the Overt-Act in giving them aid or comfort; it is ſufficient to alledge the Treaſon in the Words of the Statute, adhering to the King's Enemies. An Overt-Act alledged, ſhews it to be againſt the King; and in purſuance of that adherence he did ſo and ſo; he was a Captain and Soldier in the Ship, did joyn with the King's Enemies, *&c.* with a Deſign to deſtroy the King's and his Subjects Ships; ſurely that is moſt manifeſtly an adherence to the King's Enemies againſt the King.

Mr *Phipps.* The Overt-Act, if it were alledged ſufficiently, would not help it; for if there can be an adhering to the King's Enemies that is not Treaſon, they ought to alledge ſuch adhering as is Treaſon, and if the Treaſon it ſelf is not well alledged, the Overt-Act will not help it.

L. C. J. There is an Overt-Act to ſhew it to be againſt the King. It is ſaid all along, he being in this Veſſel *Clencarty*, *cum diverſis Subditis.*

Mr *Phipps.* But then that Overt-Act is not well alledged, for 'tis ſaid only he went a cruizing; whereas they ought to have alledged that he did commit ſome Acts of Hoſtility, and attempted to take ſome of the King's Ships; for cruizing alone cannot be an Overt-Act, for he might be cruizing to ſecure the *French* Merchant Ships from being taken, or for many other purpoſes, which will not be an Overt-Act of Treaſon.

L. C. J. I beg your Pardon. Suppoſe the *French* King, with Forces, ſhould come to *Dunkirk* with a Deſign to invade *England*, if any one ſhould ſend him Victuals, or give him Intelligence, or by any other Way contribute to their Aſſiſtance, it would be High-Treaſon in adhering to the King's Enemies.

Mr *Phipps.* If the *French* King had deſigned an Invaſion upon *England*, and Captain *Vaughan* had aſſiſted in his Veſſel in forwarding the Invaſion, it would have been Treaſon; but here is nothing mentioned but cruizing.

L. C. J. Cruizing about the Coaſts of *England* with a Deſign to deſtroy the King's Ships.

Mr *Phipps.* That Deſign ought to be made appear by ſome Act of Hoſtility; for in the Caſe of *Burton* and *Bradſhaw*, and others, which my Lord *Coke* cites, the agreeing to riſe and pull down Incloſures, and meeting and providing Arms for that purpoſe, is agreed not to be levying of War; and they were indicted for conſpiring to levy War upon the Statute of Queen *Eliz.* And in this Caſe, here being only a Conſpiring, and nothing attempted, it can be no more Treaſon than it was in that Caſe.

L. C. J. When Men form themſelves into a Body, and March Rank and File with Weapons offenſive and defenſive, this is levying of War with open Force, if the Deſign be Publick. Do you think when a Ship is armed with Guns, *&c.* doth appear on the Coaſt, watching an opportunity to burn the King's Ships in the Harbour; and their deſign be known, and one goes to them, and aids and aſſiſts them; That this is not an adhering to the King's Enemies? Here are two Indictments, one for levying War, and the other for adhering to the King's Enemies; but the adhering to the King's Enemies is principally inſiſted on, and there muſt be an actual War proved upon the Perſon Indicted in the one, yet need not be proved in the other Caſe.

Mr *Phipps.* The ſame certainly is neceſſary in one as well as the other; for barely adhering to the King's Enemies is not Treaſon, but there muſt be an actual aiding and comforting them; and a meer Intention to aſſiſt the King's Enemies, is not an adherence within the Statute of 25 *Ed.* 3.

L. C. J. If there be not High-Treaſon in the Act alledged, that is, if it do not make out an adherence to the King's Enemies, than your Objection would hold good.

Mr *Phipps.* The going to cruize, my Lord, does not make out an adherence to the King's Enemies; for his cruizing might be for other purpoſes as well as to take the King's Ships, and your Lordſhip will intend the beſt in favour of Life.

Mr *Whitaker.* To burn the King's Ships.

L. C. J. *Treby.* The Indictment is laid for adhering to, and comforting and aiding the King's Enemies. You would take that to be capable to be conſtrued adhering to the King's Enemies in other Reſpects; but I take it to be a reaſonable Conſtruction of the Indictment, to be adhering to the King's Enemies in their Enmity. What is the Duty of every Subject? It is to fight with, and ſubdue, and weaken the King's Enemies: And contrary to this, if he confederate with, and ſtrengthen the King's Enemies, he expreſsly contradicts this Duty of his

Allegiance and is guilty of this Treaſon of adhering to them. But then you ſay here is no aiding, unleſs there were ſomething done, ſome Act of Hoſtility. Now here is going aboard with an intention to do ſuch Acts; and is not that comforting and aiding? Certainly it is. Is not the *French* King comforted and aided, when he has got ſo many *Engliſh* Subjects to go a cruizing upon our Ships? Suppoſe they man his whole Fleet, or a conſiderable part of it; Is not that aiding? If they go and enter themſelves into a Regiment, Liſt themſelves and March, though they do not come to a Battel, this is helping and encouraging; ſuch Things give the Enemy Heart and Courage to go on with the War; or elſe, it may be, the *French* King would come to good Terms of Peace. It is certainly Aiding and Comforting of them, to go and accept a Commiſſion, and enter into their Ships of War, and Liſt themſelves, and go out in order to deſtroy their Fellow-ſubjects, and ruin the King's Ships; theſe are Actings of an hoſtile Nature. And if this be not Adhering, *&c.* it may as well be ſaid, That if the ſame Perſons had made an attack upon our Ships and miſcarried in it, that had not been ſo neither, becauſe that in an unproſperous Attempt there is nothing done that gives aid or comfort to the Enemy. And after this kind of Reaſoning they will not be guilty, till they have Succeſs; and if they have Succeſs enough, it will be too late to queſtion them.

Mr *Phipps*. Intending to levy War is not Treaſon, unleſs a War be actually levied.

L. C. J. *Treby*. Is it not actual levying of War, if they actually provide Arms, and levy Men, and in a Warlike manner ſet out and cruize, and come with a deſign to deſtroy our Ships?

Mr *Phipps*. It would not be an actual levying of War, unleſs they commit ſome Act of Hoſtility.

L. C. J. Yes, indeed, the going on Board, and being in a Poſture to attack the King's Ships. As to the Fault you find with the Indictment, there is a Fault, but not in point of Law; they might have laid it more generally, ſo as to have given more Evidence.

Mr *Baron Powis*. However it is well enough.

But for you to ſay, becauſe they did not actually fight, it is not a levying of War; Is it not plain what they did intend? That they came with that Intention, that they came in that Poſture, that they came armed, and had Guns, and Blunderbuſſes, and ſurrounded the Ship twice, they came with an armed Force; that is a ſtrong Evidence of the Deſign.

L. C. J. You would make no Act to be aiding and aſſiſting but fighting.

Mr *Phipps*. Then next I am in your Lordſhip's Judgment, whether the Statute of 28 of *Hen.* 8th. by which Captain *Vaughan* is tried, is in force, and be not repealed by the firſt and ſecond of *Philip* and *Mary*, which ſaith, that all Tryals, in Caſes of Treaſon, ſhall be at the Common-Law. Now by the Common-Law before the Statute 28 *Hen.* 8. Treaſon done upon the Sea, was tried before the Admiral, or his Lieutenant, and my Lord *Coke* in the 12 *Rep.* in the Caſe of the Admiralty, ſaith the Juriſdiction of the Admiralty is by the Common-Law. By the Statute 33 *Hen.* 8. Treaſon confeſſed before three of the Privy-Council might be tried in a foreign County, but that Statute is repealed by the Statute 1 and 2 of *Philip* and *Mary*; for by the Statute 33 *Hen.* 8. *c.* 4. Treaſon committed *in trales*, might be tried in what County the King would aſſign; but ſince the Statute of *Philip* and *Mary*, it muſt be in the proper County; ſo that we are in your Lordſhip's Judgment, whether the Statute of 28 *Hen.* 8. be in force; and whether, ſince the Statute of 1 and 2 *Philip* and *Mary*, Treaſons done upon the Sea, ought not to be tried before the Admirals, or anciently at the Common-Law?

L. C. J. This is Treaſon by the Common-Law, and the Trial is by the Method of the Common-Law.

Mr *Phipps*. 'Tis true that my Lord *Coke*, and other Authorities ſay, That the Statute 35 *H.* 8. for trying Treaſons committed beyond Sea, is not repealed by the Statute of 1 and 2 *Philip* and *Mary*, but they do not ſay that this Statute is not repealed by the Statute of *Philip* and *Mary*; and the Books being ſilent in this, is the Reaſon why I propoſe this Queſtion for your Lordſhip's Judgment.

L. C. J. It is no more a Queſtion than the Tryals of foreign Treaſon, and then the Determination of the Tryals upon the 35th determines the Queſtion upon this.

Dr *Oldys*. We muſt have two Witneſſes by the Rules of the Civil-Law, an extrajudicial ſaying of a Party may be retracted by them at any time, that is the Civil-Law, and ſo there can be but one Witneſs.

L. C. J. That is not the Law of *England*.

Dr *Oldys*. I do humbly conceive that the Civil-Law is not taken away in this Caſe; for though the Statute preſcribes the Form of Proceedings according to the Rules of the Common-Law, yet as to the Crimes and Proofs the Civil-Law is ſtill in force, and then the Party may retract his Confeſſion in Judgment, much more any extrajudicial ſaying.

Mr *Whitaker*. You are arraigning the Verdict.

L. C. J. That you ſhould have taken notice of before the Verdict was given. But we think there is no danger in hearing this Objection, becauſe it is ſo eaſily anſwered. How many Witneſſes were to the Confeſſion?

Sir *Charles Hedges*. We are not in a Court that proceeds according to the ſtrict Rules of the Civil-Law; but if we were, that Law is not ſo abſurd as to allow that a Party may retract his Confeſſion at any time, ſo as to make it have no Effect.

Dr *Oldys*. There muſt be two Witneſſes at any time.

Sir *Charles Hedges*. So there are here to the Confeſſion; but you miſtake if you think that every particular is to be proved ſtrictly as the Civil-Law requires, for the end of the Statute which directs the Proceedings of this Court was to facilitate the Method of making Proofs, that being found difficult by the Courſe of the Civil-Law; and therefore was that Statute made, as plainly appears, by the Preamble thereof.

Dr *Oldys*. There is a new Statute that revives that Statute again, and that requires two Witneſſes; whereby it is reduced to the Rules of the Civil Law again.

L. C. J. Two Witneſſes there muſt be; but then conſider it is not neceſſary to have two to every individual Overt-Act: For ſuppoſe there be two Overt-Acts laid in the Indictments, for one Species of Treaſon, Compaſſing and Imagining the Death of the King; if there be one Witneſs that he bought a Dagger, and ſaid he would kill the King, and he is ſeen, it may be, going to the King's Bed-chamber with the Dagger; another Wit-

Witneſs ſays, he ſaid he would kill the King with a Piſtol, and bought a Piſtol, and he ſtood waiting to kill the King as he came by; that is another Overt-Act of the ſame Treaſon. If one Witneſs prove one, and another Witneſs prove the other, this is ſufficient Proof with us.

Dr *Oldys*. It is another Queſtion, Whether he be a Subject?

L. C. J. That is not an Overt-Act; if there be one Witneſs to that, it is enough, there needs not two Witneſſes to prove him a Subject; but upon the Tryal there were above two Witneſſes to prove it: That was *Crittenden*, the Marſhal of *Dover*, *Cray* and *Rivet*. I muſt tell you, as to the Doctrine of the Civil Law, it is not univerſally received in all Countries; it is received in ſeveral Countries as they find it convenient, and not as Obligatory in it ſelf.

Dr *Oldys*. Yes, in all Places, as to Proof; for 'tis the Law of God and Nations, *ex ore duorum, vel trium*, &c. And one Witneſs is no Witneſs.

Sir *Charles Hedges*. Two Witneſſes may be neceſſary to convict a Man of any capital Crime, but then it doth not follow that there muſt be two Witneſſes to prove every particular Fact and Circumſtance. In this point, touching the Place of the Nativity of *Thomas Vaughan*, was there not ſufficient in his own Confeſſion, together with the other Proofs on the King's behalf, to throw the Burden of Proof upon the Priſoner? You your ſelves ſeem to have been of that Opinion; you undertook to prove it, and 'tis you that have failed in that particular.

L. C. J. Our Tryals by Juries are of ſuch Conſideration in our Law, that we allow their Determination to be the beſt, and moſt advantagious to the Subject, and therefore leſs Evidence is required than by the Civil-Law. So ſaid *Forteſcue* in his Commendation of the Laws of *England*.

Dr *Oldys*. Becauſe the Jury are the Witneſſes in reality, according to the Laws of *England*, being preſumed to be *ex vicineto*; but when it is on the High and open Seas, they are not then preſumed to be *ex vicineto*, and ſo muſt be inſtructed according to the Rules of the Civil Law by Witneſſes.

Mr Baron *Powis*. This is not a Tryal by the Civil Law; for that Statute was made to avoid the Niceties of your Law.

Mr *J. Eyres*. He is tryed with like Evidence, as in other Caſes of High-Treaſon.

Dr *Oldys*. No, the late Act requires two Witneſſes.

Cl. of Arr. Make Proclamation of Silence.

Cryer. All manner of Perſons are commanded to keep Silence, while Judgment is giving, upon Pain of Impriſonment.

And then Judgment was given, according as the Law directs in Caſes of High-Treaſon.

The Commiſſion of Captain *Thomas Vaughan*, which he had by Order of the *French* King.

LEwis Alexander *of* Bourbon, *Earl of* Touloufe, *Duke of* Amville, *Commander of the King's Orders, Governour and Lieutenant-General for his Majeſty in the Province of* Britany, *Peer and Admiral of* France. *To all thoſe who ſhall ſee theſe preſent Letters Greeting; The King having declared War againſt his Catholick Majeſty, the Favourers of the of the Crowns of* England *and* Scotland, *and the* Eſtates of the United Provinces, *for the Reaſons contained in the Declarations Publiſhed by his Majeſty throughout the Extent of his Kingdom, Countries, Lands and Lordſhips under his Obedience; and his Majeſty having commanded us to take care that the ſaid Declarations be obſerved, in what doth depend upon the Power and Authority which his Majeſty hath been pleaſed to commit to our ſaid Charge of Admiral, We have according to the expreſs Orders of his ſaid Majeſty, given Leave, Power and Permiſſion to* Thomas Vaughan, *living at* Bulloigne, *to arm and ſet forth in Warlike Manner a Bark, called,* The Loyal Clencarty *of the Burthen of Ten Tuns, or thereabouts, which is at preſent in the Port of* Bulloigne, *with ſuch Number of Men, Cannons, Bullets, Powder, Shot, and other Ammunitions of War, and Proviſions which are neceſſary to ſet her out to Sea, in a Condition to ſail and cruize upon the Pirates, and others without Commiſſion, as alſo upon the Subjects of his Catholick Majeſty, the* Eſtates of the United Provinces, *the Favourers of the of the Crowns of* England *and* Scotland, *and other Enemies of this Eſtate, in what Places ſoever he can meet them, whether it be upon the Coaſts of their Country, in their Ports, or Rivers, alſo upon their Shores, or Places where the ſaid Captain* Thomas Vaughan *ſhall think fit to land to annoy the ſaid Enemies; and there to make uſe of all the Means and Arts permitted, and uſed by the Laws of War, to take them and bring them Priſoners with their Ships, Arms, and other Things in their Poſſeſſion.*

Provided the ſaid Vaughan *ſhall keep, and cauſe thoſe of his Crew to keep the Maritime Orders, and that he ſhall carry, during his Voyage, the Flag and Enſign of the King's Arms and of Ours, and cauſe the preſent Commiſſion to be regiſtred in the Regiſtry of the neareſt Admiralty where he ſhall be equipped, and leave there a Roll Signed and Certified by him, containing the Names and Sirnames, the Births and Reſidence of his Crew; and make his Return to the ſaid Place, or ſome other Port of* France, *and make his Report before the Officers of the Admiralty, and no others, of what ſhall have happened during his Voyage, and give us Advice thereof; and ſend his ſaid Report to the Secretary-General of the Marine, with the Papers juſtifying the ſame, that we may give ſuch Orders thereupon as may be neceſſary.*

And we pray and require all Kings, Princes, Potentates, Sovereigns, Eſtates, Republicks, Friends and Allies of this Crown, and all others, to whom it ſhall appertain, to give the ſaid Vaughan *all Favour, aid, aſſiſtance and ſuccour in their Ports, with his ſaid Veſſel, Company and Prizes, which he ſhall take during his Voyage, without doing, or ſuffering to be done to him any Trouble or Hindrance; offering to do the like when we ſhall be by them thereunto required.*

And we do command and require all Marine Officers, and others, to whom it ſhall appertain, to let him ſafely and freely paſs with his ſaid Veſſel, Arms and Company, and the Prizes which he ſhall take, without doing, or ſuffering to be done to him any Trouble or Hindrance; but on the contrary, to give him all Succour and Aſſiſtance that ſhall be neceſſary. Theſe Preſents to be of no force after one Year, from the Day of the Date hereof.

In Witneſs whereof we have ſigned theſe Preſents, and cauſed them to be Sealed with the Seal of our Arms, and Counter-ſigned by the Secretary-General of

the

the Marine, *at* Verſailles *the tenth Day of the Month of* July, *One thouſand ſix hundred ninety five.*

L. A. de Bourbon.

L. S.

By my Lord *De Vallencour.*

The preſent Commiſſion was regiſtred in the Regiſtry of the Admiralty of *Bulloigne*, after having been ſeen by us *James Abbot de la Cocherine*, the King's Councellor, deputed to the Intendancy of *Bulloigne*, Exerciſing the Charge of Lieutenant-General of the Admiralty, in the preſence of the King's Proctor, at the Requeſt of the ſaid Captain *Vaughan*, being preſent, whom we have permitted to ſail and cruize upon the Enemies of the Eſtate. Done at *Bulloigne* the fourteenth of *July*, one thouſand ſix hundred ninety five.

Maginon.

Verſionem hanc Anglicanam in omnibus, cum ſuo Originali Gallico convenire teſtor,

Wilihelmus Rocke, Notar. Publ.

The TRYAL of EDWARD *Earl of* Warwick *and* Holland.

Die Martis 28. *Martii*, 1699.

ABout Eleven of the Clock the Lords came from their own Houſe into the Court erected in *Weſtminſter-Hall*, for the Tryals of *Edward* Earl of *Warwick* and *Holland*, and *Charles* Lord *Mohun*, in the Manner following.

The Lord High Steward's Gentlemen Attendants, two and two.

The Clerks of the Houſe of Lords, with two Clerks of the Crown in the Courts of *Chancery* and *King's-Bench*.

The Maſters in Chancery, two and two.

Then the Judges.

The Peers Eldeſt Sons, and Peers Minors, two and two.

Four Serjeants at Arms with their Maces, two and two.

The Yeoman Uſher of the Houſe.

Then the Peers, two and two, beginning with the youngeſt Barons.

Then Four Serjeants at Arms, with their Maces.

Then one of the Heralds, attending in the Room of *Garter*, who by reaſon of his Infirmity could not be preſent.

And the Gentleman Uſher of the Black Rod, carrying the White Staff before the Lord High Steward.

Then the Lord Chancellor, Lord High Steward of *England* alone.

When the Lords were ſeated on their proper Benches, and the Lord High Steward upon the Wooll-pack.

The Two Clerks of the Crown in the Courts of *Chancery* and *King's-Bench*, ſtanding before the Clerk's Table with their Faces towards the State.

The Clerk of the Crown in *Chancery* having his Majeſty's Commiſſion to the Lord High Steward in his Hands, made three Reverences towards the Lord High Steward, and the Clerk of the Crown in *Chancery* on his Knees preſented the Commiſſion to the Lord High Steward, who delivered it to the Clerk of the Crown in the *King's-Bench*, (then likewiſe kneeling before his Grace) in order to be opened and read, and then the Two Clerks of the Crown making three Reverences, went down to the Table; and the Clerk of the Crown in the Court of *Kings-Bench* Commanded the Serjeant at Arms to make Proclamation of Silence, which he did in this Manner.

Serjeant at Arms. O Yes, O Yes, O Yes, My Lord High Steward his Grace does ſtraitly Charge and Command all manner of Perſons here preſent, to keep Silence, and hear the King's Majeſty's Commiſſion to his Grace my Lord High Steward of *England* directed, openly read, upon Pain of Impriſonment.

Then the Lord High Steward ſtood up, and ſpoke to the Peers.

Lord High Steward. Your Lordſhips will be pleaſed to ſtand up, and be uncovered, while the King's Commiſſion is Reading.

All the Peers ſtood up, and were uncovered, while the Commiſſion was read.

Clerk of the Crown. *GUlielmus Tertius Dei Gratia Angl. Scot. Franc. & Hibern. Rex Fidei Defenſor, &c. Prædilecto & fideli Conſiliar. noſtro Johanni Domino Somers Cancellar. noſtro. Angl. Sciatis quod cum Edrus. Comes Warwic. & Holland nuper de Paroch. Sti. Martini in Campis in Com. Middleſex. & Carolus Dominus Mohun nuper de Paroch. prædict. in Com. prædict. coram dilectis & fidelib. noſtris Carolo Lee Milit. Samuel. Buck Willielmo Withers & Franciſco Tyſſon Armigeris & aliis ſociis ſuis Juſticiar. noſtris ad inquirend. per Sacramentum probor. & legalium hominum de Com. noſtro Middleſex. prædict. ac aliis viis modis & mediis quibus melius ſciverint aut poterint tam infra libertat. quam extra per quos rei veritas melius ſciri poterit & inquiri de quibuſcunque proditionibus Miſpriſionibus prodition. Inſurrectionib. Rebellionib. Controfact. tonſur. lotur. falſis fabricationib. & aliis falſitat. Monet. hujus Regni noſtri Angl.*

Angl. & alior. Regnor. ſive Dominior. quorumcunque ac de quibuſcunque Murdris Feloniis Homicid. Interfectionibus Burglar. Raptib. Mulier. Congregationib. & Conventicul. illicit. verbor. prolationib. Coadunationib. Miſpriſionib. Confederationibus falſis Alleganciis Tranſgreſſionibus Riotis Routis Retentionib. Eſcapiis Contempt. Falſitat. Negligentiis Concelament. Manutenent. Oppreſſionibus Cambiparciis Deceptionib. & aliis Maleſactis Offenc. & Injur. quibuſcunque Necnon Acceſſar. eorundem infra Com. prædict. tam infra libertat. quam extra per quoſcunque & qualitercunque habit. fact. perpetrat. ſive commiſ. & per quos vel per quem cui vel quibus quando qualiter & quomodo & de aliis Articul. & Circumſtanc. præmiſs. ſeu cor. alicujus vel aliquor. qualitercunque concernen. plenius veritat. & ad eaſdem proditiones & al. præmiſſ. audiend. & terminand. ſecundum legem & conſuetud. Regni noſtri Angl. nuper aſſignat. de Felonia & Murdro per ipſos Edrum. Comitem Warwic. & Holland & Carolum Dominum Mohun Commiſſ. & Perpetrat. per ſacrament. probor. & legal. hominum Com. noſtri Middleſex. prædict. Indictat. Exiſtunt Nos conſiderantes quod Juſtitia eſt virtus excellens & altiſſimo complacens Volenteſque quod prædict, Edrus. Comes Warwic. & Holland & Carolus Dominus Mohun de & pro Felonia & Murdro unde ipſi ut præfertur Indictat. exiſtunt. coram nob. in preſenti Parliament. noſtro ſecundum Leg. & conſuetud. Regni noſtri Angl. Audiantur Examinentur ſententientur & Adjudicentur Cateraque omnia quæ in hac parte pertinent debo. modo exerceantur & exequantur; Ac pro eo quod Officium Seneſchalli Angl. (cujus præſentia in hac parte requiritur ut Accepimus jam vacat) Nos de Fidelitate Prudentia provida Circumſpectione & Induſtria veſtris plurimum confidentes Ordinavimus & Conſtituimus vos ex hac cauſa Seneſchallum Angl. ad Officium illud cum omnibus eidem Officio in hac parte debit. & pertinen. (hac vice) gerend. occupand. & exercend. Et ideo vob. Mandamus quod circa præmiſſ. diligenter intendatis & ea omnia quæ in hac parte ad Officium Seneſchal. Angl. pertinent & requiruntur (hac vice) faciatis exerceatis & exequamini cum effectu. In Cujus rei Teſtimonium has literas noſtras fieri fecimus Patentes Teſte meipſo. apud Weſtmonaſterium viceſimo quinto die Martii Anno Regni noſtri Undecimo.

Per ipſum Regem propria Manu Signat.

Serjeant at Arms. God ſave the King.

Then the Herald and the Gentleman Uſher of the Black Rod, after three Reverences, kneeling, preſented the White Staff to his Grace, and his Grace removed from the Wooll-pack to the Chair, which was placed upon an Aſcent juſt before the uppermoſt Step of the Throne, and ſeated himſelf in the Chair.

Clerk of the Crown. Serjeant at Arms make Proclamation.

Serjeant at Arms. O Yes, O yes, O yes, My Lord High Steward of *England*, his Grace, does ſtraightly Charge and Command all manner of Perſons here preſent, to be uncovered upon Pain of Impriſonment.

Then the Judges and Maſters in *Chancery* ſat down in their Places upon the Wooll-pack, uncovered.

Then the Clerk of the Crown read the Return of the *Certiorari in hac verba.*

Gulielmus Tertius Dei Gratia. Angl. Scoc. Franc. & Hibern. Rex Fidei Defenſ. &c. Juſtic. noſtris. per Literas. noſtras. Paten. confect. ad inquirend. per Sacrm. probor. & legal. hom. Com. noſtri. Midd. ac aliis viis mod. & med. quibus melius ſciverint aut poterint de quibuſcunque prodic. miſpriſ. prodic. inſurrection. Rebellion. controfact. tonſur. lotur. falſis fabricac. & aliis falſitat. monet. hujus Regni Angl. & alior. Regnorum ſive Dominiorum quorumcunque ac de quibuſcunq; murdris felon. homicid. interfection. burglar. raptibus mulierum congregacon. & conventicul. illicit. verborum prolationibus coadunat. miſpriſion: confederat. falſis Alleganc. tranſgreſ. riot. rout. retention. eſcapiis contempt. negligenc. concelament. manutenen. oppreſſion. deception. & aliis maleſactis offenſ. & injur. quibuſcunq; Necnon acceſſariis eorundem infra Com. prædict. tam infra libertates quam extra per quoſcunq; & qualitercunq; habit. fact. perpetrat. ſive commiſſ. ac de aliis articulis & circumſtanciis premiſſ. & eorum quodlibet ſeu eorum aliquod vel aliqua qualitercunq; concernen. plenius veritat. & ad eaſdem Prodition. & al. premiſſ. audiend. & terminand. Aſſign. Necnon Juſtic. noſtris ad Gaol. noſtram de Newgate de priſonar. in ea exiſten. deliberand. Aſſign. & eorum cuilibet Saltm. volen. certis de cauſis omnia & ſingula Indictament. & Inquiſition. de quibuſcunq; felon. & murdris unde Edrus. comes Warwic. & Holland & Carolus Dominus Mohun & al. coram vobis Indictat. ſunt Necnon Record. conviction. Rici. French Rogeri James & Georgii Dockwra pro felon. & homicid. unde Indictat. ſunt Et ſuperinde per quandam. Iur. Prie. inde inter nos & prefat. Richardum French Rogerum James & Georgium Dockwra capt. convict. ex ſt. ut dicitur coram nobis & non alibi terminari vobis & cuilibet veſtrum mandamus quod omnia & ſingula in Indictament. & Record. Convict. prædict. cum omnibus ea tangen. quibuſcunq; nominibus iidem Edrus. Comes Warwic. & Holland Carolus Dominus Mohun Richardus Rogerus & Georgius nuncupentur in eiſdem coram nobis ſub ſigillis veſtris aut unius veſtrum in octab. ſti. Hillarii ubicunq; tunc fuerimus in Angl. mittat. ſeu unus veſtrum mittat una cum hoc brevi ut ulterius inde fieri fac. quod de jure ac ſecundum legem & conſ. regni noſtri Angl. fore viderimus faciend. Teſte J. Holt Mil. apud Weſtm. xxviii die Novembris Anno regni noſtri Decimo

per Cur. *Aſtry*

Ad inſtanc. proſecutor. quoad duos Def. & ad inſtanc. caterorum Def.

J. Holt.

Virtute cujus brevis mihi & aliis direct. Indictament. & Inquiſition. inſramentionat. necnon Record. conviction. inſranominat. Rici. French Rogeri James & Georgii Dockwra pro felon. & homicid. unde Indictat. & ſuperinde per quandam Jur. prie. convict. exiſt. cum omnibus ea tangen. coram Dom. Rege in quibuſdam Sched. huic brevi annex. mitto prout interius præcipitur.

Reſponſ. Fra. Child. Mil. Major. Civit. Lond. un. Juſtic. infraſcript.

Midd. ſſ. Memorandum quod ad deliberation. Gaol. Domini Regis de Newgate tent. pro. Com. Middleſex. apud Juſtice-Hall in le Old Baily in Suburbiis Civit. London. die veneris (ſcilt.) decimo tertio die Januarii Anno Regni Dom. noſtri. Gulielmi tertii Dei gra. nunc Regis Angl. &c. Decimo coram Fran. Child Mil. Majore Civit. London. Edro. Ward Mil. Capital. Baron. Sccii. dict. Dom. Regis Henrico Hatſel Milit. un Baron. Sccii. Dicti Domini Regis Thoma Stamp Mil. Edro. Clarke Mil. Aldris. dict. Civit. London Salathiel. Lovell Mil. ſervien. dict. Dom.

Dom Regis ad legem ac Recordator dict. Civit. London & aliis ſociis ſuis Juſtic. dict. Dom. Regis ad Gaol. ipſius Dom. Regis de Newgate prædict. de priſonar. in eadem exiſten. deliband. aſſign. ven. hic in Cur. Carolus Lee Mill. Samuel Buck Will. Withers & Fran. Tyſſon Ar. Juſtic. dict. Dom. Regis per Literas patent. ipſius Dom. Regis eiſdem Juſtic. prænoiat. & aliis ac quibuſcunq; quatuor vel plur. eorum ſub magno Sigillo dict. Dom. Regis Angl. confect. ad inquirend. per Sacrament. probor. & legal. hom. de Com. Midd. præd. ac aliis viis modis & mediiis quibus melius ſciverint aut poterint tam infra libertat. quam extra per quos rei veritas ſciri poterit de quibuſcunq; prodition. miſpriſion. prodition. inſurrection. rebellion. controfactur. tonſur. lotur. falſis fabrication. & al falſitat. monetæ hujus Regni dict. Dom. Regis Angl. & al. Regnorum ſive Domin. quorumcunq; ac de quibuſcunq; murdris felon. homicid. interfeccon. burglar. Rapt. mulier. congregac. & conventicul. illicit. verborum prolation. Coadunac. miſpriſion. Confederac. falſis Alleganc. tranſgr. Riot. Rout. retention. eſcapiis contempt. negligenc. concelamen. manutenen. oppreſſion. Cambi-parciis Deception. & aliis Malefact. & Offenc. quibuſcunq; nec non acceſſar. eorund. infra Com. pred. tam infra libertat. prædict. quam extra per quoſcunq; & qualitercunq; habit. fact. perpetrat. ſive commiſſ. ac de aliis articul, & Circumſtanc. premiſſa & eorum quodlibet ſeu eorum aliquod vel aliqua qualitercunq; concernen. pleniùs veritat. & ad eaſdem prodition. & al. premiſſa audiend. & terminand. Secundum. legem & conſuetud. hujus Regni dict. Dom. Regis Angl. Aſſign. & per manus ſuas propr. deliberaver. hic in Cur. dict. Dom. Regis quoddam Record. Indictament. coram eis & aliis ſociis ſuis nuper præantea preſentat. & capt. verſus Edrum. Comit. Warwic. & Holland Carolum Dominum Mohun de Oakehampton in Com. Devon. Ricum. French Rogerum James & Georgium Dockwra pro murdro cujuſdam Rici. Coote Ar. in forma juris terminand. &c. (eiſdem Rico. French Rogero James & Georgio Dockwra priſonar. in dict. Gaol. dict. Dom. Regis de Newgate cauſa in eodem Indictament. content. adtunc. exiſten.) Record. cujus quidem Indictament. patet in quibuſdam Schedul. huic annex.

Midd. ſſ. Memorandum quod ad Seſſionem de Oyer & Terminer Domini Regis tent. pro Com. Middleſex. apud Hicks-Hall in St. John-ſtreet in Com. præd. die Mercurii ſcil. ſeptimo die Decembris Anno Regni Domini noſtri Gulielmi Tertii Dei gratia nunc Regis Angliæ &c. decimo coram Carolo Lee Mil. Samuele Buck, Willielmo Withers, Franciſco Tyſſon Armigeris & aliis Sociis ſuis Juſtic. dict. Dom. Regis per Literas Paten. ipſius Dom. Regis eiſdem Juſtic. prænominat. & al. ac quibuſcunque quatuor vel pluribus eorum ſub magno Sigillo dict. Domini Regis Angliæ confect. ad inquirend. per ſacrament. probor. & legalium hom. Com. Middleſex. præd. ac aliis viis mod. & med. quibus melius ſciverint aut poterint tam infra libertat. quam extra per quos rei veritas melius ſciri poterit de quibuſcunque prodition. miſpriſion. prodition. inſurrection. rebellion. controfactur. tonſur. lotur. falſis fabrication. & aliis falſitat. monet. hujus Regni dict. Dom. Regis Angl. & al. Regnor. ſive Dominior. quorumcunque ac de quibuſcunq; murdris felon. homicid. interfection. burglar. rapt. Mulier. congregat. & conventicul. illicit. verborum prolation. coadunat. miſpriſion. confederat. falſis allegan. tranſgr. riot. rout. retention. eſcapiis contempt. negligen. concelamen. manutenen. oppreſſion. cambiparciis deception. & aliis malefactis & offenſis quibuſcunq; necnon Acceſſar. eorundem infra Com. præd. tam infra libertat. quam extra per quoſcunque & qualitercunque habit. fact. perpetrat. ſive commiſſ. ac de aliis articulis & circumſtantiis premiſſa & eor. quodlibet vel aliqua qualitercunque concernen. plenius veritat. & ad eaſdem prodition. & al. præmiſſ. audiend. & terminand. ſecund. legem & conſ. hujus Regni Dicti Dom. Regis Angl. aſſign. per ſacrm. Egidii Riddle, Richardi Read, Roberti Leg, Joſephi Partherich, Johannis Marriott, Jonathan Hall, Nicolai Baker, Roberti Teague, Thomæ Briggs, Willielmi Brace, Thomæ Williams, Georgii Biſhop, Thomæ Hodges, Johannis Lynn, Samuelis Lee, Richardi Rogers, Joſephi Rogers, Johannis Cheney, Johannis Fowler, & Roberti Nicholſon, probor. & legalium hominum Com. præd. adtunc & ibidem jurat. & onerat. ad inquirend. pro dicto Dom. Rege & corpore Com. præd. præſentat. exiſtit. qd. Billa Indictament. huic Schedul annex. eſt vera.

Midd. ſſ. Jurator. pro Domino Rege ſuper ſacrum ſuum præſentant quod Edwardus Comes Warwic. & Holland. nuper de Paroch. S. Martini in campis in Com. Middleſex. Corolus Dominus Mohun Baro Mohun de Okehampton in Com. Devon nuper de Paroch. præd. in Com. Middleſex. præd. Richardus French nuper de Paroch. præd. in Com Middleſex. præd. Gen. Rogerus James nuper de Paroch. præd. in Com. Middleſex præd. Gen. & Georgius Dockwra nuper de Paroch. præd. in Com. Middleſex. præd. Gen. Deum pre oculis ſuis non habentes ſed inſtigatione diabolica moti & ſeducti Triceſimo die Octobris Anno Regni Domini Gulielmi tertii Dei gra. Angl. Scoc. Franc. & Hibern. Regis fidei defenſ. &c. decimo vi & armis &c. apud paroch. præd. in Com. Middleſex. præd. in & ſuper quendam Richardum Coote Ar. in pace dei & dicti Domini Regis nunc adtunc & ibidem exiſten. felonice voluntarie & ex malitiis ſuis præcogitat. inſult. fecer. & qd. præd. Edwardus Comes Warwic. & Holland, cum quodm. gladio. (Anglice a Sword) de ferro & chalibe confect. valor. quinque ſolidor. quem ipſe idem Edwardus Comes Warwic. & Holland. in manu ſua dextra adtunc & ibidem extract. habuit & tenuit præfat. Richardum Coote in & ſuper ſiniſtram partem pectoris ipſius Richardi Coote prope os Collar. (Anglice the Collar Bone) ipſius Richardi Coote adtunc & ibidem felonice voluntarie & ex malitia ſua præcogitat. percuſſit pupugit & inforavit (Anglice did ſtrike ſtab and thruſt in) dans eidem Richardo Coote adtunc & ibidem cum gladio extract. præd. in & ſuper dict. ſiniſtram partem Pectoris ipſius Rici. Coote prope Os Collar. (anglice the Collar Bone) ipſius Rici. Coote unum vulnus mortal. (anglice one Mortal Wound) latitud. dimidii unius pollicis & profunditat. quinq; pollicium De quo quidem vulnere mortal. præd. Ricus. Coote adtunc & ibm. inſtanter obiit Et qd. præd. Carolus Dnus. Mohun Ricus. French Rogerus James & Georgius Dockwra adtunc & ibm. felonice voluntarie & ex maliciis ſuis precogitat. fuer. preſen. auxilian. abettan. confortan. aſſiſten. & manutenen. preſat. Edrum. Comit. Warwick & Holland. ad prefat. Ricum. Coote modo & forma pred. felonice voluntarie & ex malicia ſua precogitat. interficiend. & murdrand. Et ſic Jur. pred. ſuper ſacrm. ſuum pred. dic. qd. pred. Edrus. Comes Warwici & Holland. Carolus Dnus. Mohun Ricus. French Rogerus James & Georgius Dockwra prefat. Ricum. Coote modo & forma pred. felonice voluntarie & ex maliciis ſuiis precogitat. interfecer. & murdraver. contra pacem dci. Domini Regis nunc Coron. & Dignitat. ſuas &c.

Ricus. French 13 *Januar.* 98. *pon. ſe Cul. de Felon. & Homicid. tant. Non cul. de Murdro. Catalla nulla. Pet. Librum. Legit ut Clericus. Crematio reſpectuatur quouſq; &c.*

Rogerus James 13 *Jan.* 98. *pon. ſe cul. de Felon. & Homicid. tant. Non cul. de Murdro. Catalla nulla. Petit Librum. Legit ut Clericus. Crematio reſpectuatur quouſq; &c.*

Billa

Billa vera. *Samuel Cowthorne de paroch. ſti. Martini in Campis in Com. Midd. Toman.*

Willus. Cripps de paroch. præd. in Com. præd. Toman, Henricus Pomfret de paroch. præd. in Com. præd. Toman, Willus. Salmon de paroch. præd. in Com. præd. Chirurgus, Robtus. Applegate de paroch. præd. in Com. præd. Toman.

Jur. in Cur.

Midd. ſſ. Memorand. qd. ad Deliberation. Gaole Dni. Regis de Newgate tent. pro Com. Midd. apud Juſtice-Hall in le Old Bailey in Suburbiis Civitat. London. die Mercurii Scilt. Septimo die Septembris Anno Regni Dni. nri. Gulielmi tertii Dei gra. Angl. Scoc. Franc & Hibnie. Regis Fidei Defenſ. &c. decimo coram Franco. Child. Mil. Majore Civitat. London. Georgio Treby Mil. Capital. Juſtic. dci. Dni. Regis de Banco Littleton Powis Mil. uno Baron. Sccii. dict. Dni. Regis Thoma Stamp Mil. Edro. Clarke Mil. Aldris. dict. Civitat. London. Salathiel Lovell Mil. Servien. dci. Dni. Regis ad Legem ac Recordatore dict. Civitat. London. & aliis Sociis ſuis Juſtic. dci. Dni. Regis ad Gaolam ipſius Dni. Regis de Newgate præd. de Priſonar. in eadem exiſten. deliberand. aſſign. ven. Robertus White gen. Coronator dci. Dni. Regis infra libertat. Decani & Capituli Eccliæ. Collegiat. bti. Petri Weſtm. Civitat. Burgi & Ville Weſtm. in Com. Midd. præd. Et per manus ſuas proprias deliberavit hic in Cur. quandam Inquiſition. de morte Rici. Coote Ar. coram eo nuper capt. in Cur. hic de Recordo in forma juris terminand. Que quidem Inquiſitio huic Schedule annex. eſt

pon. ſe

Civitas, Burgus & Villa, Weſtm. in Com. Midd. } *ſſ.* INquiſitio indentat. capt. pro Dno Rege apud paroch. ſci. Martini in Campis infra Libertat. Decani & Capitli. Eccleſie Collegiat. bti. Petri Weſtm. Civitat. Burgi & Ville Weſtm. in Com. Midd. triceſimo die Octobris Anno Regni Dni. nri. Gulielmi tertii Dei gra. Angl. Scoc. Franc. & Hiberniæ Regis Fidei defenſoris &c. decimo Coram Roberto White gen. Coronatore dci. Dni. Regis Libertat. præd. ſuper viſum Corporis cujuſdam Rici. Coote Ar. ibm. jacen. mort. per ſacrm. Johis. Harris Petri Solomon Rici. Newgent Willi. Fryer Samuelis Thomſon Jacobi Timberlick ſen. Jacobi Timberlick jun. Rici. Jackſon Johis. Finch Samuelis Powell Samuelis Dimont Robti. Giltrick Johis. Paulin Joſephi Vernon Thome Smithſon Andreæ Rogers & David Jones proborum & legium. homin. Libertat. præd. jurat. & onerat. ad inquirend. pro dco. Dno. Rege quando qualiter & quomodo præfat. Ricus. Coote ad mortem ſuam devenit dicunt ſuper ſacrm. ſuum præd. qd. Edrus. Comes Warwic. & Holland. nuper de paroch. ſci. Martini in Campis infra Libertat. præd. in Com. præd. Carolus Dnus. Mohun nuper de paroch. præd. infra Libertat. præd. in Com. præd. Ricus. French nuper de paroch. præd. infra Libertat. præd. in Com. præd. gen. Rogerus James nuper de paroch. præd. infra Libertat. præd. in com. præd. gen. & Georgius Dockwra nuper de paroch. præd. infra Libertat. præd. in Com. præd. gen. Deum præ oculis ſuis non hentes. ſed Inſtigatione diabolica moti & ſeducti dco. triceſimo die Octobris Anno decimo ſupradicto vi & armis &c. apud paroch. pred. infra Libertat. præd. in Com. præd. in & ſuper prefat. Ricum. Coote in pace Dei & dci. Dni. Regis. nunc adtunc & ibm. exiſten. felonice voluntarie & ex malicciis ſuis precogit. inſult. jecer. & qd. præd. Ricus French cum quodam Gladio (anglice a Rapier) de ferro & chalibe conject. valorus quinq; ſolid. quem ipſe idem Ricus. French in manu ſua dextra adtunc & ibm. extract. huit. & tenuit præfat. Ricum. Coote in & ſuper ſiniſtram partem Pectoris ipſius Rici. Coote prope Os Collar. (anglice the Collar Bone)) ipſius Rici. Coote adtunc & ibm. felonice voluntarie & ex malicia ſua precogitat. percuſſit & pupugit dans eidem Rico. Coote adtunc & ibm. cum gladio pred. extract. in & ſuper pred. ſiniſtram partem pectoris ipſius Rici. Coote prope dict. Os Collar. ipſius Rici. Coote unum vulnus mortale longitudinis dimid. unius Pollicis & Profunditatis quinq; Pollicium de quo quidem vulnere mortali pred. Ricus. Coote apud paroch. pred. infra Libertat. pred. in Com. pred. inſtanter obiit Et qd. predicti Edrus. Comes Warwic. & Holland. Carolus Dnus. Mohun Rogerus James & Georgius Dockwra adtunc & ibm. felonice voluntarie & ex malicis ſuis precogitat. fuer. preſentes auxiliantes abettantes confortantes aſſiſtentes & manutentes prefat. Ricum. French ad predictum Ricum. Coote in forma pred. felonice voluntarie & ex malicia ſua precogitat. interficiend. & murdrand. Et ſic Jur. pred. dicunt ſuper ſacrm. ſuum pred. quod pred. Edrus Comes Warwici & Holland. Carolus Dnus. Mohun Ricus. French Rogerus James & Georgius Dockwra prefat. Ricum. Coote modo & forma predict. felonice voluntarie & ex malicis ſuis precogitat. interfecer. & murdraver. contra pacem dci Dni. Regis nunc Coron. & Dignitat. ſuas &c. Et ulterius Jur. pred. dicunt ſuper ſacrum. ſuum pred. qd. immediate poſt Feloniam & Murdrum pred. per ipſos modo & forma pred. fact. & perpetrat. apud Paroch. pred. infra Libertat. pred. in Com. pred. fugam. fecer. Quæ bona & catalla terras ſive tenementa pred. Edrus Comes Warwici & Holland Carolus Dnus. Mohun Ricus. French Rogerus James & Georgius Dockwra tempore Felonie & Murdri predict per ipſos modo & forma pred. fact. & perpetrat. ſive aliquo tempore poſtea uſque diem Captionis hujus Inquiſitionis habuerunt Jur. pred. penitus ignorant. In cujus Rei Teſtimonium tam prefat. Coronator quam Jur. pred. huic Inquiſitioni Sigilla ſua alternatim appoſuerunt die anno & loco primo ſupradcis.*

Ricus French 13 Jan. 98. pon. ſe cul. de felon. & homicidio tant. Non cul. pro Murdro. Catal. nulla. Judicium ſuper Indictamentum.

Rogerus James 13 Jan. 98. pon. ſe cul. de felon. & homicid. tant. Non cul. pro Murdro. Catalla nulla. Judicium ſuper Indictamentum.

Georgius Dockwra 13 Jan. 98. pon. ſe cul. de felon. & homicid. tantum. Non cul. pro Murdro. Catalla nulla. Judicium ſuper Indictamentum.

Midd. ſſ. Memorandum qd. ad Seſſionem de Oyer & Terminer Domini Regis tent. pro Com. Middleſex. apud Hicks-Hall in S. John-ſtreet in Com. pred. die Mercurii ſcilt. ſeptimo die Decembris Anno Regni Domini noſtri Gulielmi Tertii Dei gratia nunc Regis Angliæ &c. decimo coram Carolo Lee Mil. Samuele Buck, Willielmo Withers Franciſco Tyſſon Armigeris & aliis Sociis ſuis Juſtic. dict. Dom. Regis per Literas Paten. ipſius Dom. Regis eiſdem Juſtic. prænominat. & al. ac quibuſcunque quatuor vel pluribus eorum ſub magno Sigillo dict. Dni. Regis Angliæ confect. ad Inquirend. per ſacrm. probor. & legalium hom. de Com. Middleſex. pred. ac aliis viis mod. & med. quibus melius ſciverint aut poterint tam infra Libertates quam extra per quos rei veritas melius ſciri poterit & inquiri de quibuſcunque Prodition. Miſpriſion. Prodition. Inſurrection. Rebellion. Controfactur. Tonſur. Lotur. & falſis Fabrication. & aliis falſitat. Monet. hujus Regni dict. Dom. Regis Angliæ & aliorum

orum Regnorum ſive Dominior. quorumcunque ac de quibuſcunque Murdris Feloniis Homicidiis Interfectionibus Burglar. Rapt. Mulier. congregat. & conventicul. illicit. Verborum prolation. coadunat. Miſpriſion. Confederat. falſis Alleganc. Tranſgr. Riot. Rout. Retention. Eſcapiis Contempt. Negligen. Concelamen. Manutenen. Oppreſſionibus Cambiparciis Deception. & aliis Maleſactis & Offenſis quibuſcunque necnon Acceſſar. eorundem infra Com. pred. tam infra Libertat. quam extra per quoſcunque & qualitercunque habit. fact. perpetrat. ſive commiſſ. Ac de aliis Articulis & Circumſtantiis premiſſa & eorum quodlibet ſeu eorum aliquod vel aliqua qualitercunque concernen. plenius veritat. Et ad eaſdem Proditiones & alia Premiſſa audiend. & terminand. ſcdm. Legem & Conſ. hujus Regni dci. Dni. Regis Anglie aſſign. per ſacrm. Egidii Riddle Rici. Read Roberti Legg Joſephi Partherich Johis. Marriot Jonathan Hall Nicholai Barker Roberti Teague Thome Briggs Willi Brace Thome Williams Georgii Biſhop Thome Hodges. Johis. Lynn Samuelis Lee Rici. Rogers Johis. Cheney Johis. Fowler & Roberti Nicholſon proborum & legalium Hominum Com. pred. & tunc & ibm. jurat. & onerat. ad inquirend. pro dco. Dno. Rege & corpore com. pred. preſentat. exiſtit qd. Edrus. Comes Warwici & Holland. nuper de paroch. S. Martini in campis in Com. pred. Carolus Dnus. Mohun Bare Mohun de Oakehampton in Com. Devon nuper de Paroch. pred. in Com. Midd. pred. Ricus. French nuper de Paroch. pred. in Com. Midd. pred. gen. Rogerus James nuper de paroch. pred. in com. Midd. pred. gen. & Georgius Dockwra nuper de paroch. pred. in com. Midd. pred. gen. Deum pre oculis ſuis non hentes. ſed inſtigatione diabolica mot. & ſeduct. 30 die Octobris Anno Regni Gulielmi tertii Dei Gratia Angl. Scoc. Franc. & Hibernie Regis fidei deſenſoris &c. decimo vi & armis &c. apud paroch. pred. in Com. Midd. pred. in & ſuper quendam Ricum. Coote Ar. in pace Dei & dci. Dni. Regis nunc adtunc & ibidem. exiſten. felonice voluntarie & ex maliciis ſuis precogitat. inſult. fecer. Et qd. pred. Comes Warwici & Holland. cum quodam Gladio (anglice a Sword*) de ferro & Chalibe confect. valoris quinq; ſolid. quem ipſe idem Edrus. Comes Warwici & Holland. in manu ſua dextra adtunc & ibm. extract. huit & tenuit præfat. Ricum. Coote in & ſuper ſiniſtram partem Pectoris ipſius Rici. Coote prope Os Collar. (anglice* the Collar Bone*) ipſius Rici. Coote adtunc & ibm. felonice voluntarie & ex malicia ſua precogitat. percuſſit pupugit & inforavit (anglice,* did ſtrike, ſtab, and thruſt in.*) Dans eidem Rico. Coote adtunc & ibm. cum Gladio extract. pred. in & ſuper dict. ſiniſtram partem pectoris ipſius Rici. Coote prope Os Collar. (anglice* the Collar Bone*) ipſius Rici. Coote unum Vulnus Mortale (anglice* one Mortal Wound*) latitudinis dimidii pollicis & profunditatis quinq; pollicium de quo quidem vulnere mortali pred. Ricus Coote adtunc & ibm. inſtanter obiit Et qd. pred. Carolus Dnus. Mohun Ricus French Rogerus James & Georgius Dockwra adtunc & ibm. felonice voluntarie & ex maliciis ſuis precogitat. fuer. preſentes auxiliantes abettantes confortantes aſſiſtentes & manutenentes prefat. Edrum. Comitem Warwici & Holland. ad prefat. Ricum. Coote modo & forma pred. felonice voluntarie & ex malicia ſua precogitata interficiend. & Murdrand. Et ſic Jur. pred. ſuper ſacrm. ſuum pred. dicunt qd. predict. Edrus. Comes Warwici. & Holland. Carolus Dnus. Mohun Ricus French Rogerus James & Georgius Dockwra prefat. Ricum. Coote modo & forma pred. felonice voluntarie & ex maliciis ſuis precogitatis interfecer. & murdraverunt contra pacem dci. Dni. Regis nunc Coron. & Dignitat. ſuas &c. Per quod Preceptum eſt Vic. Midd. qd. non omitteret &c. quin caperet predictos Edrum. Comitem Warwici & Holland. Carolum Dnum. Mohun Ricum. French Rogerum James & Georgium Dockwra ad reſpondend. &c. Quod quidem Indictamentum preſat. Juſtic. dci. Dni. Regis (per dcas. Literas paten. ipſius Dni. Regis eiſdem Juſtic. prenominat. & aliis ac quibuſcunq; quatuor vel pluribus eorum ſub magno Sigillo dci. Domini Regis Anglie ut prefertur confect.) poſtea ſcilt. ad Deliberationem Gaole dci. Dni. Regis de Newgate tent. pro Com. Midd. pred. apud Juſtice-Hall in le Old-Baily in Suburbiis Civitat. Lond. dco. die Mercurii ſcilt. ſeptimo die ejuſdem Menſis Decembris Anno Regni dci. Dni. Regis nunc decimo ſupradicto coram Franciſco Child Mil. Majore Civitat. London. Georgio Treby Mil. Capital. Juſtic. dci. Dni. Regis de Banco Littleton Powis Mil. uno Baronum Sccii. dci. Dni. Regis Thoma Stampe Mil. Edro. Clarke Mil. Aldris. dce. Civitat. London. Salathiel Lovell Mil. Servien. dci. Dni. Regis ad Legem ac Recordatore dce. Civitatis London. & aliis Sociis ſuis Juſtic. dci. Dni. Regis ad Gaolam dci Dni Regis de Newgate pred. de Priſonar. in eadem exiſten. deliberand. aſſign. per manus ſuas proprias deliberaverunt hic in Cur. de Recordo in forma juris terminand. &c. Super quo poſtea ſcilt. ad deliberationem Gaole dci. Dni Regis de Newgate pred. die Veneris ſcilt. 13 die Jan. Anno Regni dci. Dni. Regis nunc decimo ſupradicto coram Franciſco Child Mil. Majore Civitat. London. Edro. Ward Mil. Capital. Baron. Sccii. dci. Dni. Regis Henrico Hatſall Mil. uno Baron. Sccii dci. Dni. Regis Thoma Stamp Mil. Edro Clarke Mil. Aldris. dce. Civitat. London. Salathiel Lovell Mil. Servien. dci. Dni. Regis ad Legem ac Recordatore dict. Civitat. London. & aliis ſociis ſuis Juſtic. dci. Dni. Regis ad Gaolam ipſius Dni. Regis de Newgate predict. de Priſonar. in eadem exiſten. deliberand. aſſign. vener. predict. Ricus. French Rogerus James & Georgius Dockwra ſub Cuſtod. Willi. Goare Militis & Joſephi Smart Militis Vic. Com. pred. (in Cuſtod. cujus ex cauſa pred. in Gaolam de Newgate pred. preantea commiſſi fuer.) Ad Barram hic duct. in propriis perſonis ſuis & ſtatim de Premiſſis in Indictamento pred. ſuperius ſpecificat. eis ſuperius ſeparatim impoſit. ſeparatim allocut. qualiter ſe velint inde acquietari iidem Ricus. French Rogerus James & Georgius Dockwra ſeparatim dicunt qd. ipſi non ſunt inde Culpabiles nec aliquis eorum eſt inde Culpabilis & inde de bono & malo ſeparatim pon. ſe ſuper Priam. &c. Jo. immediate ven. inde Jura. coram prefat. Juſtic. dci. Dni. Regis ult. noiat. hic &c. Et qui nec &c. Ad recogn. &c. Et Jur. Jure. ill. per prefat. Vic. ad hoc impanellat. (ſcilt.) Chrus Rednap, Thomas Moody, Thomas Dunck, Simo Smith, Johes. Smith, Michael Miles, Thomas Rowell, Nathaniel Lee, Joſephus Deveniſh, Henricus Bradbury, Willus. Giles & Johes. Burgoyne exacti vener. qui ad veritat. de & ſuper Premiſſis pred. dicend. electi triati & jurati dicunt ſuper ſacrm. ſuum qd. pred. Ricus. French Rogerus James & Georgius Dockwra ſunt Culpabiles Et quilibet eorum eſt Culpabilis de Homicidio & felonica Interfectione prefat. Rici. Coote in Indictamento pred. ſuperius noiat. Et qd. iidem Ricus. French Rogerus James & Georgius Dockwra tempore Felonie & Homicidii pred. per ipſos Ricum. French Rogerum James & Georgium Dockwra in forma pred. commiſſ. ſeu unquam poſtea non huer. nec aliquis eorum huit. nec hent. nec aliquis eorum het. aliqua bona ſeu catalla terras ſive tenementa ad Noticiam Jur. pred. Sed. iidem Jur. ulterius dicunt ſuper ſacrum. ſuum pred. qd. pred. Ricus. French Rogerus James & Georgius Dockwra non ſunt Culpabiles nec eorum aliquis eſt Culpabilis de Murdro pred. in Indictamento pred. ſuperius ſpecificat. eis ſuperius ſepa-*

ſeparatim impoit. prout iidem Ricus. French Rogerus James & Georgius Dockwra pro ſeipſis ſuperius plitando. allegaver. nec ſeipſos eâ occone. unquam retraxer. nec eorum aliquis ſe eâ occone. unquam retraxit Super quo viſis & per Cur. hic intellectis omnibus & ſingulis premiſſis Conſ. eſt per Cur. hic qd. pred. Ricus French Rogerus James & Georgius Dockwra quoad Murdrum pred. in Indictamento pred. ſuperius ſpec. eis ſuperius ſeparatim impoit. ſint quiet. Et eant & quilibet eorum ſit quiet. & eat inde ſine die &c. Et ſuper inde ſtatim ſeparatim per Cur. hic queſit. eſt de prefat. Rico. French Rogero James & Georgio Dockwra ſi quid pro ſe habeant vel dicere ſciant vel aliquis eorum aliquid pro ſe habeat vel dicere ſciat quare Cur. hic ad Judicium & executionem de eis & eorum quolibet ſuper Veredicto pred. quoad Homicidium & felonicam Interfectionem prefat. Rici. Coote procedere non debet Qui ſeparatim dicunt qd. ipſi ſunt Clerici Et quilibet eorum eſt Clericus Et ſeparatim petunt Beneficium Clericale eis & cuilibet eorum in hac parte allocari Et ſuper hoc (tradito eiſdem Rico. French Rogero James & Georgio Dockwra ſeparatim per Cur. hic Libro) iidem Ricus. French Rogerus James & Georgius Dockwra ſeparatim legunt ut Clerici & quilibet eorum legit ut Clericus Sed quia Cur. dci. Dni. Regis hic & prefat. Juſtic. dci. Dni. Regis ult. noiat. de Judicio ſuo de & ſuper Premiſſis pred. quoad Homicidium pred. & felonicam Interfectionem prefat. Rici. Coote reddend. nondum adviſantur Ideo dies inde dat. eſt prefat. Rico French Rogero James & Georgio Dockwra in ſtatu quo nunc &c. uſq; prox. Gaole deliberationem dci. Dni. Regis de Newgate pred. pro Com. Midd. pred. tenend. de Judicio ſuo de & ſuper Premiſſis illis aud. &c. Eo qd. prefat. Judic. dci. Dni Regis ult. noiat. & Cur. hic inde nondum &c.

Lord High Steward. Is it your Lordſhips Pleaſure that the Judges may be covered?

Lords. Ay, ay.

Then the Judges put on their Caps.

Clerk of the Crown. Serjeant at Arms, make Proclamation.

Serjeant at Arms. O yes, O yes, O yes, chief Governor of the Tower of *London*, bring forth the Body of *Edward* Earl of *Warwick* and *Holland*, your Priſoner, forthwith, on Pain and Peril will fall thereon.

[*Then the Earl of* Warwick *was brought to the Bar by the Deputy-Governor of the Tower of* London, *having the Ax carried before him by the Gentleman Jaylor, who ſtood with it at the Bar, on the right Hand of the Priſoner, turning the Edge from him; the Priſoner at his Approach to the Bar making three Bows, one to his Grace the Lord High Steward, the other to the Peers on each Hand; and his Grace and the Peers returned the Salute.*]

Lord High Steward. My Lord of *Warwick*, your Lordſhip is brought before this great Judicature, in order to your Tryal. You ſtand Indicted by the Grand Inqueſt for the County of *Middleſex*, as Guilty of the Murther of one of the King's Subjects, for whoſe Blood Juſtice requires a ſtrict Inquiſition ſhould be made.

Your Lordſhip is call'd to anſwer this Charge before the whole Body of the Houſe of Peers aſſembled in Parliament. It is a great Misfortune to be accuſed of ſo heinous an Offence, and it is an addition to that Misfortune, to be brought to Anſwer as a Criminal before ſuch an Aſſembly, in Defence of your Eſtate, your Life, and Honour. But it ought to be a Support to your Mind, ſufficient to keep you from ſinking under the Weight of ſuch an Accuſation, that you are to be Try'd before ſo noble, diſcerning, and equal Judges, that nothing but your own Guilt can hurt you. No Evidence will be received, but what is warranted by Law; no Weight will be laid upon the Evidence, but what is agreeable to Juſtice; no Advantage will be taken of your Lordſhip's little Experience in Proceedings of this Nature; nor will it turn to your Prejudice, that you have not the Aſſiſtance of Council in your Defence, as to the Fact, (which cannot be allowed by Law) and their Lordſhips have already aſſigned you Council, if any Matters of Law ſhould ariſe.

Your Lordſhip, throughout your whole Tryal, may aſſuredly promiſe your ſelf, to find all the Candor and Compaſſion which is conſiſtent with impartial Juſtice; beyond that, nothing is to be expected: Their Lordſhips can never ſo far forget themſelves, as to depart from what is Right, and to draw the Guilt of Blood upon their own Heads, but if your Lordſhip is Innocent you are ſafe.

My Lord, It will be requiſite for you to recollect your ſelf upon this Occaſion, in the beſt Manner you can. You ought to hear with Temper, what the King's Council have to ſay, without interrupting them, and to hearken carefully to the Witneſſes produced againſt you, that you may be ready to Croſs-examine them if you find Cauſe, and to make your Obſervations upon the Evidence when the proper Time comes for your Lordſhip to make your Defence; of which I will not fail to give you Notice, and when that Time does come, your Lordſhip may be aſſured, your Self and your Witneſſes will be heard with great Patience and Attention; and when my Lords have heard and conſidered the whole Matter, the Judgment will unqueſtionably be according to the Rules of Juſtice, and ſuch as will become the Honour of this High Court.

Read the Indictment to my Lord.

Earl of *Warwick*. My Lord, I beg I may have the Uſe of Pen, Ink, and Paper.

Lord High Steward. Will your Lordſhips pleaſe to allow my Lord *Warwick* Pen, Ink, and Paper?

Lords. Ay, ay.

Lord High Steward. Carry Pen, Ink, and Paper to my Lord. *(Which was done by the Clerk.)*

Lord High Steward. My Lord, your Lordſhip will do well to give Attention while the Indictment is read to you. Read it to my Lord in *Engliſh*.

Clerk of the Crown. *YOur Lordſhip ſtands Indicted by the Name of* Edward *Earl of* Warwick *and* Holland, *late of the Pariſh of St.* Martin in the Fields *in the County of* Middleſex, *for that your Lordſhip, together with* Charles *Lord* Mohun, *Baron* Mohun *of* Oakehampton *in the County of* Devon, *late of the Pariſh aforeſaid in the County of* Middleſex *aforeſaid*, Richard French, *late of the Pariſh aforeſaid in the County of* Middleſex *aforeſaid, Gent.* Roger James, *of the Pariſh aforeſaid in the County of* Middleſex *aforeſaid, Gent. and* George Dockwra, *late of the Pariſh aforeſaid in the County of* Middleſex *aforeſaid, Gent. not having the Fear of God before your Eyes, but being moved and ſeduced by the Inſtigation of the Devil the* 30*th Day of* October, *in the tenth Year of the Reign of our Sovereign Lord* William *the Third, by the Grace of God King of* England, Scotland, France, *and* Ireland, *Defender of the Faith*, &c. *with Force and Arms.* &c. *at the Pariſh aforeſaid in the County of* Middleſex *aforeſaid, in and upon one* Richard Coote *Eſq; in the Peace of God, and of our*

ſaid Sovereign Lord the King, then and there being Feloniouſly, Voluntarily, and of your Malice afore-thought, did make an Aſſault, and that your Lordſhip, the ſaid Edward *Earl of* Warwick *and* Holland, *with a certain Sword made of Iron and Steel of the Value of five Shillings, which you the ſaid* Edward *Earl of* Warwick *and* Holland, *in your right Hand then and there had and held drawn, the aforeſaid* Richard Coote *in and upon the left Part of the Breaſt of him the ſaid* Richard Coote, *near the Collar Bone of him the ſaid* Richard Coote, *then and there Feloniouſly, Voluntarily, and of your Malice afore-thought, did Strike, Stab, and Thruſt in, giving to the ſaid* Richard Coote, *then and there with the Sword drawn aforeſaid, in and upon the left Part of the Breaſt of him the ſaid* Richard Coote, *near the Collar Bone of him the ſaid* Richard Coote, *one Mortal Wound of the Breadth of half an Inch, and of the Depth of five Inches, of which ſaid Mortal Wound the aforeſaid* Richard Coote *then and there inſtantly died: And that the aforeſaid* Charles *Lord* Mohun, Richard French, Roger James, *and* George Dockwra, *then and there Feloniouſly, Voluntarily, and of their Malice afore-thought, were preſent, aiding, abetting, comforting, aſſiſting, and maintaining you the ſaid* Edward *Earl of* Warwick *and* Holland, *the ſaid* Richard Coote, *in Manner and Form aforeſaid, Feloniouſly, Wilfully, and of your Malice afore-thought, to Kill and Murther, and ſo you the ſaid* Edward *Earl of* Warwick *and* Holland, *and the ſaid* Charles *Lord* Mohun, Richard French, Roger James, *and* George Dockwra, *the aforeſaid* Richard Coote, *in Manner and Form aforeſaid, Feloniouſly, Voluntarily, and of your Malice afore-thought, did Kill and Murther, againſt the Peace of our Sovereign Lord the King, that now is, His Crown and Dignity,* &c.

How ſay you *Edward* Earl of *Warwick* and *Holland*, are you guilty of this Felony and Murther whereof you ſtand Indicted, or not guilty?

Earl of Warwick. Not Guilty.

Clerk of the Crown. Culprit, How will your Lordſhip be tryed?

Earl of Warwick. By God and my Peers.

Clerk of the Crown. God ſend your Lordſhip good Deliverance.

Then at the Motion of ſome Lords who ſate towards the upper end of the Houſe, and by reaſon of the diſtance could not diſtinctly hear the Clerke, the Indictment was read again, the Clerk ſtanding near the upper end of the Houſe.

C. of the Crown. Serjeant at Arms make an O Yes.

Serjeant at Arms. O Yes, O Yes, O Yes, If any one will give Evidence on behalf of our Sovereign Lord the King, againſt *Edward* Earl of *Warwick* and *Holland*, of the Felony and Murther whereof he ſtands Indicted, let them come forth, and they ſhall be heard, for now he ſtands at the Bar upon his Deliverance.

L. H. St. Will your Lordſhips give me leave to go down to the Woolpack that I may hear the better.

Lords. Ay, Ay.

Then his Grace removed to the Woollpack, and delivered the White Staff to be held by the Gentleman Uſher of the Black Rod, who during the whole Tryal always received and delivered back the white Staff upon his Knees.

L. H. St. Mr Attorney, are you ready to proceed?

Mr *At. Gen.* Yes, my Lord.

L. H. St. Then begin Sir.

Mr *Serj. Wright.* May it pleaſe your Lordſhips.

L. H. St. Pray, Mr Serjeant, raiſe your Voice as much as poſſible you can, that my Lords towords the upper end of the Houſe may hear.

Mr *Serj. Wright.* May it pleaſe your Lordſhips, this noble Lord *Edward* Earl of *Warwick* and *Holland*, the Priſoner at the Bar, ſtands Indicted for the felonious Killing and Murther of one *Richard Coote* Eſq; and the Indictment ſets forth, That upon the 30th Day of *October*, in the tenth Year of His Majeſty's Reign, at the Pariſh of *St Martin in the Fields*, in the County of *Middleſex*, the Priſoner at the Bar, the Earl of *Warwick*, together with *Charles* Lord *Mohun* Baron of *Oakehampton*, *Richard French*, *Roger James*, and *George Dockwra*, Gent. Feloniouſly, Voluntarily, and of their Malice afore-thought, did make an Aſſault upon the ſaid *Richard Coote*, in the Indictment named, and the Indictment chargeth, that the Earl of *Warwick*, at the ſame Time and Place, with a Sword, Feloniouſly, Voluntarily, and of his Malice afore-thougbt, did give unto the ſaid *Richard Coote*, in or upon the left Part of the Breaſt of him the ſaid *Richard Coote*, near his Collar Bone, one mortal Wound of the Breadth of half an Inch, and of the Depth of five Inches, of which ſaid Wound the ſaid *Richord Coote* then and there inſtantly died; and the Indictment further charges, that the ſaid *Charles* Lord *Mohun*, *Richard French*, *Roger James*, and *George Dockwra*, the Earl of *Warwick*, to commit the Felony and Murther aforeſaid, were then and there aiding, aſſiſting, comforting, and abetting; and ſo the Jurors charge, that he the ſaid *Edward* Earl of *Warwick* and *Holland*, *Charles* Lord *Mohun*, *Richard French*, *Roger James*, and *George Dockwra*, the ſaid *Richard Coote*, Feloniouſly, Voluntarily, and of their Malice afore-thought, at the Pariſh aforeſaid, in the County aforeſaid, did Kill and Murther, againſt the Peace of our Sovereign Lord the King, his Crown and Dignity. To this Indictment this Noble Lord, the Priſoner at the Bar, *Edward* Earl of *Warwick* and *Holland*, has pleaded not Guilty, and for his Tryal hath put himſelf upon my noble Lords his Peers here preſent: We ſhall call our Evidence, and if we prove this Fact for the King, we do not doubt but your Lordſhips will give ſuch Judgment for the ſame as ſhall be juſt.

Mr *At. Gen.* May it pleaſe your Lordſhips, I am of Council in this Cauſe for the King againſt this noble Lord *Edward* Earl of *Warwick* and *Holland*; The Priſoner at the Bar, who ſtands Indicted by the grand Jury of the County of *Middleſex*, has been arraigned, and is now to be tryed before your Lordſhips for the felonious Killing and Murthering of Mr *Coote*, in the Indictmeut named, the Evidence to make good this charge againſt this noble Lord, it comes to my turn to open to your Lordſhips.

My Lords, the Caſe as to the Fact, according to my Inſtructions, is this: Upon *Saturday* the 29th of *October* laſt, at Night, my Lord of *Warwick*, my Lord *Mohun*, Mr *French*, Mr *Dockwra*, and Mr *Coote*, the unfortunate Gentleman who was killed, met together at one *Lockett*'s, who kept the *Greyhound* Tavern in the *Strand*, and there they ſtayed till it was very late; about twelve of the Clock at Night, or thereabouts, a Meſſenger was ſent by the Company to fetch another Gentleman, Mr *James*; and Mr *James* coming to them, in what condition your Lordſhips will be told by the Wit-

Witneſſes: About One of the Clock in the Morning, on *Sunday* the 30th of *October*, they all came down out of the Room where they had been ſo late, to the Bar of the Houſe, and there, as the Witneſſes will tell your Lordſhips, Swords were drawn, and Chairs were called for, and two Chairs which were neareſt at Hand came, and two of the Company went into thoſe Chairs; who they were, and what paſt at that Time, the Witneſſes will tell your Lordſhips; Thoſe that got into thoſe Chairs came out again, and more Chairs were called for. But I muſt acquaint your Lordſhips, that my Lord *Mohun*, when the two Gentlemen that went into the Chairs ordered the Chairmen to take them up, and carry them away, ſpoke to them to ſtop and go no further, for there ſhould be no quarrelling that Night, and that he would ſend for the Guards and ſecure them; and after this they came out of the Chairs again; It will appear there were Swords drawn amongſt all of them, and ſome Wounds given: More Chairs being called for, and brought this noble Lord that is here at the Bar, my Lord of *Warwick*, my Lord *Mohun*, and the other four Gentlemen, went all into the Chairs, and gave the Chairmen Directions whither they ſhould carry them, at leaſtwiſe the Foremoſt had Directions given them, and the reſt were to follow them; it was a very dark Night, but at laſt they came all to *Leiceſter* Square, and they were ſet down a little on this Side the Rails of the Square, and when the Chairmen had ſet them down they went away; but immediately ſome of them heard my Lord of *Warwick* calling for a Chair again, who came towards the Rails, and there they found two of the Gentlemen that had been carried in ſome of the other Chairs holding up Mr *Coote* between them, and would have had the Chairmen carried him away to a Surgeon's, but they found he was dying, and ſo would not meddle with him; afterwards my Lord of *Warwick* and Mr *French* were carried by two of the Chairs to Mr *Annys*, the Surgeon at the *Balneo* in *Long-acre*, where Mr *French* being wounded, was taken care of, particularly by the Recommendation of my Lord of *Warwick*, and the Maſter of the Houſe was called up, it being very late. Mr *Coote*'s Sword was brought to that Place, but by whom it was brought we cannot exactly ſay, while my Lord of *Warwick* and Capt. *French* were there, and my Lord of *Warwick* had given Orders for the Denying of himſelf, and forbid the opening of the Door. There came the other two Gentlemen, Mr *James* and Mr *Dockwra*, and upon their knocking at the Door they were let in by my Lords Order, after he had diſcovered who they were, looking through the Wicket. Mr *James* had his Sword drawn, but it was broken. My Lord of *Warwick*'s Hand was ſlightly wounded, and his Sword bloody up to the Hilt when he came in, as will be proved by the Teſtimony of the Servants in the Houſe. There was a Diſcourſe between my Lord, Mr *James*, and Mr *Dockwra*, about going into the Country, but before they went the Swords were all called for to be brought to them, and upon enquiry there was no blood found upon Mr *French*'s Sword, but a great deal upon my Lord of *Warwick*'s, of which great notice was taken at that Time. Mr *Coote*, who was killed, had received one Wound in the left Side of his Breaſt, half an Inch wide, and five deep, near the Collar Bone; he had likewiſe another Wound upon the left Side of his Body; both which your Lordſhips will hear, in the Judgment of the Surgeon, were mortal Wounds, and the Evidence will declare the Nature of them.

My Lords, the Evidence does chiefly conſiſt of, and depend on Circumſtances, the Fact being done in the Night, and none but the Parties concerned being preſent at it, we ſhall lay the Evidence before your Lordſhips as it is for your Judgment, and call what Witneſſes we have on behalf of the King, againſt this noble Peer the Priſoner at the Bar, and take up your Lordſhips Time no further in opening; and we ſhall begin with *Samuel Cawthorne*; he is a Drawer at the Tavern where thoſe Lords and Gentlemen were together, and he'll give you an Account of the Time they came there, how long they ſtaid, what happened in the Houſe during there being there, and what Time they went away.

L. H. St. Give him his Oath. *(Which the Clerk did.)*

Mr Att. Gen. My Lords, I doubt the Witneſs is ſo far off, that it will be difficult for him to hear the Queſtions that we are to ask him, unleſs we could have him nearer to us.

L. H. St. Mr Attorney, My Lords ſeem to be of Opinion, that it will be more for your advantage and theirs, that the Witneſſes ſtand at the Diſtance they do, which will oblige you to raiſe your Voice ſo loud, that they may hear the Witneſſes and you too.

Mr Att. Gen. Is your Name *Samuel Cawthorne*.

Cawthorne. Yes my Lord.

Mr Att. Gen. Where do you live?

Cawthorne. With Mr *Lockett* at *Charing-croſs*.

Mr Att. Gen. Did you live with him at the *Greyhound* Tavern in the *Strand* the latter end of *October* laſt?

Cawthorne. Yes I did.

Mr Att. Gen. Well, pray will you acquaint my Lords with the Time when my Lord of *Warwick*, my Lord *Mohun* and Mr *Coote* were at that Houſe, how long they ſtayed, what happen'd while they were there, and when they went away.

Cawthorne. It was *Saturday* Night the 29th of *October* laſt.

Mr Att. Gen. Pray tell my Lords the whole of your Knowledge in the Matter.

Cawthorne. There came my Lord of *Warwick*, my Lord *Mohun*, Capt. *Coote*. Capt. *French*, and Capt. *Dockwra*, the 29th of *October* laſt, in the Evening to my Maſter's Houſe at the *Greyhound* Tavern in the *Strand*.

Mr Att. Gen. How long were they there, and what Time of Night came they in?

Cawthorne. About Eight a Clock at Night, my Lord *Warwick*, my Lord *Mohun*, Capt. *French*, and Capt. *Coote*, came in.

Mr Att. Gen. What Day do you ſay it was?

Cawthorne. *Saturday* the nine and twentieth Day of *October* laſt.

Mr Att. Gen. How long did they continue there?

Cawthorne. It was between one and Two the next Morning before they went away.

Mr Att. Gen. Was any Body ſent for to come to them there?

Cawthorne. Yes, Mr *James*.

Mr Att. Gen. What Time was that?

Cawthorne. About Twelve of the Clock.

Mr Att. Gen. Did he ſtay with them till they went away?

Cawthorne. Yes.

Mr Att. Gen. What did you obſerve paſt in the Company while they were there?

Cawthorne. I did not obſerve any Thing of quarrel, nor ſo much as an angry Word amongſt them, till they came down to the Bar and were going

away

away; when they came down to the Bar they order'd me to call them Chairs, or Coaches, and there were no Coaches to be had, and so I went for Chairs, and two Chairs came, for the Porter that went to call the Coaches was a great while before he came back, and as I said, I going for Chairs, there came two, but that they said was not enough, so more Chairs were called for, and at length there were more Chairs gotten; in the first three Chairs, my Lord of *Warwick*, my Lord *Mohun*, and Capt. *Coote* went away in; and my Lord *Warwick* and my Lord *Mohun* bid the Chairmen carry them home.

Mr Att. Gen. Were there then any other Chairs at the Door?

Cawthorne. There were two more Chairs at the Door, and another was called for.

Mr Att. Gen. Did you hear any Directions given where they should carry them?

Cawthorne. My Lord *Warwick*, and my Lord *Mohun* bid them carry them home.

Mr Att. Gen. Did you hear my Lord *Warwick* or my Lord *Mohun* particularly, and which, say whither they would be carried.

Cawthorne. I did hear my Lord *Mohun* say Capt. *Coote* should go and lye with him, or he would go and lye with Capt. *Cooote* that Night, for there should be no quarrelling.

Mr Att. Gen. Did they upon that go away?

Cawthorne. Mr *French* and Mr *Coote* were in Chairs before my Lord *Mohun* or my Lord *Warwick*, or any of the rest.

Mr Att. Gen. What then happen'd upon their going into the Chairs?

Cawthorne. My Lord *Mohun* came out to them and swore there should be no Quarrel that Night, but he would send for the Guards and secure them.

Mr Att. Gen. What happen'd then?

Cawthorne. Upon that, both of them came out of their Chairs and came into the House, and there they came to the Bar, three of them in the Passage by the Bar, and three of them behind that Passage.

Mr Att. Gen. Pray will you tell what did really pass throughout the whole Transaction, what was done after they came in again into the House.

Cawthorne. After that I was bid to call for six Chairs, if I could get no Coaches, and so I did, and when I had brought what Chairs I could get, and returned to the Bar, I heard the Swords clash; when the Swords were drawn, I cannot say, nor by whom, it might be, by all the six for ought I know, because I was in the Street to call the Chairs, and when I came back to the House, I was in hopes all had been quieted, for their Swords were putting up: And when they went away in the Chairs, I did hope they went away friendly.

Mr Att. Gen. Pray how did they go away, who went together?

Cawthorne. My Lord of *Warwick*, my Lord *Mohun*, and Capt. *Coote* went in the first three Chairs, them three together, and bid the Chair-men go home, the sixth Chair was not then come.

Mr Att. Gen. When that Chair came pray what Directions were given to it.

Cawthorne. I did not hear them give the Chairmen any Directions at all.

Mr Att. Gen. Do you know any Thing more that was done after this Time?

Cawthorne. No my Lord, not after they went away, after I return'd with the Chairs, it was in two Minutes Time that they went away.

Mr Att. Gen. My Lords, I suppose he knows no more of the Matter.

L. H. St. Will you then ask him no more Questions, Mr Attorney?

Mr Att. Gen. No, my Lords, unless this noble Lord shall ask him any Questions, upon which we shall have Occasion to examine him.

L. H. St. My Lord, has your Lordship any Questions to ask this Witness, for now is your Time, the King's Council having done examining him.

E. *of War.* I desire to ask him whether I did not bid the Chair-men go home?

L. H. St. If your Lordship please to propose your Question to me, I will require an answer to it from the Witness, and it will be the better heard by my Lords.

Earl of *Warwick.* My Lord, I desire to know of this Man, whether when I went away in the Chair from his Master's House, I did not bid the Chairmen go home.

L. H. St. Witness: You hear my Lord's Question, What say you to it?

Cawthorne. Yes: My Lord of *Warwick* did bid the Chair-men go home.

E. *of Warwick.* My Lord, I have another Question to ask him, Whether he knows of any Quarrel there was between me and Mr *Coote* at that Time, or any other Time, because we both used to frequent that House.

Cawthorne. No, my Lords, I never heard any angry Words between my Lord *Warwick* and Mr *Coote* in my Life.

[*Then the Lords towards the upper end of the House complaining that they did not hear his Grace, the Lord high Steward was pleased to repeat the Question thus;*]

L. H. St. When my Lord of *Warwick* bid the Chairmen go home, or at any other Time, did you observe that there had been any Quarrel between his Lordship and Mr *Coote?*

E. *of Warwick.* My Lord, I desire he may be asked, since we both used that House, Whether that Night when I went away, or before or after, I had any Quarrel with Mr *Coote?*

L. H. St. The Question my Lord desires you that are the Witness to answer, is, Whether you did hear any Quarrelling or angry Words to pass between my Lord *Warwick* and Mr *Coote* that Night before or after they came down, or when they went away, or at any other Time?

Cawthorne. No, my Lord, I never heard any angry Words pass between them then, nor ever at any Time before in all my Life, but I always looked upon them to be very good Friends.

E. of *Warwick.* I desire he may be asked, Whether Mr *Coote* did not come to that House in my Company, and whether he did not frequently come to that House?

Cawthorne. Yes, they used to be there every Day almost, and they came that Night together in Company.

E. of *Warwick.* I desire he may be asked, Whether I have not been frequently in his Company there?

Cawthorne. Yes, I say, very frequently, every Day almost, sometimes twice a Day.

L. H. St. Would your Lordship ask him any other Question?

E. of *Warwick.* My Lord, I desire he may be asked

asked this Question, Whether he knows of any particular Kindneſs between Mr *Coote* and me?

L. H. St. Do you know of any particular Kindneſs between my Lord *Warwick* and Mr *Coote* the Gentleman that was killed?

Cawthorne. Yes, my Lord, there was always a great Kindneſs between them as I obſerved, it ever was ſo, and I never heard any angry Words paſs between them, but they were very good Friends conſtantly; I waited upon them generally when they were at my Maſter's Houſe, which was every Day almoſt.

E. of *Warwick.* I deſire to know of this Witneſs, Whether he does not remember, or can name ſome particular Kindneſſes that paſſed between Mr *Coote* and me?

L. H. St. Can you ſpecify any particular Inſtances of Kindneſs that paſſed between my Lord *Warwick* and Mr *Coote?*

Cawthorne. Yes, my Lord of *Warwick* uſed generally to pay the Reckoning for Mr *Coote*, and he did ſo at this Time.

E. of *Warwick.* My Lord, I deſire he may be asked, between whom he apprehended the Quarrel to be at this Time.

L. H. St. You ſay, Friend, there were Swords drawn, and a Quarrelling at the Bar; Can you tell between whom the Quarrel was?

Cawthorne. My Lord *Warwick*, my Lord *Mohun*, and Capt. *Coote*, were all on one Side, and the other three were on the other Side.

E. of *Warwick.* Who were the two Perſons that it was apprehended the Quarrel was between, I deſire he may be asked.

L. H. St. You ſay, there were three on the one Side, and three on the other, pray between whom did you apprehend the Quarrel to be?

Cawthorne. I believe the Quarrel was between Mr *Coote.* and Mr *French.*

E. of *Warwick.* My Lord, I deſire to know of this Witneſs, what Words he heard Mr *Coote* ſay, after he and Mr *French* returned into the Houſe and came out of the Chairs..

L. H. St. What do you ſay to the Queſtion my Lord propoſes?

Cawthorne. I heard Mr *Coote* ſay, He would laugh when he pleaſed, and he would frown when he pleaſed, God damn him.

E. of *Warwick* My Lord, I deſire to know who he thinks thoſe Words were addreſſed to.

L. H. St. To whom did Mr *Coote* ſpeak theſe Words?

Cawthorne. Whether he ſpoke them particularly to Mr *French*, or to the other two Gentlemen who were on the other Side of the Bar, I cannot directly tell.

E. of *Warwick.* I deſire to know of him, Whether Mr *Coote* was not one of the three that was on the other Side of the Bar?

Cawthorne. Yes, my Lord of *Warwick*, my Lord *Mohun*, and Capt. *Coote*, were of the outſide of the Bar.

E. of *Warwick.* Was Capt. *Coote* with me in the beginning of the Night at that Houſe?

Cawthorne. Yes, he came at the beginning of the Night with my Lord of *Warwick.*

E. of *Peterb.* My Lords, I deſire to ask this Witneſs one Queſtion?

L. H. St. I think it is proper, my Lords, in Point of Method, to let both Sides have done before any Queſtions be asked by any of my noble Lords.

E. of *Peterb.* I did apprehend my Lord of *Warwick* had done.

L. H. St. No, my Lord, not as yet? pray, my Lord *Warwick*, what other Queſtions has your Lordſhip to ask of this Witneſs?

E. of *Warwick.* My Lord, I deſire he may be asked particularly this Queſtion, Whether he perceived any Quarrel particularly between me and Capt. *Coote* when we went out of the Houſe?

L. H. St. You hear the Queſtion, Did you perceive any Quarrel between my Lord *Warwick* and Mr *Coote* before they went out of the Houſe?

Cawthorne. No, I did not, nor ever ſaw any Quarrel between them in my life.

E. of *Warwick.* I deſire to know who paid the Reckoning that Night?

Cawthorne. The Reckoning was called for before I came in to take it; and tho' I think my Lord of *Warwick* paid for Mr *Coote*, yet I cannot ſo directly tell, becauſe it was collected before I came into the Room to receive it.

L. H. St. My Lord, have you any Thing more to ask this Witneſs?

E. of *Warwick.* No, my Lord, at preſent that I think of.

L. H. St. My Lord *Peterborough*, your Lordſhip deſired to ask a Queſtion, will you pleaſe to propoſe it now.

E. of *Peterb.* My Lord, this Witneſs ſeems to take notice of two Sides, who were on the one Side, and who were on the other, and that Mr *Coote* and my Lord of *Warwick* were on one Side; I deſire to know one Thing of him, what reaſon he had to apprehend that they two were of a Side?

L. H. St. Friend, you hear that noble Lord's Queſtion; you ſeem to ſay, there were three and three of a Side, What reaſon had you to apprehend, that my Lord *Warwick* and Mr *Coote* were of one Side? You muſt explain to my Lords how you come to make that Judgment, what reaſon you had to think ſo.

Cawthorne. They three, my Lord *Mohun*, my Lord *Warwick*, and Mr *Coote*, were on the one Side of the Bar; and Capt. *James*, Capt. *French*, and Capt. *Dockwra* were on the other Side of the Bar.

L. H. St. So you ſaid before; but the Queſtion which my noble Lord deſires to be ſatisfied in is this, How you come to ſpeak as if there was a Quarrel between three and three? What reaſon had you to think, that three were on one Side, and three on the other?

Cawthorne. Their Swords were all drawn, and they ſtood three on one Side of the Bar, and three on the other.

E. of *Rocheſter.* My Lords, I deſire to ask this Witneſs one Queſtion; I think he told your Lordſhip at firſt, That he did not perceive any angry Words among them; afterwards he comes to talk of Swords drawn amongſt them all, three on the outſide, and three on the inſide of the Bar; I deſire to know what was the Occaſion of thoſe Swords being drawn on the one Side or the other?

Cawthorne. Whatſoever Quarrel there was, was amongſt themſelves above Stairs, and I know no angry Words that paſſed between them when they came down to the Bar.

L. H. St. See what you ſay? How conſiſtent one Part of it is with another! You ſaid at firſt, you did not hear of any angry Words that paſſed between them, and yet you ſay, all their Swords were drawn, and three were on the one Side and

three

three on the other: And when you were examined upon the Motion of that noble Lord, what you meant by three on the one Side, and three on the other, you ſaid, my Lord *Mohun*, my Lord *Warwick*, and Mr *Coote*, were on the one Side, Mr *James*, Mr *French*, and Mr *Dockwra*, were on the other Side: How could there be two Sides, unleſs there was a Quarrel?

Cawthorne. I ſaid, I did not hear any angry Words paſs between them before they came to the Bar, or while they were above Stairs, but there were three on the one Side of the Bar, and three on the other.

L. H. St. But you have not given a ſatisfactory Anſwer to that Queſtion which the noble Lord, my Lord *Peterborough*, asked you, What reaſon you had to apprehend, that the noble Lord the Priſoner at the Bar and Capt. *Coote* were of a Side?

Cawthorne. My Lord *Mohun* came to the Chair ſide when Capt. *Coote* and Capt. *French* were got into the two firſt Chairs, and told Capt. *Coote*, that there ſhould be no Quarrel that Night, but that they three, my Lord *Warwick*, my Lord *Mohun*, and he, ſhould go home together; and I took them three to be of a Side, becauſe they were on the outſide of the Bar together, and when they all went away, their three Chairs went away firſt all three together.

L. H. St. Is that all the Reaſon you can give why you ſay, they were three and three of a Side?

Cawthorne. Yes, my Lord, I did apprehend it ſo.

Mr Att. Gen. If my noble Lords have done with their Queſtions, I deſire to ask this Witneſs another Queſtion; My Lords, I think this Perſon ſays, That there was a Quarrel at the Bar of the Houſe, and Swords drawn, and as he apprehended, three were on the one Side, and three on the other; but if I take him right, I do not ſee that he has given your Lordſhips any Manner of Satisfaction, what reaſon he had to apprehend there were three and three of a Side, or, which will be very Material in this Caſe, if your Lordſhips can get to the Knowledge of it, which three were on the one Side, and which three were on the other, or indeed whether there were three and three of a Side, as your Lordſhips will have reaſon by and by to enquire a little further into that Matter: My Lords, I deſire he may be asked this plain Queſtion, What Words or other Paſſages he did perceive, that made him apprehend there was a Quarrel between them, and they were three and three of a Side?

Cawthorne. I apprehended it from the Words that Mr *Coote* ſaid, That he would laugh when he pleaſed, and frown when he pleaſed.

Mr Att. Gen. Pray, my Lord, I deſire he may be asked, Who thoſe Words were ſpoke to, and who they were applied to?

Cawthorne. They were ſpoke to Mr *James*, Mr *French*, and Mr *Dockwra*, who were withinſide of the Bar.

Mr Att. Gen. Did he apply thoſe Words to all thoſe particular Perſons?

Cawthorne. Yes, as I thought, for they three were within the Bar, my Lord *Warwick*, my Lord *Mohun*, and Mr *Coote*, were without the Bar.

Mr Att. Gen. Pray my Lord, I deſire he may be asked this Queſtion, Was that before the Swords were drawn, or afterwards?

Cawthorne. It was before.

Mr Att. Gen. Then I deſire he may be asked, Whether the Swords were drawn upon thoſe Words?

Cawthorne. No, my Lord, the Time of drawing the Swords was when I went out to call Chairs and Coaches; and I know not who drew the Swords firſt, or when they were drawn, but when I came back I found them all drawn, and I heard them Claſhing.

Mr Att. Gen. Upon the Oath you have taken, Was thoſe Words that you ſpeak of Mr *Coote*'s, That he would laugh when he pleaſed, and frown when he pleaſed, before the Swords were drawn, or after the Swords were drawn?

Cawthorne. Before the Swords were drawn; for I did not ſee the Swords drawn till I came back.

L. H. St. Does either Side deſire to ask this Witneſs any Queſtions; if not, then you may withdraw, and you may proceed, Mr Attorney, to examine ſome other Witneſs.

Lord Wharton. My Lord, there was a Queſtion asked at the Bar about the Hindring of the Quarrel, and my Lord *Mohun*'s deſire to part them, and make them Friends; I deſire the Witneſs, before he goes away, may be asked what he knows of that Matter.

L. H. St. It has been obſerved by my Lord that you ſaid, when they came down to the Bar, and the Quarrel happened, ſome Body would have prevented it; pray repeat that Matter again, Did you obſerve any of the Company were diſpoſed to take up the Quarrel, and make them Friends, and who they were?

Cawthorne. My Lord *Mohun* and my Lord *Warwick* ſaid they would ſend for a File of Muſqueteers, and my Lord *Mohun* did all he could to quiet and pacify them till the Quarrel was over; and my Lord *Mohun* particularly had his Finger prick'd with endeavouring to croſs their Swords, and keeping them from fighting, which was all he got by it.

L. H. St. Do you know that of your own Knowledge?

Cawthorne. His Hand was bloody, and he ſaid ſo at the Bar; but I was juſt coming in again when I heard him ſay ſo; but I cannot ſay that I ſaw him hurt, for I was without the Houſe at the Time when that was done.

Lord Godolphin. My Lords, I deſire to ask this Witneſs one Queſtion: I obſerve he has told my Lords, there was not an angry Word paſs'd between them before they came down to the Bar; I would fain ask him this Queſtion, Whether he was in the Room all the Time till they did come down to the Bar?

Cawthorne. I received the Reckoning juſt before they came down to the Bar.

Lord Godolphin. And I deſire he may be asked, How long he ſtay'd in the Room when he received the Reckoning?

Cawthorne. It was about two or three Minutes that I ſtay'd in the Room, and not longer.

Earl of Warwick. My Lord, this Witneſs that has been examined, told you, That when we firſt came down to the Bar there were two Chairs call'd for; and when they came, Mr *Coote* and the other Gentleman Mr *French*, went into the Chairs, and afterwards they came out again, and Mr *Coote* ſaid ſome Words; I deſire the Witneſs may be asked again, when it was Mr *Coote* ſpoke thoſe Words; whether it was before or after the Time that he came out of the Chair, for I take it to be very material.

Cawthorne.

Cawthorne. It was after Mr *Coote* came out of the Chair, for the Chairmen heard the Words as I verily believe.

Mr Att. Gen. My Lord, I desire he may be ask'd, Was there any Reply made to those Words by any of those Persons he says he apprehends were on the other Side?

Cawthorne. No, not one Word that I know of.

Earl of Warwick. My Lord, I must beg the Favour to have the Question asked again of him, Whether I did not at that Time endeavour to prevent any Quarrelling, and did not say I would call for the Guard if they did?

Cawthorne. Yes: My Lord of *Warwick* did say so, and so did my Lord *Mohun*, and so I think did Mr *James*.

L. H. St. How came you not to say so when you were asked that Question particularly before? Then you said my Lord *Mohun* endeavoured to prevent the Quarrelling, and make them Friends.

Cawthorne. Yes, my Lord *Warwick* did so, and so did Mr. *James*.

L. H. St. I cannot tell whether any Body else desires to ask him any Questions.

Mr Att. Gen. My Lord, he speaks of what this noble Lord, my Lord of *Warwick* said; but he does not tell you the particular Expressions, nor the Time when my Lord said them.

L. H. St. You say, my Lord, the Prisoner at the Bar, endeavoured to pacify the Quarrel between them; but you do not tell my Lords who the Quarrel was between, nor when the Endeavour was made by my Lord *Warwick* to pacify it.

Cawthorne. My Lord of *Warwick* did say he would have the Guards sent for.

L. H. St. What Time was that, before or after my Lord *Mohun* said so?

Cawthorne. Truly, my Lord, I do not know but that it was at the same Time.

L. H. St. Was it when the Swords were drawn, or before?

Cawthorne. They spoke it both before and after the Swords were drawn, as I remember, for the Swords were not drawn while I was in the House, till I came back.

L. H. St. Were the Swords drawn when my Lord *Warwick* spoke of sending for the Guards?

Cawthorne. Surely, my Lord, it was before the Swords were drawn, when I was sent for the Chairs.

L. H. St. You said there was no angry Words or Quarrel between them.

Cawthorne. Not above Stairs, my Lord: But I apprehended when they came down to the Bar there were three on one Side, and three on the Other.

Mr Att. Gen. Pray, my Lord, let him be asked this Question, Was it after they were three on the one Side, and three on the Other that my Lord *Mohun* and my Lord *Warwick* spoke those Words?

Cawthorne. I apprehend the Words were spoke by Mr. *Coote*, That he would Laugh when he pleased, and Frown when he pleased, before the Swords were drawn.

L. H. St. But that which my Lords desire to know is, What the Time was when my Lord *Warwick* and my Lord *Mohun* declared their Desire to part them and make them Friends: Whether before or after the Swords drawn?

Cawthorne. Before and after; for I was absent when the Swords were drawn.

Earl Rivers. He says, That after my Lord *Mohun* and my Lord *Warwick* threatned to send for the Musqueteers, They promised to be quiet: I desire to know who he means by They.

Cawthorne. Mr *James* call'd to me and said, I need not go and call for the Guards, for the Quarrel was over. There is one Thing more that I forgot, my Lord: After my Lord *Mohun* and my Lord *Warwick* were gone away in their Chairs, and Mr *Coote*, I heard Mr *Dockwra* say to Captain *James* and Captain *French*, they did not care a Farthing for them, they would fight them at any Time.

L. H. St. Who were together then?

Cawthorne. Captain *James*, Mr *French*, and Mr *Dockwra*, after my Lord *Mohun* and my Lord *Warwick*, were gone with Captain *Coote*.

L. H. St. Then Mr *French* was with them, when Mr *Dockwra* said so?

Cawthorne. Yes, my Lord.

Lord Wharton. If I apprehend him aright, as to what he says now, my Lord of *Warwick*, my Lord *Mohun*, and Captain *Coote* were gone away at that Time.

Cawthorne. Yes, they were gone away in the three first Chairs, which my Lord *Mohun* bid go home.

Lord Wharton. Who does he say spoke those Words?

L. H. St. You hear my noble Lord's Question, Who spoke those Words? Repeat them again.

Cawthorne. When my Lord *Warwick*, my Lord *Mohun*, and Captain *Coote* were gone, I heard Mr *Dockwra* say to Mr *French* and Mr *James*, we don't care a Farthing for them, we will fight them at any Time.

Mr Att. Gen. I desire to know whether this Witness testified any Thing of this Matter, when he was examined before the Coroner?

Cawthorne. No, I forgot those Words when I was examined before the Coroner.

Mr Att. Gen. How soon after your Examination did you recollect your self as to what you now speak?

Cawthorne. The next Day after.

Mr Att. Gen. I pray my Lords that he may be asked, Whether he did in general give the same Evidence before the Coroner that he does now?

Cawthorne. Yes, as to all but only those Words of Mr *Dockwra*'s declaring he did not care a Farthing for them, they would fight them at any Time.

Mr Att. Gen. My Lord, I beg he may be asked how long it was after the Fact was done, that he was examined before the Coroner.

Cawthorne. It was the next Day in the Afternoon.

Mr Att. Gen. Then I have this Question further to ask, if your Lordships please, Was he at the Tryal of Mr *Dockwra*, Mr *James*, and Mr *French?*

Cawthorne. Yes, I was.

Mr Att. Gen. Did he then give any Evidence of those Words of Mr *Dockwra*'s, after when my Lord *Warwick*, my Lord *Mohun*, and Captain *Coote* were gone?

Cawthorne. No, I did not.

Mr Att. Gen. My Lord, I have one Question to ask him then more, How he came not to swear this Matter at that Tryal.

Cawthorne. It was out of my Mind at that Time, and I had like to have forgot it now.

Mr Att. Gen. My Lord, we have done with this Witneſs: Is it your Lordſhips pleaſure that we go on to call our other Witneſſes?

Lords, Ay, Ay.

Mr Att. Gen. Then our next Witneſſes, my Lords, will be the Chairmen that carried my Lord *Mohun*, my Lord of *Warwick*, and Captain *Coote*: We ſhall begin with *Thomas Browne* and *John Gibſon*, one of them carried Mr *Coote*, the other my Lord of *Warwick*.

[*Thomas Browne was Sworn.*]

L. H. St. What Queſtion do you ask this Witneſs Mr Attorney.

Mr Att. Gen. That he would acquaint your Lordſhips, whether he carried Mr *Richard Coote*, the Perſon that was ſlain, upon the 29th or 30th of *October*, from the *Greyhound* Tavern in the *Strand*, and to what Place he carried him?

L. H. St. You hear the Queſtion; pray ſpeak ſo loud that my Lords may all hear what you ſay.

Browne. My Lords, I was between the Hours of One and Two in the Morning, on *Sunday* the 30th of *October* laſt, with my Fellow and our Chair, at the *Buffler*'s-Head Tavern at *Charing-croſs*, and I heard ſome People at *Lockets* at the *Greyhound* in the *Strand*, calling Coach, Coach, a pretty while; but there were no Coaches in the Street, nor that came to them; when they could not get Coaches then they called out for Chairs, and we coming to the Door with our Chair, there were four other Chairs there, and ſix Gentlemen ſtood in the Paſſage, and then it was ſaid, there was not Chairs enough, and there wanted one more, and they ſtood Diſcourſing, and the firſt Man came into my Chair who was Captain *Coote*, and my Lord of *Warwick* he got into another; when the Door of the Chair was ſhut up, we asked them whither we ſhould go, but my Lord *Mohun* came and bid open the Chair again, and we did ſo, and he returned into the Houſe, and there was ſome Diſcourſe between them ſtanding at the Bar in the Entry. Mr *Coote* came out again and came into my Chair, and my Lord *Mohun* and my Lord of *Warwick* went into two others; Mr *Coote* bid me carry him into *Leiceſter-Fields*, and to make all the haſte I could; my Lord of *Warwick* and my Lord *Mohun* being in the next Chairs, asked him, *Whither are you a going*, and called out twice, and he ſaid, *To* Leiceſter-Fields; *Pray do not*, ſays my Lord of *Warwick*, *but come along with us, and let it alone till to morrow*; but he bid us go on, and as we were turning up St. *Martin's-Lane* by the *Croſs-Keys* Tavern, my Lord *Mohun*, and my Lord *Warwick* called out to us to ſtop, and their Chairs came up to the Back-Door of the *Croſs-Keys* Tavern, and there all the three Chairs were ſet on a-breſt in *St. Martins-Lane*, and while they were talking together there came by three Chairs of the other Side of the Way, and Mr *Coote* bid us take up and make all the haſte we could before them into *Leiceſter-Fields*, ſo taking up the Chair again Mr *Coote* bid us make haſte, and if we could go no faſter he ſwore Damn him, he would run his Sword in one of our Bodies: There were two Chairs before me, and my Lord *Mohun* and my Lord *Warwick* followed in two Chairs after me; and when we came to the Corner of *Leiceſter-Fields* at *Green ſtreet* end, all the three Chairs were ſet down a-breſt again, and Mr *Coote* put his Hand in his Pocket, and took out half a Guinea to pay and ſaid he had no Silver, and my Lord of *Warwick* ſpoke to my Lord *Mohun*, who took out three Shillings out of his Pocket, who ſaid there was for my Lord *Warwick*, Captain *Coote*, and himſelf; and when they were gone out I took my Box and my Pipe, and filled my Pipe, and took the Lanthorn and lighted it, and by that Time I had lighted my Pipe, I heard a calling out Chair, Chair, again, towards the upper End of the Square, ſo I took my Chair, and there was one of the Chairs that was not gone, and ſo we came up to the upper End of the Fields, and they called to us to bring the Chairs over the Rails; we told them we did not know how to do that, for we ſhould not be able to get them back again; at laſt we did get over the Rails, and made up cloſe to the Place where we heard the Noiſe, for we could ſee nothing, it being a very dark Night, and when we came up cloſe to them, by our Lanthorn there were two Gentlemen holding up Mr *Coote* under their Arms, and crying out, *My Dear* Coote, *my Dear* Coote!

Mr Att. Gen. Pray who were thoſe two Gentlemen?

Browne. I did not know them, one was in Red Cloaths, and the other had Gold Lace, and they would have had me have taken Mr *Coote* into my Chair; but ſeeing him bloody, and not able to help himſelf, I ſaid I would not ſpoil my Chair, and ſo would not meddle with him, but they ſaid they would make me any Satisfaction for my Chair, and deſired me to take him in, but he gave himſelf a ſpring from them, and we found he was too heavy for us to lift over the Rails, and all we could do could not make him ſit in the Chair, but the Chair was broken with endeavouring to place him there; and they ſaid, if we would carry him to a Surgeon's, they would give us a hundred Pound Security; but we finding it impoſſible the Watch was called for, but no Body would come near, for they ſaid it was out of their Ward, and ſo they would not come anigh me; and I ſtayed about half an Hour with my Chair broken, and afterwards I was laid hold upon, both I and my Partner, and we were kept till next Night Eleven a Clock; and that is all the Satisfaction that I have had for my Chair and every Thing.

Mr Att. Gen. Pray, my Lord, I deſire he may recollect himſelf; for we do apprehend it is very Material who it was that deſired to take Mr *Coote* into the Chair.

Browne. I cannot tell who they were, it was ſo very dark I could only ſee their Cloaths.

Mr Att. Gen. Did you ſee the Earl of *Warwick* there?

Browne. No, Sir, he was not there, one of them I tell you had Officers Cloaths on, Red lined with Blue, and the other had Gold Lace on; there was no Body there that held him up but them two.

M. of *Norm.* He ſays he ſaw two Perſons holding up Mr *Coote*; it would be very well to have that Matter very well ſettled who thoſe two Perſons were, I deſire to know how he is ſure my Lord of *Warwick* was not one of them two?

Browne. I know my Lord of *Warwick* very well, and I am ſure he was neither of the Two.

D. of *Leeds.* I would know what Light he had to diſcern it ſo well by, that he can be ſure my Lord of *Warwick* was not there; for he ſays, it was a very dark Night, and yet he deſcribes the particular Perſons that held Mr *Coote* up.

Browne. Yes, my Lord, I am ſure my Lord of *Warwick* was none of them.

Duke of Leeds. How could you diſtinguiſh in ſo dark a Night the Colours of People's Cloaths?

Browne.

Browne. With the Candle that I had lighted in my Lanthorn.

Duke of Leeds. He could not know any of the Perſons unleſs he held a Lanthorn to their Faces, or knew them very well before.

Lord High Steward. My Lord *Warwick*, will your Lordſhip ask this Witneſs any Queſtions?

Earl of Warwick. My Lord, I deſire he may be asked, Whether I did not bid him ſtop at St. *Martins-Lane* End, and do all that I could to hinder Mr *Coote* from going any further, but to go home?

Browne. The Earl of *Warwick*, and my Lord *Mohun*, as they turned up the Lane, asked Mr. *Coote*, Whither he was going? and when he ſaid to *Leiceſter-fields*, they deſired him to let it alone till to Morrow; and my Lord *Mohun* ſaid he ſhould go home with him; but the other bid us go on, and ſaid he would not go to his Lodgings, but that they would make an End of it that Night; Still they called to him again, dear *Coote* let's ſpeak a Word with you, and as the Chairs came to the Back-Door of the *Croſs-keys* Tavern, there they ſtood all of a Breaſt, and they both of them ſpoke to him, and ſtood a pretty while there, and in the mean Time three Chairs paſſed by on the other Side, he Commanded us to take up, and carry him away to *Leiceſter-fields* immediately, and overtake the other Chairs, or he would run one of us into the Body.

Lord High Steward. Would your Lordſhip ask him any more Queſtions?

Earl of Warwick. No, my Lord.

Mr *Attorney General.* My Lord, I obſerve, he ſays they diſcourſed ſome Time together while they ſtopped in St. *Martins-lane*, I deſire that he may be asked, whether he can tell what that Diſcourſe was?

Browne. I could not well hear, they whiſpered together, but I could hear my Lord *Mohun*, and my Lord of *Warwick*, deſire Captain *Coote* to go home, and let the Buſineſs alone till another Time.

Mr *Att. Gen.* I deſire he may explain himſelf, what that Buſineſs was that they would have put off till to Morrow?

Browne. I know not what it was, I heard of no Anger betwixt them, but they were as good Friends, for any Thing I know to the contrary, as ever they were in their Lives, or as ever I ſee any Men.

L. *Jefferys.* He ſays there were Two went into Chairs at the Door of the Houſe, and afterwards went out again, and went into the Houſe, and there was Diſcourſe at the Bar of the Houſe, I would deſire to know what that was?

Browne. I did not hear the Diſcourſe that was in the Houſe, I was at the Door of the Houſe.

Mr *Att. Gen.* Our next Witneſs is *William Crippes.* (*who was ſworn.*)

Lord High Steward. What do you ask this Man, Mr Attorney?

Mr *Attor. General.* Pray will you give my Lords here an Account who you carried to *Leiceſter-fields* the 29th or 30th of *October*, and what happened in your Knowledge at that time?

Crippes. Captain *Coote* was the firſt Man that went into the Chair when we came to the *Greyhound* Tavern, afterwards he came out again, and when we took him up the ſecond Time he was the firſt Man that ſet out, and he bid us carry him to *Leiceſter-fields*, and when he came to the Corner of St. *Martins-lane*, we turned up that way; and my Lord of *Warwick*, and my Lord *Mohun*, called to us, being in Chairs behind, to know whither we were going, and deſired to ſpeak with Captain *Coote*, and he ſaid he was going to *Leiceſter-fields*; and when they asked what to do? he ſaid to end the Buſineſs; they deſired him to put it off till to Morrow; and while they were diſcourſing about it in St. *Martins-lane* there paſſed by other three Chairs, which when Captain *Coote* ſaw, he bid us take up and overtake them, and go faſter, or he would run one of us into the Body: So we went on, and at the lower end of *Leiceſter-fields* we ſet him down; and the other Two Gentlemen, my Lord *Warwick*, and my Lord *Mohun*, were there ſet down, and went lovingly together, for any Thing that I ſaw, up the Pavement of the Square, towards the upper end; and in a little Time we heard a Noiſe of Calling for Chairs towards the upper End, and when we came there with the Chair, we were bid to lift over the Chair within the Rails, and when we ſaid it was hard to be done, they inſiſted upon it, and we did come in, and when we came there we ſaw Two Gentlemen holding up Captain *Coote*, and would have had us taken him into the Chair; we ſaw there was a great deal of Blood, but I never heard how it came, and they would have had us carried him to a *French* Surgeon's, and proffered any Money.

Mr *Att. Gen.* My Lord, I deſire to know, who they were that deſired him to be carried to the Surgeon?

L. H. St. You hear the Queſtion, What ſay you?

Crippes. I cannot tell, my Lord, one of them had ſomething of Lace upon him, but it was ſo dark that I could hardly ſee my Hand, and therefore I cannot tell who they were; and when there was an Objection made, that the Chairs would be ſpoiled, they ſaid we need not queſtion our Chair, they would give us 100 *l.* Security to anſwer any Damages, if we would but carry him; ſo we endeavoured to put him into the Chair, but could not; and ſo we called out to the Watch, to have had ſome help, but they ſaid it was none of their Ward, and ſo they would not come to us; ſo the Gentlemen went away, and we left them, and went and called a Chirurgeon, who when he came ſaid, he was a dead Man, and we were ſecured till the next Day.

Mr *Att. Gen.* Pray, my Lord, I deſire he may be asked, Were there not other Chairs in that Place at that time?

Crippes. There was one in the Field beſides, and no more that I could ſee, they all went away but us two.

Mr *Att. Gen.* What diſtance of Time was there between their ſetting down in *Leiceſter-fields*, and their calling the Chairs again?

Crippes. Not a quarter of an Hour.

Mr *Att. Gen.* What became of the three Chairs that paſſed by you in St. *Martins-lane?*

Crippes. They got before us, but what became of them afterwards I cannot tell.

Mr *Att. Gen.* Did they come from the ſame Place, the Tavern in the *Strand* that you were at?

Crippes. Yes, I believe they did, my Lord, for Captain *Coote* bid us follow them, and threatened us if we did not make greater haſte.

Mr *Att. Gen.* Do you know my Lord of *Warwick?*

Crippes. Yes, he had whitiſh Cloaths on, and none but he had ſuch Cloaths on as thoſe were.

Lord High Steward. Will your Lordſhip ask this Witneſs any Queſtions?

Earl of Warwick. My Lord, I deſire he may be asked, whether I did not bid him ſtop? And,

Whether I did not ſay, they ſhould not go to quarrel that Night?

Crippes. Yes, both he and my Lord *Mohun* would not have had Captain *Coote* gone any where, but home to his Lodgings.

Mr *Att. Gen.* My Lord, I deſire to know of him, directly and down-right, Whether my Lord of *Warwick* was not one of them that held him when he was within the Rails in the Fields?

Crippes. No, he was not, he was neither of them, for the one of them was too big for him, and the other was too little for my Lord *Mohun?*

Mr *Att. Gen.* Now we ſhall call the Chairman that carried the Earl of *Warwick* into *Leiceſter-fields. James Crattle.* (*He was ſworn.*)

Mr *Att. Gen.* Will you tell my Lords what you know of any Perſon that you carried the 29th or 30th of *October* laſt from the *Greyhound* Tavern in the *Strand*, and who it was, and whither you carried him?

Crattle. I was going along *Charing-Croſs*, between One and Two in the Morning the 30th of *October* laſt, and I heard a Chair called for at *Lockets* at the *Dog* Tavern, and thither I and my Partner went, and we took up the Gentleman, and carried him to *Leiceſter-fields.*

Mr *Att. Gen.* Who was that Gentleman?

Crattle. It was my Lord of *Warwick.*

Mr *Att. Gen.* What time of Night do you ſay it was?

Crattle. It was about One or Two in the Morning.

Mr *Att. Gen.* What Day of the Week was it?

Crattle. It was *Saturday* Night and *Sunday* Morning.

Mr *Att. Gen.* Whither did you carry him?

Crattle. Into *Green-ſtreet*, towards the lower end of *Leiceſter-Square.*

Mr *Att. Gen.* What Chairs were there more there?

Crattle. There was one that Captain *Coote* was in, and another that my Lord *Mohun* was in, and we went away all together.

Mr *Att. Gen.* Were there no other Chairs?

Crattle. I did not know who went in the other Chairs, but there were three other Chairs that paſſed by us at St *Martins-lane*, and we followed after them to *Leiceſter-fields.*

Mr *Att. Gen.* Pray what became of you after you had ſet down your Fare?

Crattle. We were diſcharged and paid, the other three went up towards my Lord of *Leiceſter*'s, but we were coming away, and in a little Time we heard the Noiſe of calling Chairs, Chairs, again, and there were Two Chairs did come up, *Thomas Browne*'s and ours; my Lord of *Warwick* called our Chair, and we took him into it, and he bid us carry him to the *Bagnio* in *Longacre*, and when we came there we knocked at the Door, and his Hand was bloody, and he asked us if we had any Handkerchief to bind up his Hand.

Mr *Att. Gen.* Was there any other Chairs at the Door of the *Bagnio*, at the ſame time when you came there?

Crattle. Yes, there was another Chair there at the Door at the ſame Time, and we ſet down both together.

Mr *Att. Gen.* Pray whence came that Chair?

Crattle. Indeed I do not know.

Mr *Att. Gen.* Who were the Chairmen that carried that Chair?

Crattle. Indeed my Lord *Mohun*, and my Lord *Warwick*, were the only Perſons that I knew of all the Company.

Mr *Att. Gen.* What ſort of Gentleman was the other that went out of the other Chair into the Houſe?

Crattle. He was a pretty tall Man; when he was in we went away; I only can ſay I ſaw my Lord of *Warwick* go into the Houſe.

Mr *Att. Gen.* Did you take any notice of any Sword that my Lord of *Warwick* had in his Hand at that Time?

Crattle. No, I cannot ſay I did take any Notice of any Sword, only that there was a Handkerchief deſired.

Mr *Att. Gen.* Pray, Did you hear no Noiſe at all in the Field, till you heard Chairs called for again?

Crattle. No, I cannot ſay I heard any Noiſe in the Field.

Mr *Att. Gen.* Did you apprehend there was any Fighting?

Crattle. No, I knew nothing at all of it, but upon the calling of Chairs again, and my Lord *Warwick* coming along, we took him in, and he bid us go to the *Bagnio*, and thither we went.

Mr *Att. Gen.* My Lord, we have done with this Witneſs.

Lord High Steward. My Lord *Warwick*, will you ask this Witneſs any Queſtions?

Earl of Warwick. No, my Lord.

Mr *Att. Gen.* Then, my Lord, our next Witneſs is *John Gibſon*, he was another of thoſe Chairmen that carried my Lord of *Warwick* to the *Bagnio* afterwards. Pray will you give my Lords an Account what you know, who you carried the 29th and 30th of *October* laſt, and whither you carried them? (*who was ſworn.*)

Gibſon. My Lord, I was at *Charing-Croſs* with my Partner the 29th of *October* laſt, at Night, and about One or Two a Clock in the Morning Chairs were called for to the *Greyhound* Tavern in the *Strand*, and when we came there, my Lord of *Warwick*, my Lord *Mohun*, and Mr *Coote*, got into the three firſt Chairs, and we got my Lord *Warwick* into our Chair, and when we had him there we were bid to go towards *Leiceſter-fields*, as I apprehended, for thither the Chairs that went firſt was to go, and indeed my Lord *Mohun*, and my Lord *Warwick*, did call to ſtop at the end of St *Martins-lane*, and asked Mr *Coote* whither he was going? and he ſaid he was going to make an End of the Buſineſs, and they ſaid it ſhould not be to Night, but preſently after three other Chairs coming along, and paſſing before us, the Chair that Captain *Coote* was in, was bid to go on, and we were ordered to follow, which was done accordingly; Juſt at the Turning of *Green-ſtreet* we ſet down our three Chairs, and, I think, juſt about the Turning of *Green-ſtreet* End we ſtayed till there came another Chair again, and we and the other Chair upon my Lord *Warwick*'s coming into us, went away from thence, and carried him to the *Bagnio* in *Long-acre.*

Mr *Att. Gen.* You talk of another Chair, pray, Whoſe Chair was that?

Gibſon. There was another Chair that was got there juſt before us, but indeed I do not know whoſe it was, nor indeed can I ſay who it was that was in it, but this I am ſure we went to the ſame place, and we met and lit juſt at the ſame Time, and my Lord of *Warwick* asked for a Handkerchief to bind about his Hand, which was bloody, which was given him.

Mr. *Att. Gen.* Did you not know who was in the other Chair at that time?

Gibſon.

Gibſon. No, indeed, I did not know, I will aſſure you.

Mr *Att. Gen.* Pray, did you not know where that other Chair took the other Gentleman up?

Gibſon. No, indeed, Sir, I did not.

Mr *Att. Gen.* Pray, What Time of the Night was it?

Gibſon. It was between One and Two of the Clock in the Morning.

Mr *Att. Gen.* You talk of his Hand being hurt, and that he called for a Handkerchief, Did you ſee his Hand bleed? and, pray, in what Nature was his Wound?

Gibſon. My Lord, all I can ſay is, there was Blood, and he wanted a Handkerchief, and had one, for he ſaid his Hand was hurt, but in truth I did not take any notice what that hurt was, I did not ſee it, if my Partner took notice of it, ſo, but elſe I can ſay nothing to it, but the Handkerchief was afterwards asked again, and could not be had.

Lord High Steward. Would my Lord of *Warwick* ask this Witneſs any Queſtions?

Earl of Warwick. No, my Lord.

Mr *Att. Gen.* Then, my Lord, our next Witneſſes are *Robert Applegate*, and *Peter Catro*, who will give your Lordſhip an Account who they carried at this Time.

Lord High Steward. Whom do you call firſt?

Mr *Att. Gen. Robert Applegate.* (*who was ſworn.*)

Lord High Steward. What Queſtions do you ask him, Mr Attorney?

Mr *Att. General.* I deſire that he would acquaint your Lordſhip, what he knows of what paſſed at the *Greyhound* Tavern in the Strand the 29th of *October* laſt, whom he carried, and whither he carried them?

Applegate. My Lord, about One or Two a Clock in the Morning, a *Sunday* Morning, the 29th or 30th of *October* laſt, I was going home with my Partner and my Chair, and I heard them calling at the *Greyhound* Tavern in the *Strand*, Mr *Locket*'s, for Coaches and Chairs, there was no Coach to be had that could be heard of, but coming up to the Door, they ſaid they wanted ſix Chairs, and when we were there at the Door, there came out firſt my Lord *Warwick*, Captain *Coote*, and my Lord *Mohun*, Captain *Coote* got into the firſt Chair, and what Directions he gave them I cannot tell; my Lord of *Warwick* got into the next, and into ours, which was the Third, my Lord *Mohun* came in, and bid us take him up and carry him towards *Weſtminſter*, and he ordered us to follow the Chairs before; juſt as they turned at St *Martins lane*, my Lord *Mohun* called out, and deſired to ſtop, and at the *Croſs-Keys* Tavern Back-door all the three Chairs came up together, and then my Lord of *Warwick*, and Captain *Coote*, and my Lord *Mohun* talked together, and I could hear my Lord *Mohun* and my Lord of *Warwick* deſire Captain *Coote* to defer it, and put it by till another Day; what it was, indeed I cannot tell: But while they were talking there, Three Chairs more came up on the other ſide of the Way, and Captain *Coote* would needs go forward, and my Lord *Mohun* and my Lord of *Warwick* went with him, and ſo they were all ſet down at the lower end of *Leiceſter-fields* at *Green-ſtreet* end. But in truth I did not ſee where the other Three Chairs ſet down thoſe they carried.

Mr *Att. Gen.* What then happened afterwards, Can you tell?

Applegate. I cannot tell whether I had lighted my Pipe, or juſt lighting it, when I heard Chairs called again, upon which we run up with our Chair towards the upper end of the Fields, and there I did ſee my Lord of *Warwick* within the Rails, who bid us put over our Chair into the Fields, but we told him if we did, we could not get it over again, and ſo we went with our Chair to the corner of the Fields, and when we came there, there came out Captain *French*, who bid us open our Chair, and let him in, for he did believe he was a dead Man; and upon that we did take him in, and he bid us carry him with all the ſpeed we could to the *Bagnio* in *Long-acre*, and my Lord of *Warwick* got into another Chair behind, ſo we went to *Long-acre*, and when we came to the Door of the *Bagnio*, and Captain *French* came out of the Chair, he was ſo weak that he fell down upon his Knees; and when he came out, I asked who ſhould pay me, and deſired to be diſcharged, and the Earl of *Warwick* ſaid, *Damn ye, call for your Money to Morrow*; ſo they both went in at the *Bagnio* Door together.

Mr *Att. Gen.* Pray who called for the Chair firſt, Captain *French*, or my Lord of *Warwick* in the Fields.

Applegate. I cannot tell, but when I brought up my Chair, I firſt ſaw my Lord of *Warwick*, and he would have had me lifted the Chair over the Rails, and I told him we could not get it over again, and ſo went up to the upper end of the Fields.

Mr *Att. Gen.* If you firſt ſpoke with my Lord of *Warwick*, why did you not carry my Lord of *Warwick*?

Applegate. Indeed I cannot tell, but I ſuppoſe it was becauſe he did not come ſo ſoon out of the Fields as Captain *French*, or did not come the ſame Way.

Mr *Att. Gen.* Pray do you remember any Thing that happened juſt at their carrying Capt. *French* away?

Applegate. Before he went into the Chair he ſtopped, and would have pulled off his Cloaths, but we would not let him.

Mr *Att. Gen.* Did you ſee any Sword Capt. *French* had?

Applegate. I did ſee no Sword that I can ſay directly was a Sword, but Captain *French* had ſomething in his Hand, but what it was I cannot tell.

Mr *Att. Gen.* What was it that he ſaid to you, when he firſt went into the Chair?

Applegate. He deſired to be carrid to the *Bagnio*, for he ſaid he believed he was a dead Man.

Mr *Att. Gen.* Pray, Friend, recollect your ſelf, if you heard him ſay any Thing at all when he firſt went into the Chair at the *Greyhound* Tavern?

Applegate. I did not hear him mention any Thing at all.

Mr *Att. Gen.* Pray what did you hear my Lord of *Warwick* ſay at that time?

Applegate. Truly I cannot ſay I heard him mention any Thing at all neither, but I did hear my Lord *Mohun* ſay, when he could not prevail in St *Martins-lane* with Captain *Coote* to go home, that if they did go he would go and ſee it.

Mr *Att. Gen.* If they did go, who did he mean by They?

Applegate. My Lord *Warwick* and Captain *Coote* that were in the other Chairs, there was no Body elſe to ſpeak to.

Mr *Att.*

Mr *At. Gen.* Was there any talk of Fighting or quarrelling?

Applegate. No indeed, I do not know of any difference there was between them.

Lord High Steward. My Lord *Warwick*, Will your Lordſhip ask this Witneſs any Queſtions?

Earl of Warwick. My Lord, I deſire he may be asked, Whether I did not endeavour to put off the going into *Leiceſter-fields*, and to have all Things let alone till to Morrow.

Applegate. My Lord, I cannot ſay any Thing of that, but I did hear my Lord *Mohun* beg heartily of Captain *Coote* to go home, and let the Buſineſs alone till another time; and indeed I think I never heard a Man beg more hearty for an Alms at a Door, than he did, that they might not go into the Fields then, but I cannot ſay that I heard any Thing that my Lord of *Warwick* ſaid about it.

L. H. Stew. Will your Lordſhip ask him any other Queſtions?

Earl of Warwick. No my Lord.

Lord High Steward. Did my Lord *Warwick* expreſs any Inclination to go on.

Applegate. Indeed I know not any Thing one Way nor other.

L. *Jefferys.* My Lords, if I am not miſtaken he did ſay, that he did not ſee any Thing of Inclination in my Lord of *Warwick* to go on; but I deſire if your Lordſhips pleaſe that he may be asked this Queſtion, Whether he did ſee any Thing in my Lord of *Warwick* that ſhewed any Inclination to the contrary.

Applegate. All that I can ſay is, I heard my Lord *Mohun* ſay, Pray let's go home and lie all together, and let us put off this Buſineſs to another time; but indeed I do not remember that my Lord of *Warwick* ſaid one Word of going any way backward or forward.

Mr *Att. Gen.* Pray, who did my Lord *Mohun* ſpeak theſe Words to?

Applegate. My Lord *Mohun* ſpoke them to my Lord of *Warwick* and Captain *Coote* both.

Lord High Steward. Mr Attorney who is your next Witneſs?

Mr *Att. Gen. Peter Catro.* (*who was ſworn.*)

L. H. Stew. What do you ask him, Sir?

Mr *Att. Gen.* He was the other Chair-man that carried my Lord *Mohun*, Pray will you give my Lords an Account what you know paſſed at the Time when you carried my Lord *Mohun* to *Leiceſter-fields?*

Catro. I and my Fellow carried my Lord *Mohun* from the *Greyhound* Tavern in the *Strand*, till we came to the Turning up of St *Martins-lane*, where my Lord *Mohun* deſired that our Three Chairs might ſtop, and that they might go down to *Weſtminſter*, and that my Lord *Warwick* and Capt. *Coote* would go thither, and he would wait upon them to their Lodging; Captain *Coote* made Anſwer again ſomething, but what I cannot tell, and his Chair went on, and my Lord *Mohun* did ſay, if they went forward he would follow them, and ſee what would come of it.

Mr *Att. Gen.* What did you ſee happen while you were in St *Martins-lane?*

Catro. There were other three Chairs that went by while we ſtood at the *Croſs-Keys* Tavern Door, and Captain *Coote*'s Chair going forward, we followed and went to the end of *Leiceſter-fields* at *Green-ſtreet* end, and there all three went out of their Chairs and walked up the paved Stones of the Square; my Lord of *Warwick* asked my Lord *Mohun* if he had any Silver, and three Shillings were given for the three Chairs, and they went from us, and bid us go about our Buſineſs, and in a little while after we heard a Noiſe from the upper end of the Fields calling Chairs again.

Mr. *Att. Gen.* Did you obſerve any Thing of Quarrel or Difference between them, or any claſhing of Swords.

Catro. Indeed I heard nothing of any Quarrel, for we were at the lower end of the Square, at *Green-ſtreet* end, and when we heard them call for Chairs again, we went up towards the upper end of the Fields, and when we came there, we heard one bid us bring up the Chair over the Rails.

Mr *Att. Gen.* Who was that?

Catro. Indeed my Lord I cannot tell, for I was behind the Chair, and could not ſee who it was, but we ſaying that we could not get it over again if we did; we went up to the upper end of the Fields, and there was Captain *French*, I think it was, for I did not perfectly ſee him, being at the hind-part of the Chair, and we went on to the *Bagnio* in *Long-acre*; and I did ſee my Lord *Warwick* come out of his Chair at the *Bagnio* Door, for there they were ſet down.

Mr *Att. Gen.* You ſay you ſaw my Lord of *Warwick* at the *Bagnio* Door; Did you ſee any Sword as my Lord of *Warwick* had, or Captain *French?*

Catro. No, I did not ſee any Sword at all of either of them.

Mr *Att. Gen.* What do you know of Captain *French* his declaring he was wounded.

Catro. I think it was either when he went into the Chair, or in *Newport-ſtreet* end he called out to have the Chair opened, for ſays he I think I am a dead Man, and would have pulled off his Cloaths; and when we were at the *Bagnio* Door we tarryed a pretty while till they got them up to let them in, and asking if we ſhould wait, my Lord of *Warwick* bid us come to that Houſe to Morrow Morning for our Money, and they went in together into the Houſe, but I never heard any one Word of Quarrel or Diſſatisfaction paſſed between them.

Mr *Att. Gen.* This Witneſs ſpeaks to the ſame Purpoſe as the other did, and I think we need not trouble your Lordſhip any further as to that.

Lord High Steward. Would my Lord *Warwick* ask him any Queſtions?

Earl of Warwick. No, my Lord.

Mr *Att. Gen.* Then our next Witneſs is one *John Palmer.* (*who was ſworn.*)

Mr *Att. Gen.* Pray will you give my Lords an Account who it was you did carry in your Chair the 29th or 30th of *October* laſt, and whither you carried him?

Palmer. About one a Clock in the Morning, the 30th of *October*, we were called to the *Greyhound* Tavern in the *Strand* to Mr *Locket*'s, and there we took up a Gentleman, one Captain *French.*

Mr *Att. Gen.* Whither did you carry him?

Palmer. He bid us go to *Leiceſter-fields.*

Mr *Att. Gen.* What did he particularly ſay to you?

Palmer. There were three other Chairs that were juſt gone before from the ſame Door, and he bid us get before all thoſe Chairs, and juſt as we came to St *Martins-lane* end, we ſaw there were three other Chairs ſet down before us over-againſt the *Croſs-Keys* Tavern Back-Door.

Mr *Att. Gen.* Well, what did you do then?

Palmer. So we went before according as we were bid unto *Leiceſter fields*, and at the upper end of the Fields by *Leiceſter-houſe* we opened the Door

Door, and Captain *French* came out, and he gave us a Shilling, and we went away about our Buſineſs.

Mr *Att. Gen.* Were there any more Chairs there that went with you?

Palmer. There were two more Chairs that ſet down two other Gentlemen by *Leiceſter-houſe*, and we came away when we were paid; that is all I know.

Mr *Att. Gen.* Did you ſee any other Chairs beſides your three when you came down again, or any other Gentlemen?

Palmer. We did ſee ſome Gentlemen walking up about the middle of the Square when we came down, but we made what haſte we could away home, it being late, and *Sunday* Morning.

Mr *Att. Gen.* Did you obſerve any fighting when you were in the Field?

Palmer. I did not hear or diſcern any fighting while I was there.

Mr *Att. Gen.* Did you hear of any Quarrel, or any Thing between any of them, and whom, before?

Palmer. No, I did not know of any Quarrel, or hear of any Thing at all I do aſſure you.

Mr *Att. Gen.* All that he ſays then, my Lord is, That he carried Captain *French* to the upper end of *Leiceſter-fields*, and there he left him.

L. H. St. Would my Lord *Warwick* ask this Witneſs any Queſtions?

Earl of Warwick. I deſire he may be asked, whether he knows who were in the Chairs that were in St. *Martins-lane* when they paſſed by?

L. H. St. You hear the Queſtion, What ſay you to it?

Palmer. There were three Chairs, but who they were that were in them I cannot tell directly, but as they ſaid when they ſet them down at *Leiceſter-fields* they were my Lord *Warwick*, my Lord *Mohun*, and Mr *Coote*.

Mr *Att. Gen.* Who was it that ſaid ſo?

Palmer. Some of the other Chairmen when I came by.

L. H. St. Mr Attorney, who is your next Witneſs?

Mr *Att. Gen.* We ſhall call next the Chairmen that carried Mr *Dockwra* and Mr *James:* Call *Jackſon* the Chairman. *(who was ſworn.)*

Mr *Att. Gen.* This Man carried Captain *James:* Pray acquaint my Lords, Who you did take up at *Locket*'s in the *Strand* on the 29th or 30th of *October* laſt, and whither you carried him?

Jackſon. I carried Captain *James* from *Lockett*'s in the *Strand* into *Leiceſter-fields*.

Mr *Att. Gen.* How many Chairs were you that went?

Jackſon. There were two more that went when I went, there were ſix in all that took up Gentlemen there, and we were the laſt but one.

Mr *Att. Gen.* Can you tell who were in the other there firſt Chairs?

Jackſon. I do not know who were in the other Chairs, but I heard my Lord *Mohun* at the Door of the Houſe deſire, That the Buſineſs might be deferred till to Morrow Morning: There were ſix Gentlemen at the Door, but truly who they all were I cannot tell.

Mr *Att. Gen.* Who did my Lord *Mohun* ſpeak that to?

Jackſon. Indeed I do not know who he ſpoke it to.

Mr *Att. Gen.* What Anſwer was made to my Lord *Mohun?*

Jackſon. Truly there was no Anſwer that I heard, but we all went away ſoon after that, and we were bid to go to *Leiceſter-fields* to follow the other Chairs, and when we came to the other end of *Leiceſter-fields*, we ſet down Captain *James* by the *Standard* Tavern, and he gave us a Shilling, and bid us go our Ways; ſo we went our Way, and I heard nothing afterwards, but came away down the Fields, and there were three Chairs that ſtood at the Bottom of the Fields, and we asked them, What they ſtayed there for? And they ſaid, To fill a Pipe of Tobacco: And preſently after we heard call Chairs again; but it was late, and it was *Sunday* Morning, and my Partner ſaid, Let us go away home and we did ſo, we went directly home.

Mr *Att. Gen.* Did you carry no Body back?

Jackſon. No, we carried no Body back.

Mr *Att. Gen.* My Lord, we have done with this Witneſs, our next Witneſs is one *Richard Edwards*, and he was one of the Chairmen that carried Mr *Dockwra*. *(He was ſworn.)*

Mr *Att. Gen.* Pray will you acquaint my Lords, Whether you carried any Body from *Lockett*'s the 29th of *October*, and who it was, and whither you carried him?

Edwards. I do not know who I carried, but they were calling Coaches at the *Greyhound* Tavern in the *Strand*, and no Coaches coming, they called for Chairs, and ſo our Chair was brought up.

Mr *Att. Gen.* When you came there, who did you ſee there?

Edwards. Indeed I did not know my Lord of *Warwick*, nor my Lord *Mohun*, nor any of them.

Mr *Att. Gen.* Well, What do you know? Tell my Lords what happened.

Edwards. When we were there, there went two into two Chairs, and my Lord *Mohun* ſaid, or another Gentleman, I cannot tell which, that the Chairs ſhould not go away, that they would kill any Man that ſhould go away, and they went out of the Chairs, and went into the Houſe again.

Mr *Att. Gen.* And what happened after they went into the Houſe again.

Edwards. After they went out of the Chairs into the Houſe again, as I was told, my Lord of *Warwick*, my Lord *Mohun*, and Mr *Coote*, went into three Chairs, and went away from the Door, and there were three Chairs of us that went laſt.

Mr *Att. Gen.* Whither did you go with your Chair?

Edwards. We went to the *Standard* Tavern at the end of *Leiceſter-fields*, and when we came to the Tavern Door, we asked him if we ſhould knock at the Door, he ſaid no, but he gave us a Shilling, and bid us go about our Buſineſs, and ſo we did, for we went ſheer away to *Charing-Croſs*.

Mr *Att. Gen.* Pray can you tell who were in the other Chairs?

Edwards. Truly I cannot tell any Man that was in our three Chairs, for I was the hind-Chairman, and did not know any of them.

Mr *Att. Gen.* My Lord, I deſire to know what he means by hind-Chairman.

Edwards. My Lord, Ours was the laſt Chair that went to *Leiceſter-fields*, and I was behind the Chair, and never could ſee any of them, it being ſo very dark after they took the Chairs, till we came to *Charing-Croſs*, at St *Martins-lane*, and then I could not ſee who the particular Perſons were that were in the Chairs; nor indeed, whoſe the Chairs were that carried them.

Mr *Att.*

Mr *Att. Gen.* What Hour was it?

Edwards. It was very late, between one and two in the Morning, it was paſt one before we were called out.

Mr *Att. Gen.* You ſay you went to the upper end of *Leiceſter-fields*, with two other Chairs; Pray did you ſee any other Chairs afterwards, and where?

Edwards. We ſaw three Chairs at the lower end of the Square, as we came down by *Green-ſtreet* end, and we asked them, What they ſtay'd there for, and they ſaid, to light a Pipe of Tobacco.

Mr *Att. Gen.* Pray, Who had been carried in thoſe Chairs, Can you tell?

Edwards. I did not ſee them ſet down any Body, and I cannot tell who they carried; and as for the Perſon that we carried, I did not ſo much as ſee him to know him, nor know who he was, but we went away as ſoon as ever we were paid.

Mr *Att. Gen.* I have one Queſtion more to ask you; you ſay, That my Lord of *Warwick* at the Tavern Door bid you ſtay, and that none ſhould go away, and ſwore he would run any Man through that ſhould go away.

Edwards. It was my Lord *Mohun*; and then two that had gone into the Chairs went into the Houſe again.

Mr *Att. Gen.* Did not you ſay, that there was ſome talk of going to *Weſtminſter*?

Edwards. My Lord *Mohun* did talk of going to *Weſtminſter* when they went into the Chairs the Second time, and I think I heard Mr *Coote* ſay he would make an end of it then; and he would kill any Man that would not go forwards to *Leiceſter-fields*.

L. H. St. My Lord *Warwick*, will you ask this Witneſs any more Queſtions?

Earl of Warwick. No, my Lord.

L. H. St. Mr Attorney, have you any more Evidence to call?

Mr *Att. Gen.* My Lord, the next Piece of Evidence that we ſhall apply our ſelves to, will be to what happened at the *Bagnio* in *Long-acre*, after my Lord *Warwick* and Captain *French* came there: And the Witneſs that we ſhall call is *Pomfret*, and he is a Servant at the *Bagnio* in *Long-acre*, and he will acquaint your Lordſhips who came thither the 30th of *October* laſt, and what happened there.

L. H. St. What is his Name?

Mr *Att. Gen. Henry Pomfret.*

L. H. St. Is he ſworn?

Mr *Att. Gen.* Yes, my Lord.

L. H. St. What is it that you examine him about? What Queſtions do you ask him Mr Attorney?

Mr *Att. Gen.* Who came to his Maſter's Houſe; and at what Time they came.

Pomfret. My Lord, on *Sunday* the 30th of *October* laſt, between Two and Three in the Morning, there came to my Maſter's Door the Earl of *Warwick*, and knocked at the Door, and there was Captain *French* with him; and when they were let in, my Lord of *Warwick* told me that Captain *French* was wounded, and he himſelf had a Wound, and he deſired that my Maſter might be called up for to dreſs the Wounds; eſpecially, becauſe Captain *French* was very much wounded, which accordingly was done in about a quarter of an Hour after they were brought in.

Mr *Att. Gen.* Did he deſire to be concealed when he was come in?

L. H. St. Of whom do you ſpeak, Mr Attorney.

Mr *Att. Gen.* My Lord of *Warwick.*

Pomfret. He did deſire, that if any Body asked for him, it ſhould be ſaid he was not there.

Mr *Att. Gen.* Pray in what Condition did my Lord of *Warwick* ſeem to be in at that time.

Pomfret. He ſeemed to be very much concerned at that time, and his Right Hand, in which he had his Sword, and which was drawn, was very much bloody.

Mr *Att. Gen.* Was the Sword Bloody that he had in his Hand?

Pomfret. The Blade was Bloody; but whether it was all over Bloody I cannot tell; there was beſides ſome Blood upon the Shell, it was very near all over bloody, as I remember.

Mr *Att. Gen.* Pray, Friend, Conſider what you ſwore at the Coroner's Inqueſt about the Blood upon the Sword.

Pomfret. Indeed I cannot ſay it was bloody all along the Blade; but there was Blood upon the Shell, and there was Blood upon the Inſide, it was ſo to the beſt of my remembrance.

Mr *Att. Gen.* What Condition was Mr *French*'s Sword in?

Pomfret. He had a drawn Sword in his Hand, but I did not perceive it had any Blood upon it: it was a large Blade.

Mr *Att. Gen.* How do you know what ſort of Sword Mr *French*'s was, and in what Condition it was?

Pomfret. He deſired me to take notice of it next Morning, and I did ſo, and there was no Blood upon it.

Mr *Att. Gen.* How came you to be deſired to take Notice of what paſſed there about the Swords?

Pomfret. My Lord, there was three of them the next Day, and one it was ſaid was Mr *Coote*'s, and another of them was my Lord of *Warwick*'s, which I do believe was bloody from the Point upwards, very near, but I cannot directly ſay but that was afterwards.

Mr *Att. Gen.* Who brought in that Sword that you ſay was Mr *Coote*'s?

Pomfret. To the beſt of my Remembrance Captain *Dockwra* brought it in, it was almoſt half an Hour after my Lord *Warwick* and Captain *French* came into the Houſe, when they came thither.

Mr *Att. Gen.* They, Who do you mean?

Pomfret. Captain *James* and he.

Mr *Att. Gen.* Were they let in preſently?

Pomfret. No, My Lord of *Warwick* had deſired that they might be private there; but when they knocked at the Door, my Lord of *Warwick* deſired to know who they were; and when it was underſtood that they were Mr *James* and Mr *Dockwra*, they were let in by my Lord's Order.

Mr *Att. Gen.* Pray, which of all the Four brought in any Sword in a Scabbard?

Pomfret. It was Captain *Dockwra.*

Mr *Att. Gen.* Pray, did they appear to be all of a Party?

Pomfret. They were glad to ſee one another; and they talked a pretty while together, but indeed I cannot ſay I heard what they talked.

Mr *Att. Gen.* Pray, do you remember my Lord of *Warwick*'s Sword, and what there was upon it?

Pomfret. It was a Steel Sword Water-gilt, and as near as I can remember there was Blood upon it for the moſt part from the Point upward.

Mr

Mr *Att. Gen.* And what did appear upon Mr *French*'s Sword?

Pomfret. There was Water and Dirt, but there was no Blood at all.

M. *Att. Gen.* How long did they ſtay there?

Pomfret. They all continued about half an Hour, and then went away, all but Mr *French*, who ſtaid there?

Mr *Att. Gen.* What then became of the others?

Pomfret. Mr *James*, and Mr *Dockwra*, and my Lord of *Warwick*, went away, and my Lord of *Warwick* deſired particularly, that we would all take care of Mr *French*, for he was his particular Friend, and Mr *French* continued there till *Sunday* about One of the Clock.

Mr *Att. Gen.* Was there any Diſcourſe at that Time about Mr *Coote*?

Pomfret. Not that I heard of, one Word.

Mr *Att. Gen.* Was there any notice taken of any Quarrel that happened between any Body, and who?

Pomfret. No, indeed, I did not hear them take notice of any Quarrel at all between any Body.

Mr *Att. Gen.* You ſay Mr *French* when he came into your Houſe was wounded, and there was care particularly taken of him becauſe he was wounded.

Pomfret. Yes, my Lord of *Warwick* deſired to take care of him.

Mr *Att. Gen.* Then pray, was there no Diſcourſe how he came to be wounded?

Pomfret. Indeed I do not know how he came to be wounded; nor did I hear one Word of Diſcourſe about it, indeed I cannot ſay any Thing who wounded him.

Mr *Att. Gen.* Pray will you recollect your ſelf, and tell my Lords what Sort of Handle had my Lord of *Warwick*'s Sword when you ſaw it.

Pomfret. It had a Steele Handle.

Mr *Att. Gen.* Pray, can you tell whether the Shell was open or cloſe?

Pomfret. I cannot tell juſtly; I ſaw it, and that was all.

Mr *Att. Gen.* If I apprehend you, you ſay my Lord had a Wound in his Hand.

Pomfret. Yes, my Lord, he had ſo.

Mr *Att. Gen.* Pray, in what Hand was it that he was wounded?

Pomfret. To the beſt of my remembrance it was in his right Hand.

Mr *Att. Gen.* Pray did there appear much Blood there?

Pomfret. Yes, my Lord, indeed there did.

Mr *Serj. Wright.* You talk of Mr *James* and Mr *Dockwra*'s Swords, pray in what Condition were they?

Pomfret. Mr *Dockwra's* Sword was by his Side, and not drawn.

Mr *Serj. Wright.* What did you obſerve of Captain *James*'s Sword?

Pomfret. His Sword was naked, and he had loſt his Scabbard; but how that came I cannot tell, and there was dirt on one Side of the Sword, and he ſaid he had left his Scabbard behind him.

Mr *Att. Gen.* Was there any Blood upon his Sword?

Pomfret. No, there was no Blood that I did ſee upon it.

Mr *Att. Gen.* Pray did you ſee any Blood upon Mr *Dockwra*'s Sword?

Pomfret. No, indeed, I did not ſee Mr *Dockwra*'s Sword, it was in the Scabbard by his Side.

D. of *Leeds*, My Lords, There has been notice here taken of ſeveral Swords that this Witneſs ſaw, and he takes ſo far notice of my Lord of *Warwick*'s Sword, that he tells you what Sort of Hilt it had, and how it was Bloody from the Point to the Hilt; I deſire he would give you an Account of the Length and Breadth of the other Men's Swords, Mr *French*, Mr *James*, and Mr *Dockwra*.

L. H. St. You ſaid juſt now, that you took notice of my Lord of *Warwick*'s Sword, that it was bloody from the Point to the Hilt, what Sort of Sword was it?

Pomfret. It was a pretty broad Sword.

L. H. St. Did you take notice of the other Swords, what Breadth or Length they were of?

Pomfret. No, my Lord, I did not.

Mr *Att. Gen.* Which was that Sword that was Dirty as you ſay?

Pomfret. That was Captain *French*'s

Mr *Att. Gen.* Was that a broad Sword or not?

Pomfret. No, it was not.

Mr *Att. Gen.* Pray was it over Night or next Morning that you ſaw the Swords?

Pomfret. It was in the Morning about three a Clock.

Mr *Att. Gen.* What Time did my Lord of *Warwick*, and Mr *James*, and Mr *Dockwra* go away?

Pomfret. My Lord of *Warwick* and they were gone ſeveral Hours before Mr *French*; and to the beſt of my remembrance Mr *James* broke his Sword upon the Floor after he came in.

Mr *Att. Gen.* Pray, what Swords were there in all that you ſaw there?

Pomfret. There was Captain *French*'s, Captain *James*'s, my Lord of *Warwick*'s, and one Mr *Coote*'s, as Mr *French* ſaid when it was brought in.

L. H. St. Have you done with this Witneſs, Mr Attorney?

Mr Att. Gen. Yes, my Lord, we have.

L. H. St. My Lord *Warwick*, Will you ask him any Queſtions?

Earl of *Warwick.* No, my Lord.

L. H. St. Then, Mr Attorney, call your next Witneſs.

Mr Att. Gen. Our next Witneſs is *Thomas Goodall*, who is a Servant at the *Bagnio* in *Long-acre*, as well as this Man that was laſt. (*He was Sworn*)

L. H. St. What Queſtions do you ask him, Mr Attorney?

Mr Att. Gen. My Lord, I deſire he would acquaint your Lordſhips, What Time it was my Lord of *Warwick* and Capt. *French*, came to his Maſter's Houſe?

Goodall. It was between One and Two of the Clock in the Morning.

Mr Att. Gen. My Lord, I deſire he would acquaint your Lordſhips what he ſaw and knows, that paſſed at that Time?

Goodall. All that I can ſay is, That I did ſee my Lord of *Warwick*'s Sword bloody, and it was naked in his Hand, and I did ſee a Wound on his Hand: Indeed I did not ſee him when he firſt came in, for he had been there a pretty While before I ſaw him.

Mr Att. Gen. Pray, in what Condition was my Lord when you ſaw him?

Goodall. He had his Sword in one Hand, and it was bloody at the Blade, and at the Hilt; but whether it was bloody all over, indeed I did not

take notice of it, and ſo cannot give an Account.

Mr Att. Gen. Pray, What Sort of Sword was it?

Goodall. Indeed I cannot give an Account what Sort of Sword it was, but it was either Steel or Silver gilt, as I remember, but I did take notice that there was Blood upon the Hilt, that is, upon the Shell.

Mr Att. Gen. Was it an open Shell, or a cloſe One?

Goodall. I think it was a cloſe One.

Mr Att. Gen. Pray, Did my Lord of *Warwick* give any Order to be denied in the Houſe, or for any Concealment there?

Goodall. Indeed I did not hear of any Orders given for Concealing of any Body there, but my Lord walked up and down very much Concerned.

Mr Att. Gen. Did not Mr *French* come in with him?

Goodall, I do believe he might: But I cannot ſay I ſaw him when he came in.

Mr Att. Gen. Can you tell when Mr *James* and Mr *Dockwra* came in? How long was that after my Lord of *Warwick* was there, and Mr *French?*

Goodall. To the beſt of my Remembrance and Knowledge, it was half an Hour after my Lord of *Warwick* and Mr *French* came, that Mr *James* and Mr *Dockwra* came: I am ſure it was ſo before I ſaw them in the Houſe; but indeed I cannot ſay directly when they came in, or when they went out.

Mr Att. Gen. Pray, Which Hand of my Lord of *Warwick* was it that was hurt, the Right or the Left?

Goodall. Indeed, I cannot poſitively ſay; but I think it was the Right Hand.

Mr Att. Gen: You talk of my Lord of *Warwick*'s Sword, Did you take any notice of Mr *French*'s Sword?

Goodall. No, indeed, I was buſie about the Affairs of the Houſe; I did ſee my Lord of *Warwick*'s Sword, but that was by Chance, and it was bloody at the Hilt, and upon the Blade; but whether it were all over bloody, indeed I cannot tell.

Mr Att. Gen. I deſire to ask him, Whether he can tell who brought in Mr *Coote*'s Sword thither?

Goodall. Indeed I cannot.

L. H. St. Mr Attorney General, Have you any more Queſtions to ask him?

Mr Att. Gen. No, my Lord, not I.

L. H. St. My Lord *Warwick*, Will you ask him any Queſtions?

Earl of *Warwick.* No, my Lord.

L. H. St. Mr Attorney, Who is your next Witneſs?

Mr *Att. Gen.* My Lord, our next Witneſs is Mrs *A. Goodall*, this Man's Wife, *(Who was ſworn)*

L. H. St. What Queſtions do you ask this Gentlewoman?

Mr *Att. Gen.* I deſire that ſhe would acquaint your Lordſhips, Whether ſhe was at the *Bagnio* in *Long-acre* when my Lord of *Warwick* and Captain *French* came in?

A. Goodall. I was there when my Lord of *Warwick* came in.

Mr *Att. Gen.* Was Captain *French* with him?

A. Goodall. Yes, Captain *French* was with him.

Mr *Att. Gen.* About what a Clock was it that they came there?

A. Goodall. It was about Two a Clock, as near as I can remember.

Mr *Att. Gen.* In what Condition were they when they came in, pray?

A. Goodall. Mr *French* was very much wounded.

Mr *Att. Gen.* Pray, How was my Lord of *Warwick?*

A. Goodall. My Lord had his Sword in his Hand, and it was very bloody, both at the Hilt, and upon the Blade.

Mr *Att. Gen.* Did you obſerve any Wound that my Lord had?

A. Goodall. I think, to the beſt of my Remembrance, my Lord had his Hand wrapped up in a Handkerchief, which was bloody; but I was buſy up and down in the Houſe, and I cannot ſo well tell what Hand it was; I was indeed up and down there while they were there.

Mr *Att. Gen.* Do you know of any Orders that were given by my Lord of *Warwick* to be concealed while he was there?

A. Goodall. He did deſire the Door might not be opened to any Body that asked for him, and that it might not be ſaid that he was there; and when the other Two Gentlemen came to the Door, he went to the Door himſelf, and when he ſaw who they were, he ordered them to be let in.

Mr. *Att. Gen.* What was the Occaſion of his going to the Door himſelf?

A. Goodall. There was a Knocking at the Door, and he had a Mind to know who it was, and when it did appear it was Mr *James* and Mr *Dockwra*, he himſelf ordered them to be let in.

Mr *Att. Gen.* How came the Door to be open to them?

A. Goodall. Indeed I think he opened it himſelf.

Mr *Att. Gen.* How long was that after he and Capt. *French* came in?

A. Goodall. It was about half an Hour.

Mr *Att. Gen.* When they firſt came in, What Poſture were they in? Had they any Swords in their Hands?

A. Goodall. I did not poſitively take notice, Whether they had any Swords in their Hands, nor What they had when they came in.

Mr *Att. Gen.* What became of them afterwards?

A. Goodall. My Lord of *Warwick*, Mr *James*, and Mr *Dockwra*, went away within a little While, and my Lord of *Warwick* ordered particular Care to be taken of Mr *French*, as his Friend, and he was put to Bed after his Wounds were dreſſed; but I cannot tell what afterwards became of my Lord *Warwick*, and the other Gentlemen.

Mr *Att. Gen.* I think you were ſaying, that my Lord of *Warwick* was Wounded in the Hand, Which Hand was it?

A. Goodall. I cannot poſitively ſay, Whether it was the Right or the Left.

L. H. St. Will you who are of the King's Council, ask this Witneſs any further Queſtions?

Mr *Att. Gen.* No, my Lord, we ſhall ask her no other Queſtions.

Earl of *Warwick.* No, my Lord, nor I.

Mr *Att. Gen.* Then our next Witneſs is *Henry Amy*, who is a Surgeon, and lives at the *Bagnio* in *Long acre*, and he will give your Lordſhip an Account what paſſed within his Knowledge at this

Time

Time within his Houſe, and who came thither Wounded, and what particular Care was ordered to be taken of Mr *French*, and by whom.

(*Mr.* Amy *was Sworn.*)

Mr *Att. Gen.* I deſire you will give an Account to my Lords what happened at your Houſe early in the Morning, the 30th of *October* laſt?

Amy. The 30th of *October* laſt, about Two of the Clock, I was knock'd up out of my Bed to attend two Gentlemen, my Lord *Warwick* and Captain *French*, who came then into my Houſe.

Mr *Att. Gen.* In what Condition were they?

Amy. They were both Wounded; Mr *French* very much, and my Lord of *Warwick* in his Hand.

Mr *Att. Gen.* Did you ſee any Swords?

Amy. Yes; they had both Swords in their Hands, and my Lord of *Warwick*'s Sword was very bloody.

Mr *Att. Gen.* Well, Sir, when they came into your Houſe, What Directions was given by my Lord *Warwick*?

Amy. He gave Directions, if any Body ſhould ask for him, they ſhould ſay he was not there.

Mr *Att. Gen.* Did any Body come and ask for him?

Amy. While we were taking Care of Mr *French*, and Dreſſing his Wound, there were ſome Perſons came and knocked at the Door, and my Lord of *Warwick* did Order, that no Body ſhould be let in; but he himſelf went to the Door, and when he found that it was Mr *Dockwra* and Mr *James*, my Lord *Warwick* ordered, that they ſhould be let in.

Mr *Att. Gen.* Pray, Tell my Lords what followed after that?

Amy. After we had Dreſſed Mr *French* ——.

Mr *Att. Gen.* By the Way, was there any particular Directions, and by whom, to take Care of Mr *French*?

Amy. Yes, my Lord *Warwick* deſired me to take Care of him, as his Particular Friend.

Mr *Att. Gen.* Well then, after you had Dreſſed Mr *French*'s Wound, What happened?

Amy. I Dreſſed my Lord *Warwick*'s Wound.

Mr *Att. Gen.* Pray, Whereabouts was my Lord of *Warwick*'s Wound?

Amy. It was near the firſt Joynt of his Fore-finger.

Mr *Att. Gen.* Pray, How long did they ſtay there?

Amy. After Mr *Dockwra* and Mr *James* came in, and my Lord's Hand was Dreſſed, they ſtayed a little While, and they Three went away?

Mr *Att. Gen.* What was ſaid when they went away?

Amy. My Lord of *Warwick* deſired to have great Care taken of Mr *French*; and they ſaid, Now let us go away, and they went away.

Mr *Att. Gen.* Pray, What Time did they ſtay in your Houſe?

Amy. When they went away, I think it was about half an Hour after they firſt came in.

Mr *Att. Gen.* Did you take notice of no Sword but my Lord of *Warwick*'s?

Amy. No, not then.

Mr *Att. Gen.* Did you afterwards?

Amy. Afterwards, in the Morning, Mr *French* called for his Sword, and I looked upon it.

Mr *Att. Gen.* Pray, in what Condition was his Sword; Was it bloody?

Amy. It was without Blood, only a little Dirty.

Mr *Att. Gen.* Pray, Did you obſerve that they talked of any Quarrel that had been between Captain *French* and my Lord, when they came in?

Amy. No.

Mr *Att. Gen.* Did you ask them any Queſtions about it, the one or the other of them?

Amy. No, I did not.

Mr *Att. Gen.* Did you hear them ſay, how they came by their Wounds?

Amy. No, I did not.

Mr *Att. Gen.* Did you hear them talk of any Body being killed, particularly Mr *Coote*?

Amy. I did not know of any Body being killed till next Day.

Mr *Att. Gen.* Did you take any notice of *James*'s and *Dockwra*'s Swords?

Amy. Truly I took no notice of any Swords, but my Lord *Warwick*'s; while my Lord *Warwick* was there in the Houſe, but the next Morning Mr *French* gave me his Sword, and there was another Sword there, which Mr *French* told me was Capt. *Coote*'s Sword.

Mr *Att. Gen.* When was that: How long after my Lord of *Warwick*, and *James*, and *Dockwra* were gone away.

Amy. It was ſome Hours after.

Mr *Att. Gen.* When did you hear of Mr *Coote*'s being killed?

Amy. About Nine a Clock next Morning I heard of Mr *Coote*'s being killed.

Mr *Att. Gen.* Whom did you hear it from?

Amy. From *Pomfret* my Servant.

Mr *Att. Gen.* Did you hear no Diſcourſe between my Lord of *Warwick*, Capt. *French*, Mr *James* and Mr *Dockwra* about it?

Amy. No, I did not.

Mr *Att. Gen.* Did they not talk how thoſe Wounds came they had, nor did not you ask who gave them?

Amy. No, I did ask no Queſtion of either of them: And in half an Hour after they came in, my Lord of *Warwick* and the other Two Gentlemen went away.

Mr *Att. Gen.* When they left *French* there, What Orders were left about him?

Amy. Only to take care of him, my Lord of *Warwick* deſired that.

Mr *Att. Gen.* What Reaſon did my Lord give for that?

Amy. I heard nothing of Reaſon, only that he was his particular Friend.

Mr *Att. Gen.* Did you hear them talk any Thing whither they would go, when they went away.

Amy. I did hear ſome talk about going into the Country.

Mr *Att. Gen.* Do you know whither they went, when they went away from your Houſe?

Amy. No, indeed I did not.

Mr *Att. Gen.* My Lord, we have done with him.

L. H. St. My Lord *Warwick*, Will your Lordſhip ask this Witneſs any Queſtions?

Earl of *Warwick.* I deſire to have him asked Whether I was not Wounded in the Hand.

Amy. His Hand was very bloody, the Handkerchief that was about it was wet with the Blood.

Earl of *Warwick.* I deſire to ask him when it was that he ſaw Capt. *French*'s Sword?

Amy. It was not before the Morning; it was about Nine a Clock, as I remember.

M. of *Norm.* Before this Witneſs goes away, I deſire he may be asked one Queſtion, Whether he can tell the Size of Mr *French*'s Sword.

L. H. St. Here is a noble Lord that deſires to know if you can tell about Capt. *French*'s Sword, what Sort of Sword it was?

Amy. As to the Blade, it was a middle-ſiz'd Sword.

Marq. of *Norm.* Was it a broad Blade or no?

Amy. No, my Lord, it was not a broad Blade.

L. H. St. Mr Attorney, Who is your next Witneſs?

Mr *Att. Gen.* Capt. *Loftus Duckingfield. (who was Sworn.)*

Mr *Att. Gen.* This Gentleman will acquaint your Lordſhips what Diſcourſe paſt between theſe Gentlemen the next Day; pray Sir, acquaint my Lords what you heard about Mr *Coote*'s Death, and when, and where.

Capt. *Duck.* Early in the Morning I was told of this Accident.

Mr *Att. Gen.* By whom?

Capt. *Duck.* One of the Company, I cannot tell who, I think they were all together then, my Lord of *Warwick*, Captain *James*, Captain *Dockwra*, and no Body elſe.

Mr *Att. Gen.* What was their Diſcourſe?

Capt. *Duck.* They ſaid they believed Captain *Coote* was killed.

Mr *Att. Gen.* Did they tell you by whom?

Capt. *Duck.* By Mr *French*, every Body did ſay he was his Adverſary.

Mr *Att. Gen.* What Account was given of the Action?

Capt. *Duck.* They ſaid it was done in the Dark, and Capt. *French* was his Adverſary.

Mr *Att. Gen.* Was there any notice taken of any Duel?

Capt. *Duck.* Yes there was, between thoſe two, and the other Perſons on both Sides; and it was ſaid my Lord of *Warwick* was Friend to Mr *Coote* and my Lord *Mohun*.

Mr *Att. Gen.* Who were on the other Side?

Capt. *Duck.* Mr *Dockwra* and Mr *James*.

Mr *Att. Gen.* Was there any Diſcourſe who actually fought?

Capt. *Duck.* It was ſaid, that Captain *French* fought with Captain *Coote*, as they believed, and Mr *James* with my Lord of *Warwick*.

Mr *Att. Gen.* Did you ſee my Lord of *Warwick*'s Sword?

Capt. *Duck.* Some Time of the Day I did, but I cannot tell whether it was in the Morning, or no.

Mr *Att. Gen.* In what Condition was it, Was it bloody, or not?

Capt. *Duck.* It was a ſteel Sword.

Mr *Att. Gen.* How long did they ſtay with you?

Capt. *Duck.* About half an Hour.

Mr *Att. Gen.* Did they come publickly?

Capt. *Duck.* We went away in a hackney Coach together.

Mr *Att. Gen.* Pray what Diſcourſe was there about conſulting to go into the Country together?

Capt. *Duck.* That might be diſcourſed, but by whom I cannot tell.

Mr. *Att. Gen.* Did my Lord of *Warwick* talk of going into the Country?

Capt. *Duck.* Whether the Company talked of it, or my Lord of *Warwick* in particular, and the reſt aſſented to it, I cannot well tell.

Mr *Att. Gen.* Whither did they go?

Capt. *Duck.* I cannot directly tell.

Mr *Att. Gen.* What Time of the Day was it?

Capt. *Duck.* It was about Six of the Clock.

Mr *Att. Gen.* Cannot you tell whither they went?

Capt. *Duck.* Capt. *James*, and Capt. *Dockwra* went to the *Ship* and *Caſtle* in *Cornhil* about Five a Clock or Six, as near as I can remember.

Mr *Att. Gen.* Can you tell what Time my Lord of *Warwick* went away?

Capt. *Duck.* No, I cannot tell what Time he went away, not directly.

Mr *Att. Gen.* Can you tell of any Agreement amongſt them, whither they were to go?

Capt. *Duck.* No, I cannot.

Mr *Att. Gen.* What Diſcourſe or Concern did you obſerve paſt between them, concerning Captain *Coote?*

Capt. *Duck.* My Lord of *Warwick* ſhewed a great deal of Concern for his Friend Mr *Coote*.

Mr *Att. Gen.* Had you any Notice of Mr *Coote*'s Death amongſt you?

Capt. *Duck.* We had notice before we went away, but I cannot tell whether it was before my Lord of *Warwick* was gone.

Mr *Att. Gen.* Was it after the Diſcourſe of going into the Country, or before?

Capt. *Duck.* Indeed, I cannot directly ſay when it was.

Mr *Att. Gen.* Pray what Reaſon was there for their going into the Country before he was dead?

Capt. *Duck.* They believed he was dead.

Mr *Att. Gen.* Cannot you tell the Reaſon why they would go into the Country?

Capt. *Duck.* No, indeed, I cannot tell the Reaſon.

Mr *Att. Gen.* Did you obſerve my Lord of *Warwick*'s Sword? Was there any Blood upon it?

Capt. *Duck.* I cannot ſay his Sword was bloody at the Point; the whole Blade and Shell was bloody, to the beſt of my remembrance.

Mr *Att. Gen.* What Sort of Sword was it?

Capt. *Duck.* It was a pretty broad Blade, a hollow Blade, and a hollow open Shell.

Mr *Att. Gen.* Was there any Diſcourſe concerning Capt. *French?*

Capt. *Duck.* Yes, they thought he was very ill Wounded.

Mr *Att. Gen.* Was there any, and what Diſcourſe who ſhould give my Lord of *Warwick* his Wound?

Capt. *Duck.* It was ſaid, they believed Capt. *James* gave my Lord his Wound.

Mr *Att. Gen.* Pray, Was there any Blood upon Mr *James*'s Sword, or was he Wounded?

Capt. *Duck.* I ſaw no Wound upon Capt. *James*, that I know of.

L. H. St. Do you believe that my Lord *Warwick*'s Sword was bloodied with the Hurt of his own Hand, or any otherwiſe?

Capt. *Duck.* I cannot tell; it was a Cut-ſhell, and the Outſide bloody as well as the In.

L. H. St. My Lord *Warwick*, Will your Lordſhip ask this Witneſs any Queſtions?

Earl of *Warwick.* No, my Lord.

L. H. St. Mr Attorney, if you have any other Witneſſes, pray call them.

[*An-*

Another Witneſs was produced, that belonged to the Ship *and* Caſtle *in* Cornhill.

Mr *Att. Gen.* This Man will give you an Account what paſt at his Houſe at that time, and between whom; Pray will you tell my Lords who was at your Houſe the 30th of *October* laſt, and what paſt there then.

Witneſs. My Lord of *Warwick*, Capt. *James*, and Captain *Dockwra*, and when my Lord of *Warwick* came in, I thought my Lord was in a very great Concern, and called for Pen, Ink and Paper, and I feared there was ſome Quarrel in hand, but they ſaid no, the Quarrel was over, and ſays, my Lord of *Warwick*, I am afraid poor *Coote* is killed.

Mr *Att. Gen.* Did you obſerve any Deſire to be private?

Witneſs. No indeed, I cannot tell that.

Mr *Att. Gen.* How long did they continue there?

Witneſs. About ſix a Clock my Lord of *Warwick* and Capt. *James*, and Capt. *Dockwra*, and Captain *Duckinfield* went away.

Mr *Att. Gen.* Can you tell who went with my Lord *Warwick?*

Witneſs. No indeed, I cannot tell who went with my Lord *Warwick*; there came in a Gentleman in Black, whom I knew to be my Lord of *Warwick*'s Steward, and he came and ſpoke ſome Words to my Lord of *Warwick*, about a quarter of an Hour after they came in, and then they went away, for after that I did not hear any farther Diſcourſe.

Mr *Att. Gen.* What became of the reſt of the Company?

Witneſs. They went away; I do not know what became of them, nor whither they went; ſome of them went in and out of one Room into another ſeveral times, two or three times, and came out again.

Mr *Att. Gen.* My Lord we have done with this Witneſs.

L. H. St. My Lord *Warwick*, Will you ask him any Queſtions?

E. of Warw. No, my Lord.

L. H. St. Mr Attorney, who is your next Witneſs?

Mr *Att. Gen.* Mr *Salmon* the Chirurgeon, who by the Coroner's Order ſearched the Wound. (*Who was ſworn.*)

Mr *Att. Gen.* Pray, Sir, was you ordered by the Coroner to view the Body of Mr *Coote?*

Salm. Yes, I was ordered by the Coroner to inſpect the Body of Capt. *Coote*, and to give the Jury an Account of the Nature of the Wounds.

Mr *Att. Gen.* Pray upon the view of the Body, what Wounds had he?

Salm. There was two Wounds; one on the Breaſt near the Collar-bone running downwards very deep.

Mr *Att. Gen.* Pray what Part of the Breaſt was it, and how deep was it?

Salm. It was on the left part of the Breaſt near the Collar-bone and it penetrated four or five Inches.

Mr *Att. Gen.* Can you gueſs at what ſort of Sword it was that made the Wound?

Salm. No indeed, Sir, I cannot.

Mr *Att. Gen.* Was it a broad Sword, or a little Sword?

Salm. The Orifice was about the length of half an Inch, and about the Depth of five Inches.

Mr *Att. Gen.* Was that made with a broad Sword, or with a narrow Sword?

Salm. Indeed I cannot tell.

Mr *Att. Gen.* You ſay he had another Wound; where was that?

Salm. That was on his left Side too, near unto the ſhort Ribs, under the laſt Rib, which was about the length of an Inch, and of the depth of ſix Inches, and it run through the Diaphragma.

Mr *Att. Gen.* Did you take one of thoſe Wounds, or both of them to be mortal?

Salm. I did look upon either of them to be mortal, and to be the Occaſion of his Death.

Mr *Att. Gen.* Can you tell whether they were both made with one and the ſame Sword?

Salm. Indeed I cannot tell that, whether they were made with one Sword, or two.

Mr *Att. Gen.* Cannot you tell how they appeared to be? I ſuppoſe you probed them.

Salm. Yes, I probed them both; one was quite through the Diaphragma.

Mr *Att. Gen.* What Time was it that you viewed the Body by the Order of the Coroner?

Salm. I ſaw the Body at Seven a Clock on *Sunday* Night.

Mr *Att. Gen.* If my Lord of *Warwick* deſire to ask him any Queſtions, he may.

E. of Warw. My Lord, I deſire to ask him, whether any of the Wounds were large enough to be made by a Sword run up to the Hilt?

Salm. No, my Lord, ſure that they were not.

E. of Warw. My Lord, I deſire to know of him, whether both theſe Wounds were given before or behind?

Salm. I can only tell you the length and depth by following of the Probe; the one was downwards, and the other upwards.

Mr *Att. Gen.* Do you ſuppoſe both thoſe Wounds were given when the Perſon was ſtanding backward or forward?

Salm. 'Tis impoſſible to tell how they were given, becauſe of the Variety of the Poſtures of the Body in the divers Capacities thereby of receiving the Wounds?

Mr *Att. Gen.* Pray can you tell whether they were given by one and the ſame Sword or no?

Salm. Indeed I cannot tell.

Mr *Att. Gen.* Do you know any Thing to the contrary?

Salm. I cannot ſay any Thing for it, or againſt it.

E. of Kingſton. My Lords, this Witneſs, if I apprehend him right, ſays, the Wound on his Side was a large Wound.

Salm. Yes, a very large Wound, of the Length of about three quarters of an Inch at the Orifice, and five or ſix Inches deep.

E. of Kingſton. I deſire he may tell whether that Wound could be given by any other than a broad Sword.

Salm. I cannot tell that.

E. of Rocheſter. Indeed, my Lords, I would have him asked this Queſtion again; I know not whether he can anſwer it or no; but I cannot but think it is proper to have ſome Account of this Matter. In all Enquiries before the Coroner, there is a Judgment to be made of the Nature of the Wound, in order to form the Indictments, and that the Jury may know with what ſort of Weapon it was made; and it is his Profeſſion, as a Chirurgeon, to know ſuch Matters.

L. H. St. Mr *Salmon*, you hear what is required of you by my noble Lords, and the Obſervation

which

which is made. You are the Chirurgeon ſent for by the Coroner, on purpoſe to inſpect this Body; and when you did ſo, it was incumbent upon you to conſider and give Information, as well with what ſort of Inſtrument the Wound was given, as the length and depth of the Wound, that the Jury might conſider upon all the Circumſtances of the Occaſion, and Manner of the Party's Death: And my Lords would know whether by the Orifices of the Wounds when you inſpected them, you can make a Judgment if they were made by ſeveral Swords, or the ſame Sword.

Salm. I cannot ſay that I ſaw any difference between the Orifices, as to the Nature of the Inſtrument they were given with, nor whether they were made by one and the ſame Sword or no, only the one Orifice was bigger than the other; that of the Side was bigger than that at the Collar-bone.

L. H. St. Then ſo far we have light (if I apprehend you rightly) the Orifice of the upper Wound was not near ſo wide as that of the lower; but it ſeems to be much in one of your Profeſſion not to be able to judge whether the Wounds were given with the ſame ſort of Sword, when there was ſuch a difference in the Orifice.

Salm. That below was a deeper Wound; and there was a conſiderable difference between the Largeneſs of one and the other.

Lord Audley. My Lords, I deſire he may tell your Lordſhips how far backward the Wound in the Side lay.

Salm. It was directly on the left Side, immediately under the two laſt Ribs, and paſt through the Diaphragma.

M. of Normanby. Pray, my Lords, let him point with his Finger whereabouts it was.

L. H. St. My Lords would have you ſhow them with your Finger whereabouts it was. (*which he did.*)

E. of Warw. It is a very material Queſtion for me that he ſhould anſwer, whether he did believe that one and the ſame Sword might not give both Wounds?

Salm. I cannot ſay any Thing of it one Way or other; but one Wound went much further than the other, becauſe it was in a fleſhy Part; and in ſuch a Caſe, the further the Sword goes in, it makes the Wound larger.

Mr *Att. Gen.* Then our next Witneſs is *Stephen Turner*, who was Mr *Coote*'s Man, and he will give you an Account what Sword his Maſter had, and where he found it.

[*He was Sworn, a Sword was ſhewn him.*]

Turner. This was my Maſter's Sword, Mr *Coote*'s, and I never ſaw it after he went out in the Morning, till I ſaw it in the Hands of the Conſtable, and afterwards before the Coroner.

Mr *Att. Gen.* What Time did you hear of your Maſter's Death?

Turner. It was about Nine a Clock next Morning that I heard he was dead.

Mr *Att. Gen.* Where was your Maſter's Body?

Turner. It was in St. *Martin*'s Lane.

Earl of *Tanckerville.* I would deſire he might be asked one Queſtion, Whether his Maſter uſed his Left-hand or his Right?

Turner. I do believe he was a right-handed Man. I did never ſee him Fence. It was on the *Sunday* Morning that I went to the Round-houſe, where I found my Maſter dead.

Earl of *Warwick.* I deſire he may be asked, Whether he has not obſerved a particular Kindneſs and Friendſhip between his Maſter and me?

Turner. Yes, my Lord: I have ſeveral Times waited upon my Maſter, when my Lord and he was together, and they were always very civil and kind one to another; and I never heard one Word of any Unkindneſs between them.

Earl of *Warwick.* Whether he knows of any Quarrel that was between us?

Turner. No, I never did.

Earl of *Warwick.* I deſire he may be asked, Whether he did not uſe to lie at my Lodgings ſometimes?

L. H. St. You hear my Lord's Queſtion; What ſay you, Did your Maſter uſe to lie at my Lord of *Warwick*'s Lodgings at any Time?

Turner. Yes; very often.

Mr *Att. Gen.* Pray call *Pomfret* again, and let him ſee the Sword.

[*Then he came in, and two Swords were ſhewn him.*]

Mr *Att. Gen.* I deſire he may acquaint your Lordſhips what he knows of thoſe two Swords.

Pomfret. Theſe two Swords were brought in by ſome of the Company that came to my Maſter's Houſe, and when they were ſhewn to Captain *French* in the Morning, he owned this to be his, and the other to be Mr *Coote*'s; and he deſired that Notice might be taken that his Sword was Dirty, but not Bloody, and there was ſome Blood upon the other.

Mr *Att. Gen.* Who brought in Mr *Coote*'s Sword?

Pomfret. Indeed I cannot tell.

Mr *Att. Gen.* Then our laſt Piece of Evidence, my Lord, will be that of Mr *White* the Coroner.

(*Who was Sworn.*)

L. H. St. What do you ask him, Mr Attorney?

Mr *Att. Gen.* From whom had he theſe Swords?

(*The Swords were ſhewn him.*)

White. May it pleaſe your Grace, theſe Swords were delivered to me by the Conſtable.

Mr *Att. Gen.* My Lord, I deſire he may be asked, Whether, upon his View of the Body, he looked upon the Wounds? and, Whether he did apprehend they were given by one and the ſame Sword.

White. May it pleaſe your Grace, when I had ſworn my Inqueſt, I ſent for the Chirurgeon that was here before, and gave him order to probe the Wounds, that the Jury might know the Nature of them, in order to the Drawing up the Inquiſition, and I did expreſsly ask him, Whether he found any ſuch Diſtinction between them, that they were given by one and the ſame Weapon, or different Weapons? He ſaid, as he ſays now, That he could not tell, Whether the Wounds were given by two Swords, or by one; but he did apprehend there was a great Difference between them, and ſo did I; but generally the Orifice of a Wound does cloſe up when the Body is cold: One of the Wounds were nearer the Left-ſide than the Other; to the beſt of my remembrance, it was almoſt behind him.

Mr *Att.*

Mr *Att. Gen.* We have done with our Evidence, until we hear what my Lord of *Warwick* ſays to it.

L. H. St. My Lord *Warwick*, will you ask this Witneſs any Queſtions?

Earl of *Warwick*. No, my Lord.

L. H. St. Make Proclamation for Silence.

Cl. of the Crown. Serjeant at Arms, make Proclamation.

Serj at Arms. O yes, O yes, O yes, His Grace, my Lord High Steward of *England*, does ſtrictly charge and command all Manner of Perſons here preſent, to keep Silence, upon Pain of Impriſonment.

L. H St My Lord of *Warwick*, the King's Council have made an End of giving Evidence for the King; now is the proper Time for you to enter upon your Defence.

E. of Warwick. May it pleaſe your Grace, and you my noble Lords, my Peers.

I ſtand here before your Lordſhips accuſed of the Murther of Mr *Coote*, of which I am ſo innocent, that I came and voluntarily ſurrendred my ſelf ſo ſoon as I heard your Lordſhips might be at leiſure to try me; and had ſooner done it, but that the King was not then here nor your Lordſhips Sitting, and had no mind to undergo a long Confinement; and now I think I might well ſubmit it to your Lordſhips Judgment, even on the Evidence has been offered againſt me, whether there hath been any Thing proved of Malice propenſe, or my being any Actor therein, ſo as to adjudge me guilty. And I think I may with humble Submiſſion to your Lordſhips ſay, that my Innocence appeareth even from ſeveral of the Witneſſes who have been examined againſt me, which I will not trouble your Lordſhips to repeat, but ſubmit to your Memory and Obſervation.

But my Lords, the Safety of my Life does not ſo much concern me in this Caſe, as the Vindication of my Honour and Reputation, from the falſe Reflections to which the Proſecutor has endeavoured to expoſe me, and I ſhall therefore beg your Lordſhips Patience to give a fair and full account of this Matter; In which the Duty I owe to your Lordſhips, and to Juſtice in general, and the right I owe to my own Cauſe in particular, do ſo oblige me, that I will not in the leaſt prevaricate, neither will I conceal or deny any Thing that is true.

My Lords, I muſt confeſs I was there when this unfortunate Accident happened, which muſt be a great Misfortune in any Caſe, but was more ſo to me in this, becauſe Mr *Coote* was my particular Friend, and I did all I could to hinder it, as your Lordſhips may obſerve by the whole Proceedings.

It was on the *Saturday* Night when my Lord *Mohun* and I, and ſeveral other Gentlemen met at *Locket*'s where the ſame Company uſed often to meet, and in ſome time after ſeveral of us had been there, Mr *Coote* came unexpectedly, and for ſome Time he and we were very friendly, and in good Humour, as we uſed to be with each other: But then there happened ſome reflecting Expreſſions from Mr *Coote* to Mr *French*, who thereupon called for the Reckoning; and it being paid, we left the upper Room, and I propoſed to ſend three Bottles of Wine to my own Lodging, and to carry him thither to prevent the Quarrel. But while the Company ſtop'd to call for a Glaſs of Ale at the Bar below, Mr *Coote* (whoſe unfortunate Humour was ſometime to be quarrelſome) did again provoke Mr *French* to ſuch degree that they there drew their Swords, but we then prevented them of doing any Miſchief; then Mr *Coote* ſtill inſiſting to quarrel further with Mr *French*, my Lord *Mohun* and I propoſed to ſend for the Guards to prevent them: But they had got Chairs to go towards *Leiceſter-fields*, and my Lord *Mohun* and I, as Friends to Mr *Coote*, and intending to prevent any hurt to him, did follow him in two other Chairs, and as he was going up St *Martins lane* ſtop'd him, and I extreamly there preſſed him to return and be Friends with Mr *French*, or at leaſt defer it, for that the Night was very dark and wet; and while we were ſo perſwading of him, Mr *French* in one Chair, and Mr *James* and Mr *Dockwra* in two other Chairs paſt by us, (which we gueſs'd to be them) on which Mr *Coote* made his Chairmen take him up again, and becauſe the Chairmen would not follow Mr *French* faſter, threatened to prick him behind, and when we were got to *Green ſtreet*, and got out of our Chairs, Mr *Coote* offered half a Guinea to be changed to pay for all our three Chairs, but they not having Change, he deſired Lord *Mohun* to pay the three Shillings, which he did. And in a few Minutes after, Mr *Coote* and Mr *French* engaged in the Fields, whither I went for the Aſſiſtance and in Defence of Mr *Coote*, and received a very ill Wound in my right Hand; and there this fatal Accident befel Mr *Coote* from Mr *French*, whom Mr *Coote* had dangerouſly wounded, and I muſt account it a great unhappineſs to us all who were there: But ſo far was I from encouraging of it, that I will prove to your Lordſhips that I did my utmoſt endeavours to prevent it; ſo far from any Deſign upon him, that I expoſed my own Life to ſave his; ſo far from propenſe Malice, that I will by many Witneſſes of good Quality and Credit prove to your Lordſhips a conſtant good and uninterrupted Friendſhip, from the firſt of our Acquaintance to the Time of his Death; which will appear by many Inſtances of my frequent Company and Correſpondence with him, often lending him Money, and paying his Reckonings, and about two Months before his Death lent him an hundred Guineas towards buying him an Enſign's Place in the Guards, and often and even two Nights before this, he lodged with me, and that very Night I paid his Reckoning.

And when I have proved theſe Things, and anſwered what has been ſaid about the Sword, and what other Objections they have made, I doubt not but that I ſhall be acquitted to the entire Satisfaction of your Lordſhips, and all the World that hear it.

Before I go upon my Evidence, I will crave leave further to obſerve to your Lordſhips that at the *Old Bailey* when I was abſent, Mr *French*, *James* and *Dockwra*, have been all tried on the ſame Indictment now before your Lordſhips, and it was then opened and attempted as now it is, to prove it upon me alſo; and by moſt of them the ſame Witneſſes who have now appeared; and they were thereupon Convicted only of Manſlaughter, which could not have been, if I had been guilty of Murther. And on that Trial it plainly appeared that Mr *French* was the Perſon with whom he quarrelled, and who killed him. And now I will call my Witneſſes.

L. H. St. Will your Lordſhip pleaſe to go on to call your Witneſſes, for the Proof of what you have ſaid; that is the Method, and then you are to make ſuch Obſervations as you pleaſe.

E. of

E. of War. My first Witneſs is Captain *Edmund Keeting*, who was with me at *Locket*'s, but went away before Captain *Coote* or any of them came, and he will tell you I was with him a while.

Then Captain Keeting *ſtood up.*

L. H. St. Captain *Keeting*, you are not upon your Oath becauſe the Law will not allow it. In Caſes of this Nature the Witneſſes for the Priſoner are not to be upon Oath, but you are to conſider that you ſpeak in God's preſence, who does require the Truth ſhould be teſtified in all Cauſes before Courts of Judicature, and their Lordſhips do expect that in what Evidence you give here, you ſhould ſpeak with the ſame regard to Truth as if you were upon Oath; you hear to what it is my Lord *Warwick* deſires to have you examined, what ſay you to it?

Captain *Keeting.* My Lord, I will tell your Lordſhip all the Matter I know of it. I met with my Lord of *Warwick* that Evening at *Tom*'s Coffee-Houſe, and we continued there till about Eight at Night, I went away to ſee for a Gentleman that owed me Money, and afterwards I went to *Locket*'s, and while I was there, the Drawer came up and told me my Lord of *Warwick* deſired to ſpeak with me, and when he came up into the Room, he ſaid he was to meet with my Lord *Mohun* there and Captain *Coote*, and he asked me if I knew where Captain *French* and Capt. *James* were; I told him I dined with Capt. *Coote* at *Shuttleworth*'s; and in a while after Capt. *Coote* came in, and about an Hour and an half I think, I continued there, and Capt. *French* came in; Captain *Dockwra* and we drank together for an Hour and an half, and they admired about 10 a Clock that my Lord *Mohun* was not come, and I payed my Reckoning not being very well, and away I went home, Mr *James* came in juſt before I went away, but there was no quarrelling, nor any Thing like before I went away.

E. of Warw. My Lord, I deſire he may be asked, Whether we did not uſually meet there as Friends, eſpecially Capt. *Coote* and I?

Capt. *Keeting.* Captain *Coote* and my Lord of *Warwick* uſed to be almoſt every Day together at that Place.

E. of Warw. Pray did he ever know or obſerve any Difference or Quarrel between Captain *Coote* and me?

Capt. *Keeting.* No, my Lord, I never ſaw any Thing but the greateſt Friendſhip between my Lord of *Warwick* and Captain *Coote* that could be, I was with them and ſaw them together almoſt every Day.

L. H. St. Have you any Thing further to examine this Witneſs to?

E. of War. No, my Lord, I have no other Queſtion to ask him.

L. H. St. Who is your next Witneſs, my Lord?

E. of War. My Lord, I ſuppoſe I ſhall not need to trouble you to examine the Chairmen over again; Your Lordſhips have heard what they can ſay, I deſire Colonel *Stanhope* may be called.

Who it ſeems ſtood by the Chair of State, and it was ſome while before he could get round to come to the Place where the Witneſſes were to ſtand.

L. H. St. While this Witneſs gets round, if your Lordſhip has any other Witneſs ready to ſtand up, pray let him be called.

E. of Warwick. To prove the Kindneſs between Captain *Coote* and me, I deſire Colonel *Bliſſet* may be called.

Who ſtood up.

L. H. St. What is it your Lordſhip asks this Witneſs, or calls him to?

E. of Warw. To teſtifie what he knows of any Kindneſs or Unkindneſs between Captain *Coote* and me; whether he has not been often in our Company?

L. H. St. Have you been often in Company with my Lord *Warwick* and Captain *Coote?*

Col. Bliſſet. Yes, my Lord, I was very well acquainted with both of them for a twelve Month paſt before this Accident, and I have often been in their Company, and I always obſerved that there was a great deal of Friendſhip and Kindneſs between them.

E. of Warwick. My Lord, I deſire he may tell any particular Inſtance that he knows or can remember.

Coll. Bliſſet. I remember when Captain *Coote* had his Commiſſion in the Regiment of Guards, he was complaining of the Streightneſs of his Circumſtances; he was to pay for his Commiſſion 400 Guineas, and ſaid he had but 300 for to pay for it, and my Lord of *Warwick* did then ſay to him, do not trouble your ſelf about that; or let not that diſturb you, for I'll take care you ſhall have 100 Guineas, and he ſaid he would give Order to his Steward to pay him ſo much, and I was told afterwards that he did ſo.

E. of War. I deſire he may tell if he knows of any other particular Inſtances of my Friendſhip to Mr *Coote.*

Coll. Bliſſet. Once when he was arreſted by his Taylor for 13 *l.* my Lord lent him five Guineas, and uſed very frequently to pay his Reckoning for him.

E. of Warw. I deſire he may tell if he knows any Thing elſe; and whether he has not lain at my Lodgings, and particularly but ſome ſmall time before this Accident happened.

Coll. Bliſſet. About ten Days before this unhappy Accident happened, I was at my Lord of *Warwick*'s Lodgings, and when I came there I found Captain *Coote* there a dreſſing himſelf; and I asked him how that came to paſs, and he told me they had been up late together, and that he had ſent home for his Men to dreſs himſelf there; upon which I did obſerve that they had been a rambling together over Night, and there was a very great familiarity between them.

E. of Warw. Did you obſerve any Quarrel between us?

Coll. Bliſſet. No; None at all; I never knew of any Quarrel between my Lord of *Warwick* and Captain *Coote*, but I obſerved there was a particular Kindneſs between them, and a great deal of Friendſhip I know my Lord of *Warwick* ſhewed to him, in paying of Reckonings for him, and lending him Money when he wanted.

E. of War. My Lord, I deſire he may be asked, whether he does not know that Captain *Coote* was ſtraitned for Money.

Col. *Bliſſet.* I did hear Captain *Coote* ſay, That he had not received any Thing from his Father for

for thirteen Months, and his Father was angry with him, and would not ſend him any Supply, becauſe he would not conſent to cut off the Entail, and ſettle two or three hundred Pounds upon a Whore he had.

Mr *Att. Gen.* Pray, Sir, will you conſider with your ſelf, and though you are not upon your Oath, anſwer the Queſtions truly, for you are obliged to ſpeak the Truth, though you are not Sworn, whenever you come to give your Teſtimony in a Court of Judicature: Pray acquaint my noble Lords here, Whether you did never hear my Lord *Warwick* complain of Capt. *Coote?*

Col. *Bliſſet.* No, I never did hear him complain of him.

Mr *Att. Gen.* Did you never hear the leaſt Word of any Quarrel between them?

Col. *Bliſſet.* No, indeed, I did never hear of any Quarrel between them.

Mr *Att. Gen.* Did you never hear of any Unkindneſs at all?

Col. *Bliſſet.* No, indeed, my Lord, not I: I never ſo much as heard of the leaſt Unkindeſs whatſoever.

L. H. St. Well then, my Lord, who do you call next?

Earl of *Warwick.* Now Colonel *Stanhope* is here, I deſire he may be asked the ſame Queſtion, Whether he does not know the particular Friendſhip that was between Captain *Coote* and me, and what Inſtances he can give of it?

L. H. St. You are to conſider, Sir, though you are not upon your Oath, you are in a great Court, and under no leſs ſtrict Obligation to teſtify the Truth and nothing but the Truth: You hear what my noble Lord asks you?

Col. *Stanhope.* My Lord, I have known my Lord *Warwick* and Captain *Coote* for about a Twelvemonth, and I did perceive that they did always profeſs a great Kindneſs for one another.

Earl of *Warwick.* I deſire to know of him, Whether he obſerved any particular Friendſhip between Capt. *Coote* and me, much about the Time of this Buſineſs.

Col. *Stanhope.* About eight or ten Days before this unhappy Accident, I went to wait upon my Lord of *Warwick* twice at his Lodgings: Once I found Captain *Coote* there, one of them was in Bed, and the other was dreſſing of himſelf; I thought they were very good Friends that were ſo familiar, and I had good Reaſon to think ſo, becauſe of that Familiarity: Both the Times that I was there, when I found them together, was within eight Days before the Accident happened.

Earl of *Warwick.* The next Witneſs I ſhall call will be Mr *Diſney.*

Mr *Att. Gen.* But before Colonel *Stanhope* goes, I deſire to ask him this Queſtion, Whether he did never hear or know of any Unkindneſs between my Lord of *Warwick* and Capt. *Coote?*

Col. *Stanhope.* No, indeed I did not, I always thought them to be very good Friends.

L. H. St. Will your Lordſhip go on to your next Witneſs?

Earl of *Warwick.* Yes, my Lord, there he is, Mr *Diſney*; I deſire he may be asked what he knows of any Expreſſions of Kindneſs and Friendſhip between me and Capt. *Coote.*

Mr *Diſney.* About the Time that Captain *Coote* was to have his Commiſſion in the Guards, my Lord of *Warwick* received a Letter from him, wherein he deſired him to lend him the 100 Guineas, according to his Offer, for he had but 300 by him, and he ſaid his Father was unkind to him, and he could have no Money from him, and he would be honeſt to him and pay it again as ſoon as he could; my Lord ſent for his Steward, and ordered him to provide 100 Guineas for Captain *Coote* while I was there; and all the Times that ever I ſaw them together, which was very frequently, there was the greateſt Kindneſs between them that could be; and ſeveral Times I have ſeen my Lord of *Warwick* pay Capt. *Coote*'s Reckoning for him, and lent him Money when he wanted Money.

Mr *Att. Gen.* I deſire to ask you, Sir, this Queſtion, though you are not upon Oath, yet you are obliged to ſpeak the Truth in a Court of Juſtice as much as if you were upon Oath: Did you not know or hear any Thing of a Miſunderſtanding or Quarrel about the Time that this Buſineſs happened?

Mr *Diſney.* No, indeed: I was with them together but the Day before, and frequently, and I heard nothing of any Unkindneſs between them in my Life, nor never knew of any Quarrel between them, or any Reaſon for it.

L. H. St. My Lord, Who is it you call next?

Earl of *Warwick.* Colonel *Whiteman.* *(Who ſtood up.)*

L. H. St. What do you call this Gentleman for?

Earl of *Warwick.* It is to the ſame Effect, to acquaint your Lordſhips with what he knows of the Converſation between Captain *Coote* and me.

Col. *Whiteman.* My Lord, I know my Lord of *Warwick* and Captain *Coote* were conſtant Companions together; they dined together almoſt every Day for half a Year's Time almoſt; and as to this Time, when this Buſineſs had happened, I went to my Lord of *Warwick*, being ſent for by him, and found him at a private Lodging, where he expreſſed a great deal of Concern for the Death of his dear Friend Mr *Coote*, and he ſhewed me the Wound he had received in his Hand, and he deſired he might be private, and he told me he believed People would make worſe of it than it was, becauſe he did not appear; but he did but intend to keep himſelf out of the Way till he could be Tryed, and I took what Care I could to get him a Convenience to go to *France.*

Mr *Att. Gen.* Pray, What Reaſon did he give for his going away?

Col. *Whiteman.* The King being at that Time out of *England*, and ſo the Parliament not Sitting, he ſaid he did not love Confinement, and had rather be in *France* till the Parliament ſhould meet and he might have a fair Tryal, which he thought he ſhould beſt have in this Houſe.

Mr *Att. Gen.* But pray, Sir, conſider, You are bound to tell Truth, and the whole Truth, in ſuch a Caſe as this: Are you ſure there was no Unkindneſs or Quarrel, between my Lord *Warwick* and Captain *Coote* about this Time?

Col. *Whiteman.* No, I never knew of any Quarrel or Unkindneſs between them in all my Life.

L. H. St. My Lord, Have you any more Witneſſes?

Earl of *Warwick.* I have a great many Witneſſes more to the ſame Purpoſe, but I think I need not trouble your Lordſhip with them; only I would call a Perſon that has been mentioned, that is my Steward.

L. H. St. What is his Name?

Earl of *Warwick. Edmund Raymund. (Who ſtood up.)*

L. H. St. What Queſtions do you ask him?

Earl of *Warwick*. I desire he may tell what he knows of any Friendship between Captain *Coote* and me, and what particular Instances he can give of it

Raymond. My Lord, I know that my Lord sent for me, and said Captain *Coote* had occasion for 100 Guineas to pay for a Commission in the Guards, which he had not Money to make up, and I know that they were constant Companions every Day, did eat together, and often did lie together, and I did provide the 100 Guineas for him; and I always did observe that there was a very great Friendship between them.

Earl of *Warwick*. My Lord, the next Witness I shall call will be Mr *French*, who, I hope, having been Tried and had his Clergy allowed him, will be a good Witness; I should be sorry to interpose any Thing that would be a Hindrance to your Lordships giving Judgment in this Cause presently; he is able to give your Lordships an Account of the whole Matter; and though, I hope, I have no need of calling him as a Witness, yet I humbly offer it to your Lordships.

L. H. St. What say the Council on the other Side?

Earl of *Warwick*. My Lord, I do not insist upon it; I think I have no need of it?

L. H. St. Your Lordship must judge for your self how far it is for your Advantage, to desire that this Matter should be debated.

E. of Warwick. I do not desire to take up your Lordship's Time, though I am very well advised, that he is a good Witness in Law.

E. of Roch. I apprehended it the Duty of the King's Council to make Objection against any Witness that should be produced by the Prisoner; I am loth to give your Lordships any unnecessary Trouble, yet I own, that I am not satisfied that a Witness should be offered and rejected, though the Objection be not made and argued, by my Lord, the Prisoner at the Bar: If a Witness be offered, and they think they have an Objection against him, if they do insist upon it, it will occasion a Debate, and then we must adjourn into the House of Lords.

L. H. St. It is not insisted upon by my Lord, as I apprehend. My Lord of *Warwick*, Have you any other Witness you would have called?

E. of Warw. I desire to ask Mrs. *Amy* a Question or two.

Then she stood up.

L. H. St. What does your Lordship ask her?

E. of Warw. What she remembers passed at her House about my Sword, or any Thing.

Mrs *Amy*. My Lord, when I came into the Room where my Lord of *Warwick* and Captain *French* were, in our House, I stood by Capt. *French* while his Wounds was dressing, and I saw my Lord of *Warwick*'s Sword, and looked upon it, and the Hilt and all the Shell was full of Blood, and it ran down to the Bottom of the Sword Blade.

E. of Warw. I desire she may be asked, how soon that was after my coming in?

Mrs. *Amy*. It was a quarter of an Hour after my Lord came in.

E. of Warw. I desire she may speak what sort of Sword it was at the Hilt, whether it were open or close?

Mrs *Amy*. Indeed, I cannot say; but the Hilt was full of Blood, the Shell of it, and it ran down to the Bottom of the Blade.

L. H. St. Has your Lordship done?

E. of Warw. My Lord, I would only take notice that the three Gentlemen that were on the other Side, were tried at the *Old-Bailey*, and found guilty only of Man-slaughter; but now I being on his Side, and not having any Malice to him, but always a great deal of Friendship, I submit it to your Lordships, whether I can be thought any ways guilty of his Death; and I humbly hope your Lordships will hear my Council, if you make any doubt of that.

L. H. St. What is it your Lordship would have Council heard to?

E. of War. To this Case, my Lord, Whether there being Six Persons, Three of a Side, one is killed, and I being engaged on the Side of him that was killed, the Three of the other Side have been Tryed for the Death of that Man; whether I, who was of his Side be equally guilty with them, who were on the other Side, especially, I engaging particularly with another of the Three, that were of the other Side: That Question I desire my Council may argue, whether I be equally guilty with them that were on the other Side, and who, notwithstanding Death happened in the Case, yet were found guilty only of Man-slaughter.

L. Godolphin. My Lords, it has been moved by my noble Lord at the Bar, that his Council should be heard about Mr *French*'s being Witness, whether he should be a Witness or no; I think it would be much for the clearing of the Fact one Way or other, if the Evidence of that Witness could be heard; but whether he can be heard, or not, according to Law, is a Question that must be debated amongst your Lordships, after your Lordships have heard the Council on both Sides, and perhaps, the Opinion of the Judges upon their Arguments; and therefore I think we must adjourn, to consider whether this Matter shall be argued or no?

L. H. St. What say you to this Matter, Mr Attorney?

Mr *Att. Gen*. My Lords, I should agree with the Motion that is made, if there were any Thing insisted upon by the Prisoner at the Bar, that would bear a Question or Argument; but my Lord of *Warwick* himself has waved the Objection, and so I think there is no need for any Argument on our Side.

L. Godol. I would agree with the Motion that was made for adjourning, in order to debate, but I desire to be thus understood, if he thinks it for his Advantage, that this Witness should be heard for him, which he knows best, whether it be or be not; then I do suppose your Lordships will adjourn, to consider of it in your own House amongst your selves; it will not be proper to enter into the Debate here, nor there neither, till you know what Objection the Council for the King make against this Man's being an Evidence, and therefore we would know, it is fit to be known, whether my Lord's waving, or not insisting upon this Man's Testimony, be free and voluntary, and absolute, or whether it be only in respect to the trouble it may put the House to for the Debate.

L. H. St. My Lord *Warwick*, some of my noble Lords observe you have desired Mr *French* should be examined, and that your Council may be heard to that point, whether he be by Law a Witness, or not; several of my Lords think it reasonable, Council should be heard, Whether he be a Witness or not; or at least, that that Question should be

be conſidered amongſt themſelves, if inſiſted upon; therefore your Lordſhip is to declare, whether you do inſiſt upon it, or deſire to wave it.

E. of War. I wholly ſubmit my ſelf to your Lordſhips, but as I am adviſed by my Council, I hope he is a good Witneſs, and I deſire my Council may be heard to that Point.

Mr *Att. Gen.* My Lords, in truth I acknowledge, according to the Method of Law, the Objection ought to come of our Side, for I think we have very good reaſon to oppoſe that Gentleman's being a Witneſs in this Caſe, even upon that Objection which my Lord has made himſelf upon the Conſideration, that he has been found guilty of Man-ſlaughter, for the Death of this very Perſon. It is true, upon his Prayer, Clergy was allowed him, but the Burning of the Hand was reſpited, and he was not burnt in the Hand, and he is not pardoned; and how far he can be a Witneſs in this Caſe, is the Objection; If a Man Convicted of Felony, that is within Clergy, Prays his Clergy, and it is allowed him, but he is not burnt in the Hand, nor Pardoned, we apprehend he is no Witneſs; and that is the Objection we make againſt his Teſtimony to your Lordſhips.

L. H. St. My Lord *Warwick*, you hear what is ſaid by way of Objection againſt this Man's being a Witneſs. What ſay you to it?

E. of Warw. For Matter of Law, my Lords, I am not capable of ſpeaking to it, but I deſire my Council may.

L. H. St. That which Mr Attorney propoſes by way of Objection is Matter of Fact, and the Matter of Law does not ariſe till the Fact be ſetled, which muſt fall within your Lordſhip's own Knowledge, who produce him as a Witneſs, and therefore you muſt Anſwer to that Fact your ſelf.

E. of Warw. I deſire to know of your Lordſhips if a Man be convicted of Felony, that is within Clergy, and prays his Clergy, and it is allowed him, but the Burning of the Hand is reſpited, and there is a Warrant for his Pardon; whether he cannot be a good Witneſs: That his Clergy was allowed, and the burning of the Hand reſpited; I have the Record here to ſhew.

L. H. St. My Lords, my noble Lord at the Bar, inſiſting upon a Warrant for a Pardon, I muſt acquaint you with ſomething that has happened during your Lordſhips ſitting here this Day; ſince I came hither a Privy Seal was delivered to me, in order to paſs a Pardon for the Burning in the Hand of Mr *French* for the Man-ſlaughter, for which he was convicted at the *Old Baily*; ſo far I can acquaint your Lordſhips as to Matter of Fact.

Earl of *Warwick*. My Lord, I am adviſed by my Council, that he is a good Witneſs without a Pardon, or without burning in the Hand.

L. H. St. What ſay you, Mr Attorney, to the Law? Now you underſtand what the Fact truly is.

Mr *Att. Gen.* Yes, my Lord; and I do apprehend, with Submiſſion to your Lordſhips Judgment, That a Man convicted of Felony, tho' he prays his Clergy, and has it allow'd him, but is not burnt in the Hand, nor has any Pardon, can be no Witneſs.

L. H. St. That is the Caſe upon which you are to form your Objections: Here is a Man produced as a Witneſs, who has been convicted of Felony, within the Benefit of Clergy, has craved his Clergy, has had it allowed, but has not been burnt in the Hand, nor pardoned.

Mr Att. Gen. Then my Lords, with humble Submiſſion, upon the Matter of Fact ſo ſtated, I make this Objection, That he is no Witneſs in Point of Law: He has been Convicted, in one reſpect, for the very Offence for which the noble Lord, the Priſoner at the Bar, ſtands Indicted: Tho' not in the ſame Degree as the Indictment ſets it forth, yet it is for the ſame Fact. Upon this Indictment Mr *French* was indicted at the Seſſions at the *Old Baily*, and there he was found guilty of Man-ſlaughter, upon which, he pray'd the Benefit of his Clergy, which was allow'd him, but he was not burnt in the Hand: Thus ſtands the Caſe in Fact. Now, my Lords, the Allowance of Clergy of it ſelf, does not diſcharge the Party from the Offence, ſo far as to ſet him *Rectus in Curia*, and make him in all reſpects a Perſon fit to have the Benefit and Priviledges of a *Probus & Legalis Homo*, till he has paſs'd through thoſe Methods of ſetting himſelf right in the Eye of the Law, that the Law hath preſcribed; and in order to ſet this Matter in its true Light before your Lordſhips, it will be neceſſary for me to open to your Lordſhips, as far as I can, the Nature of this Benefit of Clergy, and what Advantage did accrue to the Party, by having that Benefit allow'd him, and likewiſe what Benefit he had by the Act that Enacted the Burning in the Hand, which was the Statute of the 4th of *Hen.* 7. And by that Act the Burning in the Hand was to be of no more Effect, but only to ſhew that he had had his Clergy allowed him; that unleſs he were within Orders, he ſhould have it no more than once. Before that Act of Parliament, a Perſon might have had the Benefit of Clergy ſeveral Times, but that Act limits it as to Time, that it ſhall be but once: And therefore, in order to the having of it known, whether a Man once had his Clergy allowed him, that did not produce his Orders, that Act provides there ſhall be a Mark ſet upon him at the Time of the Allowance of this Clergy, as a Token that it was allowed him, and he was never to have it allowed afterwards, but even at that Time he was to be delivered over to the Ordinary to make his Purgation; but ſince that Act, ſeveral Statutes have been made about this Matter. I ſhall mention one that relates to your Lordſhips, and that is the Statute of *Edward* the 6th, which indeed does Enact, That in Caſe where a Peer is convicted of Felony within the Benefit of Clergy, he ſhall be diſcharged without being burnt in the Hand, but then, and thus the Law ſtood till the Statute of 18 *Eliz. cap.* 7. by which 'tis Enacted, That after the Burning in the Hand the Priſoner ſhall not be delivered to the Ordinary, but he ſhall be diſcharged; by virtue of which Act, after burning in the Hand, the Priſoner hath made full Satisfaction to the Law, without that Sort of Purgation which was before requiſite to be made, but till he be burnt in the Hand, or has his Pardon, he is not to be diſcharged; it may be he may be Bailed out by the Judge, in order to get a Pardon, but ſtill he remains in *ſtatu quo*, as to his being a Witneſs, or any Thing of that Nature; his Credit is gone till it be reſtored by the King's Pardon, or his undergoing the Puniſhment that the Law requires; and no Man would ſay, that where one lies under a Conviction of Felony undiſcharged by burning in the Hand, or Pardon, that he can be a Witneſs; he remains juſt as he was be-

fore, the Conviction remains upon him, which diſabled him to be a Witneſs; and that we ſubmit to your Lordſhips as the Caſe of this Perſon, Captain *French*.

Mr Sol. Gen. My Lords, if your Lordſhips pleaſe to ſpare me one Word of the ſame Side: Sure at common Law there would be no Difficulty at all, that a Perſon convicted of Felony within the Benefit of Clergy, unpardoned, and undiſcharged, could be no Witneſs; and ſince thoſe ſeveral Statutes that have been mentioned by Mr. Attorney, unleſs there be an actual burning in the Hand, or a Pardon for that burning in the Hand; ſure it cannot be pretended, that one convicted of Felony can be admitted as a Witneſs. If my Lord of *Warwick* does inſiſt upon his Evidence as Matter of Right, we for the King do inſiſt upon it, that there is no Right at all in the Caſe; for *French* muſt be taken to be one convicted of Felony, and not diſcharged without either burning in the Hand, or Pardon, and then we are ſure it cannot be pretended in Law that he can be a Witneſs.

L. H. St. My Lords, the King's Council have ſtated their Objection, what is your Pleaſure to have done in it?

Earl of *Rivers*. I ſuppoſe, my Lords, that it will be neceſſary to hear what Anſwer my Lord of *Warwick* gives to this Objection.

L. H. St. Is it your Lordſhips Pleaſure then, that the Council aſſigned for my Lord *Warwick* be heard what they have to ſay to this Matter?

Lords. Ay, ay, ay.

[*Then Sir* Thomas Powys *came to the Bar, and ſtood by the Earl of* Warwick, *and ſpoke thus.*]

Sir T. Powis. May it pleaſe your Lodſhips, I am by the Order of this Honourable Houſe, aſſigned of Council for this noble Lord at the Bar, in Point of Law; and, my Lords, as to the preſent Queſtion that has been ſpoken to by the King's Council, I am a little ſurprized to hear it ſhould be wondered at, that my Lord of *Warwick* ſhould inſiſt upon it, that this Gentleman ſhould be examined for him as a Witneſs, becauſe, with humble Submiſſion to your Lordſhips, I think the Authorities of Law will make for the Opinion on the other Side. Mr Attorney General ſays true, the firſt Statute that was made for Burning in the Hand, was that in 4 *Hen.* 7. before that Time the Benefit of Clergy, even for Murther, was uſed to be allowed upon the Prayer of the Party, and he was thereupon delivered over to the Ordinary to make his Purgation, and that not only once, but *toties quoties*, let him demand it as often as he would, and as often as he offended it was allowed: This was thought ſuch a Priviledge as ought to be reſtrained; that Statute of the 4th of *Hen.* 7. takes notice that an ill Uſe was made of it, and therefore does Ordain, That it ſhould be allow'd no more than once, unleſs to Perſons within Orders: And as a Means to know, Whether it had been before allowed, or not, the Act does direct, That the Party convicted ſhall be Burnt in the Hand, that is all the Act does appoint, it does no otherwiſe alter the Caſe; it does not impoſe it upon the Party as a Puniſhment for the Offence, but only as a Mark of Diſtinction, that if ever he came again before the Court, and being Convicted of the like Offence, ſhould Pray the Benefit of Clergy, then upon Inſpection it might be known whether before he had been allowed his Clergy or not; and ſo ſtood the Law without Alteration as to the Manner of Delivery of the Criminal over to the Ordinary to make his Purgation, with which the Temporal-Law, in the Manner of Doing thereof, did not intermeddle; and therein conſiſted, with reſpect to this Matter, the Benefit of Clergy. Afterwards, by the Statute of *Edward* the 6th, the Peers were exempted from the Burning in the Hand; and then comes the Act that we rely upon, which is, that of the 18th of *Eliz.* that takes notice of the former Act of the 4th of *Hen.* 7. which only ordered the Burning of the Hand for the Purpoſes aforeſaid, but left the Party to be delivered over to the Ordinary to make his Purgation; which was found to be a Matter attended with many Abuſes, and upon the Reformation thought fit to be aboliſhed, and taken away, becauſe it was only an outward Appearance and Shew of Purgation, and was often the Occaſion of very great Perjuries, therefore it is taken totally away, and by this Act the Party ſhall have the Benefit of Clergy without making Purgation, as fully as if he had actually made it. But, ſay they, There is ſtill left ſomething that the Law requires, which is, That he ſhould be firſt Burnt in the Hand, and if he be not Burnt in the Hand, or at leaſt Pardoned, he is not in that Condition that the Law calls for in ſuch a Caſe, to ſet him *Rectus in Curia*: If he be Burnt in the Hand, or Pardoned by the King, they agree on the other Side, that he may be a very good Witneſs. My Lords, that Act of Parliament of Queen *Eliz.* does impower the Court that Tries the Criminal, and before whom he is Convicted, not only to burn him in the Hand, purſuant to the Act of *Henry* 7. but alſo to detain him in Priſon for a Year after; but yet I think that doth not ſignify any Thing one Way or other, to reſtore him, or not reſtore him to his Credit; for I think the Burning in the Hand, which is a Mark of Infamy, was never intended as a Means, any more than Impriſonment for a Year of reſtoring a Man to his Credit; it was only to ſhew he had his Clergy once, and ſhould have it no more: The Allowance of Clergy by the Statute of *Eliz.* operates as a Pardon; only, ſaith the Statute, he ſhall not be delivered out of Priſon before he is burnt in the Hand, according to the Statute of *Hen.* 7. No Body can ſay, that the Continuing in Priſon for a Year, which the Court may order, though burnt in the Hand, would, as to reſtoring of Credit, have operated one Way or other: But that we inſiſt upon is, That the Allowance of Clergy ſets him right in Court, ſince Purgation is aboliſhed, and is the ſame Thing as if he had undergone the ceremonial Parts of a formal Purgation. It is the Allowance of Clergy that makes the Alteration or Operation in this Caſe, by virtue of this laſt Act of the 18th of *Eliz.* for we take it, that he is to have the ſame Benefit of his Clergy as if he had been delivered to the Ordinary, and Purgation had been made; and now the Allowance of Clergy by this Act, gives the ſame Benefit to the Party, as Purgation would have done before the Act, and he is in the ſame State and Condition as he would have been in Caſe of a Purgation, or of a Pardon by the King. The Authorities are all with us. There is a Caſe that is very well known among the Men of the Law in the fourth Report of my Lord *Coke*, *Holcroft*'s Caſe, who was Indicted and Convicted of Manſlaughter, and he prayed the Benefit of his Clergy; the Judges thought fit to reſpite their Judgment therein, but his

his Prayer was enter'd upon Record; and then an Appeal being brought againſt him, it came to be a Queſtion, How far he had had his Clergy? for by the Statute of the Third of *Hen.* 7. an Appeal will lie notwithſtanding a Conviction, if the Party have not had his Clergy; and in this Caſe it was adjudged, That the Party having prayed his Clergy, he ſhould have the ſame Benefit as if the Court had ordered every Thing to be actually executed, which ought thereupon to be done: And ſurely then it can be no Queſtion, Whether a Man ſhall be a Witneſs or no, who has had his Clergy allowed. It is ſo entred upon Record, That the Book was adminiſtred to him, and that he read as a Clerk, for the Party has done as much as he can; prayed the Benefit of his Clergy, and had it allowed, and ſo it is entred upon Record. The Reſpiting of the Burning of the Hand till the King's Pardon be obtained, ſhall not ſure put him in a worſe Condition than he would have been, if he had actually been burnt in the Hand. My Lords, I have in my Hand a Book which is of very great Eſteem, and that is, *The Reports of my Lord Chief Juſtice* Hobbart, wherein he declares his Opinion in this Point, and for whoſe Opinion every one of our Gown ever hath teſtified a very great Veneration and Reſpect; The Caſe is that of *Searle* and *Williams*, wherein my Lord *Hobbart* has ſpoken ſo fully to this Matter, that I think it ought to put an End to the Queſtion: He ſays, the Statute of *Eliz.* appointing the Burning in the Hand without Purgation, does operate as a Statute-Pardon to all Intents and Purpoſes, and the Party having now the Benefit of his Clergy allowed, is in all Reſpects in the ſame Condition as if he had been acquitted: That is the Opinion that he holds throughout that Caſe: I need not trouble your Lordſhips with reading all the particular Words that he uſes, but only thoſe which relate to the Thing now in Queſtion. Immediately before your Lordſhips he delivers his Opinion, *That whoſoever ſpeaks Words of Accuſation, reflecting upon a Man for any Offence for which he was Indicted and Convicted, and had had his Clergy allowed, an Action lies as if he had been totally acquitted from it*; *'tis not the Burning in the Hand, but the Allowance of Clergy, that ſets him right in his Credit in the Eye of the Law, and he is thereby in the ſame Condition, in that Reſpect, that he would have been, if he never had had any Conviction upon him.* Towards the End of the Caſe, his very Words are theſe, *Though the Statute ſaith, after burning in the Hand, according to the Statute in that behalf made, he ſhall be diſcharged, and there is no burning in the Hand, that makes nothing*; *for though it be a Caſe where the Hand ought to be burnt, yet it is not ſo eſſential but a Man may have the Benefit of the Statute, though he be not burnt*; *the King may pardon the Burning, for the Burning, even in an Appeal, is no part of the Judgment, nor ſo much as in the Nature of Puniſhment, but rather a Mark to notify that he may have his Clergy but once*; Theſe are his very Words in this Caſe; ſo that the Statute of Queen *Elizabeth* doth aboliſh Purgation, but gives the Party all the Benefit thereof, as if he had gone through it, and inſtead of delivering the Party to the Ordinary to make his Purgation, it ſays, he ſhall be delivered out of Priſon; but leſt it might ſeem to repeal the Statute of *Hen.* 7. as to burning in the Hand, it adds, *being burnt in the Hand, according to the Statute in that behalf provided*: By the Statute of *Hen.* 7. he was firſt to be burnt in the Hand, and then delivered to the Ordinary to make his Purgation; but by the Statute of *Eliz.* he is firſt Pardoned his Crime by being allowed the Benefit of his Clergy, without making his Purgation, and afterwards to be burnt in the Hand before he be delivered out of Priſon; ſo that the Burning in the Hand is only a Condition precedent to his getting out of Priſon, not to his being reſtored to his Credit: The King may pardon the Burning in the Hand undoubtedly, and he has gone a great Way in this Caſe, for he hath given a Pardon as far as the Privy Seal, and that is ſufficient to ſhew his gracious Intention of Pardoning it throughout; and if there be need, we hope it may paſs yet forward. What we inſiſt on, is not only the Opinion of my Lord Chief Juſtice *Hobbart*, but he is followed therein by the Opinion of a Man of very great Authority, one no leſs eminent than he in his Profeſſion, and that is my Lord Chief Juſtice *Hale*, in a Book of his that is intituled, *His Pleas of the Crown*, which is but an Abridgement of what he intended upon that Subject under the Title of Clergy; when he comes to treat of the Conſequences of the Allowance of Clergy, and what the ſeveral Effects of Clergy allow'd, ſhall be, he ſays it gives him a Capacity to purchaſe Goods, and retain the Profits of his Lands, and reſtores him to his Credit, according to the Caſe I have mentioned before in *Hobbart*, of *Searle* and *Williams*; for that Caſe is particularly in that Book mentioned and referred to: Therefore I hope your Lordſhips will make no difficulty of hearing this Witneſs; for we think the Having his Clergy allow'd him, is that which reſtores him to his Credit. If they have any other Objections againſt him, I hope we ſhall hear it from the King's Council: But if this be ſtood upon in Point of Law as an Objection, That though Clergy was allowed, he was not burnt in the Hand, nor pardoned; I would have obſerved to your Lordſhips, That my Lord High Steward has told you it is ſo far gone towards the Pardon, that the King has ſhewn his Intention to pardon by the Privy-Seal; and we hope your Lordſhips will not let this noble Lord at the Bar ſuffer any Prejudice, by the not Perfecting of the Pardon by actual Paſſing of the Great Seal.

L. H. St. Mr Attorney General, what ſay you to the Matters which have been urged?

Mr *Att. Gen.* My Lord, we have ſtated our Objection; we think there is nothing given as an Anſwer to it, and we ſubmit it to your Lordſhip's Judgment.

Marq. of *Hallifax.* My Lords, I deſire that the Queſtion that is to be decided before your Lordſhips, may be ſettled truly what it is.

L. H. St. If there be ſix in Company, and one of them is killed, the other five are afterwards indicted, and three are tried, and found guilty of Manſlaughter, and upon their Prayers have their Clergy allowed, and the Burning in the Hand is reſpited, but not pardoned; Whether any of the three can be a Witneſs upon the Tryal of either the other Two.

Sir *T. Powis.* My Lords, with ſubmiſſion, though he were convicted of the Felony, yet upon Prayer of his Clergy, that being allowed him, That reſtores him to all the Capacities, we ſay, that he had before the Conviction, and particularly to his Credit; and for that we ſubmit our ſelves to your Lordſhips Judgment.

Marq. of *Hallifax.* I ſuppoſe your Lordſhips will have the Opinion of the Judges upon this Point, and

and that muſt be in the preſence of the Priſoner.

L. H. St. It muſt certainly be in the preſence of the Priſoner, if you ask the Judges Opinions.

Marq. of *Hallifax*. But in theſe Caſes, my Lords, it is uſual to hear the King's Council to make a Reply: I deſire to hear what they would ſay to what has been offered by the Council for the noble Lord the Priſoner at the Bar.

Mr *Serj. Wright*. My Lords, I did apprehend that the very ſtating of the Objection would have ſet this Matter in its true Light: For the firſt Place, it is agreed on all Hands, That this Mr *French*, that is deſired to be a Witneſs, does ſtand convicted of Felony, and by the Law of *England*, while that Conviction remains upon him, till he be either purged or pardoned, he cannot be a Witneſs: By the Conviction his Credit is loſt; and till he be reſtored to his firſt Condition, he ſtands not ſo clear in the Eye of the Law that he can be an Evidence. The Council for the Priſoner have objected, That if he either be pardoned, or Clergy allowed, he is put in the ſame Condition as if he had been acquitted.

My Lords, I muſt admit a Pardon reſtores to Credit; and I muſt likewiſe admit, That allowance of the Benefit of Clergy, and Burning in the Hand upon it, amounts in Law to a Pardon, or is equivalent to a Pardon in this Matter: But the Fact here is not ſo; for here is neither actual Pardon, nor any burning in the Hand: The Benefit of Clergy was prayed, and allowed; but that alone is not ſufficient; there muſt be an actual burning in the Hand, or a Pardon of that burning in the Hand, otherwiſe it cannot be a Satisfaction in Law, ſuch as ſhould put him in the ſame Condition as if he were acquitted. Your Lordſhips have heard what was ſaid by his Grace my Lord High Steward, That as to the burning in the Hand, The King has been pleaſed to proceed ſo far as to grant a privy Seal for the Pardon of the burning of the Hand: But your Lordſhips very well know, and it cannot be inſiſted on to the contrary, by the Council on the other Side, That it is no Pardon until it be paſt under the great Seal of *England*: So that here is no actual Pardon; nor is the bare Allowance of Clergy, without burning in the Hand, equivalent to a Pardon. My Lords, it muſt be agreed, That at the common Law, Perſons that were convicted of Felony, were not reſtored to their Credit meerly by allowing the Benefit of Clergy to them; there was ſomething further to be done to regain Credit; the Party convicted muſt undergo another Trial before the Ordinary, which was commonly called Purgation; when any Man was convicted of Felony, he was upon his Prayer of the Benefit of Clergy to have it allowed to him, and if he could read as a Clerk, his Life was ſaved. He was not diſcharged of the Felony, and therefore was delivered over to the Ordinary to be kept in Priſon until he had, by a ſort of Trial before the Ordinary, made his Innocence appear, and purged himſelf of the Fact charged upon him; and if he could not make his Purgation, he was to lie perpetually in Priſon; and notwithſtanding the Allowance of Clergy, and delivery over to the Ordinary, yet was not the Credit reſtored, nor his former Capacities; he was not a legal Witneſs until he had purged himſelf of the Crime: It was the clearing themſelves of the Guilt, that reſtored ſuch Perſons to their Reputation and Credit, not the bare Allowance of Clergy: Some Criminals were delivered ro the Ordinary generally, thoſe might make their Purgation; others were ſpecially delivered, or delivered with a ſpecial Charge to the Ordinary, not to admit them to Purgation, *Abſque purgatione facienda*: Theſe latter could never be reſtored to Credit, except by the King's Pardon; for the Liberty of Purgation, which was the Means of regaining their Credit was taken from them; their Guilt occaſioned their loſs of Credit; taking away that Guilt doth conſequentially reſtore Credit again; and this Benefit of Clergy was to be allowed as often as any Man had occaſion for it.

Thus the Matter of Benefit of Clergy ſtood in common Law, in reſpect of Purgation and reſtoring of Credit, Till the Statute of 18 *Eliz. c.* 7. which was cited on the other Side by Sir *Thomas Powis*; by which Statute Purgation is abſolutely taken away, and ſet aſide: And the Party being burnt in the Hand, according to the Statute of 4. *H.* 7. is appointed by this Statute, 18 *Eliz.* to be diſcharged, and not to be delivered over to the Ordinary, as was before that Time uſed. The delivering over to the Ordinary was in order to Purgation, and that by the laſt Statute is quite taken away, and the Party is to have the ſame Benefit by the having the Benefit of his Clergy and burning in the Hand, as if he had made his Purgation; he ſhall be diſcharged: It is not his reading as a Clerk, and that pronounced by the Ordinary, that gives him the Benefit of a diſcharge, as if he had been purged of the Crime; but there muſt be the burning in the Hand, that is the very Terms of the Statute upon which he is to be diſcharged; that muſt actually be done before he can be put into the ſame Condition that he was in before the Conviction, and conſequently make him capable of being a Witneſs. As for the Caſe of *Searle* and *Williams* that was cited by Sir *Thomas Powis*, that Caſe doth not oppoſe in this Matter; there it was not needful to burn the Perſon convicted; he was a Clerk in holy Orders, and by Law exempt from burning in the Hand: ſo it was not neeedful to burn him, the Statute of 18 *Eliz.* not requiring any Perſon to be burned in the Hand that were not ſo liable before then. The moſt that is ſaid in that Caſe by the Chief Juſtice *Hobbart* is, That in Caſe where the Hand ought to be burnt, it is not eſſential; but the Party may have the Benefit of the Statute, *i. e.* be diſcharged without burning, and the King may pardon the burning; and no doubt if the King pardons the burning, it is as good and effectual as if the Hand had been actually burnt. The King might pardon the whole, and conſequently any Part; the Pardon of the Puniſhment ſupplies the Effect of it; no Queſtion but a Pardon may ſupply the want of burning in the Hand. Chief Juſtice *Hales* in his Book of *Pleas of the Crown*, *Fol.* 240 which I have here, ſays expreſsly, That burning in the Hand is now, ſince the Statute, 18 *Eliz.* the Conſequent upon the Allowance of Clergy, which hath this Effect: Firſt, it enables the Judges to deliver him. Secondly, It reſtores him to former Capacities. Thirdly, It reſtores him to his Credit, and ſo it puts him in the ſame Condition as if he were acquitted. What is it that hath this Effect? The Allowance of Clergy, and burning in the Hand: There is not to be a Delivery of the Criminal till all be done which is required by Law: The Law requires that the Party be burnt in the Hand, or that the King do pardon the burning in the Hand before the Party be diſcharged; and, with humble ſubmiſſion, it was never yet pretended, that any Perſon could have the

full

full Advantage of the Benefit of Clergy, ſince the Statute of 4 *H.* 7. till he was burnt in the Hand, or the Burning in the Hand was pardoned. Now, my Lords, to apply this to the Caſe in Queſtion, it is on all Hands admitted, That Mr *French* was convicted of Felony and Manſlaughter, and is neither burnt in the Hand, nor pardoned; but he has prayed the Benefit of the Clergy, and has had the Book given to him, to try if he can read, and he certified he can read; this is all that is done. I think it cannot be pretended he ought to be diſcharged until he is burned in the Hand, or that Burning pardoned, as the Act requires; and if the Reading as a Clerk without burning in the Hand, or pardon of it, be not ſufficient in Law to entitle him to be diſcharged, Why ſhould it be ſufficient to reſtore his Credit? the whole together Works the Diſcharge, and reſtores the Party. In the Caſe of *Burroughs* and *Holcroft* that has been cited, there a Man was convicted of Manſlaughter, and prayed his Clergy; the Court did not allow his Clergy, but did adviſe upon it. This was held ſufficient to bar an Appeal; for if Clergy had been allowed, it had clearly been a good Bar; and the Act of the Court in adviſing upon the Prayer, and not allowing Clergy where it ought to be, ſhall not prejudice the Party convicted, but he ſhall be in the ſame ſtate as if the Clergy had been actually allowed: But that has no likeneſs to the Caſe now before your Lordſhips; for here it is not pretended that Mr *French* ever deſired to be burnt in the Hand, but that was reſpited in favour to him, which was done with Intention, it ſeems, to get the King's Pardon for the burning of the Hand, which is not yet obtained, and conſequently I take it he is not entitled to that Benefit which the Law would give him, if he was either pardoned or burned in the Hand; he is not fully diſcharged of the Conviction, and therefore I think he ought not to be admitted as a Witneſs.

L. H. St. What is the Reſolution your Lordſhips pleaſe to take upon this Matter? Is it your Lordſhips pleaſure to have the Opinion of my Lords the Judges, who are here preſent, upon this Point?

Lords. Ay, Ay, by all Means have the Judges Opinions.

L. C. J. *Treby.* Two Things have been mentioned at the Bar, which, I think, ought to be laid out of the Queſtion.

1. The Conſideration of a Peer, with reſpect to Burning in the Hand.

I ſuppoſe it is not (I am ſure it ought not to be) inſinuated, that, if any of your Lordſhips Degree ſhould have the Misfortune to fall into the like Condition as the Gentleman now produced, *viz.* to be once convict of a clergyable Felony, there could be any Doubt of receiving ſuch Peer, as a Witneſs, without his having been burnt in the Hand. Certainly there could not; For the Statute of 1. *E.* 6. exempts the Peers from ſuch Penalty, and virtually Repeals the Statute of 4 *H.* 7. as to ſo much. And the Statute of 18 *Eliz.* requires burning in the Hand only, according to the Statute in that behalf (before) Provided. And there being no Statute then, or now, in Force to ſubject Peers to ſuch Brand; they are, in ſuch Caſe, upon the Allowing the Benefit of the ſaid Statute of *E.* 6. (which is as much as Clergy without reading or burning) freed from Diſcredit and other Penalties of the Felony, as much as Commons are by having Clergy formally allowed and being burnt.

2. Here hath been mention of a Pardon of the burning this Gentleman in the Hand; and, it ſeems, the Proceeding hath been ſo far as to paſs the privy Seal. I do not queſtion the King's pardoning of the Burning's being as effectual as the Party's undergoing it. But, I ſay, Here is no Pardon (though great Preparation for one). For, the Sign Manual, the Signet, the privy Seal, are but Warrants in ſuch Caſes, and countermandable. But, it is the great Seal that ſpeaks the King's laſt and irrevocable Intent, and paſſeth the Pardon (or other like Thing) to be granted. And that hath not been obtained here.

Now the Queſtion is cleared, I take it to be this; Whether this Commoner being convicted of Felony, and having his Clergy allowed, but being unburnt and unpardoned, ſhall be received and allowed to be a Witneſs.

I am of Opinion he ought not.

For (whatever Quality or Credit he might Perſonally be of,) he is, by being and remaining a Felon convict, rendered Infamous in the Eye of the Law. Upon the Conviction, he loſt, by the Intendment of Law, That Credit which is neceſſary to a Witneſs. And is not reſtored to it by the bare Allowing of Clergy: But, is in the State as a Felon convict would have been, before Purgation, at common Law.

Clergy or (more properly called) Benefit of Clergy, is an antient Priviledge, whereby a Clerk charged with Felony was diſmiſſed from the temporal Judge, and delivered in Cuſtody to his Ordinary, before whom he was to purge himſelf, if he could, of the Offence; and if he failed in his Purgation, he was to remain in the Ordinary's Priſon.

I mean Generally. And I think it not proper to this Occaſion, to Diſcourſe of the ſpecial Caſes wherein the Delivery to the Ordinary was *Abſque Purgatione.*

This Priviledge took its Root originally from a Conſtitution of the Pope, exempting the Perſons of the Clergy from the ſecular Juriſdiction. This the Canon-Law is full in. But, that Law was not throughly received here in *England.* And this Matter was Moulded, Ordered, and Altered by our common and Statute-Law.

For Inſtance. The Cannon-Law gives the Priviledge only to Men in holy Orders: Our Law, in favour to Learning, and the Deſire of the *Engliſh* Biſhops, extended it to Lay-Clerks, as an old Statute calls them, *i. e.* any Lay-man, that, by reaſon of his Ability to read, was (other Circumſtances concurring) in a Poſſibility of being made a Prieſt. On the other Side; That Law would not ſuffer the Clergy to be tryed before ſecular Judges: But, ours hath, for ſeveral hundred Years, ſubjected them to ſuch Tryal.

But, the common Law was ever clear in this, That when a Man was convicted of Felony, though by the Allowing of Clergy, his Life, Land, and Blood were ſaved, yet, That Conviction laid him under divers Penalties and Porfeitures, ſome Abſolute, others Limited and Determinable.

He forfeited all his Goods and Chattels, which he had at the Time of his Conviction, Abſolutely; not to be reſtored by Purgation or Pardon.

He alſo forfeited and loſt, 1. His Liberty, being to continue a Priſoner. 2. His Capacity of Purchaſing more Goods or Chattels, and of Taking and Retaining the Iſſues and Profits of his Freehold Land to his own Uſe. 3. His Credit. ſo as

not

not to be a Witneſs, Juror, &c. Under theſe three Penalties he remained till his Purgation. But, by that, they were determined. As ſoon as he had made his Purgation, he was reſtored to his Liberty, Capacities, and Credit.

Purgation was the Convict's clearing himſelf of the Crime, by his own Oath, and the Oaths or Verdict of an Inqueſt of twelve Clerks (as Compurgators.) The Proceeding was before the Ordinary. And, for the Manner of it, old Books ſpeak of their making Proclamation for Perſons to come in againſt his Purgation, and of their enquiring into his Life, Converſation, and Fame, and of other Formalities. In all which, ſeveral Statutes ſay, there were great Abuſes. But it is certain, that, upon his Acquittal, the Ordinary pronounced him Innocent, and abſolved from Infamy. And thereupon he was diſcharged from the Impriſonment, Incapacities, and Diſcredit Incident to the Felony.

The Statute 4 *H.* 7. brings in a new Thing, Appointing that every Perſon Convict of Felony, ſhould be marked in the Hand by the Goaler in open Court, before he ſhould be delivered to the Ordinary. And this, was partly that they might taſte of Corporal Puniſhment; But, principally to notifie that they had had their Clergy. For, the ſame Statute, taking notice that Men were emboldened to commit Murder, Rape, Robbery, and other Felonies, becauſe they had the Benefit of Clergy *toties quoties*, ordains that no Perſon, who was once admitted to that Benefit, ſhould ever have it again for a following Offence, unleſs he were within Orders and produced his Letters of his Orders, or a Certificate of them.

For this Act, *Perkin Warbeck* in his Declaration againſt *H.* 7. Brands him as an *execrable Breaker of the Liberties and Franchiſes of holy Church.*

Then comes the Statute 18 *Eliz.* C. 7. which, for ſo much as concerns this Queſtion, I deſire to read.

It is in theſe Words.

For the Avoiding of ſundry Perjuries and other Abuſes in and about the Purgation of Clerks convict, delivered to the Ordinaries, Be it enacted that every Perſon which ſhall be admitted and allowed to have the Benefit or Priviledge of his Clergy, ſhall not thereupon be delivered to the Ordinary as hath been accuſtomed, But after ſuch Clergy allowed, and burning in the Hand according to the Statute in that behalf provided [meaning that of 4 H. 7.] *ſhall forthwith be inlarged and delivered out of Priſon by the Juſtices before whom ſuch Clergy ſhall be granted, that Cauſe notwithſtanding.*

Then there follows a Proviſo to this Effect.

Provided nevertheleſs, and be it enacted that the Juſtices before whom any ſuch Allowance of Clergy ſhall be had, may for the further Correction of ſuch Perſons, detain and keep them in Priſon for ſuch convenient Time as the ſame Juſtices in their diſcretions ſhall think convenient, ſo as the ſame do not exceed one Year's Impriſonment.

This Statute refers to that of *H.* 7. and follows the Order of it, As that appointed that the Convict ſhould be burnt before he ſhould be delivered to the Ordinary to have the Benefit of Purgation, So this of 18 *Eliz.* Appoints that he ſhall be burnt before he ſhall be diſcharged by the Juſtices, and have the Benefit thereby intended (inſtead of Purgation.)

The Council for the noble Lord at the Bar ſay, that the Allowance of Clergy by vertue of this Act, freeth this Man, and makes him *Rectus in Curia*, as if he had made his Purgation; and that by this Statute he is firſt pardoned his Crime, by being allowed the Benefit of Clergy, without making his Purgation; and afterwards to be burnt in the Hand before he be delivered out of Priſon, and ſo the Burning is a Condition precedent to his getting out of Priſon, not to his being reſtored to his Credit.

But I am to ſeek for any Ground for this Notion in this Statute. It doth not require Clergy to be allowed, nor give any new Vertue or Operation to it, when allowed. It ſuppoſeth ſuch a Thing to be by Virtue of the common Law: But there it leaves it, if there be nothing more done. It is one Clauſe conſiſting of two Parts; 1. *Negative*; He that is allowed his Clergy, ſhall not be delivered to the Ordinary. 2. *Affirmative*; But after that, and burning in the Hand ſhall be delivered by the Juſtices.

Now, If it had ſtopped at the firſt Part, it had been ſo far from pardoning or reſtoring any Clerk Convict, that it had put all into the ſame Condition that thoſe were, who were without Purgation, *viz.* to be perpetually impriſoned, and infamous. Indeed, it had not been reaſonable to take away ſuch a Priviledge from the Subjects, without ſome Recompence; and therefore it did not ſtop there: But proceeds to the 2d Part, and Provides that thoſe who before were delivered to, and by the Ordinary, ſhall now be delivered by the Juſtices. But withal, it declares when, and upon what Terms, *viz.* After Clergy Allowed, and burning in the Hand. And this is a Satisfaction to be given to the Law, before they ſhall have the Benefit of it.

I agree if this Convict had made that Satisfaction to the Law, he might have been a Witneſs; for, in that Caſe, he would have been freed from his Diſcredit by Vertue of the laſt Words of the ſaid Clauſe. 'Tis true, the Words are only [*ſhall forthwith be inlarged and delivered out of Priſon by the Juſtices,*] which literally Import nothing but reſtoring his Liberty. But under this prime Inſtance, are implied and intended all other particulars which a Convict might be diſcharged of by means of Purgation. It was never the Intent of the Statute meerly to ſet him at large, and leave him a Fleon convict. But when it is ſaid delivered, 'tis meant delivered Free, freed from all incident further Penalties, as he might have been if delivered upon Purgation. This is a reaſonable Conſtruction: to a Man that obſerves the Oppoſition in the Words, the Senſe will appear to be as if the Lawmakers had ſaid, that inſtead of being diſcharged *a Culpa et Pœnâ* by the Ordinary, upon a tedious Proceeding to Purgation, he ſhall now be ſo diſcharged by the Juſtices, forthwith.

And this alſo is neceſſary to vindicate the Juſtice of this Law; for, ſince it takes from him the means he had of regaining his Credit, it is but juſt it ſhould reſtore it to him by this Way.

'Tis Objected, that it may as well be ſaid that he ſhall not be reſtored to Credit till he have ſuffered Impriſonment, not exceeding a Year, as that he ſhall not be reſtored till burnt. But that receives an eaſie Anſwer; for, if it were ſo, it would not avail this Perſon. But, I take it to be otherwiſe. A Convict is diſcharged from Impriſonment and all other Penalties incident to the Conviction, forthwith upon his burning in the Hand.

But

But if there be a Commitment made by Virtue of the Proviſo, it is a collateral and a new Thing, and the Party is not then in Priſon by Virtue of his Conviction, but by a freſh expreſs Order of the Judges, made upon the heinouſneſs of the Circumſtances appearing on the Evidence. They may, and generally do, forbear to commit at all. And when they do, it may be for a Month or two, at their Diſcretion. The Proviſo calls it a further Correction.

As to the Manner in which this Statute works this full Diſcharge, it hath been diſputed whether it be by ſupply of Purgation, or rather by a kind of Statute-Pardon. But, I think, that by Force of the Statute the Party is purged and freed of the Felony, and all Penalties incident to it in nature of a Pardon.

In what Manner ſoever the Statute works it, 'tis manifeſt that it doth it not but upon a Condition precedent, *viz.* After Clergy allowed, and burning in the Hand. Now, this Perſon hath his Clergy allowed, but is not burnt in the Hand, (nor has any Pardon for it.) And therefore is not yet Intitled to the Benefit of this Statute. My Lord's Council ſay he is, becauſe he hath his Clergy allowed. But, that is claiming the Advantage upon the Performing of one Part of a joint Condition, which ought not to be had but upon performing both. They might as well have pretended to it before the Performance of either; The Statute ſays, after both Clergy and Burning. They ſay alſo, that this Burning is no Part of the Judgment, as hath been held in the Caſe of an Appeal. Be it ſo. But, I ſay, 'tis a Part of the Condition in this Statute.

There is no Caſe in our Books againſt this Opinion. (But, on the contrary, there are Authorities for it.)

Holcrofts Caſe is in no ſort applicable to this Caſe; as was truly obſerved by the King's Serjeant.

The Opinion of my Lord Chief Juſtice *Hobart* in *Searl* and *Williams* Caſe, rightly conſidered confirms this. I have borrowed the Book from the Gent. at the Bar, and read it. He ſaith expreſsly that where a Convict is liable to be burnt in the Hand, he is not diſcharged and reſtored without it; becauſe the Statute ſays after burning, But from thenceforth the Statute frees him from all further Puniſhment. But, he ſaith, that where he is not liable to burning, he ſhall have the ſame Benefit immediately upon the Allowance of Clergy only. So it was in the Caſe before him; which was that of a Clerk in Orders: For, *Searl* was a Clergyman, Parſon of *Heydon German* in Eſſex, and convicted of Manſlaughter. So it is, he ſays, in Caſe where the King pardons the burning. And the laſt Words in the Caſe clearly ſhew his meaning, *viz.* where the Statute ſays, after burning, It imports where burning ought to be, *&c.*

To me the Law is evident. A Peer ſhall have this Benefit, without either Clergy or Burning. A Clerk in Orders, upon Clergy alone without Burning. A Lay-Clerk, not without both.

As I remember, there hath been but one Authority more mentioned, and that is of my L. C. J. *Hale*, in his *Summary of the Pleas of the Crown*; I have got hither that Book alſo. To my Underſtanding, he plainly declares the ſame Opinion, and cites the before-mentioned Caſe of *Searl* for Proof of it. His Words (ſo far as they relate to this Matter) are theſe;

What the Effect of Clergy allowed?

In ancient Time the Conſequent was Delivery to the Ordinary, either to make Purgation, or abſque Purgatione, *as the Caſe required.*

But by Stat. 18 Eliz. c. 7. *Now only burnt in the Hand, which hath theſe Effects,*

1. *It enables the Judges to deliver him out of Priſon.*

2. *It gives him a Capacity to purchaſe Goods, and retain the Profits of his Lands.* Foxley's Caſe, 5 Report.

3. *It reſtores him to his Credit.* Hob. Seales *Caſe.*

The Word [which] uſed here (whatever elſe it do, or do not refer to) doth certainly refer to the next Antecedent, that is, Burning in the Hand; and the two Books which this moſt learned Judge cites, are full Authorities that 'tis this Burning which enables the Court to Deliver him, and that That Delivering which is then due to him is, by good Conſtruction, in lieu of a Pardon, which reſtores him to his ſaid Capacity and Credit.

To conclude: This Condition Precedent, upon which the Reſtitution of this Perſon's Credit depends, is not performed (by his undergoing the ſaid Puniſhment) nor diſcharged (by the King's pardoning it;) and therefore he is not a legal Witneſs.

Earl of *Rocheſter.* If the reſt of my Lords the Judges be of the ſame Opinion; ſo: and I hope you will not oblige them to deliver their Opinions at large to take up your Lordſhip's Time with Arguments of any Length, for the Matter has been, I think, ſufficiently debated.

Lord Chief Baron. My Lords, I am of the ſame Opinion.

Mr Juſtice *Nevill.* And ſo am I.

L. H. St. My Lord *Warwick*, Have you any Thing more to ſay to this Queſtion?

Earl of *Warwick.* No, my Lord.

L. H. St. Then what is your Lordſhip's Pleaſure? Is this Man to be admitted a Witneſs, or not?

Lords. No, no; we think, by Law, he can't be a Witneſs.

L. H. St. My Lord *Warwick*, my Lords are of Opinion, That this Perſon cannot be admitted as a Witneſs for you.

Earl of *Warwick.* My Lords, I ſubmit to your Lordſhips Judgment in the Matter.

Earl of *Nottingham.* My Lords, I am very glad your Lordſhips have had this Matter debated by the Council, that ſo it might be ſettled: All my Lords the Judges that are here, it ſeems, are of Opinion, that this Man can be no Witneſs, and therefore his Teſtimony muſt be rejected. But there is another Propoſal that I have to make to your Lordſhips, of a Point that I think ought to be conſidered of: My noble Lord at the Bar did ſuppoſe that he had proved before your Lordſhips, that he went into the Field to fight on the Side of the Party that was killed, but not on the other Side; and indeed, that he went not to fight, but to prevent a Quarrel, and thereupon he did ſtart a Queſtion, Whether it ſhould not be a Preſumption in Point of Fact and Law, that he, being on the Side of the Party that was killed, ſhould not be reputed innocent of his Death? Now, I confeſs, upon the Starting of this Objection, I doubted of it, Whether if any one were preſent at the Killing of a Man, where ſeveral People were engaged in fighting, on what Side ſoever ſuch a Perſon

ſon were, either on the Side of the Party that was killed, or on the other Side, yet whatſoever Crime it was in thoſe that killed him, it was the ſame Crime in thoſe that were preſent at the Action? My Lord of *Warwick* did deſire, that his Council might be heard upon that Point; if there be any Queſtion with your Lordſhips in that Caſe, and my Lord deſires his Council may be heard to that Matter, it may occaſion a Matter of Debate, which cannot be in this place openly, but muſt be between your Lordſhips among your ſelves: Indeed, I think it reaſonable, that Council ſhould be heard upon the Caſe.

L. H. St. My Lords, I think you are not arrived at that Queſtion yet; you are not to take for granted any Part of the Fact, but are to debate among your ſelves, after the Proof is over, what that Proof does amount to.

Earl of *Rocheſter*. Indeed, my Lords, I hope you will not ſuppoſe any Thing, and ſo take it for granted, that may occaſion any Debate, becauſe that is not to be done here in this Place, but we muſt adjourn to another Place for it: The bare putting of a Caſe by a Priſoner at the Bar, does not make that to be the Caſe truly in Point of Fact; for as far as I heard and underſtood the noble Lord's Propoſal at the Bar, what he deſired to have his Council heard to, was, That he being One of Six that went into the Field, but going with a Deſign to part them, and not with any Intention to promote the Quarrel, could not be in equal Degree of Guilt with thoſe that were on the other Side, who killed the Party: But now, my Lords, I take it, it is far from being granted on the other Side, that That is the State of the Fact; nay, my Lord himſelf owns that he was in the Field, and that he was engaged in the Combat with Mr *James*; and then the Queſtion muſt be that is to be debated, Whether a Party that is concerned in a Quarrel where a Perſon is killed, is in equal Degree guilty with thoſe that were on the other Side againſt the Perſon that was killed? And then the Queſtion would be far different from what it would be otherwiſe, and as his Lordſhip did propoſe it; and if there be a Doubt in Matter of Fact, That ought to be ſettled here in this Place, that afterwards it may be conſidered in another.

Earl of *Nottingham*. My Lords, I cannot but agree with that noble Lord, That the Matter of Fact ought to be ſettled, and then if any Debate ariſes thereupon, your Lordſhips are to return to your own Houſe, and there to debate what is your Judgment upon that Matter of Fact: But whatſoever Motion is made by the noble Lord at the Bar, wherein he deſires to have his Council heard, that I ſuppoſe may be conſidered here; and this Point having been ſtarted by my noble Lord at the Bar, as a Point of Law, and not of Fact, I deſire to remind him of it, to know whether he does inſiſt upon it; if he does not move to have the Matter argued, then there is an End.

L. H. St. My Lords, I do not think you will hear Council upon a Matter of Fact, and therefore it is not ripe (till the Fact be ſettled) for you to hear Council.

Earl of *Warwick*. My Lords, I humbly pray, That you will hear my Council as to that Point.

L. H. St. My Lord, this is a Matter of Fact undetermin'd, and not a Matter of Law: What Opinion their Lordſhips will be of, when they have conſidered the Proofs as to the Fact, is one Step; when that is over, it will be the proper Time, if any Doubt be remaining with their Lordſhips, in Point of Law, to hear Council, but upon bare Matter of Fact Council is not to be allowed.

Earl of *Rocheſter*. My Lords, if there be any Debate among the Lords, Whether it be a Matter of Fact, or a Matter of Law, we muſt go up to our own Houſe; but upon any Point of Law, where Council is to be heard, it muſt be in this Place in the Preſence of the Priſoner, and afterwards your Lordſhips will debate it among your ſelves.

Earl of *Nottingham*. I hope, my Lords, the Council would not ſtate the Caſe otherwiſe than as it is really in Point of Fact; nor can this noble Lord hope, that any Thing will make an Impreſſion upon my Lords, but what from the Fact rightly ſtated, but what is ſupported from the Evidence; and that which my Lord propoſes, is to have his Council heard to a Matter of Law, which your Lordſhips will be Judges of after you have heard it, whether there be any Weight in that which he ſuppoſes to be his Caſe, That a Perſon aſſiſting in a Combat on the Side of him that is killed, is in equal Degree of Guilt with them that are on the other Side; That poſſibly, if the Fact be agreed, may be a Point fit to hear Council to, before your Lordſhips go to Debate it among your ſelves.

Duke of *Devonſhire*. If I am not miſtaken, my Lord of *Warwick* owns his being one of them that fought, for he has offered Witneſſes to prove, That he received a Wound in his Hand by fighting: If my Lord of *Warwick* thinks, that there is a Difference between his being on Mr *Coote*'s Side, and theirs that were on the other Side, and would have his Council heard, how far it will difference his Guilt, and the Nature of the Crime, from what it was with them on the other Side, I cannot think that can be to any great Purpoſe to have that argued; but if your Lordſhips pleaſe, you may hear his Council what they have to ſay to that Matter; but otherwiſe I cannot think, but that his Lordſhip will acknowledge that the Matter of Fact, that he was engaged in the Quarrel.

Earl of *Peterborough*. My Lords, I deſire, if this be a Point, that my Lord's Council ſhould be heard to, that it ſhould be ſtated as a Point of Law, and then your Lordſhips will conſider of it.

L. H. St. As well as I could apprehend it, as it was offered by my Lord *Warwick*, this was what he deſired to have his Council heard to: Tho' the Perſons engaged in the Quarrel on the oppoſite Party to Mr *Coote* have been tried, and found guilty of Manſlaughter, yet he is not in equal Degree of Guilt with them, he being engaged on Mr *Coote*'s Side, and therefore his Lordſhip's Caſe differs from theirs who fought againſt Mr *Coote*. This Point he would have argued by his Council before your Lordſhips, as a Matter of Law founded upon the Fact; now the Fact of the Caſe muſt ariſe from the Evidence as it has been given, which has not yet been debated or ſettled by your Lordſhips, and till that be agreed to be the Caſe, no Queſtion of Law does properly ariſe.

Duke of *Leeds*. My Lords, if poſſible, I would put this Matter into its true Method, for indeed I think we have been all this While out of the Way. The noble Lord at the Bar has deſired to have his Council heard, this Houſe has allow'd him Council in Matters of Law, I would deſire that the Council would ſtate the Caſe ſo to your Lordſhips, that it may appear to be a Caſe fit to be argued, that

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ſo it may receive your Lordſhips Judgment thereupon. My Lord's own bare propoſing of ſuch a Thing, will not be enough to encline your Lordſhips to be of Opinion, perhaps, one Way or other; but I would pray your Lordſhips, That you would direct the Council that are aſſign'd for my noble Lord at the Bar, to propoſe that to your Lordſhips as a Point of Law that he ought to inſiſt upon; I think it is apparent to every Body, that no Point of Law can ariſe but upon Matter of Fact, which is agreed to be proved in any Caſe; now the Proofs of the Fact we have heard; now, that which I would propoſe to your Lordſhip is, That inſtead of hearing his Council to argue in Point of Fact, what is not yet agreed upon to be the Fact, they ſhould ſtate ſuch a Point of Law as they would argue upon; and then whether you would think it a Point of Law, or not a Point of Law, we muſt go into another Place, where it may be debated, whether it be ſuch a Point of Law as that Council ſhould be heard to it.

Earl of *Peterborough*. My Lords, I hope you will forgive me for interpoſing in this Matter, but that which I have to ſay to it is this: I am far from giving any Opinion as yet, as to the Matter of Fact, whether my Lord of *Warwick* was Mr *Coote*'s Friend or his Enemy; I know it is not a proper Place for that Matter to be debated in, but my noble Lord at the Bar deſires to have his Council heard, upon that Point, as if the Fact was agreed: Truly, till the Fact be agreed, I queſtion whether we can give any Judgment or Opinion one Way or other: If I obſerv'd aright, the Evidence for the King aimed at ſomewhat elſe: I ſhall not ſay what my Opinion now is, till we come to debate it among our ſelves; but here is a Deſire of having Council heard, but there is no Queſtion of Law ſtated, but it depends upon a Matter of Fact, which is not yet determined by your Lordſhips, before whom the Conſideration of both Fact and Law doth lie, Whether a Perſon that is engaged on the Side of the Party that's kill'd in a Quarrel, where ſeveral Perſons on both Sides are concerned, be as much guilty as thoſe that are concerned on the other Side.

Marq. of *Norm*. My Lords, I do ſuppoſe that you may hear the Council to ſtate the Queſtion, without your determining any Thing upon it, as to your Opinion one Way or other; for your hearing of Council, is only in order to prepare your Lordſhips for the Debate among your ſelves, if there remains any Doubt with you. It ſeems my noble Lord at the Bar has propoſed that his Council ſhould be heard: If the Council will ſtate the Point to be argued upon, your Lordſhips may here conſider, Whether it be ſuch a One as it is fit to hear Council to, then, no doubt, you will hear Council to it. This, I ſuppoſe, you will hear from them, or otherwiſe your Lordſhips will not think fit to give your ſelves the Trouble to go and debate that which is no ſettled Queſtion to be debated of.

Earl of *Rocheſter*. My Lords, I am afraid, of Neceſſity, you muſt adjourn to your own Houſe; for I find my Lords are here arguing one with another; ſome are of Opinion, That the Council ſhould ſtate the Queſtion, that they ſhould be heard upon; others of my Lords are of Opinion, That it is only a Matter of Fact, not a Matter of Law, upon which Council ſhould be heard; then it muſt be debated between your Lordſhips, which is not proper for to do here, therefore I would humbly move your Lordſhips, that you would adjourn to your own Houſe.

Earl of *Peterborough*. I ſuppoſe your Lordſhips will be pleaſed to enquire of the Council, Whether they do inſiſt upon this Point, or no.

L. H. St. My Lord *Warwick*, if your Lordſhip inſiſt that your Council ſhould be heard upon the Point which you have offer'd, it ſeems there is ſuch a Difference of Opinion among my Lords, that for the Debating of what ſhall be done in the Caſe, my Lords muſt adjourn; but if you do not inſiſt upon it, they will go in the ordinary Method, to conſider of the Evidence that has been given, after it is ſum'd up on both Sides; for if you have no more Evidence to offer, you are to make your Obſervations upon the Evidence that has been given.

Earl of *Warwick*. I ſubmit it, upon the whole Matter to your Lordſhips, Whether my Council can be heard, or not, to that Point; how far, I being of Mr *Coote*'s Side, can be guilty of his Death.

L. H. St. That is a Matter of Fact which is not yet determin'd, and therefore the Queſtion which you ſuppoſe to ariſe upon it, is not yet ripe to be reſolved. If you have no other Witneſſes to produce, that which remains, for I think I may properly acquaint you with the Methods of Proceeding, is, That you are now on your Part to ſum up the Evidence that has been given, which is your own Work, as not being allow'd Council as to Matter of Fact; you are at liberty to make ſuch Obſervations as you may think for your Advantage upon the Evidence, and ſo to cloſe your Defence.

Earl of *Warwick*. My Lord, I ſubmit it upon the whole Matter to your Lordſhips.

L. H. St. Mr Attorney General, my Lord of *Warwick* ſubmits the Matter, as it has been prov'd, to their Lordſhips, without any ſumming up of the Evidence; you who are of the King's Council, if you think fit, will ſum up the Evidence on yours, in Order to their Lordſhips Conſideration of it: This you know is the Time for doing it. Make Proclamation for Silence.

Cl. of the Crown. Serjeant at Arms make Proclamation.

Serj. at Arms. O Yes, O Yes, O Yes, My Lord High Steward of *England*, his Grace does ſtraitly charge and command all manner of Perſons here preſent, to keep ſilence, upon pain of Impriſonment.

L. H. St. Gentlemen, you that are of the King's Council, now is your Time to ſum up the Evidence for the King.

Then Mr Sollicitor began to ſum up the Evidence, but his Voice was ſo low, that he could not be heard by the Lords that ſate at the upper end of the Houſe.

D. of *Leeds*. My Lords, I think it of ſo great Importance to have a true State of the Fact and Evidence laid before us, and that we may hear what the King's Council do ſay at the ſumming up of the Evidence, that if my Lords be of my Opinion, we ſhall be very defective to know what Judgment we give when we come to give Judgment, unleſs we are thoroughly apprized of the Matter of Fact and the Proofs: I confeſs I am going to move, that which is a Thing, according to the Orders of the Houſe, much without the Rules of the Houſe,

That the Council ſhould be heard in any other Place but where they are, at the Bar of the Houſe; This is contrary indeed, I acknowledge, to the Orders of the Houſe, and ſo my Motion is irregular; but yet, in order to our Satisfaction, that we may be enabled to hear what the King's Council do ſay to us, eſpecially in ſumming up the Evidence, I cannot but offer this to your Lordſhips; for we can no more hear the Council here, than if we were quite out of the Houſe: Whether therefore your Lordſhips will pleaſe to Order, that any Perſon that has a ſtronger Voice ſhould ſum up the Evidence: Or whether you will diſpence with the Orders of the Houſe ſo far, as that Mr Sollicitor may come to the Clerk's Table, or ſome other Place within the Houſe, that he may be heard by all, I muſt ſubmit it to your Lordſhips. It would be a great Satisfaction for us to hear him, in order to our Judgment; but I acknowledge in this I do make an irregular Motion, as to the Orders that are uſually obſerved by your Lordſhips: But I know not how to help it, in regard without hearing, it is impoſſible for us to form our Judgment.

E. of *Roch.* My Lords, I have a very great Reſpect for every Motion that That noble Lord who ſpoke laſt does make, and I am of his Opinion, That it will mightily tend to the Satisfaction of my Lords who are to give their Judgment in this Caſe, to hear both the Evidence and the Council, and what obſervations are made on both Sides; and that it is a great Diſadvantage that the Council ſhould have ſo low a Voice, that all my Lords ſhould not be able to hear him; but yet I hope that may be remedied ſome other Way than what is propoſed by that noble Lord; for if what he deſires were done, it will be obvious that in Point of Precedent many Inconveniencies will occur upon breaking the Orders of the Houſe, to comply with a Motion which is acknowledged by the noble Lord himſelf, to be irregular; for it would be impoſſible to hear any Body, if it be permitted to make ſuch a great Noiſe without; and it is that which renders the Difficulty of hearing the greater. If that were quieted, your Lordſhips might hear this Gentleman as well as thoſe of the other Council: Or if this Gentleman's Voice will not ſo well reach your Hearing, then there are other Gentlemen of the King's Council that have ſtronger Voices; and if any of them would ſum up the Evidence, I believe it would be better heard and conſequently better apprehended by your Lordſhips, for I had rather any Expedient ſhould be found out to comply with the Orders of the Houſe, and preſerve them, than that any irregular Thing ſhould be done for the breaking the Orders of the Houſe, upon any Account whatſoever.

L. H. St. Make another Proclamation for Silence.

Cl. of the Crown. Serjeant at Arms, make Proclamation.

Serj. at Arms. O Yes, O Yes, O Yes; My Lord High Steward of *England* his Grace does ſtraitly Charge and Command all manner of Perſons here preſent to keep Silence, upon pain of Impriſonment.

E. of *Bridgewater.* Truly, my Lords, The Noiſe about the Court is ſo great, that we who ſit much nearer to the Bar, than the noble Lord who made the Motion for the removal of the Council into another Place, cannot hear Mr Sollicitor what he ſays, and therefore I think ſome of the Guard ſhould be ſent out to clear all the Paſſages about the Court, that there may be no Noiſe, for it is the Noiſe of the People without, that makes it ſo difficult to hear the King's Council.

L. H. St. Let ſome of the Guard without take care that there be not that Noiſe made; and whoſoever does make a Noiſe, let him be taken into Cuſtody.

Then another Proclamation was made for Silence; upon which there was a greater Quietneſs in the Hall.

L. H. St. Mr Sollicitor, There is hopes now ſince there is not ſo great Noiſe as there was, that you may be heard by my Lords: You muſt uſe the beſt Endeavours you can, that you may be heard.

E. of *Roch.* If that Gentleman cannot ſpeak out ſo well that he can be heard, thoſe of the King's Council that have better Voices, muſt ſum up the Evidence.

Mr *Sol. Gen.* My Lord, I ſpeak as loud as I can.

E. of *Roch.* There are others of the King's Council, pray let them do it then; Mr Attorney, he being nearer and within the Bar.

L. H. St. I know not whether Mr Attorney be prepared for the ſumming up of the Evidence, becauſe he examined the Witneſſes, and the King's Council uſually allot to themſelves the particular Parts, which they intend to take.

E. of *Roch.* Then let Mr Sollicitor go on.

Mr *Sol. Gen.* I would ſhortly obſerve to your Lordſhips, what Evidence hath been given to you on behalf of the King in this Caſe, againſt that noble Lord the Priſoner at the Bar for the Offence for which he ſtands indicted. The firſt Witneſs that was produced was the Drawer at the *Greyhound* Tavern in the *Strand*, where this Quarrel, that was the Occaſion of the Death of this Perſon that was ſlain, happen'd; and he tells you that That Night there was at his Maſter's Houſe my Lord of *Warwick*, my Lord *Mohun*, Captain *French*, Captain *Coote* the Perſon that was kill'd, and Mr *Dockwra*, and after they had been there ſome Time that other Perſon that was the Sixth concerned in the Scuffle, Mr *James*, was ſent for, and he came in when it was pretty late; there they continued till One or Two a Clock, and then they came down to the Bar, and Orders was given for to call Coaches, but it being ſo late, and *Sunday* Morning, they could not find Coaches, and then there was Orders for the getting of Chairs; when ſome Chairs were brought, Mr *Coote* and Mr *French* went into two of the Chairs, but my Lord *Mohun* interpoſed, and ſaid there ſhould be nothing done that Night, and that if they went away he would call for a File of Muſqueteers from the Guard, and ſecure them, and thereupon they came out of the Chairs, and went into the Houſe, and there was the Noiſe of Swords claſhing heard at the Bar; Captain *Coote* ſaid he would laugh when he pleas'd, and frown when he pleas'd, and they parted; Three were on one Side, and three on the other of the Bar, my Lord of *Warwick*, my Lord *Mohun*, and Captain *Coote*, were on one Side; Captain *French*, Captain *James*, and Mr *Dockwra*, were on the other Side: Indeed he ſays my Lord *Mohun* and my Lord *Warwick* did what they could to pacifie them, and threatned to ſend for the Guards, but away they went. The next Witneſs was *Thomas Browne*, and he was the Chairman that carried Mr *Coote*, and he ſays, that there was an Endeavour by my Lord of *Warwick*, and my Lord *Mohun*, to put off the Buſineſs at that Time, and that they did what

what they could to have put it off, and that even after they were in their Chairs, when they were turned up St. *Martins-lane*, there they ſtopt at the Back Door of the *Croſs-Keys* Tavern, and that while they ſtood there with their three Chairs, three other Chairs came by, and then Captain *Coote* bid them put up, and follow after thoſe Chairs as faſt as they could to *Leiceſter-fields*.

The next Witneſs is *William Crippes*, who was the other Chairman that carried Captain *Coote*, and he gives your Lordſhips much the ſame Account that *Browne* gave before, and his Evidence was juſt to the ſame purpoſe, That my Lord of *Warwick* and my Lord *Mohun* endeavoured to pacifie the Matter, and that there ſhould be an end of the Buſineſs for that Night, and let it alone till another Time, and that my Lord *Mohun* threatn'd to ſend for the Guards, and ſecure them, and would have had them gone home, that is, Mr *Coote* either with him to his Lodging, or he would go to Mr *Coote's*, but he could not prevail: Then my Lord *Mohun* ſaid, If he would go on, his Lordſhip would go and ſee an end of the Buſineſs.

The next Witneſs was one *Crattle*, who was one of the Chairmen that carried my Lord of *Warwick*, and he ſays, That my Lord *Mohun* and my Lord of *Warwick* did endeavour what they could to put off the Matter till the next Morning, but that they could not prevail; That afterwards, when he carried my Lord from *Leiceſter-fields* to the *Bagnio*, my Lord borrowed a Handkerchief of him to wrap his Hand in, for he ſaid he was wounded, but by whom that Wound was given does not appear, nor how he came by that Wound any otherwiſe then as his Lordſhip himſelf ſays, that it was given him by Mr *James*.

The next was the other Chairman that carried my Lord of *Warwick*, which was *John Gibſon*, and his Teſtimony need not be repeated, becauſe it did not differ from the others. The next Witneſs was *Robert Applegate*, who was the Chairman that carried my Lord *Mohun*, and he ſays, that there was an Endeavour uſed by my Lord upon his ſetting down in St *Martins lane*, to quiet Captain *Coote*, and prevent any Quarrel at that Time, but he ſays, when they would go on, my Lord *Mohun* ſaid he would go and ſee the End of it, and thereupon they went on towards *Leiceſter-fields* to the end of *Green-ſtreet*, which is at the lower end of the Square.

The next Witneſs was *Palmer*, who was one of the Chairmen that carried Mr *French* to the *Bagnio* in *Long-acre*, and he tells your Lordſhips what happen'd upon his carrying of him thither, how immediately after his coming there my Lord of *Warwick* came thither, and they knock'd at the Door the ſame Time, and that Captain *French* was very much wounded, and they went into the Houſe together, and that *French* would have had them pull off his Cloaths to ſee his Wounds, for he believed he was a dead Man.

The next Witneſs was the Chairman which carried Mr *James*, and he only tells your Lordſhips, That he carried a Gentleman into *Leiceſter-fields*, that my Lord *Mohun* endeavoured to put off the Buſineſs for that Night, but who the Perſon was that he carried, he cannot ſo well tell, nor give an Account of; but when he had ſet him down at the further end of the Square, there he left him, and he knows no further.

Then there was the Surgeon at the *Bagnio* in *Long-acre*, who gives your Lordſhips an Account, That about Two of the Clock in the Morning on the *Sunday*, my Lord of *Warwick* and Captain *French* came in there, Captain *French* was wounded in the Body, and my Lord *Warwick* was wounded in the Hand, and my Lord *Warwick* did take extraordinary Care of Captain *French*, and would not have the Door open'd to any Body, nor his Lordſhip known to be there; That afterwards Captain *James* and Mr *Dockwra* came to the Door, and my Lord came to the Door himſelf, and when he ſaw who they were, he ordered them to be let in, and that there was a Diſcourſe about going into the Country, and that there was a Fear that *Coote* was kill'd. This is the Effect of the Teſtimony both of the Surgeon and his Servants; and it is to be obſerved, That when Captain *French* came in, his Sword was not bloody, but my Lord of *Warwick's* Sword was bloody almoſt all over, and that was taken notice of the next Day, and there are ſeveral Witneſſes both Men and Women of that Houſe that give your Lordſhips an Account much to the ſame purpoſe; Then there was Captain *Duckingfield*, who ſays, that my Lord *Warwick* came to his Lodgings, and they went in a Coach together to the Tavern in *Cornhill*, and then there was a Diſcourſe of going into the Country, and my Lord ſaid, that he was afraid his Friend Mr *Coote* was kill'd, but they had no abſolute News of his being kill'd at that Time, for it ſhould ſeem my Lord of *Warwick* forſook the Field as ſoon as the fatal Stroke was given, which by whom it was given, is left to your Lordſhip's Conſideration: Indeed it is pretended by my Lord, that the Wound that he had in his Hand was given him by Mr *James*, but nothing of that is made apparent to your Lordſhips upon the Proofs.

Then we came to give your Lordſhips an Account of the Nature of the Wounds that Mr *Coote* had in his Body, and for that we produced both the Surgeon that did probe the Wounds by the Order of the Coroner, and the Coroner himſelf; Indeed we could not get a poſitive Anſwer from either the Surgeon or the Coroner, whether the Wounds were given by one and the ſame Sword, or by different Swords, but then your Lordſhips have the Teſtimony of Mr *Turner*, who was Captain *Coote's* Servant, and who knows his Maſter's Sword, and it hath been ſhewn to him, and he ſays that is his Maſter's Sword that he went out with, and it can be eaſily Judg'd whether he could give himſelf thoſe Wounds by that Sword.

And your Lordſhips have likewiſe had brought before you another Sword, which was left at the *Bagnio* in *Long-acre*, that was Captain *French's* that had no blood at all upon it, but my Lord of *Warwick's*, it ſeems by all the Evidence, had a great deal of Blood upon it.

Then came the Witneſſes for the Priſoner at the Bar, this noble Lord, my Lord *Warwick*, and the Sum of the Teſtimonies that they have given is of a great deal of Kindneſs between my Lord *Warwick* and Captain *Coote*; That my Lord lent him a hundred Guineas to purchaſe his Commiſſion in the Guards, and he had but three of four hundred Guineas which was neceſſary to make the Purchaſe, and there are ſeveral of them that do teſtifie, that they always look't upon Captain *Coote* and my Lord of *Warwick* to be very good Friends, and that there never was any Quarrel between them; and that is the Sum of what the Evidence on that Side did teſtifie. And this, my Lords, I take to be the Sum of the Evidence that has been given on either Side, and when I have laid it thus before your Lordſhips, I muſt ſubmit it to your Lordſhips Judgment what

Opi-

Opinion you will be of upon the whole Matter; only there is this one Obſervation that I would make to your Lordſhips upon this Evidence, That there is not one Witneſs that has given you an Account ſatisfactory by whoſe Hand theſe Wounds were given to Mr *Coote*; and therefore, tho' it is apparent my Lord of *Warwick* was in the Place, where the mortal Wound was given, yet by whoſe Hand it was given is not yet known; until that can be known every Perſon that was there muſt remain under the Imputation of the ſame Guilt, as having a Hand, and contributing to his Death; it is certain, and cannot be denied, that this noble Lord, my Lord at the Bar, was in the Field, wherein there was actual Fighting; for he does not deny it himſelf, but ſays, that he was engaged particularly with Captain *James*, when Captain *Coote* was engaged with Captain *French*, between whom, as it is alledged, the Quarrel was; but that is no Way in Point of Fact made appear to your Lordſhips, and there being ſuch Suſpicions and Circumſtances of the Blood upon my Lord of *Warwick*'s Sword, and the great Concern that he was in when he came to the *Bagnio*, and deſiring to be concealed, and that no Body ſhould know that he was there, and the Care he took of Mr *French*, who is the pretended Perſon that did the Fact, is that which is to be ſubmitted to your Lordſhips; and it is to be obſerved, that Mr *French*'s Sword was not bloody, but only dirty, but my Lord of *Warwick*'s Sword was very bloody from the Hilt to the Point, and he was in a great Conſternation when he came into the Houſe.

There is likewiſe a Circumſtance which your Lordſhips will pleaſe to obſerve, that even Mr *Coote*'s Sword was brought into the Houſe by ſome of the Company that were there, and whatſoever this noble Lord pretends of his Friendſhip to Mr *Coote*, yet, it ſeems by his Care that he took of Captain *French*, he had as much Friendſhip for him.

There is another Circumſtance that has been teſtified, which it will be fit for your Lordſhips to take into Conſideration, and make ſome Obſervation of; That is the Nature of the Wound: It ſeems he had two Wounds, one on the left Side of the Breaſt, near the Collar Bone, and that was downward, and yet his Man, that was here produced as a Witneſs, does teſtifie, that he was one that uſed his right Hand, and then it is a Wonder that he ſhould receive ſuch a ſort of a Wound in that Part; and the other Wound was on the left Side too, but it was upward, and how that could be given to one that was a Right-handed Man, is certainly a very great Wonder; and the Wounds being both given upon the ſame Side, it cannot but be concluded, that they were given by one and the ſame Sword.

Another Circumſtance which relates to my Lord of *Warwick* is, that when he came into the *Bagnio* after the Fact was over, he would have himſelf denied to be there, and went to the Door when *James* and *Dockwra* came in, and his declaring his deſire of going into the Country; Theſe we ſay, are Circumſtances that do induce a Doubt, That my Lord of *Warwick* had a Concern upon him of great Guilt of having a Hand in this Man's Death: It is indeed pretended by my Lord of *Warwick*, That Mr *Coote* was a Perſon that my Lord of *Warwick* had a Kindneſs for, but it is plain by the Evidence, that he left him dead in the Field, and did not take any Care of him, but took a great deal of Care of Captain *French*, who, it is pretended, was the Perſon that fought with *Coote*, when he came to the *Bagnio*, and there is nothing of Kindneſs at this Time pretended, nor any Thing of a Defence to this Matter offer'd by my Lord of *Warwick*, but only what the Chairmen ſay, that he endeavoured to put it off to another Time. Theſe, my Lords, are all the Obſervations that I ſhall make upon the Evidence in this Caſe; How far this Evidence, upon Conſideration, will weigh with your Lordſhips, I muſt ſubmit it to you. If my Lord of *Warwick* did do the Fact, as theſe Circumſtances, we think, may incline your Lordſhips to believe he did, it will ſurely be Murder; but how far the Evidence comes up to the Proof of that, we muſt humbly ſubmit to your Lordſhips, who are the Judges of it; and we leave it entirely to your Conſideration upon what you have heard.

L. H. St. Then it ſeems you have done on all Sides.

Council. Yes, my Lords.

Lords. Then Adjourn, Adjourn.

L. H. St. Is it your Lordſhip's pleaſure to Adjourn into the Houſe of Lords?

Lords. Ay, Ay.

L. H. St. This Houſe is adjourned into the Houſe of Lords.

Then the Lords went back to their own Houſe in the ſame Order they came into the Court in Weſtminſter-hall, *and debated the Matter among themſelves, what Judgment to give upon the Evidence that had been heard, and in about Two Hours Time they returned again into the Court, erected upon a Scaffold in* Weſtminſter-hall; *and after they were ſeated in their Places, the Lord High Steward being ſeated in his Chair before the Throne, ſpoke to the Lords thus;*

L. H. St. Will your Lordſhips proceed to give your Judgment?

Lords. Ay, Ay,

L. H. St. Your Lordſhips will give me leave, as I ask your Lordſhips your ſeveral Opinions, to take ſo much time as to write down the Opinion of every Lord.

Lords. Ay, Ay.

Then the Lord High Steward *asked this Queſtion of every one of the Lords there preſent, beginning with the Puiſne Baron, which was the Lord* Bernard.

L. H. St. My Lord *Bernard*, Is *Edward* Earl of *Warwick* Guilty of the Felony and Murder whereof he ſtands indicted, or not guilty?

The Lord Bernard *ſtood up in his Place uncovered, and laying his Right Hand upon his Breaſt, pronounced his Judgment thus,*

L. Bernard. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

The ſame Queſtion was asked ſeverally of all the Lords, who in the ſame Form delivered their Opinions, as followeth,

L. Haverſham. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

L. Herbert of Cherbury. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

L. Weſton. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

L. Aſhburn-

L. Ashburham. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Cholmley. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Jefferys. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Godolphin. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Guilford. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Oselstone. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Osborne. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Craven. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Cornwallis. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Granville. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Berkly. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Laxington. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Rockingham. Not guilty of Murder, bnt guilty of Manslaughter, upon my Honour.

L. Lucas. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Culpeper. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Vaughan. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Byron. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Jermyn. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Leigh. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Raby. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Howard of Escrick. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Lovelace. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Hunsdon. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. North and Gray. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Wharton. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Eure. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Willoughby of Parham. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Dudley. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Ferrers. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Willoughby of Eresby. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Audley. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Abergaveny. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. H. Steward. My Lord Viscount *Lonsdale*, Is *Edward* Earl of *Warwick* Guilty, *&c.*

L. Viscount Lonsdale. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Viscount Longaville. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Viscount Townsend. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. H. St. The Earl of *Grantham*, Is *Edward* Earl of *Warwick* guilty, *&c.*

E. of Grantham. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Albemarle. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Tankerville. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Warrington. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Scarborough. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Torrington. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Marlborough. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Mountague. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Portland. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Rochester. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Nottingham. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Yarmouth. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Radnor. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Macclesfield. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Feversham. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Burlington. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Caliste. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Bath. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Anglesey. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Essex. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Scarsdale. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Thanet. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Chesterfield. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Carnarvan. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Kingston. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Winchelsea. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Stamford. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Peterborow. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. Rivers. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Manchester. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Denbigh. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Leicester. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Bridgwater. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of

E. of Dorſet and Middleſex. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

E. of Suffolk. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

E. of Huntington. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

E. of Darby. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

E. of Kent. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

E. of Oxford. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

Lord High Steward. My Lord great Chamberlain, is *Edward* Earl of *Warwick* guilty, *&c.*

E. of Lindſey. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

Lord High Steward. My Lord Marqueſs of *Normanby*, Is *Edward* Earl of *Warwick* guilty, *&c.*

Lord Marqueſs of Normanby. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

L. Marqueſs of Hallifax. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

Lord High Steward. My Lord Duke of *Newcaſtle*, Is *Edward* Earl of *Warwick* guilty, *&c.*

D. of Newcaſtle. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

D. of Scomberg. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

D. of St. Albans. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

D. of Northumberland. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

D. of Ormond. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

D. of Southampton. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

D. of Richmond. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

D. of Somerſet. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

D. of Devonſhire. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

Lord High Steward. My Lord Preſident, Is *Edward* Earl of *Warwick* guilty, *&c.*

D. of Leeds. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

Lord High Steward. My Judgment is, That my Lord of *Warwick* is not guilty of the Murder, but is guilty of Manſlaughter, upon my Honour.

Then the Lord High Steward reckoned up the Number of the Peers that were then preſent, and the Opinions that were given, and afterwards acquainted their Lordſhips with the Reſolutions that they came to, in this manner.

L. H. St. My Lords, your Lordſhips are Ninety Three in Number here preſent, and you have all acquitted my Lord of *Warwick* of the Murder whereof he ſtands indicted, but you are of Opinion that he is guilty of Manſlaughter; Is it your Pleaſure, that he ſhould be called to the Bar, and acquainted with your Lordſhip's Judgment?

Lords. Ay, Ay.

Cl. of the Crown. Serjeant at Arms, make Proclamation.

Serj. at Arms. O Yes, O Yes, O Yes; Chief Governour of the *Tower* of *London*, bring forth the Body of your Priſoner, *Edward* Earl of *Warwick* forthwith, upon Pain and Peril will fall thereon.

Then the Earl of Warwick *was brought to the Bar.*

L. H. St. My Lord of *Warwick*, your Lordſhip has been Arraigned upon an Indictment for the Killing Mr *Coote*, you have pleaded Not-guilty, and put your ſelf upon your Tryal by your Peers here preſent; my Lords have heard the Evidence given both againſt you and for you, and have conſidered of it, and are come to a Reſolution, and their Judgment is, That your Lordſhip is not guilty of the Murder whereof you ſtand indicted, but that you are guilty of Manſlaughter; What has your Lordſhip to ſay, why Judgment of Death ſhould not be pronounced againſt you according to the Law?

E. of Warw. My Lords, I deſire that the Benefit of my Peerage may be allowed me, according to the Statute of *Edward* the Sixth.

L. H. St. My Lord, your Lordſhip has demanded the Benefit of your Peerage upon the Statute of *Edward* the Sixth, and you muſt have it by Law; but I am directed by their Lordſhips to acquaint you, That you cannot have the Benefit of that Statute twice, therefore I am likewiſe directed by their Lordſhips to ſay, That they hope you will take a more than ordinary Care of your Behaviour for the future, that ſo you may never hereafter fall into ſuch unfortunate Circumſtances as you have been now under; my Lords hope this will be ſo ſenſible a Warning, that nothing of this kind will ever happen to you again; your Lordſhip is now to be diſcharged.

L. H. St. Is it your Lordſhip's Pleaſure to adjourn to the Houſe of Lords?

Lords. Ay, Ay.

L. H. St. This Houſe is adjourned to the Houſe of Lords.

Then the Lords went in Proceſſion, in the ſame Order that they came into the Court.

The TRYAL of CHARLES *Lord* MOHUN.

Die Mercurii 29 Martii, 1699.

ABOUT One of the Clock, the Lords came, in the ſame Order as the Day before to the Tryal of the Earl of *Warwick*, into the Court erected in *Weſtminſter-hall*.

Clerk of the Crown. Serjeant at Arms, make Proclamation.

Serj. at Arms. O Yes, O Yes, O Yes, My Lord High Steward, his Grace, does ſtrictly Charge and Command all manner of Perſons here preſent, to keep Silence upon Pain of Impriſonment.

Serj. at Arms. O Yes, O Yes, O Yes, All manner of Perſons who are obliged to give their Attendance here this Day, before his Grace, my Lord High Steward of *England*, let them give their Attendance forthwith.

Cl. of the Crown. Serjeant at Arms, make Proclamation again.

Serj. at Arms. O Yes, O Yes, O Yes, His Grace my Lord High Steward of *England* does ſtraitly Charge and Command all manner of Perſons here preſent to be uncovered.

Cl. of the Crown. Serjeant at Arms, make Proclamation again.

Serj. at Arms. O Yes, O Yes, O Yes, Chief Governour of the *Tower* of *London*, bring forth the Body of your Priſoner *Charles* Lord *Mohun* forthwith, upon Pain and Peril will fall thereon.

Then my Lord Mohun *was brought to the Bar.*

L. High Steward. My Lord *Mohun*, your Lordſhip is now brought upon your Tryal for the Murder of Mr *Coote*, for which you ſtand indicted by the Grand Jury for the County of *Middleſex*. The King, who knows that Juſtice is one of the Pillars which ſupports a Throne, will have a ſtrict Account taken of the Blood of any of his Subjects, without Reſpect to the Quality of the Slain, or of the Perſon who ſtands Charged with his Death. There is not one of the Noble Peers here preſent, who are to be your Tryers, but does heartily wiſh your Lordſhip Innocent; But, on the other ſide, if you ſhould appear to be guilty upon the Evidence, you ought not to hope that any Conſideration of Relation, Friendſhip, or Pity, will prevail againſt Juſtice. And therefore ſince in your preſent Condition every Thing that is valuable in this World is at ſtake, it will be highly neceſſary for your Lordſhip to recollect your ſelf, and to have your beſt Thoughts about you. Facts of this Nature are frequently attended with ſuch unhappy Circumſtances, that a noble Perſon may be juſtly covered with Shame to have Faults and Weakneſſes expoſed to ſuch an Aſſembly as this, although he be not Conſcious to himſelf of the Guilt of Blood: But your Lordſhip ought not to be ſo far diſcompoſed with any Thoughts of this Kind, as to neglect your Defence againſt this heavy Accuſation of Murder. In order to this, it is neceſſary for your Lordſhip to hear with Temper what will be ſaid againſt you, and by no means to interrupt the Council or Witneſſes. I will take care to give your Lordſhip notice when the proper Time comes for you to make your Obſervations upon the Evidence, to examine your Witneſſes, and to ſay what you think proper for your own Defence; And when my Lords have heard, and fully and maturely conſidered the whole Matter, their Lordſhips will give ſuch a Judgment as the Law and Juſtice require.

L. H. St. Read the Indictment to my Lord.

Clerk of the Crown. CHarles *Lord* Mohun, *your Lordſhip ſtands Indicted in the County of* Middleſex, *by the Name of* Charles *Lord* Mohun *of* Oakehampton *in the County of* Devon, *late of the Pariſh of St.* Martins in the Fields, *in the County of* Middleſex, *together with* Edward *Earl of* Warwick *and* Holland, *late of the ſame Pariſh and County*, Richard French, *late of the ſame Pariſh and County, Gent.* Roger James, *late of the ſame Pariſh and County, Gent. and* George Dockwra, *late of the ſame Pariſh and County, Gent. not having the Fear of God before your Eyes, but being moved and ſeduced by the Inſtigation of the Devil the* 30*th Day of* October, *in the Tenth Year of the Reign of our Sovereign Lord that now is*, William *the Third, by the Grace of God of* England, Scotland, France, *and* Ireland, *King, Defender of the Faith*, &c. *with Force and Arms*, &c. *at the Pariſh aforeſaid, in the County of* Middleſex *aforeſaid, in and upon one* Richard Coote *Eſq; in the Peace of God, and of our ſaid Sovereign Lord the King, that now is, then and there being Feloniouſly, Wilfully, and of your Malice aforethought, did make an Aſſault, and that the aforeſaid* Edward *Earl of* Warwick *and* Holland, *with a certain Sword made of Iron and Steel of the Value of five Shillings, which he the ſaid* Edward *Earl of* Warwick *and* Holland, *in his right Hand then and there had and held drawn, the aforeſaid* Richard Coote *in and upon the left Part of the Breaſt of him the ſaid* Richard Coote, *near the Collar Bone of him the ſaid* Richard Coote, *then and there Feloniouſly, Voluntarily, and of his Malice afore-thought, did Strike, Stab, and Thruſt in, giving to the ſaid* Richard Coote, *then and there with the Sword drawn aforeſaid, in and upon the left Part of the Breaſt of him the ſaid* Richard Coote, *near the Collar Bone of him the ſaid* Richard Coote, *one Mortal Wound of the Breadth of half an Inch, and of the Depth of five Inches, of which ſaid Mor-*

Mortal Wound he the aforeſaid Richard Coote *then and there inſtantly died: And that you the ſaid Lord* Mohun, *together with the ſaid* Richard French, Roger James, *and* George Dockwra, *then and there Feloniouſly, Wilfully, and of your Malice afore-thought, were preſent, aiding, abetting, comforting, aſſiſting, and maintaining the ſaid* Edward *Earl of* Warwick *and* Holland, *the ſaid* Richard Coote, *in Manner and Form aforeſaid, Feloniouſly, Wilfully, and of his Malice afore-thought, to Kill and Murder, and ſo the ſaid* Edward *Earl of* Warwick *and* Holland, *and you the ſaid* Charles *Lord* Mohun, Richard French, Roger James, *and* George Dockwra, *the aforeſaid* Richard Coote, *in Manner and Form aforeſaid, Feloniouſly, Wilfully, and of your Malice afore-thought, did Kill and Murder, againſt the Peace of our Sovereign Lord the King, that now is, His Crown and Dignity.* How ſay you, *Charles* Lord *Mohun*, are you guilty of this Felony and Murder, whereof you ſtand indicted, or not guilty.

Lord Mohun. Not guilty.

Cl. of the Crown. Culprit, How will you be tried?

Lord Mohun. By God and my Peers.

Cl. of the Crown. God ſend your Lordſhip good Deliverance.

Cl. of the Crown. Serjeant at Arms, make Proclamation.

Serj. at Arms. O Yes, O Yes, O Yes, All manner of Perſons that will give Evidence on behalf of our Sovereign Lord the King, againſt *Charles* Lord *Mohun*, the Priſoner at the Bar, let them come forth and give their Evidence, for now he ſtands at the Bar for his Deliverance.

Lord Mohun. My Lords, I deſire I may have the Benefit of Pen, Ink, and Paper.

L. H. St. Your Lordſhips are pleaſed to permit my Lord *Mohun* to have Pen, Ink, and Paper?

Lords. Ay, Ay.

[*Pen, Ink, and Paper were carried to my Lord, by one of the Clerks of the Houſe.*]

Mr *Cowper.* May it pleaſe your Lordſhips, my Lord *Mohun*, the Priſoner at the Bar, ſtands Indicted by the Grand Jury of the County of *Middleſex* before Commiſſioners of *Oyer* and *Terminer* in that County; and the Indictment ſets forth, That *Edward* Earl of *Warwick* and *Holland*, *Charles* Lord *Mohun*, Baron *Mohun* of *Oakehampton* in the County of *Devon*, *Richard French*, *Roger James*, and *George Dockwra*, the 30th of *October*, in the tenth Year of his Majeſty's Reign, with Force and Arms, at the Pariſh of St. *Martin in the Fields*, in the County of *Middleſex*, upon one *Richard Coote* Eſq; Feloniouſly, Wilfully, and of their Malice aforethought, did make an Aſſault, and that the ſaid *Edward* Earl of *Warwick* and *Holland*, with a drawn Sword then in his right Hand, the ſaid *Richard Coote*, upon the left Part of his Breaſt near the Collar-Bone, did Strike, Stab, and Thruſt, giving him thereby a Mortal Wound of the Breadth of half an Inch, and the Depth of five Inches, of which Wound he inſtantly died; that my Lord *Mohun*, Mr *French*, Mr *James*, and Mr *Dockwra*, Feloniouſly, Wilfully, and of their Malice afore-thought, were preſent, aiding, and abetting my Lord of *Warwick* and *Holland*, the ſaid *Richard Coote*, in manner aforeſaid, to Kill and Murder; and then concludes, ſo that the Earl of *Warwick* and *Holland*, the ſaid Lord *Mohun*, *Richard French*, *Roger James*, and *George Dockwra*, the ſaid *Richard Coote*, in Manner and Form aforeſaid, Feloniouſly, Wilfully, and of their Malice afore-thought, did Kill and Murder, againſt the Peace of the King, his Crown and Dignity. To this Indictment my Lord *Mohun* has pleaded not guilty, and for his Tryal has put himſelf upon God and your Lordſhips, his Peers. We ſhall call our Witneſſes, and produce what Evidence we have to give to prove my Lord *Mohun* guilty, and ſo ſubmit it to you.

Mr *Att. Gen.* My Lords, This Noble Lord, my Lord *Mohun*, the Priſoner at the Bar, ſtands indicted for the Death of Mr *Coote*, one of the King's Subjects, as your Lordſhips have heard in the Caſe that was before you Yeſterday, to which Indictment he hath pleaded not guilty, and for his Tryal has put himſelf upon my Lords who are his Peers; I ſhall very ſhortly open the Subſtance of the Evidence that we ſhall offer for the King againſt my Lord, the Priſoner at the Bar; we ſhall produce Evidence to prove, That at the Time laid in the Indictment, the 29th of *October* at Night, and the next Morning, which was *Sunday*, my Lord, the Priſoner at the Bar, and my Lord of *Warwick*, (who has been found guilty of Manſlaughter upon this Indictment before your Lordſhips) and thoſe other Perſons that are named in the Indictment, Captain *French*, Captain *James*, and Mr *Dockwra*, and the Gentleman that was killed, happened to be at the *Grey-hound* Tavern in the *Strand*, which was then kept by Mr *Lockett*, and continued there a great Part of the Night, indeed till the next Morning, about One or Two of the Clock in the Morning; there was my Lord of *Warwick*, my Lord *Mohun*, Captain *French*, Captain *Coote*, and Mr *Dockwra*, but very late in the Night the other Gentleman, Mr *James*, was ſent for; A Meſſenger was ſent particularly to have him come to them; There they continued drinking till about one or two of the Clock in the Morning, then Coaches were ſent for; then the Drawer of the Houſe will acquaint your Lorſhips, that he went for them, and could not get any at that time, being a very dark Night; and when there could be no Coaches had, then there were Chairs called for, and the Drawer went to call Chairs; and, as we ſhall make it appear to your Lordſhips, when the Drawer came back, there did appear to be a Quarrel among them, for their was claſhing of Swords, and they ſeem'd to be divided into Two Parties; on the one Side were my Lord of *Warwick*, my Lord *Mohun*, the Priſoner at the Bar, and Mr *Coote*; On the other Side were Captain *French*, Captain *James*, and Mr *Dockwra*; and firſt there were two Chairs came to the Door, into which Mr *French*, and Mr *Coote* went, and when they were in the Chairs my Lord *Mohun* came out, and ſaid he would kill any of the Chairmen that went away, and ſo they put up again, and the Gentlemen came out, and came into the Houſe, but afterwards Mr *Coote* went into the firſt Chair, and my Lord of *Warwick* into the next, and my Lord *Mohun* into the Third, and then they went away; and the other three Gentlemen went into the other three Chairs, and followed them. Your Lordſhips will hear whither they were all carried; When they came to the end of St. *Martin's-lane* in the *Strand*, my Lord *Mohun* would indeed have endeavoured to have perſwaded Mr *Coote* in particular to have gone home for that Night, and let the Buſineſs alone till another time, but Mr *Coote* would go on; and while the three Chairs that carried my Lord

Lord of *Warwick*, my Lord *Mohun*, and Mr *Coote* to St. *Martin's-lane* End, which were the three firſt Chairs that went away from *Lockett's*, the other three Chairs that went after them overtook them, and then by Mr *Coote's* Command, the Chairmen that carried him went forward towards *Leiceſter-fields*, and then this Noble Lord, my Lord *Mohun*, did ſay, If you do go on, I will go and ſee the End of it, and ordered the Chairmen that carried him to go after thoſe Chairs in which my Lord of *Warwick* and Mr *Coote* went, and accordingly they did go till they came to the hither End of the Square in *Leiceſter-fields* near *Green-ſtreet* End, where my Lord *Mohun* got out of his Chair, paid for all the three Chairs three Shillings. But we ſhall not be able to give to your Lordſhips an Account particularly as to my Lord *Mohun*, what he did afterwards, but we ſhall call our Witneſſes to prove what we have opened, and when our Witneſſes are heard, we ſhall leave the Matter to your Lordſhips Judgment.

Samuel Cawthorne, *which was the Drawer at the Tavern at* Lockett's, *was Sworn, and gave his Evidence to the ſame Effect that he did the Day before.*

Mr *Att. Gen.* Pray, Will you acquaint my Lords who were at your Houſe the 29th and 30th of *October* laſt, *Saturday* Night and *Sunday* Morning?

Cawthorne. There were my Lord of *Warwick*, my Lord *Mohun*, Capt. *Coote*, Capt. *French*, Mr *Dockwra*, and Mr *James*.

Mr *Att. Gen.* How long did they continue there?

Cawthorne. Till between one and two of the Clock in the Morning.

Mr *Att. Gen.* Pray, Will you acquaint my Lords what happened at your Maſter's Houſe at that Time; you remember what Evidence you gave yeſterday; tell the whole Matter again, becauſe it relates to another Noble Lord that is now at the Bar.

Cawthorne. The Reckoning was called for about that Time, and I went up and took the Reckoning, and all the Gentlemen came down to the Bar, and Coaches were ſent for; I went for them, but no Coaches could be had; Then Chairs were ſent for, and I called for Chairs, and there came two Chairs to the Door, and into thoſe Two Chairs went Captain *Coote*, and Captain *French*, and my Lord *Mohun* and my Lord of *Warwick* endeavoured to quiet them, and to put off the Buſineſs till another Day, and thereupon they came out of the Chairs, and came into the Houſe again; My Lord *Mohun* did deſire there might be no Quarrel, and would have Mr *Coote* go home with him to his Lodgings at *Weſtminſter*, or he would go with Mr *Coote*, and ſaid there ſhould be no Quarrel that Night: There were then three of them of one Side of the Bar, and three of the other Side, and their Swords were all drawn: My Lord of *Warwick*, my Lord *Mohun*, and Mr *Coote*, were of one Side, and Capt. *French*, Capt. *James*, and Mr *Dockwra*, were of the other Side: I was without the Houſe when the Swords were firſt drawn, but I heard my Lord *Mohun* ſay, I have got a cut Finger by endeavouring to part them, and at firſt when the Chairs came on, my Lord *Mohun* ſaid, if they did quarrel, he would ſend to the Guards for a File of Muſqueteers, and ſecure them, ſo that he did what he could to prevent any Quarrel at all; and when he had received the Wound in his Hand, I helped him to a Napkin to wrap his Hand in upon the bleeding of it; Then my Lord of *Warwick*, my Lord *Mohun*, and Captain *Coote*, went away in three Chairs, and my Lord *Mohun* gave Order to go down to *Weſtminſter*; and there were three Chairs called for by the other three Perſons, two did come, and Captain *French* and Captain *James* went into them, and the 6th not being come, they ſtayed till it did come, and then they three went away too; the Chairs were all ordered to go home with them; My Lord of *Warwick*, and my Lord *Mohun* gave Order to their Chairs to keep cloſe with Mr *Coote*; and the other three Chairs immediately followed.

Mr *Att. Gen.* Pray, Will you conſider, and recollect with your ſelf, Was Mr *James* there at firſt?

Cawthorne. No, I was ſent for him about ten a Clock at Night, and there he continued with them till they went all away in the Six Chairs, and he was almoſt fuddled when he came in.

Mr *Att. Gen.* When *James* came in, was his Sword drawn?

Cawthorne. His Sword was in the Scabbard, but the Scabbard was broken, and he took and broke his Sword ſtamping upon it.

Mr *Att. Gen.* Pray, can you tell, you being up and down in the Room, what was the Occaſion of the Quarrel?

Cawthorne. Indeed I can't tell, but ſome Words paſt when they were below Stairs by the Bar from Captain *French*, That he would laugh when he pleaſed, and frown when he pleaſed; and Mr *Dockwra* did ſay, that they would fight them whenever they pleaſed when they went away; but I did not obſerve that there was any Quarrel between them while they were above, nor any Swords drawn till after I came from calling the Chairs.

Mr *Att. Gen.* Were all the Swords drawn at once?

Cawthorne. They were all drawn when I came in from calling for the Coaches and the Chairs, and three were within the Bar, and three were without; They were putting up their Swords when I came in again; Indeed I do not know any Thing of the Quarrel.

L. H. St. My Lord *Mohun*, Will you ask this Witneſs any Queſtions?

L. Mohun. Indeed I think I need not ask him any Queſtion, but yet, if your Lordſhips pleaſe, I would ask him this, Whether directly or indirectly I was any ways concerned in the Quarrel? Or, Whether I did not endeavour all that ever I could to quiet them.

Cawthorne. Yes, indeed, my Lord *Mohun* did endeavour all that ever he could to prevent any Quarrel at that Time.

L. Mohun. Did I ſay any Thing tending to the promoting of a Quarrel or Fighting among them?

Cawthorne. No, my Lord *Mohun* did not promote any Thing of the Quarrel between them, but he did ſay two or three times that he would ſend for the Guards to ſecure them, and keep them from fighting, both at the Door of the Houſe, and at the Bar, and ask'd for a Napkin to wrap up his Hand in for the Wound which he ſaid he got in endeavouring to quiet and part them, and prevent their fighting.

L. Mohun. That is all that I would ask him, whether I did not endeavour all that I could to prevent any Quarrelling or Fighting at that Time.

Cawthorne. Yes, indeed, my Lord did ſo.

L. H. St. He has ſaid ſo already, my Lord, and therefore there does not need any further Examination of him to that Point: If both Sides have done with this Witneſs, let him go down. (*Which he did.*)

L. H. St. Then Mr Attorney, Who is your next Witneſs?

Mr *Att. Gen.* Our next Witneſs is *Tho. Browne*, who was one of the Chairmen that carried Mr *Coote* into *Leiceſter-fields.*

Then he was ſworn.

L. H. St. What is the Queſtion you would ask him, Mr Attorney?

Mr *Att. Gen.* My Lords, I deſire he may be ask'd and examin'd, and acquaint your Lordſhips, who it was that he carried from *Lockett*'s the 29th of *October* laſt to *Leiceſter fields*, and what time it was of the Night?

Browne. I carried Mr *Coote* in my Chair.

Mr *Att. Gen.* Whither were you directed to carry him?

Browne. To *Leiceſter-fields.*

Mr *Att. Gen.* What Time of Night was it?

Browne. It was three Quarters paſt One, as near as I could gueſs.

Mr *Att. Gen.* Pray, What other Chairs were there that went along with you?

Browne. There were Two other Chairs.

Mr *Att. Gen.* Who were in thoſe Chairs, pray?

Browne. There were my Lord of *Warwick* in one, and my Lord *Mohun* in the other.

Mr *Att. Gen.* Did you three go away from *Lockett*'s together?

Browne. Yes, we did, and when we were bid to take up, we went to the end of St. *Martin*'s-*lane*, and turning up at the End of St. *Martin*'s-*lane*, there my Lord of *Warwick* and my Lord *Mohun* called out to Capt. *Coote* to ſtay, and to turn down to go to *Weſtminſter*, but Mr *Coote* would turn up the *Lane*, and my Lord of *Warwick* and my Lord *Mohun* made a ſtop at the Back Door of the *Croſs-Keys* Tavern, and both of them perſwaded Mr *Coote* to put it off till the next Morning, but he would not, he ſaid he would make an End of it that Night.

Mr *Att. Gen.* Pray, recollect your ſelf, Did they name among them what their Buſineſs was that they would make an end of?

Browne. No, they did not.

Mr *Att. Gen.* Who was it that ſtop'd at St. *Martin*'s-*lane* End?

Browne. When we were turning up at St. *Martin*'s-*lane* End, my Lord of *Warwick* and my Lord *Mohun* call'd out to ſtop, and ask'd Mr *Coote* whither he was going, and when he ſaid to *Leiceſter-fields*, my Lord *Mohun* called out to us to ſet down, which we did, at the Back Door of the *Croſs-Keys* Tavern; They did both of them, my Lord *Warwick*, and my Lord *Mohun*, perſwade Mr *Coote* to go home to *Weſtminſter*, and not to end the Buſineſs that Night, but he would go on, and while we were there, there went three other Chairs up St. *Martin*'s-*lane* on the other Side of the Way; then Mr *Coote*, who was in our Chair, bid us take up, and follow thoſe Chairs into the Fields, and ſwore damn him he would run his Sword into one of us, if we did not make haſte, and overtake thoſe other Chairs, and go before them; I think his Words were, *Damn me, I'll run my Sword in your Breech, if you don't make haſte, and get before that other Chair.*

Mr *Att. Gen.* You ſay then, they went all away together up to *Leiceſter-fields?*

Browne. Yes, they did ſo.

L. *Mohun.* I deſire he may be ask'd, whether I did not deſire him to go home with me to my Lodging at *Weſtminſter.*

Browne. Yes, you did, and beg'd of him as if it had been for an Alms, That he would put it off for that Night; but when the other Chairs paſt by us at *Charing-Croſs* in St. *Martin*'s-*lane*, he would have the Chair taken up, and us to make what haſte we could to get before them thither, or elſe he ſwore damn him he would run his Sword into one of us, if we did not make haſte to get to *Leiceſter-fields* before the other Chairs that went up the other Side of the Way.

Mr *Att. Gen.* When the other Chairs were paſt by, and you went away to *Leiceſter-fields*, pray tell my Lords what happened then?

Browne. We went away to *Leiceſter-fields*, and when we came to *Green-ſtreet* End, and were entring upon the Square upon the Broad Stones, Mr *Coote* call'd out to us, and bid us to ſet him down, and ſo did the other two Chairs, and when he put his Hand in his Pocket to diſcharge us, my Lord of *Warwick* put his Hand in his Pocket to pay the three Chairs, and Mr *Coote* offered half a Guinea to diſcharge the Chairs, and my Lord *Mohun* did produce 3 *s.* and with it diſcharged all the three Chairs, and they all three walked away together forward upon the broad Stones on the right Hand ſide of the Way; It was ſo dark a Night, I could not ſee half a dozen Yards from me; It was the darkeſt Night, I think, that ever I ſaw in all my Life, and therefore I cannot tell what became of them after they went out of the Chairs.

Mr *Att. Gen.* Pray, did you ſee my Lord *Mohun* afterwards.

Browne. No, I did never ſee my Lord *Mohun* afterwards till now here at the Bar.

Mr *Att. Gen.* You ſay it was ſo dark, that you could not ſee three Yards from you, pray, what did happen afterwards when you were in the Field?

Browne. A little while after we had ſet down theſe Gentlemen, I fill'd my Pipe out of my Box, and before I could light it, I heard a Calling of Chairs, Chairs, and I went up towards the End of the Square, where the Noiſe was, and when I came there, they would have had me lift the Chair over the Rails, and I told them, if I did I could not lift it over again: but they would needs have me lift it over, and I did ſo, and by the Light of the Lanthorn I ſaw Capt. *French* and Captain *James* holding up Captain *Coote*, and they did deſire me to take him into our Chair, but he was in ſuch a Condition that I could not get him into the Chair; I was before It could well light my Pipe the Chairs were called.

Mr *Att. Gen.* Who did call, can you tell?

Browne. No, indeed I cannot tell who did call Chairs, but it was a Voice from the upper end of the Fields, and we lifted our Chair over the Rails into the Fields, and there were two Gentlemen holding up another Man; I have heard it ſaid it was Captain *French* and Captain *James*, and they cried out, Dear *Coote*, Dear *Coote*, and would

would have had him gotten into the Chair, but we could not; and my Lord of *Warwick* did then ſay, if any Damage did come to the Chair, tho' it were 100 *l.* we ſhould be ſatisfied for the Damage; but we were not able to get him into the Chair, and ſo there we left him.

Mr *Att. Gen.* You ſay you ſee two Gentlemen holding up Mr *Coote*, and 'twas a very dark Night, how could you tell who thoſe Gentlemen were?

Browne. I could not ſee any Thing of them till we came up with the Candle cloſe to them.

Mr *Att. Gen.* And what did they ſay when you came up cloſe to the Chair?

Browne. They offered me a 100 *l.* Satisfaction for any Damage to my Chair; but they could not get him in, for he was at that time dead, I believe, for we went to hale him up, and to get him into the Chair, but we could not do it.

Mr *Att. Gen.* Can you tell who the two Perſons were that held him up?

Browne. No, but by the Deſcription of the Perſons they had ſuch Cloaths on, as that they muſt be Captain *French* and Captain *James*, but indeed I cannot ſwear directly who they were that were there, nor who they were that called for Chairs at the upper End of the Field; but when our Chair was lifted over again over the Rails, and we came to the Corner to ſee who ſhould be taken in, there came one to us who bid us carry him to the *Bagnio* in *Long-acre*, and thither we did go accordingly.

Mr *Att. Gen.* Pray can you tell who the Perſons were that held up the Gentleman they would have to be got into the Chair?

Browne. No, indeed, I cannot.

Mr *Att. Gen.* Pray can you deſcribe 'em ſo as to know them, whether my Lord of *Warwick*, and my Lord *Mohun* were thoſe two Gentlemen?

Browne. My Lord of *Warwick* and my Lord *Mohun* were not there I'm ſure, for I know them very well; I was acquainted with them before; and when I came up to theſe Gentlemen with the Candle, there was one of them was bigger than my Lord of *Warwick*, or my Lord *Mohun*; and the Elder of them had other ſort of Cloaths than either of them had on at that time, as we could ſee when we came up cloſe with the Candle to them.

Mr *Att. Gen.* Were there any Lights of the Lamps, that are uſually in the Streets at that time, about the Square?

Browne. Yes, there were thoſe Lights; but it was a very dark Night, and we could not ſee two Yards before us, that I am ſure of, and there was no Body elſe that I ſaw at that time at the upper end of the Field, but thoſe two Gentlemen, holding up of Captain *Coote*, whom we had brought up before to the Square, and left him with the Earl of *Warwick* and my Lord *Mohun*, at the Bottom of the Square; but whither they all went, indeed I can't tell: We call'd Watch, but they ſaid it was not within their Ward, and therefore they would not come. When we ſaw how ill Mr *Coote* was upon our coming up, and that we could not get him into the Chair, we went away, lifted our Chair over the Rails again, and carried a Gentleman to the *Bagnio* in *Long-acre*.

Lord *Mohun.* I have a Queſtion to ask this Witneſs, and that is, how far the Place is whither he carried the Chair, that is, from *Green-ſtreet* End, to the Place whither the Chairs were called for again, at the upper End of the Pails, where he found the two Gentlemen holding up Mr *Coote*, and endeavouring to get him up into the Chair?

Browne. I believe it is about fifty Yards, as near as I can gueſs.

Lord *Mohun.* I deſire to know, whether he means fifty Yards from the upper End to the lower End of *Leiceſter-fields?*

Browne. Yes, I believe, my Lord, it is, and better.

Lord *Mohun.* I deſire to ask him, whether *Green-ſtreet* be not at the very lower End of the Square?

Browne. Yes, my Lord, the lower End of the Square, coming out of St. *Martins-lane* into *Green-ſtreet*.

Mr *Att. Gen.* But did you ſee three other Chairs in that Place?

Browne. Yes, while I was filling my Pipe out of my Box, three other Chairs did come by, and went away; but within a little while after the filling of my Pipe, or rather before I could well fill it, or light it, we heard calling for Chairs again towards the upper End of the Fields, and we carried up our Chair thither, and there we found, as I have told you, two Gentlemen holding up Mr *Coote*, and crying out, *My dear* Coote, *my dear* Coote.

Mr *Att. Gen.* Can you tell who it was that called for the Chairs the ſecond Time, when you were in the Fields?

Browne. No, indeed, I cannot; but they would have us bring our Chair over the Rails, and we did lift it over; and when we came up to them, I ſaw only two Gentlemen, whom I did not know who they were particularly, till we came up cloſe to 'em that we could ſee their Cloaths, by the Light of the Candle in our Lanthorn; and they would have had us put Mr *Coote* into our Chair, and he being very much wounded, they would have had us carry him away; we told them it would ſpoil our Chair, and we could not beſides lift him over the Rails again; they promiſed we ſhould have any Satisfaction for Damage to our Chair, even to the value of a Hundred Pounds; we went to heave him up to put him into the Chair, and did all we could to have got him into the Chair, but we could not; ſo we lifted the Chair over the Rails again; and when we came to the Corner of the Rails, at the Way that goes to *Long-acre*, there we took up a Gentleman whom we carry'd to the *Bagnio* in *Long-acre*; we called out to the Watch, but they ſaid it was not within their Ward, and they would not come.

Mr *Att. Gen.* Can you tell who were the Perſons that were at the upper End of the Fields?

Browne. No, indeed, I cannot tell who they were.

Mr *Att. Gen.* Was my Lord *Mohun* and my Lord *Warwick* the two?

Browne. No, my Lord *Mohun* was not there, nor my Lord *Warwick*; I know them ſo well, that it could not be them; one of the Gentlemen was bigger than my Lord of *Warwick*, and the other of them had other Cloaths than my Lord *Mohun*.

Mr *Att. Gen.* Was that the Way they walked up, when they came out of the Chairs, that led to that End of the Fields where you found Mr *Coote* wounded?

Browne.

Browne. Yes, it was.

Mr *Att. Gen.* My Lords, this is but the Repetition of the Evidence that he gave to your Lordſhips Yeſterday.

L. H. St. If you have done with this Witneſs, my Lord *Mohun* may ask him any Queſtions.

Lord *Mohun.* I deſire to have him ask'd, how far is the Place where he carried the Chair at firſt into *Leiceſter-fields*, from the Place where they put over the Chair within the Rails, and would have taken in Mr *Coote?*

Browne. It is about fifty Yards, as near as I can gueſs.

Lord *Mohun.* I deſire to know of him, whether the Place where we were ſet down, that came in the firſt three Chairs, from *Lockett*'s into *Leiceſter-fields*, to the Place where he found Mr *Coote* ſupported by the two Gentlemen, be not from one End of the Fields to the other?

Browne. The Place were we ſet down Captain *Coote*, is at the lower End of *Green-ſtreet*, and the Place where we found him wounded, was at the upper End by *Leiceſter-houſe.*

L. H. St. I think it is underſtood, that *Green-ſtreet*, which comes out of St. *Martin*'s-*lane*, is at one End of *Leiceſter-ſquare*, and *Leiceſter-houſe* is at the other End.

Mr *Att. Gen.* Pray where was it that you ſaw the two Gentlemen hold up Captain *Coote*, and cry out, *My dear* Coote, *my dear* Coote?

Browne. It was on one Side of the Croſs-way, that leads out of the Fields towards *Newport-ſtreet*, and by *Leiceſter-houſe.*

Mr *Att. Gen.* But you ſay, three Chairs did go up towards the upper End of the Fields?

Browne. Yes, they did ſo; but our three Chairs that came away firſt from the *Greyhound* Tavern, ſet down at *Green-ſtreet* End, and the three Gentlemen that came in our Chairs went up the Fails to them; but whither they went I can't tell, but ſoon after we heard calling for Chairs again, and ſo we went up, where we found the two Gentlemen holding up Captain *Coote*, and ſaying, *My dear* Coote, *my dear* Coote.

Mr *Att. Gen.* But when you were called the ſecond time, that is, into the Fields, where was the Place you ſay that you found them in?

Browne. It was within the Rails, one Side of the Croſs-way towards *Leiceſter-houſe.*

Lord *Mohun.* Pray was that the direct Way that I went from the Place that I was ſet down, that is the lower End of *Green-ſtreet*, to the Place that they afterwards went to, which was the *Bagnio* in *Long-acre.*

Browne. When Captain *Coote*, and my Lord *Mohun* were ſet down, and walked away upon the paved Stones of the Square, to the Place where I found the two Gentlemen holding up Capt. *Coote*, was the quite contrary Way from the End of *Green-ſtreet* to the *Standard* Tavern.

L. H. St. Who is your next Witneſs, Mr. Attorney?

Mr *Att. Gen.* The next Witneſs that we call, is *Robert Applegate.*

Who was Sworn.

L. H. St. What do you ask this Witneſs?

Mr *Att. Gen.* My Lords, this is the Chairman that carried my Lord *Mohun* to *Leiceſter-fields* from *Locket*'s; he will give your Lordſhips an Account when he carry'd him, who he carry'd, and what happened afterwards, which is all but to the ſame Purpoſe with the Evidence that he gave Yeſterday. But pray, who was that whom you carried on the Thirtieth of *October* laſt to *Leiceſter-fields?*

Applegate. I carried my Lord *Mohun* from *Locket*'s, at the *Grey-hound* Tavern in the *Strand* to *Leiceſter-fields.*

Mr *Att. Gen.* Pray, How many Chairs were there of you that went away together?

Applegate. There were Three of us that went away together, one carry'd my Lord *Warwick*, we my Lord *Mohun*, and the third carry'd Captain *Coote*, which was the firſt Chair that went away.

Mr *Att. Gen.* Whither did you go?

Applegate. We went to the Corner of St. *Martin*'s *Lane.*

Mr *Att. Gen.* Who do you ſay were in the other two Chairs?

Applegate. My Lord of *Warwick*, and my Lord *Mohun.*

Mr *Att. Gen.* When they came out firſt, What Orders or Directions were given?

Applegate. My Lord *Mohun* ſaid, That he and my Lord of *Warwick*, and Captain *Coote*, would go all three together down to *Weſtminſter*, and there they would all lie together, or be together that Night.

Mr *Att. Gen.* What Anſwer was given to what my Lord *Mohun* ſaid?

Applegate. Indeed I do not remember any Anſwer that was given at all; but after that my Lord *Mohun* went into the Chair, and ordered us to follow down the other two Chairs towards *Weſtminſter*, and we put up the Chair and came away; and when we came to St. *Martin*'s *Lane* End, the Chair that carried Capt. *Coote* turn'd up the Lane, and we being ordered to follow the other Chairs, went up the Lane too; but my Lord *Mohun* perceiving that they were not going down to *Weſtminſter*, call'd out to ſtop, juſt when we were entred into St. *Martin*'s *Lane*, over-againſt the Back-door of the *Croſs-Keys* Tavern, and made the other Chairs to ſtand, and all the three Chairs were ſet a-breaſt before that Place, and my Lord *Mohun* ask'd Capt. *Coote* whither he was going? and he anſwer'd, to *Leiceſter-fields:* He beg'd of him, as one would beg for an Alms, that he would not go that Night, for the Buſineſs could not be done that Night, and it was better to put it off till the next Morning.

Mr *Att. Gen.* Did they name what the Buſineſs was, that was to be done?

Applegate. No; but my Lord *Mohun* did ſay, 'twas impoſſible to be done that Night.

Mr *Att. Gen.* Well, and what happened afterwards, while you were in that Place?

Applegate. While we were there, three other Chairs paſt by us, on the other Side of the Way, and going forward up the Street, Captain *Coote* order'd their Chairs to follow, and ſo we did to *Green-ſtreet* End, and there we ſet 'em down.

Mr *Att. Gen.* Pray can you remember what was ſaid by my Lord *Mohun* at the Time when the other Chairs paſs'd by?

Applegate. He was then deſiring and begging of Capt. *Coote* to go home to *Weſtminſter*, telling him that it could not be done that Night, but it muſt be defer'd till the next Morning; but Captain *Coote* ſaid he would not delay it till the next Morning, but he would go to *Leiceſter-fields* that Night, and all three Chairs were ordered to go forward, and we did go on forward to *Leiceſter-fields*; my Lord *Mohun*, indeed, did beg and deſire as heartily as, I ſay, a Man for an Alms, that they would let it alone

alone for that Night; but Captain *Coote* would not, and ordered his Chair to go forwards.

Mr *Att. Gen.* You ſay, my Lord *Mohun* beg'd as heartily as if it were for an Alms to defer it for that Night?

Applegate. Yes, he did do ſo; ſo that I do really think that he was not concerned in the Matter.

Mr *Att. Gen.* If he were ſo earneſt to defer and put off the Buſineſs, how came you to carry him thither that Night? What Expreſſions did he uſe, particularly in St. *Martin's Lane*, after the other Chairs were paſs'd by?

Applegate. He ſaid, If you muſt go, I'll go with you and ſee it; and he bid us take up and follow the other Chairs wherein Capt. *Coote* and my Lord *Warwick* were; and we did go.

Mr *Att. Gen.* And where did you ſet my Lord *Mohun* down?

Applegate. At the hither End of *Leiceſter Square*, at the Corner of *Green-ſtreet*, the lower Corner of the paved Stones, going up to *Leiceſter Houſe*.

Mr *Att. Gen.* What became of the three Gentlemen that you ſet down at the End of *Green-ſtreet*?

Applegate. They went all three together up the Stone-pavement, towards the upper End of the Square, towards the *Standard* Tavern, I think.

Mr *Att. Gen.* Did they go together, or did they go aſunder?

Applegate. They went together, I think; I did not ſee them part one from another.

Mr *Att. Gen.* Pray did you ſee my Lord *Mohun* afterwards?

Applegate. No, I did not.

Mr *Att. Gen.* What became of you afterwards?

Applegate. I ſtay'd a little at the lower End of the Square to take a Pipe of Tobacco, and when I had filled my Pipe, I heard calling Chairs, Chairs again, at the upper End of the Square; and when we brought up our Chair to the upper End of the Fields, the firſt Man that I did ſee was my Lord of *Warwick*, who would have had us put over our Chair within the Rails; but we told him we could not get it over again if any one was put in it: but if they would come out into the Square, there we were ready to carry 'em any where; and when we came to the upper End of the Square, there was Captain *French*, and we took him into the Chair, and he bid us carry him to the *Bagnio* in *Long-acre*; and at *Newport-ſtreet* End he would have had us ſtop and pull off his Cloaths, for he believed he was a dead Man.

Mr *Att. Gen.* Pray, Who did you ſee there at the upper End of *Leiceſter-fields*?

Applegate. No Body, indeed, but my Lord of *Warwick* and Mr *French*.

Mr *Att. Gen.* No Body but them two.

Applegate. No; no Body but them two.

Mr *Att. Gen.* Where do you ſay that was, that the Calling for Chairs was, and where you brought your Chair?

Applegate. It was juſt at the upper End of *Leiceſter-fields*, by *Leiceſter-houſe*, and by the *Standard*-Tavern.

Mr *Att. Gen.* Who was it that you there took up?

Applegate. It was Captain *French*.

Mr *Att. Gen.* Whither then did you carry him?

Applegate. We were order'd to go to the *Bagnio* in *Long-acre*; and thither we, and another Chair that carried my Lord *Warwick*, did go; and when we came there, we did knock a good while before we could get any Body up; and when they were let in, we came away, and were bid to call for our Fare the next Morning.

Mr *Att. Gen.* Pray where was it that you took up Captain *French*?

Applegate. It was at the upper end of all *Leiceſter-fields*.

Mr *Att. Gen.* And you went away with him, did you?

Applegate. Yes, as ſoon as ever we took him up; it was as ſoon as ever we could, at the outſide of the Rails. I was the firſt Chair that, upon the calling for Chairs after they came thither, was by the *Standard-Tavern*; and from thence we went into *Long-acre*.

Mr *Att. Gen.* Whereabout is the *Standard-Tavern*?

Applegate. It is at the further end of the Fields by *Leiceſter-houſe*; it is by *Cramburne-lane*, which is the Street that leads into *Newport-ſtreet*, and ſo into St *Martins-lane*; and then we were to go to the *Bagnio* in the *Long-acre*.

L. H. St. My Lord *Mohun* will you ask this Witneſs any Queſtions?

Lord *Mohun.* Yes, my Lord, I have a Queſtion or two to ask him; I deſire to ask him, Whether, when we were going along, and the Chair, in which Captain *Coote*, was turn'd up St *Martins-lane*, I did not call out to have him ſtop, and know whither they were going?

Applegate. Yes, my Lord, you did.

Lord *Mohun.* Pray whither did I bid you go, when you firſt took me up at *Locket's*?

Applegate. My Lord *Mohun* bid me follow thoſe Chairs, but go down to *Weſtminſter*, for he ſaid they all three would go together, and lie together that Night.

Lord *Mohun.* My Lords, I deſire this Man may be ask'd, whether there were not ſeveral Ways of going out of the Fields, beſides thoſe of *Green-ſtreet* and the *Standard-Tavern*?

Applegate. Yes, my Lord, no doubt there are.

Lord *Mohun.* Then I'll leave it to your Lordſhips to make the Obſervation; for there is no Evidence that I was ever ſeen in the Field after I alighted out of the Chair at *Green-ſtreet* end; and I hope your Lordſhips do obſerve, That he has told you, I was as earneſt in begging Captain *Coote* to defer going to *Leiceſter-fields* till the next Morning, and begg'd as heartily of him for it, as any Beggar would do for an Alms.

L. H. St. My Lord, their Lordſhips, no doubt, have made that Obſervation; for he did ſay ſo.

Lord *Mohun.* My Lords, I have no more to ask him.

L. H. St. Mr Attorney, Who is your next Witneſs?

Mr *Att. Gen.* Our next Witneſs is *Peter Ketro*, who likewiſe was a Chairman that carried my Lord *Mohun* into the Place were the Fact was done.

Peter Ketro was Sworn.

Mr *Att. Gen.* Pray will you acquaint my Lords who you carried upon the Thirtieth of *October* laſt, from the *Greyhound* Tavern to *Leiceſter-fields*?

Ketro. Upon the Thirtieth of *October* laſt, in the Morning (which was *Sunday*) very early, we were call'd to the Door of the *Greyhound-Tavern*, and when we came there, there were ſeveral other Chairs there, for there was no Coach, it ſeems, to be had.

Mr *Att.*

Mr *Att. Gen.* And who was in your Chair?

Ketro. My Lord *Mohun*; and there were two other Chairs that went away together, wherein were Captain *Coote* and my Lord of *Warwick*.

Mr *Att. Gen.* And whither did you go from thence?

Ketro. We went along the *Strand*, and when we came to the end of St *Martins-lane*, the Chair that Capt. *Coote* was in, we ſuppoſed by his Order, turn'd up the Lane; for my Lord *Mohun* had given us Order to go down to *Weſtminſter*; and then when we came there, to the end of St. *Martins-lane*, he call'd out to ſtop, and to have the other Chairs ſtopt, and they ſtood ſtill at the Back-door of the *Croſs-Keys* Tavern, which is at the end of St *Martins-lane*, and all the three Chairs did make a ſtand at that Place, and my Lord of *Warwick*, and my Lord *Mohun*, and Captain *Coote* talk'd together; and my Lord *Mohun* did deſire Captain *Coote* to go down to *Weſtminſter*, and to put off the Buſineſs for that Night, for nothing of Buſineſs could be done; then my Lord of *Warwick* did ſay, if they did go on he would go on with them; but my Lord *Mohun* did endeavour to perſuade 'em to go down to *Weſtminſter* to Lodge, for nothing could be done that Night; but when the other three Chairs paſt by, on the other Side of the Way, and Captain *Coote* would needs go forwards to *Leiceſter-fields*, my Lord *Mohun* did bid us take up and follow them; and he ſaid, if they would go, he would go and ſee what came of it; ſo we took up, and followed the other Chairs, and went up the Lane, and into *Green-ſtreet*, to the lower end of *Green-ſtreet*, next the Square, and there our three Chairs ſet down my Lord of *Warwick*, my Lord *Mohun*, and Captain *Coote*, and were diſcharged.

Mr *Att. Gen.* And what became of them after?

Ketro. There they went up upon the broad Stones, up towards the upper end of the Fields.

Mr *Att. Gen.* Did they go all together, or did they part?

Ketro. They went together, for any Thing I know; I ſaw no parting, and indeed it was ſo dark a Night, that I cannot tell what became of 'em after they went out of the Chairs: It was one of the darkeſt Nights that ever I ſaw.

Mr *Att. Gen.* Well then, pray what happened after that?

Ketro. I went to light my Pipe of Tobacco, and before we could light a Pipe of Tobacco, there was calling at the upper end of the Square for Chairs again, and ſo up we went with our Chair to the upper end of the Fields; and when we came there, ſome Body call'd out to have us lift our Chair over within the Rails, but we told 'em, if we did ſo, we could not get it over again, if any Body were put into it; and ſo we were bid to go to the end of the Rails, in Order to the getting out from that Place, and getting in of any Body that was to go into the Chair; and when we came to the end of the Rails, we took up Captain *French*, and he bid us carry him to the *Bagnio* in the *Long-acre*, and we did ſo, and at *Newport-ſtreet* end he would have had us have pull'd off his Cloaths, for, he ſaid, he believ'd he was a Dying Man; but we carryed him on to the *Bagnio* in *Long-acre*, and there came after us my Lord of *Warwick* in another Chair; and there we ſet 'em down.

Mr *Att. Gen.* I have a Queſtion to ask you, Friend, Did you not ſee my Lord *Mohun* after you ſet him down at *Green-ſtreet* end.

Ketro. No, indeed, not I; I did not, after he went out of the Chair.

Mr *Att. Gen.* Can you tell whither he went after he went out of the Chair?

Ketro. No, I can't tell whither he went; they all three went up the pav'd Stones together, but whither they went I can't tell.

Mr *Att. Gen.* Did you hear of any other Chair that was at that end of the Fields at that Time?

Ketro. There was another Chair at that Time, at the upper end of the Fields.

Mr *Att. Gen.* Did you hear 'em deſire to take Mr *Coote* into that Chair?

Ketro. No, I did not.

Mr *Att. Gen.* Nor do you know any Thing of their putting Mr *Coote* in a Chair?

Ketro. No, indeed not I; what they did as to the other Chair, that was before, they can beſt tell, for I can't.

L. H. St. Who is your next Witneſs, Mr Attorney?

Mr *Att. Gen. Richard Edwards.*

L. H. St. What do you call him to?

Mr *Att. Gen.* Becauſe we would not trouble your Lordſhips with the Repetition of every one of the Witneſſes that were here Yeſterday; this is the Man that carry'd Mr *Dockwra* into the Field.

Edwards *was Sworn.*

L. H. St. Mr Attorney, What do you ask this Witneſs?

Mr *Att. Gen.* Pray do you acquaint my noble Lords here, who you carried in your Chair to *Leiceſter-fields?*

Edwards. Indeed, I can't tell; there were three Chairs that took up three Perſons at the *Greyhound* Tavern in the *Strand*, after three other Chairs were gone away, and every one had a Gentleman in 'em: I, for my Part, did not know who was in our Chair; but when we ſhut up the Chair we were bid to go to the *Standard* Tavern in *Leiceſter-fields*, and thither we did go, and there we ſet down the Gentleman that was in our Chair, and away we went; and as we went up St. *Martin's Lane*, we paſs'd by the Three other Chairs that turn'd up before, at the Back-door of the *Croſs-Keys* Tavern.

Mr *Att. Gen.* Did you ſee the other three Chairs in *Leiceſter-fields* afterwards?

Edwards. No, indeed I did not; but went up to the *Standard* Tavern, and ſet down the Gentleman that was in our Chair, and there we left him, and went away.

Mr *Att. Gen.* Pray, Can you tell who it was that you carried?

Edwards. Indeed, I cannot very well tell; but I believe it was Captain *James*, or Mr *Dockwra.*

Mr *Att. Gen.* When you came to the *Standard* Tavern, pray, What happen'd? What paſs'd there?

Edwards. To the beſt of my Knowledge, I took hold of the Knocker of the Door, and knock'd at the Door, and the Gentleman came out, and was ſet down there; and he gave me a Shilling, and away I went with my Chair.

Mr *Att. Gen.* When you ſet him down at the *Standard* Tavern, pray, What did he ſay?

Edwards. He gave me a Shilling, and bid me go about my Buſineſs; and ſo we went away.

Mr *Att. Gen.* Was you there when you heard 'em call Chairs back?

Edwards. No, we went away as ſoon as we had ſet 'em down at the *Standard* Tavern.

Mr *Att.*

Mr *Att. Gen.* Did you obſerve which Way they went after you ſet him down?

Edwards. No, indeed I did not; I never minded which Way they went, after we ſet him down.

Mr *Att. Gen.* Which Way did you go?

Edwards. We went away down towards *Charing-croſs.*

Mr *Att. Gen.* Did you ſee any other Chairs in the Square when you went down?

Edwards. Yes, there were other Chairs at the other End of the Square.

Mr *Att. Gen.* Did you ſee any Gentlemen as you came down, walking up towards the *Standard* Tavern, upon the pav'd Stones?

Edwards. No, indeed, my Lords, not that I remember; but I did ſee the other three Chairs as I paſs'd by at *Green-ſtreet* End; who were in 'em, or what was become of them that were in 'em, that I can't tell.

Mr *Att. Gen.* What did they ſay to you any of 'em at that Time?

Edwards. They ask'd us if we were going away, and we told them yes; we were diſcharg'd.

Mr *Att. Gen.* But pray, Did you not meet any of the other Gentlemen upon the pav'd Stones?

Edwards. No, indeed, I did not ſee, to the beſt of my Remembrance, any other Gentlemen upon the paved Stones.

Mr *Att. Gen.* What did the other Chairmen ſay to you?

Edwards. They ask'd if we were coming away; and we left 'em behind us.

L. H. St. Has my Lord *Mohun* any Queſtions to ask him?

Lord *Mohun.* No, I have not.

L. H. St. Mr Attorney, who is your next Witneſs?

Mr *Att. Gen. Jackſon*, who was the Chairman that carry'd Capt. *James.* *(He was Sworn.)*

Mr *Att. Gen.* Pray, Will you acquaint my Lords who you carry'd from *Locket*'s to *Leiceſter-fields?*

Jackſon. Captain *James:* There were ſix Chairs in all: I do not know who went in the other Chairs, but in the three Chairs that went together, when we went, there was Captain *Dockwra*, Captain *French*, and Captain *James.*

Mr *Att. Gen.* And where did you ſet him down?

Jackſon. At the *Standard* Tavern in the Square of *Leiceſter-fields.*

Mr *Att. Gen.* What became of him after you ſet him down?

Jackſon. We knock'd twice at the Tavern Door, and then he gave us a Shilling, and we went away preſently, and went down on the left Hand upon the pav'd Stones, towards *Green-ſtreet* End.

Mr *Att. Gen.* Did you meet any Perſons coming up upon the paved Stones?

Jackſon. Yes, my Lord, I did.

Mr *Att. Gen.* Can you tell who thoſe Perſons were?

Jackſon. Indeed, I cannot tell.

Mr *Att. Gen.* How many were they in number?

Jackſon. They were two or three; but it was ſo dark, that I cannot tell how many they were.

Mr *Att. Gen.* Which Way were they walking?

Jackſon. They were going up towards the middle Street.

Mr *Att. Gen.* How far was that from the *Standard* Tavern?

Jackſon. It might be about ſixty Yards from the *Standard* Tavern.

Mr *Att. Gen.* You ſay there were three Chairs ſtanding at the End of *Green-ſtreet* when you came by?

Jackſon. Yes, there were ſo.

Mr *Att. Gen.* Had you no Diſcourſe with them?

Jackſon. No, indeed, I had not.

Mr *Att. Gen.* Did you not ask them why they ſtay'd there?

Jackſon. No, indeed, I did not; we paſs'd by and went home.

Mr *Att. Gen.* You know my Lord *Mohun*, don't you?

Jackſon. Yes, I do, very well.

Mr *Att. Gen.* Was not my Lord *Mohun* in that Company?

Jackſon. He was when the ſix Chairs were call'd to *Lockets*; but I did not hear any Diſcourſe, that I can remember, that paſs'd among 'em, nor do I know, or did hear, what became of my Lord *Mohun* afterwards.

Mr *Att. Gen.* Were thoſe the other three Chairs that went away from *Locket*'s firſt, that you ſaw at *Green ſtreet* End?

Jackſon. Indeed, my Lords, I believe ſo; I cannot ſwear that they were thoſe three Chairs; when we had ſet down Captain *James*, we did not look back any Way at all, but went away home, it being ſo late and ſo dark.

L. H. St. My Lord *Mohun*, will you ask this Witneſs any Queſtions?

Lord *Mohun.* No, my Lord.

Mr *Att. Gen.* Then, my Lord, we ſhall call *William Salmon* who was the Surgeon that did ſearch the Wound by the Coroner's Command, when he took the Inquiſition upon the View of the Body.

Who was Sworn.

Mr *Att. Gen.* Pray, Did you view the Body of Mr *Coote* after he was Dead?

Salmon. Yes, I did view his Body by the Command of the Coroner at the Watch houſe where it lay in St. *Martin*'s *Lane.*

Mr *Att. Gen.* Pray then will you acquaint my Lords what Wounds you found upon the Body?

Salmon. There was one upon the left Part of the Breaſt, near the Collar-bone, which, upon probing, I found to be half an Inch in Breadth, and four or five Inches deep downward; the other was a Wound that was in his left Side, juſt under the ſhort Ribs, and that was upward; and upon probing of it, I found it was about the Breadth of an Inch at the Orifice, and about the depth of five or ſix Inches, and pierced through the Diaphragma.

Mr *Att. Gen.* Pray, Did you obſerve any Difference in the Wounds, or in the Orifice of them?

Salmon. That below was a large Wound, larger than the other.

Mr *Att. Gen.* Were the Wounds, do you think, given with two Swords, or with one and the ſame Sword?

Salmon. Indeed, I can't tell.

Mr *Att. Gen.* Did you look upon either, and which of them to be Mortal?

Salmon. I look'd upon both to be Mortal.

L. H. St. If you have done with him, Mr Attorney, will my Lord *Mohun* ask him any Queſtions?

Lord *Mohun.* No, I ſhall ask him no Queſtions, for I think I need not, I was never prov'd to be in the Company, in the Place where the Fighting was.

Mr *Att. Gen.* We have done with calling of Witneſſes, till we hear what my Lord *Mohun* ſays to it.

L. H. St. My Lord *Mohun*, This is the Time (the King's Evidence being finiſhed) for you to call your Witneſſes, and make your Defence.

Lord *Mohun.* My Lords, I ſhall not call many Witneſſes, for I think there is nothing that fixes any Thing of Guilt, as to Capt. *Coote*'s Death, as to me; but I ſhall call one Witneſs that was here (as I underſtand) Yeſterday, but not examined, and that is a Perſon that ſaw me afterwards, and knows that I had a Wound in my Finger laid open, and that Wound was received at *Locket*'s, by endeavouring to part 'em when they were quarrelling there at that Time.

The Witneſs ſtood up.

L. H. St. Tho' you are not upon your Oath, yet you are as much obliged, in Juſtice and Conſcience, to ſpeak the exact Truth, as if you was upon your Oath, therefore have a Care what Teſtimony you give.

Witneſs. Yes, my Lord.

L. H. St. What is the Queſtion you would have this Witneſs ask'd?

Lord *Mohun.* What he knows of my being Wounded about this Time, and what I declared concerning that Wound, how I received it?

L. H. St. I will not refuſe to ask the Queſtion, but I muſt acquaint your Lordſhip that it ſignifies nothing in Point of Evidence at Law, what you your ſelf did declare after the Fact was over. It is Material what you did to prevent this Miſchief before it happened, but not what you ſaid or declared after the Thing was done. You hear my Lord's Queſtion, What ſay you to it?

Witneſs. I was at my Lord *Mohun*'s ſeveral Days after this Buſineſs happened, at the Lodging where he lay, and where I ſaw him; he had a Hurt in his Hand, and it was laid open, it was in the Finger, and that he ſaid was all he got by endeavouring to part People from fighting.

Mr *Att. Gen.* Pray, Sir, when was this?

Witneſs. It was ſeveral Days after the Death of Mr *Coote*.

L. H. St. I told your Lordſhip before, that in Point of Law, ſuch Evidence would ſignify nothing; becauſe your declaring any Matter, after the Thing was done, in relation to the Fact, could not be admitted as legal Evidence; if any of my Lords be of another Opinion, I ſuppoſe they will declare it?

Lord *Mohun.* My Lords, I ſubmit it to your Lordſhips; I only deſire he may be ask'd, Whether he ſaw my Hand or no, and how it was?

Witneſs. I ſaw my Lord's Finger, and it had been laid open ſome Time before; and he ſaid, he had received that Wound by endeavouring to part Captain *French* and Captain *Coote:* That's all I know of the Matter.

Mr *Att. Gen.* But, pray, When was That that he declared ſo? How long after the Death of Mr *Coote?*

Witneſs. It was ſeveral Days after That.

L. H. St. You hear, in Point of Law, That can be no Evidence at all: If you have no other Witneſſes to call, your Lordſhip would do well to ſum up your Evidence, and make what Obſervations you think fit upon the Evidence has been given for the King?

Lord *Mohun.* My Lords, I hope I ſhall make my Defence, againſt this Accuſation, with all the Modeſty and Submiſſion to your Lordſhips, that becomes me: I am very much aſhamed to be brought before your Lordſhips upon any ſuch Account as this again, after having been once before your Lordſhips upon ſuch an Account before. I may very well ſay, I am not guilty at all of having any Hand in Mr *Coote*'s Death; and I can aſſure your Lordſhips, I will avoid all Occaſions of giving you any Trouble of this Nature for the future: I do not doubt but to acquit my ſelf of all Guilt, in relation to this Matter; and, indeed, with Submiſſion to your Lordſhips, there has been no Evidence given, relating to me, that does infer any Guilt upon me, to prove that I was at the Place where this Fact was done; therefore I ſhall only make ſome few little Remarks upon what has been ſaid, and leave it all to your Lordſhips Conſideration.

The King's Council firſt have call'd the Drawer of the Houſe, and he has ſatisfied, that I did ſo far endeavour to part 'em, that I threaten'd to ſend for the Guards and ſecure 'em, if they would not go home; and when they went into the Chairs, I went into my Chair, on purpoſe to follow 'em down to *Weſtminſter*, whither I would have had them gone; the Prick that I got in my Finger, of itſelf ſpeaks, that I endeavour'd to part 'em, and ſo the Drawer he has told you; I am ſure it was the Occaſion of a great deal of Pain to me, it being forc'd to be afterwards laid open. The Chairman that carry'd Mr *Coote*, ſwears, That I, at the Door of the Tavern in St. *Martin*'s *Lane*, did make 'em ſtand, and when I came up to 'em, I beg'd, as for an Alms, that they would go home; and I ask'd *Coote* whither he was going, which proves that I was not conſcious of any Deſign of going to fight at that Time: Your Lordſhips are likewiſe told, That when we came to *Green-ſtreet* End, I was ſet down upon the pav'd Stones. I was ſo, indeed, and I went up about five or ſix Yards, but that is all that's prov'd; but I did take the quite contrary Way to the Place where Mr *Coote* was wounded. Then there was another Chairman, one *Applegate*, and truly what Uſe they make of him, I cannot imagine, as an Evidence againſt me; for he ſays, I was very earneſt in St. *Martin*'s *Lane* to hinder any Quarrel, and indeed at the Tavern-Door, at *Locket*'s, I was ſo at firſt; and when we came to St. *Martin*'s *Lane* End, he ſays, that I order'd 'em to make them ſtop, and ask *Coote* whither he was going, and he ſaying he was going to *Leiceſter-fields*, I endeavour'd all I could to perſuade him to the contrary, and did entreat him that he would go no farther, but go down to *Weſtminſter* to his Lodging, or lodge with me; but Mr *Coote* would not give me Time, at that Time the other Chairs coming by, to give him further Reaſons, but would go away: And then it is objected, that I ſhould ſay, That if they would go, I would go and ſee: That was, my Lords, I would go on till I could have a further Opportunity to prevent any Fighting among them: And the Witneſs *Ketro* ſays, my Lord of *Warwick* did bid the Chair to follow the other Chair in which Captain *Coote* was. My Deſign

ſign was for *Weſtminſter*, to go to my Lodgings, and when we came to the End of the Square, if I did go up the whole Stones, it was directly the contrary Way to the Place where it is prov'd this Fact happen'd. For the next Witneſs, *Edwards*, he ſays he ſaw no Body walking upon the pav'd Stones; and truly, I did go the direct Way into *Newport-ſtreet*: And for my not appearing before, it was for avoiding Confinement; and I muſt ſubmit the whole Matter to your Lordſhips, how far any Guilt is fix'd upon me, not being prov'd to be in the Field at the Time when they fought, or ſeen to be in the Company when they came up and found Mr *Coote* wounded, and dying, or dead. It is a plain Caſe I could have no Hand at all in his Death; and ſo I think I need give no further Trouble to your Lordſhips, for I believe your Lordſhips cannot but be ſatisfied, that, as I have pleaded I am not guilty of killing this Gentleman: Nay, it is impoſſible that I ſhould go into the Field to be a Second, when my own right Hand was wounded, for I was not able to hold my Sword in my Sword-Hand, becauſe of that Wound. I ſubmit the Matter intirely to your Lordſhips, from whom I am ſure to meet with every Thing that will be ſuitable to Honour and Juſtice.

L. H. St. The King's Council are now to ſum up the Evidence for the King.

Mr Sollicitor General began to ſum up the Evidence for the King, but his Voice was ſo low, and the Noiſe in the Hall ſo great, that he could not be heard, and therefore the Lord High Steward moved the Houſe that he might ſtand by the Priſoner at the Bar, which was ſomething nearer than the Place where the King's Council ſtood, as was done the Day before; and it was order'd accordingly.

L. H. St. Mr Sollicitor, Pray raiſe your Voice as much as you can, that all my noble Lords may hear you.

Several of the Lords did move, That one that had a better Voice might ſum it up, and particularly Mr Cowper; but it being uſually the Part of the Sollicitor General, and he only having prepared himſelf, he was ordered to go on; but for the better Hearing of him, ſeveral of the Lords towards the upper End of the Houſe, removed from their Seats down, as they did the Day before, to ſit upon the Wooll-packs.

Mr *Soll. Gen.* My Lords, I am of Council for the King againſt this noble Lord, my Lord *Mohun*, the Priſoner at the Bar, who has been upon his Tryal this Day, and it comes to my Turn to ſum up the Evidence that has been given againſt him, which is but a Repetition of what your Lordſhips, no doubt of it, have taken exact Notice of; but I muſt ſhortly ſum up the Chief of the Particulars thereof, and make a few Remarks what of that Evidence ſticks particularly upon my Lord *Mohun*. The firſt Witneſs was the Drawer of the Houſe, at the *Greyhound* in the *Strand*, who gives you an Account who were at his Maſter's Houſe the Nine and twentieth of *October* laſt, and particularly, that my Lord *Mohun* was there in the ſame Company wherein this Gentleman was, that was unfortunately killed, and that he continued in that Company till very late that Night, or rather, very early the next Morning; when, after the Reckoning was paid, they came all down to the Bar and call'd for Coaches; and he tells you, that he was ſent out, and he tells you what he was ſent for, he was ſent for Coaches, and ſo cannot give any Account what paſs'd while he was gone; but when upon calling for Coaches none could be had, there was Order for Chairs to be call'd, and Chairs were brought to the Door; and when he came in again he heard the Claſhing of Swords, and there were Three on the one Side of the Bar, and Three of 'em on the Other: Indeed he does ſay, he did not ſee when the Swords were drawn, but at that Time they were putting up their Swords, my Lord *Mohun* was in the Company, upon which I would obſerve to your Lordſhips, that there had been ſome Fighting; for the Witneſs ſays, upon my Lord's Queſtion, that my Lord call'd for a Napkin to put his Hand in, for his Finger was cut; and he ſaid, This is all that I have got by endeavouring to part them; ſo that it ſhews there was a Quarrel, and my Lord *Mohun* was in it: When the Chairs were brought to the Door, they went into them, there went Mr *Coote* into One, into the Second my Lord of *Warwick*, and into the Third my Lord *Mohun*, ſo that ſtill my Lord *Mohun* was in the Company, and they went away together; and tho' it is pretended by my Lord, That he did all he could to prevent the Quarrel, yet he gave Directions to the Chairmen that carry'd him to follow the other Chairs, and your Lordſhips perceive what the Buſineſs was that they went about, and the other three Chairs followed after preſently, ſo that they all went away together; nay, my Lord himſelf does not diſown his being in the Company till they came into *Leiceſter-fields*. Next I would obſerve what fell from *Brown*, who carry'd the very Gentleman that was kill'd, Mr *Coote*, that my Lord *Mohun* was in One of the three Firſt Chairs, and that they all went together, till that my Lord *Mohun* call'd out to ſtop, upon the Turning up into St. *Martin's Lane*; and tho' they ſtop'd in St. *Martin's Lane*, and my Lord *Mohun* did intreat them to let it alone at that Time, yet it was only to let it alone till the Morning; and when the other three Chairs paſs'd by on the other Side of the Way, and *Coote* would have them go on; my Lord *Mohun* ſaid, If they would go on, he would go with them and ſee it. *Applegate*, the Chairman, that carry'd my Lord *Mohun*, ſays the ſame: And ſo it is plain my Lord *Mohun* did go on with an Intention to make one in the Affray; for *Applegate* ſays, That when my Lord *Mohun* could not prevail upon his perſuaſions, and when *Coote* went away after the other three Chairs were paſs'd by, my Lord *Mohun* ſaid, If you do go, I muſt go and ſee it; and they did go all together: And the Chairman ſays, he ſet my Lord *Mohun* down at the End of *Green-ſtreet*, at the lower End of the Fields, where the other two Chairs ſet down Captain *Coote* and my Lord of *Warwick*, and that they all three walk'd up together towards the *Standard* Tavern; ſtill all this proves my Lord did go there, and that he himſelf did ſay he would go and ſee it: And it is plain that my Lord *Mohun* did go as far as *Leiceſter-fields*, and it is only his Declaration concerning himſelf, without any Proof, that he went away, and did not go into the Fields, to the Place where the Fact was done; and we think it is ſufficient Proof that he was one of them that were concerned, becauſe we do prove, that he was all along in the Company till the very Time that they came into the Place where the Thing was done. Then there is the Chairman that carry'd Mr *James*,

and he tells your Lordships, That the three First Chairs that went up St. *Martin's Lane*, went to the *Standard* Tavern, and there they knock'd at the Door, and paid the Chairmen, and went out of their Chair; and so says the other Chairmen that carry'd Capt. *Dockwra* and Capt. *French*; and they say also, That when they came down the paved Stones again, they heard Chairs call'd for, but they did not interpose at all in the Matter, but the other two Chairs it seems did, for they went up to the upper end of the Square, where there were two Persons holding up Mr *Coote*, and after they put the Chair over the Rails, in order to have him carried away in a Chair, but they could not get him into the Chair. I would likewise observe from the Evidence of the Surgeon, who gives you an Account of what nature the Wounds were, one was in the Breast, near the Collar-bone, on the left Side, the other was under the Short-ribs, on the left Side too, which could not be given him by the Person that he was fighting with, he being a right-hand Man, as was prov'd by his Servant: My Lord *Mohun* has call'd but one Witness, which is only about a little Circumstance of his being wounded in the Hand, and having the Wound laid open, but that was two Days after this Fact was done; my Lord *Mohun* could not but know that the Matters he was to answer, related to a Time before. It must be agreed to me, that they all three, my Lord of *Warwick*, my Lord *Mohun*, and Mr *Coote*, went all away together, that they were carried to *Leicester-fields*, that they were set down together, and walk'd up together upon the stone Pavement, when the others were gone towards the upper end of the Fields; so that in all probability, they all went together into the Place where the Fight was, and were all concern'd; and if so, my Lord *Mohun* must be equally guilty with the rest, my Lord *Mohun* knowing what Business it was they were going about. It must be left to your Lordships, whether he shall not be presumed to be there when the Fact was done, especially his saying, when he could not prevail in St *Martins-lane*, to put the Matter off till another Time, that if they did go on, he would go and see it; so that putting these two Circumstances together, his going in one of the Chairs with my Lord *Warwick* and *Coote*, and what he said after when the Chairs stopt in St *Martins-lane*, we think are Circumstances to induce your Lordships to believe, that he was present at the Time of the Fact committed, or very near the Place; and if that be so, how far he is guilty must be submitted to your Lordships consideration; and this is all that I shall trouble your Lordships with, without repeating the particular Evidence, which your Lordships, I am sure, very well remember.

Lord *Mohun*. My Lords, I desire I may say one Word in answer to what Mr Sollicitor has observ'd; I think your Lordships have had no Evidence given you where Mr *Coote* was kill'd, but only the Chairman that was desir'd to bring over his Chair within the Rails, says it was towards *Panton-street*, which is quite contrary to the Place where I was set down at *Green-street* end; I must then be at a very great Distance from the Place where the Fact was done.

L. H. St. If all have done on both Sides, then your Lordships have nothing left but to consider of the Evidence which has been given, which I suppose you will do among your selves;

Lords. Ay, Adjourn, Adjourn.

L. H. St. Is it your pleasure, my Lords, to Adjourn into the House of Lords?

Lords. Ay, Ay.

L. H. St. This House is Adjourn'd into the House of Lords.

[*And the Lords went back in the same Order to the House of Lords, and there they stay'd for about two Hours Time, debateing the Matter among themselves, and afterwards returned again into the Court in* Westminster-hall, *and were seated all in their Places as they were before, and the Lord High Steward was seated in the Chair before the Throne.*]

Cl. of the Crown. Serjeant at Arms, make Proclamation.

Serj. at Arms. O Yes, O Yes, O Yes, My Lord High Steward of *England*, his Grace, does straitly charge and command all manner of Persons here present to be uncovered, and keep Silence, upon pain of Imprisonment.

L. H. St. Is it your Lordships pleasure to go on now to give your Judgment?

Lords. Ay, Ay.

L. H. St. Then I must pray your Lordships, to give me Time to write down your Opinions distinctly, that I may be able to acquaint you with certainty of the Numbers.

Lords. Ay, Ay.

Then the Lord High Steward *stood up, and put the Question to every Lord, beginning with the Youngest Baron, to know what his Judgment was, and the Lord to whom he call'd, stood up in his Place uncovered, and laying his Right Hand upon his Breast, delivered his Judgment in the Manner following.*

L. H. St. My Lord *Bernard*, Is *Charles* Lord *Mohun* Guilty of the Felony and Murder whereof he stands indicted, or not Guilty?

Lord *Bernard*. Not guilty, upon my Honour.

The same Question was asked severally of all the Lords, who in the same Form delivered their Opinions, as followeth,

L. Herbert. Not guilty, upon my Honour.
L. Weston. Not guilty, upon my Honour.
L. Ashburnham. Not guilty, upon my Honour.
L. Chalmondly. Not guilty, upon my Honour.
L. Jefferys. Not guilty, upon my Honour.
L. Godolphin. Not guilty, upon my Honour.
L. Guilford. Not guilty, upon my Honour.
L. Oselstone. Not guilty, upon my Honour.
L. Osborne. Not guilty, upon my Honour.
L. Craven. Not guilty, upon my Honour.
L. Cornwallis. Not guilty, upon my Honour.
L. Granville. Not guilty, upon my Honour.
L. Berkley. Not guilty, upon my Honour.
L. Lexington. Not guilty, upon my Honour.
L. Rockingham. Not guilty, upon my Honour.
L. Lucas. Not guilty, upon my Honour.
L. Culpeper. Not guilty, upon my Honour.
L. Byron. Not guilty, upon my Honour.
L. Jermyn. Not guilty, upon my Honour.
L. Leigh. Not guilty, upon my Honour.
L. Raby. Not guilty, upon my Honour.
L. Howard. Not guilty, upon my Honour.
L. Lovelace. Not guilty, upon my Honour.

L. Hunf-

L. Hunſdon. Not guilty, upon my Honour.
L. Wharton. Not guilty, upon my Honour.
L. Eure. Not guilty, upon my Honour.
L. Dudley. Not guilty, upon my Honour.
L. Fitzwalter. Not guilty, upon my Honour.
L. Willoughby. Not guilty, upon my Honour.
L. Audley. Not guilty, upon my Honour.
L. Abergaveny. Not guilty, upon my Honour.

L. H. Steward. My Lord Viſcount *Lonſdale*, Is *Charles* Lord *Mohun* Guilty, *&c.*

L. Viſcount Lonſdale. Not guilty, upon my Honour.
L. Viſcount Townſend. Not guilty, upon my Honour.

L. H. St. The Earl of *Grantham*, Is *Charles* Lord *Mohun* guilty, *&c.*

E. of Grantham. Not guilty, upon my Honour.
E. of Albemarle. Not guilty, upon my Honour.
E. of Tankerville. Not guilty, upon my Honour.
E. of Warrington. Not guilty, upon my Honour.
E. of Scarborough. Not guilty, upon my Honour.
E. of Mountague. Not guilty, upon my Honour.
E. of Portland. Not guilty, upon my Honour.
E. of Rocheſter. Not guilty, upon my Honour.
E. of Nottingham. Not guilty, upon my Honour.
E. of Yarmouth. Not guilty, upon my Honour.
E. of Radnor. Not guilty, upon my Honour.
E. of Macclesfield. Not guilty, upon my Honour.
E. of Feverſham. Not guilty, upon my Honour.
E. of Burlington. Not guilty, upon my Honour.
E. of Carliſle. Not guilty, upon my Honour.
E. of Bath. Not guilty, upon my Honour.
E. of Angleſey. Not guilty, upon my Honour.
E. of Eſſex. Not guilty, upon my Honour.
E. of Scarſdale. Not guilty, upon my Honour.
E. of Thanet. Not guilty, upon my Honour.
E. of Cheſterfield. Not guilty, upon my Honour.
E. of Carnarvan. Not guilty, upon my Honour.
E. of Kingſton. Not guilty, upon my Honour.
E. of Winchelſea Not guilty, upon my Honour.
E. of Stamford. Not guilty, upon my Honour.
E. of Peterborow. Not guilty, upon my Honour.
E. of Rivers. Not guilty upon my Honour.
E. of Mancheſter. Not guilty, upon my Honour.
E. of Denbigh. Not guilty, upon my Honour.
E. of Leiceſter. Not guilty, upon my Honour.
E. of Bridgwater. Not guilty, upon my Honour.
E. of Dorſet. Not guilty, upon my Honour.
E. of Suffolk. Not guilty, upon my Honour.
E. of Huntington. Not guilty, upon my Honour.
E. of Darby. Not guilty, upon my Honour.
E. of Kent. Not guilty, upon my Honour.

Lord High Steward. My Lord great Chamberlain, is *Charles* Lord *Mohun* guilty, *&c.*

Lord Chamberlain. Not guilty, upon my Honour.

Lord High Steward. My Lord Marqueſs of *Normanby*, Is *Charles* Lord *Mohun* guilty, *&c.*

Lord Marqueſs of Normanby. Not guilty, upon my Honour.
L. Marqueſs of Halliſax. Not guilty, upon my Honour.

Lord High Steward. My Lord Duke of *Newcaſtle*, Is *Charles* Lord *Mohun* guilty, *&c.*

D. of Newcaſtle. Not guilty, upon my Honour.
D. of Scomberg. Not guilty, upon my Honour.
D. of St. Albans. Not guilty, upon my Honour.
D. of Northumberland. Not guilty, upon my Honour.
D. of Ormond. Not guilty, upon my Honour.
D. of Southampton. Not guilty, upon my Honour.
D. of Richmond. Not guilty, upon my Honour.
D. of Somerſet. Not guilty, upon my Honour.

L. H. St. My Lord Steward, Is *Charles* Lord *Mohun* guilty, *&c.*

Lord Steward. Not guilty upon my Honour.

Lord High Steward. My Lord Preſident, Is *Charles* Lord *Mohun* guilty, *&c.*

Lord Preſident. Not guilty, upon my Honour.

Then the *Lord High Steward* of *England*, ſtanding up uncovered, putting his right Hand upon his Breaſt, ſaid, My Lord *Mohun* is not guilty, upon my Honour.

Then the Lord High Steward ſeated himſelf again in the Chair, to take the Number of the Peers who had given their Judgment.

L. H. St. My Lords, Eighty Seven of your Lordſhips are preſent, and you are all unanimouſly of Opinion, That my Lord *Mohun* is not guilty of the Felony and Murder whereof he ſtands Indicted.

Lords. Ay, Ay.

L. H. St. Let the Priſoner be call'd to the Bar.

Cl. of the Crown. Serjeant at Arms, make Proclamation.

Serjeant at Arms. O yes, O yes, O yes, my Lord High Steward of *England*, his Grace, does ſtraitly charge and command all Manner of Perſons here preſent, to keep Silence, upon Pain of Impriſonment.

Clerk of the Crown. Serjeant at Arms, make Proclamation.

Serj. at Arms. O Yes, O Yes, O Yes; Chief Governour of the *Tower* of *London*, bring forth the Body of your Priſoner, *Charles* Lord *Mohun*, whom you have committed to you, in order to be brought hither this Day, upon Pain and Peril will fall thereon.

Then he was brought forth to the Bar, and the Lord High Steward addreſs'd himſelf to him in this Manner.

L. H. St. My Lord *Mohun*, you have been Indicted for the Murther of Mr *Richard Coote*, upon which Indictment your Lordſhip has been Arraigned, and upon your Arraignment has pleaded Not-guilty, and for your Tryal, you have put your ſelf upon your Peers, my Lords here preſent;

ſent; and they have heard the Evidence, and have conſidered of it, and delivered their Judgment upon the whole Matter; and I am to acquaint your Lordſhip, they are all unanimouſly of Opinion, That your Lordſhip is not guilty of the Felony and Murther whereof you ſtand Indicted; and therefore your Lordſhip is diſcharged from your Impriſonment, paying your Fees.

Then the Lord Mohun *made his Reverence to the Lords, and expreſs'd himſelf thus.*

Lord Mohun. My Lords, I do not know which way to expreſs my great Thankfulneſs and Acknowledgment of your Lordſhips great Honour and Juſtice to me; but I crave leave to aſſure your Lordſhips, That I will endeavour to make it the Buſineſs of the future Part of my Life, ſo to behave my ſelf in my Converſation in the World, as to avoid all Things that may bring me under any ſuch Circumſtances, as may expoſe me to the giving your Lordſhips any Trouble of this Nature for the future: And then making his Reverences to the Lords, he went away from the Bar.

Clerk of the Crown. Serjeant at Arms, make Proclamation.

Serjeant at Arms. O Yes, O Yes, O Yes, All manner of Perſons here preſent, are commanded to keep Silence, by my *Lord High Steward* of *England*, his Grace upon Pain of Impriſonment.

L. H. Steward. My Lords, The Tryal being at an End, there is nothing remains to be done here, but the determining the Commiſſion.

Lords. Ay, Ay.

L. H. St. Sir *Samuel Aſtry*, let Proclamation be made in order to the diſſolving the Commiſſion of *High Stewardſhip*.

Cl. of the Crown. Serjeant at Arms, make Proclamation.

Serjeant at Arms. O yes, O yes, O yes, My *Lord High Steward* of *England*, his Grace does ſtraitly charge and command all manner of Perſons here preſent, and that have here attended, to depart hence in the Peace of God, and of our Soveraign Lord the King, for his Grace, my *Lord High Steward* of *England*, intends now to diſſolve his Commiſſion.

And then the White Staff being delivered to his Grace, the Lord High Steward, *he ſtood up, and holding it in both his Hands, broke it in two; and then leaving the Chair, came down to the Wool-pack, and ſaid, is it your Lordſhip's Pleaſure to adjourn to the Houſe of Lords?*

Lords. Ay, Ay.

L. H. St. This Houſe is adjourned to the Houſe of Lords.

And ſo they went back in the ſame Order that they came into the Court, and all the Aſſembly broke up.

The TRYAL of Spencer Cowper, *Eſq; &c.*

Die Mercurii 16 Julii, 1699.

Proclamation was made for all Perſons concerned to attend.

Cl. of Arr. YOU good Men that are empannelled to enquire, *&c.* Anſwer to your Names, and ſave your Fines.

Then *Ellis Stephens*, *William Rogers* and *John Marſon* being upon Bail, Proclamation was made for them to attend, which they accordingly did, and Mr *Cowper* was brought into Court by the Under-Sheriff.

Cl. of Arr. Spencer Cowper hold up thy Hand. (*which he did.*)
John Marſon hold up thy Hand. (*which he did.*)
Ellis Stevens hold up thy Hand. (*which he did.*)
William Rogers hold up thy Hand. (*which he did.*)

Cl. of Arr. YOU *ſtand indicted by the Names of* Spencer Cowper, *late of the Pariſh of St.* John's, *in the Town of* Hertford, *in the County of* Hertford, *Eſq*; John Marſon, *late of the Pariſh aforeſaid, in the County aforeſaid, Gent.* Ellis Stevens, *late of the Pariſh aforeſaid, in the County aforeſaid, Gent. and* William Rogers, *late of the Pariſh aforeſaid, in the County aforeſaid, Gent. For that you not having the Fear of God before your Eyes, but being moved and ſeduced by the Inſtigation of the Devil, on the thirteenth Day of* March, *in the Eleventh Year of the Reign of his preſent Majeſty, by Force and Arms,* &c. *at the Pariſh aforeſaid, in the County aforeſaid, in and upon one* Sarah Stout *Spinſter, in the Peace of God and our Sovereign Lord the King, then and there being violently, feloniouſly, voluntarily, and of your Malice afore-thought, did make an Aſſault; and that you the aforeſaid* Spencer Cowper, John Marſon, Ellis Stevens, *and* William Rogers, *a certain Rope of no Value, about the Neck of the ſaid* Sarah *then and there feloniouſly, voluntarily, and of your Malice afore-thought, did put, place, fix and bind, and the Neck and Throat of the ſaid* Sarah, *then and there with the Hands of you the ſaid* Spencer Cowper, John Marſon, Ellis Stevens, *and* William Rogers, *feloniouſly, voluntarily, and of your Malice afore-thought, did hold, ſqueeze, and gripe: And that you the ſaid* Spencer Cowper, John Marſon, Ellis Stevens, *and* William Rogers, *with the aforeſaid Rope, by you the ſaid* Spencer Cowper, John Marſon,

ſon, Ellis Stevens *and* William Rogers, *then as aforeſaid about the Neck of the aforeſaid* Sarah Stout, *put, placed, fixed, bound, and by the ſqueezing and griping of the Neck and Throat of the ſaid* Sarah *with the Hands of you the ſaid* Spencer Cowper, John Marſon, Ellis Stevens *and* William Rogers *as aforeſaid, the ſaid* Sarah Stout *then and there, by Force and Arms*, &c. *felonioufly, voluntarily, and of your Malice afore-thought, did choak and ſtrangle; by reaſon of which choaking and ſtrangling of her the ſaid* Sarah Stout, *by you the aforeſaid* Spencer Cowper, John Marſon, Ellis Stevens *and* William Rogers, *with the ſaid Rope about the Neck of the ſaid* Sarah Stout *as aforeſaid, placed, fixed and bound, and by the ſqueezing and griping of the Neck and Throat of the ſaid* Sarah *with the Hands of you the ſaid* Spencer Cowper, John Marſon, Ellis Stevens *and* William Rogers, *as aforeſaid, the ſaid* Sarah *then and there inſtantly died: And ſo you the ſaid* Spencer Cowper, John Marſon, Ellis Stevens *and* William Rogers, *the ſaid* Sarah Stout, *on the thirteenth Day of* March, *in the Year aforeſaid, in the Pariſh aforeſaid, in the County aforeſaid, in Manner and Form aforeſaid, feloniouſly, voluntarily, and of your Malice afore-thought, did kill and murder; and the ſaid* Sarah Stout, *as aforeſaid, by you the ſaid* Spencer Cowper, John Marſon, Ellis Stevens *and* William Rogers, *feloniouſly, voluntarily, and out of your Malice afore-thought, choaked and ſtrangled, into a certain River there, being called the* Priory River, *then ſecretly and maliciouſly did put and caſt, to conceal and hide the ſaid* Sarah Stout *ſo murdered, againſt the Peace of our Sovereign Lord the King, his Crown and Dignity*, &c. *How ſayeſt thou* Spencer Cowper, *art thou guilty of the Felony and Murder whereof thou ſtandeſt Indicted, or not guilty?*

Mr *Cowper*. Not Guilty.

Cl. of Arr. Culprit, How wilt thou be tried?

Mr *Cowper*. By God and my Country.

Cl. of Arr. God ſend you a good Deliverance.

Then the other Three pleaded not guilty, and put themſelves upon their Country in manner aforeſaid.

Then Proclamation was made for Information.

Cl. of Arr. You the Priſoners at the Bar, Theſe Men that you ſhall hear called, and perſonally appear, are to paſs between our Sovereign Lord the King and you, upon Trial of your ſeveral Lives and Deaths: Therefore if you will challenge them, or any of them, your Time to ſpeak is as they come to the Book to be ſworn, before they be ſworn.

Then the Pannel was called over.

Cl. of Arr. Do you deſign to join in your Challenges, or to Challenge ſeparately?

Mr *Cowper*. If we ſhould Challenge ſeparately, there muſt be ſo many ſeparate Tryals, and therefore to prevent the Trouble of the Court, I am willing there ſhould be but one Challenge for all.

Cl. of Arr. Gentlemen, do you all agree to that?

Priſoners. Yes, yes.

Then after ſome Challenges, as well on the Part of the King as of the Priſoners, there not being a full Jury of the Principal Pannel:

Mr *Cowper*. If your Lordſhip pleaſe, the Pannel is now gone through, I deſire they may ſhew ſome legal Cauſe for their Challenges.

Mr *Jones*. I conceive we that are retained for the King are not bound to ſhew any Cauſe, or the Cauſe is ſufficient if we ſay they are not good for the King, and that is allowed to be a good Cauſe of Challenge, for what other Cauſe can we ſhew in this Caſe. You are not to ſhew your Cauſe, you Challenge peremptorily, ſo in this Caſe the King does.

Mr *Cowper*. My Lord, I ſtand at the Bar with ſome Diſadvantage, to encounter a Gentleman that hath no Concerment; but however, I do take it for Law, that there muſt be a Cauſe ſhewed, and that Cauſe muſt be a legal one, and what that Cauſe is they muſt certainly make out. I do think it ought to appear that there is ſome Relation, or ſome notorious Affection or Friendſhip, or ſomething of that Sort, or otherwiſe it is not a legal Cauſe of Challenge; and if there ſeem to be any Difficulty in this Particular, I hope your Lordſhip will aſſign me Council to argue it with the King's Council.

Mr Baron *Hatſell*. Mr *Cowper*, you are not under ſuch Diſadvantage as Men uſually are that ſtand where you now do. You have been educated in the Study of the Law, and underſtand it very well. I have ſeveral Times ſeen how you have managed your Clients Cauſes to their Advantage. As for this Matter of Challenge, Mr *Jones*, I think you ſhould ſhew your Cauſe of Challenge, tho' the Law allows the Priſoner Liberty to challenge twenty peremptorily.

Mr *Jones*. I don't know, in all my Practice of this Nature, that it was ever put upon the King to ſhew Cauſe, and I believe ſome of the King's Council will ſay they have not known it done.

Mr *Cowper*. In my Lord Chief Juſtice *Hale*'s *Pleas of the Crown, p.* 259. it is expreſsly ſo, and in the Statute of 33 *E.* 1. 'tis ſaid the King ſhall not Challenge without Cauſe, and that muſt be legal.

Cl. of Arr. Call *Daniel Clarke*.

Mr Baron *Hatſell*. Mr *Jones*, if you can ſay any Juryman hath ſaid any Thing concerning this Cauſe, and given his Verdict by way of Diſcourſe, or ſhew'd his Affection one way or other, that would be good Cauſe of Challenge.

Mr *Jones* My Lord, then we ſhould keep you here while to morrow Morning.

Mr Baron *Hatſell*. If there hath been any great Friendſhip between any Jury-man and the Party, it will look ill if he be inſiſted upon.

Mr *Cowper*. My Lord, I do'nt inſiſt upon it, but I profeſs I know of no Friendſhip, only that Mr *Clarke* in Elections hath taken our Intereſt in Town; I know I have a juſt Cauſe, and I am ready to be tryed before your Lordſhip and any fair Jury of the County; therefore I do not inſiſt upon it.

Then the Jury ſworn was as followeth:

Evan. Loyd, Eſq;		*Thomas Parrot*,
William Watſon,		*Sam. Wallingham*,
John Prior,		*Francis Cole*,
John Harrow,	Jur.	*Rich. Crouch*,
George Holgate,		*John Cock*,
John Stracey.		*Rich. Dickinſon*.

Mr *Cowper*. My Lord, I humbly move that I may have Pen, Ink and Paper.

Mr

Mr Baron *Hatſell.* Ay, by all means.

Cl. of Arr. Hold up your Hand. *(which he did.)* And ſo of the reſt. You of the Jury look upon the Priſoners, and hearken to their Charge. They ſtand indicted by the Names of, *&c.* (*Prout* in the Indictment *(mutatis mutandis)*

Jury. My Lord, we deſire we may have Pen, Ink and Paper.

Cl. of the Aſſize. There are three of the Jury deſire Pen, Ink and Paper.

Mr Baron *Hatſell.* Let as many have it as will.

Mr *Jones.* May it pleaſe your Lordſhip, and you Gentlemen that are ſworn, I am of Council for the King in this Cauſe, and it is upon an Indictment by which the Gentlemen at the Bar ſtand accuſed for one of the fouleſt and moſt wicked Crimes almoſt that any Age can remember; I believe in your County you never knew a Fact of this Nature; For here is a young Gentlewoman of this County murdered and ſtrangled in the Night time. The Thing was done in the Dark, therefore the Evidence cannot be ſo plain as otherwiſe might be.

After ſhe was ſtrangled and murdered, ſhe was carried down into a River to ſtifle the Fact, and to make it ſuppoſed ſhe had murthered her ſelf; ſo that it was indeed, if it prove otherwiſe, a double Murder, a Murder accompanied with all the Circumſtances of Wickedneſs and Villany that I remember in all my Practice, or ever read of.

This Fact, as it was committed in the Night time, ſo it was carried very ſecret, and it is very well we have had ſo much Light as we have to give ſo much Satisfaction: For we have here in a manner two Tryals, one to acquit the Party that is dead, and to ſatisfie the World, and vindicate her Reputation that ſhe did not murder herſelf, but was murdered by other Hands. For my Part, I ſhall never as Council in the Caſe of Blood aggravate; I will not improve or enlarge the Evidence at all, it ſhall be only my Buſineſs to ſet the Fact as it is, and to give the Evidence, and ſtate it as it ſtands here in my Inſtructions.

My Lord, for that Purpoſe, to lead to the Fact, it will be neceſſary to inform you, that upon *Monday* the 13th of *March*, the firſt Day of the laſt Aſſizes here, Mr *Cowper*, one of the Gentlemen at the Bar, came to this Town, and lighted at Mr *Bareſoot*'s houſe, and ſtaid there ſome time, I ſuppoſe to dry himſelf, the Weather being dirty, but ſent his Horſe to Mrs *Stout*'s, the Mother of this Gentlewoman. Some time after he came thither himſelf, and dined there, and ſtaid till four in the Afternoon; and at four when he went away, he told them he would come and lodge there that Night, and ſup.

According to his Word he came there, and had the Supper he deſired, after Supper Mrs *Stout* the young Gentlewoman and he ſat together till near 11 a Clock. At 11 a Clock there was Orders given to warm his Bed, openly to warm his Bed in his hearing. The Maid of the Houſe, Gentlemen, upon this went up Stairs to warm his Bed, expecting the Gentleman would have come up and followed her before ſhe had done, but it ſeems while ſhe was warming the Bed ſhe heard the Door clap together, and the Nature of that Door is ſuch, that it makes a great Noiſe at the clapping of it to, that any Body in the Houſe may be ſenſible of any One's going out. The Maid upon this was concerned, and wondered at the Meaning of it, he promiſing to lie there that Night; ſhe came down, but there was neither Mr *Cowper* nor Mrs *Stout*, ſo that we ſuppoſe, and for all that we can find and learn, they muſt go out together. After their going out, the Maid and Mother came into the Room, and the young Gentlewoman not returning, nor Mr *Cowper*, they ſat up all Night in the Houſe, expecting what time the young Gentlewoman would return. The next Morning after they had ſat up all Night, the firſt News of this Lady was, that ſhe lay floating and ſwimming in Water by the Mill-damm. Upon that there was ſeveral Perſons call'd; for it was a ſurprize how this ſhould come to paſs. There ſhe lay floating with her Petticoats and Apron, but her Night-rail and Morning-gown were off, and one of them not found till ſome time after; and the Maid will give you an Account how it came to be found.

This made a great Noiſe in the Country; for it was very extraordinary, it happening that from the time the Maid left Mr *Cowper* and this young Gentlewoman together, ſhe was not ſeen or heard of till next Morning, when ſhe was found in this Condition, with her Eyes broad open, floating upon the Water.

When her Body came to be viewed it was very much wondered at: For in the firſt Place it is contrary to Nature, that any Perſons that drown themſelves, ſhould float upon the Water. We have ſufficient Evidence that it is a Thing that never was, if Perſons come alive into the Water then they ſink, if dead then they ſwim, that made ſome to more curious look into this Matter. At firſt it was thought that ſuch an Accident might happen, though they could not imagine any Cauſe for this Woman to do ſo, who had ſo great Proſperity, had ſo good an Eſtate, and had no Occaſion to do an Action upon her ſelf ſo wicked, and ſo barbarous, nor cannot learn what Reaſon ſhe had to induce her to ſuch a Thing. Upon view of the Body it did appear there had been violence uſed to the Woman, there was a Creaſe round her Neck, ſhe was bruiſed about her Ear, ſo that it did ſeem as if ſhe had been ſtrangled either by Hands or a Rope.

Gentlemen, upon the Examination of this Matter, it was wondered how this Matter came about, it was dark and blind. The Coroner at that time, nor theſe People had no Evidence given, but the ordinary Evidence, and it paſs'd in a Day. We muſt call our Witneſſes to this Fact, that of neceſſity you muſt conclude ſhe was ſtrangled, and did not drown her ſelf; if we give you as ſtrong a Proof as can be upon the Nature of the Fact that ſhe was ſtrangled, then the ſecond Matter under your Enquiry will be, to know who, or what Perſons ſhould be the Men that did the Fact. I told you before, it was, as all wicked Actions are, a Matter of Darkneſs, and done in ſecret, to be kept as much from the Knowledge of Men as was poſſible.

Truly Gentlemen, as to the Perſons at the Bar, the Evidence of the Fact will be very ſhort, and will be to this Purpoſe.

Mr *Cowper* was the laſt Man unfortunately in her Company, I could wiſh he had not been ſo with all my Heart, 'tis a very unfortunate Thing, that his Name ſhould upon this Occaſion be brought upon the Stage; but then my Lord, it was a ſtrange Thing; here happens to be three Gentlemen, Mr *Marſon*, Mr *Rogers*, and Mr *Stevent*, as to theſe Three Men, my Lord, I don't hear of any Buſineſs they had here, unleſs it was to do

do this Matter, to ſerve ſome Intereſt or Friend, that ſent them upon this Meſſage, for my Lord, they came to Town, (and in Things of this Nature, 'tis well we have this Evidence, but if we had not been ſtreightned in time it would have brought out more, theſe Things come out ſlowly) theſe Perſons, Mr *Stevens*, Mr *Rogers*, and Mr *Marſon* came to Town here on the 13th of *March* laſt, the Aſſize Day: My Lord, when they came to Town, they came to an Houſe, and took Lodgings at one *Gurreys*, they took a Bed for Two, and went out of their Lodging, having taken a Room with a large Bed in it, and afterwards they went to the *Glove* and *Dolphin*, and then about Eight a Clock one *Marſon* came to them there; in what Company they came, your Lordſhip and the Jury will know by and by; they ſtaid there, my Lord, at the *Glove* from Eight a Clock to Eleven, as they ſay. At Eleven theſe three Gentlemen came all in to their Lodging together to this *Gurrey*'s; my Lord, when they came in, it was very obſervable amongſt them, unleſs there had been a ſort of Fate in it: *Firſt*, That they ſhould happen to be in the Condition they were in; And *ſecondly*, fall upon the Diſcourſe they did at that time; for my Lord, they called for Fire, and the Fire was made them, and while the People of the Houſe were going about, they obſerved and heard theſe Gentlemen talk of Mrs *Sarah Stout*, that happened to be their Diſcourſe; one ſaid to the other, *Marſon*, ſhe was an old Sweet-heart of yours: Ay, ſaith he, but ſhe caſt me off, but I reckon by this Time a Friend of mine has done her Buſineſs: Another piece of Diſcourſe was, I believe a Friend of mine is even with her by this time. They had a Bundle of Linnen with them, but what it was is not known, and one takes the Bundle and throws it upon the Bed, well, ſaith he, her Buſineſs is done, Mrs *Saran Stout*'s courting Days are over, and they ſent for Wine, my Lord; ſo after they had drank of the Wine they talk'd of it, and one pulled out a great deal of Money, ſaith one to another, what Money have you ſpent to Day? Saith the other thou haſt had 40 or 50 *l.* for thy Share: Saith the other, I will ſpend all the Money I have, for Joy the Buſineſs is done.

My Lord, this Diſcourſe happened to be among them, which made People of the Houſe conſider and bethink themſelves, when the next Day they heard of this Mrs *Stout*'s being found in the Water, this made them recollect and call to mind all theſe Diſcourſes.

My Lord, after theſe Gentlemen had ſtaid there all Night, next Morning truly it was obſerved (and I ſuppoſe ſome Account will be given of it) that Mr *Cowper* and they did meet together, and had ſeveral Diſcourſes, and that very Day went out of Town, and I think as ſoon as they came to *Hoddeſdon*, made it all their Diſcourſe and Buſineſs to talk of Mrs *Stout*.

My Lord, we will call our Witneſſes, and prove all theſe Facts that I have opened to your Lordſhip, and then I hope they will be put to give you ſome Account how all theſe Matters came about.

Call Sarah Walker. (*who was ſworn.*)

Mr *Jones*. Mrs *Walker* pray give an Account to my Lord and the Jury, of Mr *Cowper*'s coming to your Houſe the 13th of *March*, and what was done from his coming there at Night to his going out.

Sarah Walker. May it pleaſe you, my Lord, On *Friday* before the laſt Aſſizes, Mr *Cowper*'s Wife ſent a Letter to Miſtreſs *Stout*, that ſhe might expect Mr *Cowper* at the Aſſize time, and therefore we expected Mr *Cowper* at that time, and accordingly provided; and as he came in with the Judges, ſhe ask'd him if he would alight, he ſaid no, by reaſon I come in later than uſual, I will go into the Town and ſhow my ſelf, but he would ſend his Horſe preſently; ſhe ask'd him, how long it would be before he would come, becauſe they would ſtay for him; he ſaid, he could not tell, but he would ſend her Word, and ſhe thought he had forgot, and ſent me down to know, whether he would pleaſe to come: he ſaid, he had Buſineſs, and he could not come juſt then, but he came in leſs than a quarter of an Hour after, and dined there, and he went away at four a Clock, and then my Miſtreſs ask'd him, if he would lie there, and he anſwered yes, and he came at Night about nine a Clock, and he ſat talking about half an Hour, and then call'd for Pen, Ink and Paper, for that, as he ſaid, he was to write to his Wife, which was brought him, and he wrote a Letter, and then my Miſtreſs went and ask'd him, what he would have for Supper, he ſaid Milk, by reaſon he had made a good Dinner; and I got him his Supper and he eat it, after ſhe called me in again, and they were talking together, and then ſhe bid me make a Fire in his Chamber, and when I had done ſo, I came and told him of it, and he looked at me, and made me no Anſwer; then ſhe bid me warm the Bed, which accordingly I went up to do as the Clock ſtruck 11, and in about a quarter of an Hour, I heard the Door ſhut, and I thought he was gone to carry the Letter, and ſtaid about a quarter of an Hour longer, and came down, and he was gone and ſhe, and Mrs *Stout* the Mother, ask'd me the Reaſon why he went out when I was warming his Bed, and ſhe ask'd me for my Miſtreſs, and I told her, I left her with Mr *Cowper*, and I never ſaw her after that, nor did Mr *Cowper* return to the Houſe.

Mr *Jones*. How long did you ſit up?

Walker. All Night.

Mr *Jones*. What time next Morning did you ſee her?

Walker. About 7 a Clock.

Mr *Jones*. In the Water, or out?

Walker. Out of the Water.

Mr *Cowper*. Pray will you recollect a little, and be very particular as to the Time when I went out at Night.

Walker. Sir, it was a quarter after Eleven by our Clock, the difference between the Town Clock and ours was half an Hour.

Mr *Cowper*. But you ſay by your Clock it was a quarter after Eleven.

Walker. Yes, Sir.

Mr *Cowper*. Pray what Account did you give as to the Time to the Coroner's Inqueſt?

Walker. I ſaid then it was Eleven, or a quarter after Eleven, when I heard the Door ſhut.

Mr *Cowper*. Pray was Miſtreſs *Stout* preſent with the Coroner's Inqueſt when you gave that Account?

Walker. Yes, ſhe was.

Mr *Cowper*. Pray what Account did you give as to the Time before my Lord Chief Juſtice *Holt*?

Walker. I gave the Account that it was Eleven, or a quarter of an Hour after.

Mr *Cowper.* In her Depoſitions there is half an Hour's difference, for then ſhe ſaid it was half an Hour after 10.

Mr Baron *Hatſell.* Which Clock was earlieſt, yours or the Town Clock?

Walker. Ours was half an Hour faſter than theirs.

Mr *Cowper.* How came you to know this?

Walker. By reaſon that Dinner was dreſt at the Cook's, and it was ordered to be ready by Two a Clock, and it was ready at Two a Clock by the Town Clock, and half an Hour after Two by ours.

Mr *Cowper.* When you came down and miſs'd your Miſtreſs, did you enquire after her all that Night?

Walker. No, Sir, I did not go out of the Doors; I thought you were with her, and ſo I thought ſhe would come to no harm.

Mr *Cowper.* Here is a whole Night ſhe gives no Account of. Pray Miſtreſs, why did not you go after her?

Walker. My Miſtreſs would not let me.

Mr *Cowper.* Why would ſhe not let you?

Walker. I ſaid I would ſee for her: No, ſaith ſhe, by reaſon if you go and ſee for her, and do not find her, it will make an alarm over the Town, and there may be no occaſion.

Mr *Cowper.* Did your Miſtreſs uſe to ſtay out all Night?

Walker. No never.

Mr *Cowper.* Have not you ſaid ſo?

Walker. I never ſaid ſo in my Life.

Mr *Cowper.* Pray Mrs *Walker* did you never take notice that your Miſtreſs was under Melancholy?

Walker. I don't ſay but ſhe was melancholy; ſhe was ill for ſome time, and I imputed it to her illneſs, and I know no other Cauſe.

Mr *Cowper.* Have you not often told People that your Miſtreſs was a melancholy Perſon, upon your Oath?

Walker. I have ſaid ſhe hath been ill, and that made her melancholy.

Mr *Cowper.* I will ask you this Queſtion, pray did you ever purchaſe any Poiſon, more or leſs, within theſe twelve Months?

Walker. Yes, Sir, I did ſo, and can tell what it was for.

Mr *Cowper.* By whoſe Order?

Walker. By my own Order.

Mr *Cowper.* Did you buy Poiſon but once, upon your Oath?

Walker. I believe I might buy twice.

Mr *Cowper.* Where?

Walker. Of Mr *Ludman.*

Mr *Cowper.* Both times there?

Walker. Yes.

Mr *Cowper.* Of him?

Walker. No, of the young Man.

Mr *Cowper.* Did you ever buy any Poiſon at *Luton?*

Walker. No.

Mr *Cowper.* Did you ever buy any by your Miſtreſſes Order, or of one Mrs *Crooke*, upon your Oath?

Walker. No, I never did.

Mr *Cowper.* Pray at what time was it that you bought this Poiſon you ſpeak of?

Walker. I can't remember.

Mr *Cowper.* Pray recollect your ſelf.

Walker. It was within this half Year to be ſure.

Mr *Cowper.* What was the Name of the Poiſon you ask'd for?

Walker. I ask'd for white Mercury.

Mr *Cowper.* She ſaith, I paſs'd by her Miſtreſſes Houſe, and went directly to Mr *Bareſoot*'s, pray did not you come to Mr *Bareſoot*'s after me?

Walker. Yes, Sir.

Mr *Cowper.* Pray did you give the ſame Account before the Coroner, when this Matter was enquir'd into, that you have now done?

Walker. Yes, I did as near as I can tell.

Mr *Cowper.* Did you give this Account in Subſtance?

Walker. Yes, I did.

Mr Baron *Hatſell.* Mr *Cowper*, I ſuppoſe you don't mean in relation to the Poiſon.

Mr *Cowper.* My Lord I mean in relation to ſo much of the Evidence which ſhe now gives, and particularly reſpects me. For what End or Purpoſe did you buy it?

Walker. I bought it to Poiſon a Dog.

Mr *Cowper.* Why ſhould you poiſon the Dog?

Walker. It was a Dog that uſed to haunt our Houſe that did us a great deal of Miſchief, but that did not do, ſo I bought it a ſecond time.

Mr *Cowper.* Who gave it to the Dog?

Walker. 'Twas another Maid did give it the Dog.

Mr *Cowper.* Why did you then ſwear it was given the Dog.

Walker. Sir I ſaw it given.

Mr *Cowper.* Did your Miſtreſs know of it?

Walker. Yes ſhe did know of it afterwards.

Mr *Cowper.* How did you give it?

Walker. In warm Milk.

Mr *Cowper.* How did the Milk look?

Walker. It did not look diſcolour'd in the leaſt.

Mr Baron *Hatſell.* You ſaid juſt now your Miſtreſs was ill, and that made her melancholy, what Illneſs was it?

Walker. My Lord, ſhe had a great pain in her Head.

Mr Baron *Hatſell.* How long had ſhe been troubled with it?

Walker. Ever ſince laſt *May* was twelve Months was the beginning of it.

Mr *Jones.* Did you ever find her in the leaſt inclined to do her ſelf a Miſchief?

Walker. No, I never did.

Mr *Cowper.* You bought Poiſon twice, did you give all the Poiſon you bought to the Dog?

Walker. Yes.

Mr *Cowper.* The firſt and the laſt?

Walker. Yes the whole.

Mr *Cowper.* How much did you buy?

Walker. I am not certain how much I bought.

Mr *Cowper.* Pray what Miſchief did it do the Dog?

Walker. I cannot tell, he may be alive till now for ought I know.

Mr *Cowper.* What Miſchief did the Dog do?

Walker. A great deal, he threw down ſeveral Things and broke them.

Mr *Jones.* Did Mr *Cowper*, upon your Oath, hear Miſtreſs *Stout* give you Order to make his Fire and warm his Bed?

Walker. He knows beſt, whether he heard it or no; but he ſat by her when ſhe ſpake it.

Mr *Jones.* Did ſhe ſpeak it ſo as he might hear?

Walker. Yes ſhe did, for he was nearer than I.

Mr *Jones.* And did not he contradict it?

Walker.

Walker. Not in the leaſt.

Mr *Jones.* Was it the old or young Woman, that gave you the Order?

Walker. The young Woman.

Mr *Cowper.* Pray, Did the Dog lap it, or did you pour it down his Throat, upon your Oath?

Walker. No, he lapt it, upon my Oath.

Mr *Jones.* Did Mr *Cowper* ſend for his Horſe from your Houſe the next Day?

Walker. I can't ſay that; I was not in the Way.

Mr *Jones.* Did he come to your Houſe afterwards?

Walker. No, I am ſure he did not.

Mr *Jones.* Was the Horſe in your Stable when it was ſent for?

Walker. Yes, Sir.

Mr *Jones.* And he did not come to your Houſe again, before he went out of Town?

Walker. No, Sir.

Mr *Jones.* Do you know which Way he went out of Town?

Walker. No, Sir.

Mr Baron *Hatſell.* Did Mr *Cowper* uſe to lodge at your Houſe at the Aſſizes?

Walker. No, my Lord, not ſince I came there; the Seſſions before, he did.

Mr *Cowper.* Where did you come to invite me to Dinner?

Walker. At Mr *Barefoot*'s.

Mr *Cowper.* Then you knew I was to lodge there?

Mr Baron *Hatſell.* Who wrote the Letter on *Friday*, that Mr *Cowper* would lodge there?

Walker. I know not who wrote it, his Wife ſent it.

Mr *Jones.* Did he tell you he would lodge there that Night before he went away?

Walker. When he went from Dinner he ſaid ſo.

Mr *Jones.* Call *James Berry*, *(who was Sworn.)* Now, my Lord, we will give Evidence of the Manner, how ſhe was found. Mr *Berry*, Do you remember when Mrs. *Stout* was found by your Mill?

Berry. No, indeed, I do not know juſt what Day it was.

Mr *Jones.* When you found her, do you remember how, in what Manner ſhe was found?

Berry. Yes; I went out in the Morning to ſhoot a Fluſh of Water by ſix a-Clock, and I ſaw ſomething a floating in the Water, ſo I went out to ſee what it was, and I ſaw part of her Cloaths.

Mr *Jones.* Did you ſee her Face?

Berry. No, not then.

Mr *Jones.* Was her Face under Water, or above?

Berry. No Part of her Body was above Water, only ſome Part of her Cloaths.

Mr *Jones.* How many Foot deep might the Water be?

Berry. Five Foot deep.

Mr *Jones.* And how much was ſhe under Water, do you conceive?

Berry. She might be under Water about five or ſix Inches.

Mr *Jones.* Then her whole Body was not under Water, was it?

Berry. Yes.

Mr *Jones.* Was her Face under Water?

Berry. Yes.

Mr Baron *Hatſell.* Did ſhe lie upon her Face, or her Back?

Berry. She lay upon her Side.

Mr *Jones.* When ſhe was taken out, Were her Eyes open or ſhut?

Berry. Her Eyes were open.

Mr *Jones.* Was ſhe ſwell'd with Water?

Berry. I did not perceive her ſwell'd: I was amaz'd at it, and did not ſo much mind it as I ſhould.

Mr *Jones.* But you remember her Eyes were ſtaring open?

Berry. Yes.

Mr *Jones.* Did you ſee any Marks or Bruiſes about her?

Berry. No.

Mr *Cowper.* Did you ſee her Legs?

Berry. No, I did not.

Mr *Cowper.* They were not above Water?

Berry. No.

Mr *Cowper.* Could you ſee them under Water?

Berry. I did not ſo much mind it.

Mr *Cowper.* Did ſhe lie ſtraight or double, driven together by the Stream?

Berry. I did not obſerve.

Mr *Cowper.* Did you not obſerve Weeds and Trumpery under her?

Berry. There was no Weeds at that Time thereabouts?

Mr *Jones.* Was the Water clear?

Berry. No, it was thick Water.

Mr *Jones.* Was there any Thing under her, in the Water, to prevent her ſinking?

Berry. No, I do not know there was; ſhe lay on her right Side, and her right Arm was driven between the Stakes, which are within a Foot of one another.

Mr *Jones.* Did any Thing hinder her from ſinking?

Berry. Not that I ſaw.

Mr *Jones.* Did you help to take her out from the Stakes?

Berry. No.

Mr *Jones.* Call *John Venables.*

Mr *Cowper.* Mr *Berry*, if I underſtand you right, you ſay her right Arm was driven between the Stakes, and her Head between the Stakes; could you perceive her right Arm, and where was her Left-arm?

Berry. Within a ſmall Matter upon the Water.

Mr Bar. *Hatſell.* Did you ſee her Head and Arm between the Stakes?

Berry. Yes; her Arm by one Stake, and her Head by another.

Mr *Jones.* Did the Arm hang down, or how?

Berry. I did not mind ſo much as I might have done.

Then John Venables *was Sworn.*

Mr *Jones.* Did you ſee Mrs. *Stout*, when ſhe was taken out of the Water, and as ſhe lay in it?

Venables. Yes.

Mr *Jones.* Give an Account how you found her.

Venables. She was floating upon the Water.

Mr *Jones.* How? Was all her Body, or what Part in the Water?

Venables. She lay upon her right Side, and this Arm upon the Water, rather above the Water, her Ruffles were above the Water.

Mr *Jones.* Did you help to take her out?

Venables. No, Sir.

Mr *Jones.* Were her Eyes open then?

Venables. Her Eyes were open when I ſaw her, but I did not ſee her when ſhe was taken out.

Mr *Jones.* Did any Thing hinder her from ſinking?

Venables. I ſaw nothing to hinder her if ſhe would have ſunk.

Mr *Jones.* Call *Leonard Dell*, *(who was Sworn.)* Did you ſee this Mrs *Stout* in the Water?

Dell. Yes.

Mr *Jones.* Pray tell us in what Poſture ſhe was found.

Dell. I ſaw her floating in the River; I ſaw her Face and her Cloaths.

Mr *Jones.* Were her Cloaths all above the Water?

Dell. Her Stays and her Coat that ſhe had next her.

Mr *Jones.* Were theſe plainly above the Water?

Dell. Some Part of them.

Mr *Jones.* Did you ſee her Face, was that above the Water?

Dell. No, Sir, it was between the Piles; ſhe lay on her right Side, and her Head was between the Stakes, and her right Arm.

Mr *Jones.* Did you help to take her out of the Water?

Dell. Yes.

Mr *Jones.* Did any Thing hinder her from ſinking?

Dell. Neither Stakes nor any Thing there.

Mr *Jones.* Did her Arms or Neck ſtick to the Stakes?

Dell. Not to my thinking.

Mr *Jones.* Was the Water clear, or weedy.

Dell. It was very clear.

Mr *Jones.* How many Foot deep was it?

Dell. I know not, but it might be five Foot deep.

Mr *Jones.* Did you help to take her out of the Water?

Dell. Yes, Sir, and we took her and carried her into the Meadow juſt by, and laid her on the Bank.

Mr *Jones.* Did you obſerve her Face, Neck, or Arms, to be bruis'd?

Dell. I ſaw no Bruiſe at all.

Mr *Cowper.* How did you know but her right Arm did reach to the Ground, ſince you did not ſee it?

Dell. We could ſee her Arm lie in this Manner between the Piles, the right Arm was downwards, for ſhe lay on one Side.

Jury-man. Did you ſee any Arm above in the Water?

Dell. No.

Mr Baron *Hatſell.* You ſhould propoſe your Queſtions to the Court.

Juryman. My Lord, I deſire to know where was her left Arm.

Mr Baron *Hatſell.* Where was her left Arm?

Dell. I can't tell how it did lie; I did not obſerve it.

Mr Baron *Hatſell.* When you took her out of the Water, did you obſerve her Body ſwell'd?

Dell. We carry'd her into the Meadow, and laid her on the Bank-ſide, and there ſhe lay about an Hour, and then was order'd to be carry'd into the Miller's.

Mr Baron *Hatſell.* Did you obſerve that any Water was in her Body?

Dell. None at all that I could ſee; but there was ſome ſmall Matter of Froth came from her Mouth and Noſtrils.

Jury-man. My Lord, I deſire to know whether her Stays were lac'd?

Dell. Yes, ſhe was laced.

Mr *Cowper.* If I take you right, you ſay ſhe was ſtrait-laced?

Dell. Her Stays were laced.

Mr *Cowper.* And you ſay there was Froth and Foam came out of her Mouth and Noſtrils?

Dell. Yes, Sir.

Mr *Jones.* Pray, What Quantity?

Dell. I could hold it all in the Palm of my Hand.

Mr *Cowper.* How was ſhe taken out of the Water?

Dell. My Lord, we ſtood upon the Bridge, I and another Man, where ſhe lay, and he laid hold of her, and took her out.

Mr *Jones.* And did you not perceive ſhe was hung?

Dell. No, my Lord.

Mr *Cowper.* Pray, Where was ſhe laid when ſhe was taken out?

Dell. In the Place call'd the *Hoppers* juſt by.

Mr *Cowper.* How long did ſhe lie there?

Dell. About an Hour.

Mr *Cowper.* Did you ſtay there all that Time?

Dell. Yes.

Mr *Cowper.* And did the Froth continue to iſſue from her Mouth and Noſtrils?

Mr Baron *Hatſell.* He told you, Mr *Cowper*, he could hold it all on the Palm of his Hand.

Mr *Jones.* Call *John Ulſe*, *(who was Sworn.)* *John Ulſe*, Did you ſee Mrs *Stout* when ſhe was taken out of the Water?

Ulſe. Yes.

Mr *Jones.* Give an Account of the Condition ſhe was in.

Ulſe. She lay on one Side; I help'd to take her out.

Mr *Jones.* Did ſhe hang or ſtick by any Thing?

Ulſe. There was nothing at all to hold her up; ſhe lay between a Couple of Stakes, but the Stakes could not hold her up.

Mr *Jones.* Did you ſee her after ſhe was taken out?

Ulſe. Yes.

Mr *Jones.* Did any Water come out of her?

Ulſe. Nothing at all, only a little Froth came out of her Noſtrils.

Mr *Jones.* Call *Katharine Dew*, *(who was Sworn.)* Did you ſee Mrs. *Stout* taken out of the River?

Dew. Yes.

Mr *Jones.* Did you ſee her in the River before?

Dew. Yes, Sir.

Mr *Jones.* How did ſhe lie in the River?

Dew. She lay Side-way with her Eyes open, and her Teeth clenched in her Head, with Water flowing a little from her Face, ſome Part of Her and her Petticoats were above Water.

Mr *Jones.* Did nothing hold her from ſinking?

Dew. Her right Arm lay againſt the Stake.

Mr *Jones.* Did you ſee her after ſhe was taken out of the River?

Dew. Yes, Sir.

Mr *Jones.* Was ſhe ſwell'd?

Dew. I did not perceive ſhe was ſwell'd at all.

Mr *Jones.* Did you handle her?

Dew. No, I touch'd nothing but her Petticoat.

Mr *Jones.* Did you obſerve her Legs were in the Water?

Dew. No, I did not.

Mr *Cowper.* Did you ſee where her right Arm was?

Dew. I could not ſee her right Arm, the Water flow'd over it.

Mr *Cowper.* Did you ſee her after this Time?

Dew. No Sir, I ſaw her taken out, but not afterward.

Mr Bar.

Mr Bar. *Hatsel.* Did you see her after she lay on the Ground?

Dew. Yes my Lord.

Mr Bar. *Hatsell.* How was she then?

Dew. She purged at the Nose and one of her Eyes, I did not take particular Notice after she was out, the Notice I took was when she was in the Water.

Mr Bar. *Hatsell.* What did you see at her Eye?

Dew. Froth, my Lord.

Mr *Jones.* Did you see her after she was stripp'd naked?

Dew. No my Lord.

Mr *Jones.* Was it a settled Frothing, or a Purging?

Dew. A purging Froth.

Mr Bar. *Hatsell.* Did any Body wipe it off?

Dew. No, my Lord, I did not see any Body do it.

Mr Bar. *Hatsell.* Then there was no new Froth came?

Dew. No, my Lord, I saw her froth at the Nose and one of the Eyes, as soon as she was taken out, but I did not stay long.

Mr *Cowper.* Was she in her Stayes?

Dew. Yes Sir.

Mr *Cowper.* Was she not laced?

Dew. Yes she was lac'd before and behind.

Mr *Jones.* Call *Thomas Dew.* (*Who was Sworn.*) Did you see this Mrs *Stout* in the Water; Pray give my Lord and the Jury an Account what Posture she was in.

Dew. I saw her lying in the Water floating, above the Water I will not say, but the Water ran some small Matter over her, her right Arm was within the Stake; and her left Arm without, she lay just upon her Side, and I saw her when she was first taken up, and her Shoes and Stockings were as clean as when they were put on, no Mud nor Dirt upon them, and I saw her Shoes and her Stockings, as high as her knee almost, but I saw no Dirt.

Mr *Jones.* Do you believe that she had been sunk to the Bottom?

Dew. She did not look as if she had, nor I see no Water come from her.

Mr *Jones.* Did you observe, that she was swelled at all?

Dew. No, nor swell'd that I perceive a bit, there was a little Froth that came out of her Nose, and about her (I can't say from her Eye) in that it was a small Quantity.

Mr *Jones.* Call Mr *Edward Blackno.* (*Who was Sworn.*) Did you see Mrs *Stout*, when she lay in the Water?

Blackno. Yes I did see her lye in the Water floating, I was so near, that I saw the Miller's Man lift her up by one of her Arms out of the Water.

Mr *Jones.* Was the Arm bent or straight?

Blackno. It hung in this Manner (showing the Court how with his own Arm.)

Mr Bar. *Hatsell.* The other Witnesses said, she lay on her right Side.

Blackno. Yes she lay on her right Side, and her Arm in this Manner.

Mr Bar. *Hatsell.* Did you observe her to be swelled?

Blackno. I did not see her taken out.

Mr Bar. *Hatsell.* Did you observe any Thing to hinder her from Sinking?

Blackno. No I did not, nothing but the Water.

Mr *Cowper.* I think Sir, if I heard you right, you say, that this taking by the Arm and stirring her, was before she was taken out of the Water, then I would know after she was stirred was she let go again, was you by at the taking of her up?

Blackno. No I was not.

Mr Bar. *Hatsell.* He told you she was floating when he saw her, and that nothing hindered her from sinking.

Then William Edmunds *and* William Page *were Sworn.*

Mr *Jones. Edmunds* did you see Mrs *Stout* when she was in the Water?

Edmunds. Yes Sir.

Mr *Jones.* Give an Account what posture she was in?

Edmunds. She lay against the Stake, her Head lay against the Stake in the River, we were coming up in a Barge, and called to a Miller to draw the Water, but he said he could not, for then she would swim through, and then we came on, and see her lye in the Water.

Mr *Jones.* Did any Thing hinder her from sinking?

Edmunds. Not that I see.

Mr *Jones.* Did no part of her Legs or Arms stick? Did you see her taken out?

Edmunds. No, I did not, I was gone, I did not know whether they would take her out or no.

Mr *Jones. Page*, did you see Mrs *Stout* upon the Water?

Page. Yes Sir.

Mr *Jones.* Tell us how she lay.

Page. She lay floating in the Water on her right Side, with her Head between the Stakes.

Mr *Jones.* Did her Arms or Cloaths, or any Thing stick?

Page. Not that I saw.

Mr *Jones.* Did any Thing hinder her from sinking?

Page. I saw nothing.

Mr *Cowper.* Did you see her Legs or Knees?

Page. No I could not, they were not out of the Water.

Mr *Jones.* Swear Mrs *Anne Ulse* (*Which was done*) Did you see Mrs *Stout* in the Water?

Ulse. Yes I help'd to pull her out, she lay on one Side in the Water floating, and the Water came over her Face.

Mr *Jones.* Did she stick by any Thing?

Ulse. One of her Arms was about the Post.

Mr *Jones.* How?

Ulse. It got through the Grate.

Mr *Jones.* But it did not hang.

Ulse. No.

Mr *Jones.* Did you take her out?

Ulse. Yes Sir.

Mr *Jones.* Did you mind her Cloaths?

Ulse. Yes I turn'd up her Petticoat in the Water.

Mr *Jones.* Had she Gloves on?

Ulse. No Sir.

Mr *Jones.* How were her Shoes and Stockings?

Ulse. They were not muddy, her Stockings were rowl'd down, she had no Garters on.

Mr *Cowper.* You say, one Arm lay through the Stakes, where lay the other?

Ulse. The other was down in the Water.

William How was Sworn.

Mr *Jones.* Did you see Mrs *Stout* in the Water?

How,

How. Yes, Sir, I ſee her lye upon the Water, ſhe lay afloat, ſhe might lye three or four Inches deep in the Water.

Mr *Jones.* Did any of her Cloaths lye above the Water?

How. Some part of her Coats lay above the Water.

Mr *Jones.* Did any Thing hinder her from ſinking?

How. I ſaw nothing, I ſaw them take her out, and did not perceive ſhe hung any Way; ſhe lay with one Arm, and her Head in the Grate, but I did not perceive ſhe hung.

John Meager was Sworn.

Mr *Jones.* Well, do you give an Account of what you know of Mrs *Stout* being in the Water?

Meager. I ſee Mrs *Sarah Stout* floating in the Water, her right Arm in the Grate, and her left Arm with the Stream.

Mr *Jones.* Did ſhe hang or ſtick by any Thing?

Meager. No, neither hang nor ſtick, ſhe floated.

Mr *Cowper.* Did you ſee ſome Body go through the *Blue-coat Building* about eleven a Clock?

Meager. No Sir, I was a Bed before Nine.

Mr *Jones.* Now, my Lord, we will give an Account how ſhe was when ſhe was ſtript, and they came to view the Body. Call *John Dimſdale*, junior. (*Who was Sworn.*)

Dimſdale. My Lord, I was ſent for at Night on *Tueſday* the laſt Aſſizes——

Mr *Cowper.* My Lord, if your Lordſhip pleaſes, I have ſome Phyſicians of Note and Eminency that are come down from *London*, I deſire they may be call'd into Court to hear what theſe Surgeons ſay.

Mr Bar. *Hatſell.* Ay, by all means.

Mr *Cowper.* My Lord, there is Dr *Sloane*, Dr *Garth*, Dr *Morley*, Dr *Gilſtrop*, Dr *Harriot*, Dr *Wollaſton*, Dr *Crell.* Mr *William Cowper*, Mr *Bartlett*, and Mr *Camlin.*

Who reſpectively appear'd in Court.

Mr *Jones.* Give an Account how you found Mrs *Stout.*

Mr Bar *Hatſell.* You are a Phyſician, I ſuppoſe, Sir?

Dimſdale. A Surgeon, my Lord. When I was ſent for to Mrs *Stout*'s, I was ſent for two or three Times before I would go; for I was unwilling after I heard Mrs *Stout* was drown'd; for I thought with my ſelf, what need could there be of me when the Perſon was Dead; but ſhe ſtill ſent; and then I went with Mr *Camlin*, and found a little Swelling on the Side of her Neck, and ſhe was black on both Sides, and more particularly on the left Side, and between her Breaſts up towards the Collar-bone, that was all I ſaw at that Time, only a little Mark upon one of her Arms, and I think upon her left Arm.

Mr *Jones.* How were her Ears?

Dimſdale. There was a Settling of Blood on both Sides the Neck, that was all I ſaw at that Time.

Mr *Jones.* How do you think ſhe came by it?

Dimſdale. Truly I only gave an Account juſt as I ſay now to the Gentlemen at that Time, I ſaw no more of it at that Time, but about ſix Weeks after the Body was opened by Dr *Phillips*——

Mr *Cowper.* My Lord, he is going to another Piece of Evidence, and I would ask him——

Mr *Jones.* Let us have done firſt; how was her Ears?

Dimſdale. There was a blackneſs on both Ears, a Settling of Blood.

Mr *Jones.* Call *Sarah Kimpſon.*

Mr Bar *Hatſell.* Mr *Cowper*, now you may ask him any Thing, they have done with him.

Mr *Cowper.* I would ask him whether he was not employed to view theſe particular Spots he mentions at the Coroner's Inqueſt.

Dimſdale. I was deſired to look upon the Face and Arms, and Breaſt, becauſe they ſaid there was a Settling of Blood there.

Mr *Cowper.* When you return'd to the Coroner's Inqueſt, What did you certify as your Opinion?

Dimſdale. I did certify there was a Settling of Blood, but how it came I could not tell.

Mr *Cowper.* I ask you, Sir, Did not you ſay it was no more than a common Stagnation uſual in dead Bodies?

Dimſdale. I do not remember a Word of it.

Mr *Cowper.* Sir, I would ask you; You ſay the Spot was about the Collar-bone; Was it above or below?

Dimſdale. From the Collar-bone downwards.

Mr *Cowper.* Had ſhe any Circle about her Neck?

Dimſdale. No; not upon my Oath.

Mr *Jones.* Swear *Sarah Kimpſon.* Did you obſerve this Mrs *Sarah Stout*, when ſhe was ſtrip'd, how her Body was?

Kimpſon. Yes.

Mr *Jones.* Pray give an Account of it.

Kimpſon. She had a great Settlement of Blood behind her Ear, as much as my Hand will cover, and more; and ſhe had a Settlement of Blood under her Collar-bone.

Mr *Jones.* Did you ſee nothing about her Neck?

Kimpſon. Nothing round her Neck; on the Side of her Neck there was a Mark.

Mr *Jones.* Was there any other Part bruiſed?

Kimpſon. Only her left Wriſt, and her Body was very flat and lank.

Mr *Cowper.* Pray, What Day was it that you ſaw her?

Kimpſon. It was the Day ſhe was found.

Mr *Cowper.* Was ſhe not laced?

Kimpſon. She was laced.

Mr *Cowper.* Did you help to ſtrip her?

Kimpſon. Yes, Sir.

Mr *Jones.* Did her Body ſeem to be ſwell'd, or was there any Water come from her?

Kimpſon. I did not obſerve the leaſt Drop of Water that appeared any Way.

Mr *Jones.* Do you know what did Purge from her?

Kimpſon. Nothing that I ſaw.

Mr *Jones.* Had not you a Child drowned there lately?

Kimpſon. Yes, about ten Weeks ago.

Mr *Jones.* And you found her?

Kimpſon. She was drowned at Night, and we found her next Morning.

Mr *Jones.* Where did you find her, at the Top or at the Bottom of the Water?

Kimpſon. At the Bottom.

Mr *Jones.* How was ſhe?

Kimpſon. She was ſwell'd as much as ſhe could hold.

Mr *Jones.* Were her Eyes ſhut or open?

Kimpſon. Her Eyes were ſhut, and the Child was laced as tight as the Coat could be.

Mr *Jones.* Was the Child opened?

Kimpſon. Yes.

Mr *Jones.*

Mr *Jones*. And what was in the Body of the Child?

Kimpſon. Twas very full of Water.

Mr *Jones*. Call *Sarah Peppercorn*.

Mr *Cowper*. You ſay you view'd the Child; Had it any Settlement of Blood?

Kimpſon. I ſaw none.

Mr *Cowper*. And you view'd the Body?

Kimpſon. Yes.

Then Sarah Peppercorn *was Sworn*.

Mr *Jones*. Did you ſee the Body of Mrs. *Sarah Stout*, after it was ſtript and laid out?

Peppercorn. I did, Sir.

Mr *Jones*. In what Condition did you find her?

Peppercorn. I did not ſee her till ſhe was brought home to her Mother's, and there was a Rumour in the Town that ſhe was with Child, and I was ſent for to give an Account whether ſhe was or not, and I found ſhe was not; and I help'd to pull off her Cloaths, and ſhe was very clear as any I ever knew, only had a black Place on the Side of her Head, and in another Place about her Ear; but how it came I know not.

Mr *Jones*. Did you obſerve how her Body was?

Peppercorn. Her Body was very well as any Woman's could be.

Mr *Jones*. Did you obſerve any Water, or any ſuch Thing from her?

Peppercorn. No.

Mr *Jones*. Was there any purging at her Mouth or Noſtrils?

Peppercorn. A little Froth, as any Body might have.

Mr *Cowper*. At what Hour did you ſee her?

Peppercorn. I believe it might be Nine or Ten a Clock.

Mr Baron *Hatſell*. In the Morning?

Peppercorn. Yes, Sir; but I can't give a juſt Account of the Time.

Mr Baron *Hatſell*. What was you ſent for?

Peppercorn. To know if ſhe was with Child; for it was reported ſhe had drowned her ſelf becauſe ſhe was with Child, and ſo her Mother deſired me to come to give an Account that it was not ſo, and I found that it was not ſo.

Mr Baron *Hatſell*. You are a Midwife, are you not?

Peppercorn. Yes, my Lord.

Then Elizabeth Huſler *was Sworn*.

Mr *Jones*. Had you the View of the Body of Mrs. *Sarah Stout*, the Day you heard ſhe was drowned?

Huſler. She was not drowned, my Lord; I went thither and helped to pull off her Cloaths.

Mr *Jones*. In what Condition was her Body?

Huſler. Her Body was very lank and thin, and no Water appeared to be in it.

Mr *Jones*. Was there any Water about her Mouth and Noſe?

Huſler. Not when I ſaw her.

Mr *Jones*. Did you mind her about her Neck and Head?

Huſler. Yes, Yes, there was a Settling of Blood at the Top of the Collar-bone, juſt here, and there was a Settling of Blood upon both her Ears, moſt about her left Ear.

Mr *Jones*. Swear *Ann Pilkington*, *(which was done)* Did you ſee the Body of Mrs *Stout*, after ſhe was drowned?

Pilkington. Yes, Sir.

Mr *Jones*. Pray, In what Condition was ſhe when ſhe was ſtript?

Pilkington. I was in the Houſe when ſhe was brought in dead; and old Mrs *Stout* deſired me to help to lay her out, and taking a View of her, I did not at all perceive her Body to be ſwelled.

Mr *Jones*. Was there any Water came out upon the moving of it?

Pilkington. No, I did not perceive any; and by a further View, I ſaw a Redneſs on the left Side of her Head, and her Ear was black, and there was a little Mark upon her Breaſt on the left Side.

Mr *Jones*. What Colour was it of?

Pilkington. It ſeem'd reddiſh and blackiſh: As to Colour it was like a Settling of Blood: I can't tell how to make it out very well.

Mr *Cowper*. Had ſhe any Circle round about her Neck?

Pilkington. No, not that I ſee.

Mr *Cowper*. Pray, Did not you make ſome Depoſition to that Purpoſe, that you know of?

Pilkington. Sir, I never did, and dare not do it.

Mr *Cowper*. It was read againſt me in the *King*'s *Bench*, and I will prove it; was not Mr *Mead* with you at the Time of your Examination?

Pilkington. Yes.

Mr *Cowper*. Did not he put in ſome Words, and what were they?

Pilkington. Not that I know of.

Mr *Cowper*. But you never ſwore ſo, upon your Oath?

Pilkington. No, I don't believe I did; if I did, it was ignorantly.

Mr *Jones*. Here is her Examination, it is croſs her Neck.

Mr *Cowper*. Was Mr *Young* of *Hertford*, the Conſtable, preſent, when you were examined?

Pilkington. Yes, he was ſo. The next Day Mrs *Stout* ſent for me again to put on her Daughter's Shrowd, and I was one that helped to draw the Sheet away, and there was not one Drop of Water come from her; and I laid a Cloth under her Chin, when I help'd her into the Coffin, but I did not ſee the leaſt Moiſture come from her.

Mr *Cowper*. What Day was it, that you put her into the Coffin?

Pilkington. The next Day after ſhe was dead.

Mr *Cowper*. Do you know nothing of her being convey'd into the Barn?

Pilkington. I hap'ned to be in the Barn, Mrs *Stout* deſired me to go with her, and ſhe was brought up in an indecent Manner, and I put a Sheet about her. I was in Mrs *Stout*'s Houſe before her Daughter was brought thither.

Mr *Jones*. Call Doctor *Coatſworth*, Doctor *Nailer*, Doctor *Woodhouſe*, Doctor *Bide*.

Mr Coatſworth *was Sworn*.

Mr *Jones*. Pray, Doctor, had you a View of the Body of Mrs *Stout*?

Coatſworth. Yes, I had, Sir: I am a Surgeon.

Mr *Jones*. Pray give an Account of it, and what your Opinion was how ſhe came by her Death.

Coatſworth. My Lord, in *April* laſt I was ſent for by Dr *Philips*, to come to *Hertford* to ſee the Body of Mrs *Stout* opened, who had been ſix Weeks buried, and he told me, That there was a Suſpicion ſhe was murthered, and that her Relations were willing to have her taken up and opened. I

came

came down, I think on the 27th of *April*, and lay at Mrs *Stout*'s Houſe that Night, and by her Diſcourſe, I underſtood ſhe wanted to be ſatisfied, whether her Daughter was with Child. I told her it was my Opinion we ſhould find the Parts contained in the *Abdomen* ſo rotten, that it would be impoſſible to diſcover the *Uterus* from the other Parts; however, if ſhe would have her opened, I could not diſcover whether ſhe was with Child, unleſs the Infant was become Bony. Her Face and Neck, to her Shoulders, appeared black and ſo much corrupted, that we were unwilling to proceed any further: But, however, her Mother would have it done, and ſo we did open her; and as ſoon as ſhe was opened, we perceived the Stomach and Guts were as full of Wind, as if they had been blown with a Pair of Bellows; we put her Guts aſide, and came to the *Uterus*, and Doctor *Philips* ſhewed it us in his Hand, and afterwards cut it out and laid it on the Table, and opened it, and we ſaw into the Cavity of it, and if there had been any Thing there as minute as a Hair, we might have ſeen it, but it was perfectly free and empty; and after That, he put the Inteſtines into their Places; and we bid him open the Stomach, and it was opened with an Inciſion-Knife, and it ſunk flat, and let out Wind, but no Water; afterwards we opened the Breaſt and Lobes of the Lungs, and there was no Water: Then we look'd on each Side, and took up the Lobes of the Lungs too, to ſee if there was no Water in the *Diaphragm*, and there was none, but all dry. Then I remember, I ſaid, this Woman could not be drowned, for if ſhe had taken in Water, the Water muſt have rotted all the Guts: That was the Conſtruction I made of it then; but for any Marks about her Head and Neck, it was impoſſible for us to diſcover it, becauſe they were ſo rotten.

Mr *Cowper*. You ſay, this Inſpection was made about ſix Weeks after ſhe was dead.

Coatſworth. It was made on the 28th of *April*.

Mr *Cowper*. She was drowned on the 13th of *March*.

Mr *Jones*. Did you make an Inciſion into thoſe Parts of the Neck and Head.

Coatſworth. No: I told Mrs *Stout* and her Son, If you imagine the Skull to be injur'd, I will open the Head, for if the Scalp be never ſo rotten, yet if the Skull has ſuffered any Impreſſion I ſhall diſcover it; they ſaid, They did not ſuſpect a broken Skull in the Caſe, and ſo we did not examine it.

Mr *Jones*. But all the other Parts were ſound?

Coatſworth. Yes, ſound to a Miracle; for I did not imagine we could find them ſo.

Mr *Jones*. Call *John Dimſdale*.

Mr *Cowper*. My Lord, I would know, and I deſire to be heard to this Point: I think where the Coroner's Inqueſt have view'd the Body, and the Relations have been heard, and the Body buried, that it is not to be ſtir'd afterwards for any private Inſpection of Parties, that intend to make themſelves Proſecutors; but if it is to be taken up, it is to be done by ſome legal Authority; for if it ſhould be otherwiſe, any Gentleman may be eaſily trepan'd: For inſtance, If they ſhould have thought fit, after the Coroner's View, to have broken the Skull into a hundred Pieces. This was a private View altogether among themſelves. Certainly, if they intended to have proſecuted me, or any other Gentleman upon this Evidence, they ought to have given us notice, that we might have had ſome Surgeons among them, to ſuperintend their Proceedings. My Lord, with Submiſſion, this ought not to be given in Evidence.

Mr Baron *Hatſell*. Mr *Cowper*, I think you are not in earneſt; there is no Colour for this Objection: If they did take up the Body without notice, Why ſhould not that be Evidence; unleſs you think they had a deſign to forſwear themſelves.

Mr *Cowper*. Had you a *Melius Inquirendum*, or any lawful Warrant for making this Inſpection?

Coatſworth. No, there was not.

Mr Baron *Hatſell*. Suppoſe they did an ill Thing in taking up the Body without ſome Order, tho' I don't know any more Ill in taking up that Body than any other; but, however, Is that any Reaſon why we ſhould not hear this Evidence?

Coatſworth. Mr *Camblin*, Sir *William Cowper*'s Surgeon, was there by.

Mr *Jones*. Call Mr *Dimſdale* Senior, (*who was Sworn.*) Had you a View of the Body after it was taken up?

Dimſdale. Yes.

Mr *Jones*. Pray give your Opinion of it.

Dimſdale. On the 28th of *April*, as I remember, I was ſent for down by Mrs *Stout*, to view the Body of her Daughter. Her Daughter was juſt taken out of the Ground but not opened; they had juſt touch'd the Body, but not opened the Skin when I came there ——

Mr Baron *Hatſell*. Are you a Surgeon?

Dimſdale. Yes, my Lord. Finding her Head ſo much mortified, down to her Neck, we thought all the Parts were ſeized, and had a Conſultation, Whether we ſhould open her or not; but Mrs *Stout* was very much enraged, becauſe a great Scandal had been raiſed, That her Daughter was with Child; and ſhe ſaid, She would have her opened to clear her Reputation: With that we opened her, and found her Body as ſound as any Fleſh could be; no Manner of Putrifaction in her Lungs or any other Part, but ſhe was very full of Wind. We ſearch'd the Stomach and the Thorax, and found not one Drop of Water about it; I was more curious than the reſt, and turn'd away her Legs, to ſee if the Coffin was ſoil'd, and the Coffin and Shrowd were not wet. Her *Uterus* was taken out, and I ſaw no Manner of Sign of Conception. After this we had a Conſultation to conſider, Whether ſhe was drowned or not drowned; and we were all of Opinion, That ſhe was not drowned; only Mr *Camblin* deſired he might be excuſed from giving his Opinion, Whether ſhe was drowned or not; but all the reſt of us did give our Opinions, That ſhe was not drowned.

Mr *Jones*. Give your Reaſons, why you believ'd ſhe was not drowned.

Dimſdale. My Reaſon was this: Becauſe we found no Water in her; her Inteſtines were not putrified; for if there had been Water in her, that would have cauſed a Fermentation, and that would have rotted the Lungs and Guts.

Mr Baron *Hatſell*. Could you tell, ſo many Weeks after, Whether ſhe was drowned or no?

Dimſdale. Yes, my Lord, for this Reaſon: For if ſhe had been drowned, there had been ſome Sign of Water; and if there had been a Pint of Water, it would have rotted her Lights and her Guts; and that is done in a Week's Time by Fermentation.

Mr *Cow-*

Mr *Cowper*. Sir, I desire to know, Whether, according to Reason and your Skill, after six Weeks Time, it's possible, there should be Water in the *Thorax*.

Dimsdale. I do believe there may be some; for it can't come out after the Body is dead, but by Putrifaction; and there was no Putrifaction, but it was firm and sound.

Mr Baron *Hatsell*. What Parts would have been putrified by the Water?

Dimsdale. The Lungs and Bowels.

Mr Baron *Hatsell*. And they were firm?

Dimsdale. They were: And if there had been Water, they would have been putrified.

Mr *Jones*. Call *John Dimsdale*, Junior.

Juryman. Was her Navel started?

Dimsdale, Sen. No: I never saw such a Body in my Life.

Mr *Cowper*. Did you ever see a Body that was drowned, opened six Weeks after?

Dimsdale, Sen. No, never. If a Body be drowned a Fortnight, the Bowels will be so rotten, there will be no coming near it; and I took particular Notice, and I did not see one Drop of Water.

Mr Baron *Hatsell*. Was the Coffin close?

Dimsdale, Sen. Yes; it was close and dry as any Board whatsoever; and all the Parts sound, but the Head and Neck, and left Arm.

Mr *Jones*. What do you think could be the Reason of that?

Dimsdale, Sen. The left Arm was rottener than the other; the Neck was rotten before.

Mr *Jones*. What did you take to be the Cause of it?

Dimsdale, Sen. I can't judge of that.

Call John Dimsdale, *Junior*, *who was Sworn*.

Dimsdale, Jun. My Lord, the Body was opened before I came to see it, and they were drawing up an Affidavit, that there was no Water in the Body, and they desired me to sign it; but I desired first to look into the Body, and I did look into it, and turn'd the Intestines aside, and there was no Water in it; but the Head from the Neck was very much putrified.

Mr *Jones*. Do you believe she was drowned?

Dimsdale, Jun. No, I believe not.

Mr *Jones*. Did you open the Child that was drowned? What Difference was there between the Body of that Child and this?

Dimsdale Jun. The Child was extreamly swell'd in the Belly and Stomach, and had abundance of Water in it.

Mr *Jones*. Was the Child lac'd that you opened?

Dimsdale Jun. It was laid upon the Table before I came.

Mr *Cowper*. How long was it before the Child was opened?

Dimsdale Jun. It was drowned in the Afternoon, and opened the next Morning.

Mr *Cowper*. You said, Sir, you was ask'd to sign the Affidavit before you saw the Body, and you were honest, and would see the Body first, pray who ask't you?

Dimsdale Jun. All of them did.

Mr *Cowper*. Who in particular, if you please name them?

Dimsdale Jun. Mr *Coatsworth*, Mr *Phillips*, Mr *Camlin*, *&c.* they asked me to set my Hand to it, because they thought I had seen it before.

Then Dr Dimsdale *was Sworn*.

Mr *Jones*. Mr *Robert Dimsdale* was you at the opening of this Body?

Dr *Dimsdale*. I came after it was opened, my Brother and I came together.

Mr *Jones*. What Profession are you of, a Physician?

Dr *Dimsdale*. Yes, when the Body was taken up, they desired us to be there, to inspect the Body, but before we came it happened they had opened the Body, and were setting their Hands to a Paper, a Sort of Affidavit, and when I came in, they would have had us set our Hands, but we would not, till we had look'd upon the Body, and went and laid it open again, and we did not find the least Drop of Water neither in the Thorax nor Abdomen.

Mr *Cowper*. Is it possible there should be Water in the Thorax, according to your Skill?

Dr *Dimsdale*. Yes, we did think there would have been, if she had been drown'd.

Mr Bar. *Hatsell*. Could you expect to find it, so long as six Weeks after?

Dr *Dimsdale*. We should have expected that or a Putrifaction, but we found no Putrifaction, neither in the Bowels nor Intestines, but only upon her Head and Shoulders, and one Arm.

Mr *Cowper*. Pray by what Passage does the Water go into the *Thorax*?

Dr *Dimsdale*. 'Twill be very difficult for me to describe the Manner here; but we should have found some in the Stomach and Intestines.

Mr *Cowper*. Pray, Sir, How should it go into the *Thorax*?

Dr *Dimsdale*. By the *Lymphæduct*, if carried by any Means.

Mr *Cowper*. When the Party is dead, Can any Water pass into any Part of the Body?

Dr *Dimsdale*. We opened the *Abdomen* of the Child that was drowned, and found in the several Cavities abundance of Water.

Mr *Jones*. When a Person is dead, Can they receive any Water after?

Dr *Dimsdale*. No: For all the Parts are clos'd and contracted.

Mr *Cowper*. Pray, If a dead Body be put into the Water, Will not the Water come into the Windpipe?

Dr *Dimsdale*. I question whether it will or no.

Mr *Jones*. Was her Mouth shut?

Dr *Dimsdale*. She was putrified about the Head and Shoulders and one Arm, that I saw was putrified; it was the left Arm, as I take it.

Mr *Jones*. What is your Opinion, as to her Death?

Dr *Dimsdale*. I believe, if she had been drowned, there would have been a Putrifaction of the *Abdomen* first; and it was her extream Parts, her Arm, her Head, and her Breast, that was putrified, but her Bowels seem'd firm and sound.

Mr *Jones*. Then you don't think her Death was by drowning?

Dr *Dimsdale*. No.

Mr *Cowper*. Pray, Did not you give some Certificate or Paper, declaring the Death of this Gentlewoman, before you saw the Body at all?

Dr *Dimsdale*. No, I did not.

Mr *Cowper*. Sir, I would ask you, Was not you angry that Mr *Camlin* would not join with you in Opinion?

Dr *Dimsdale*. No.

Mr *Cowper*. Did not you tell him, that you were a graduate Phyſician, and was angry he would not join with you?

Dr *Dimſdale*. Suppoſe I did.

Mr Baron *Hatſell*. But did you do ſo or no?

Dr *Dimſdale*. Yes, my Lord, we had ſome Words about it.

Mr *Jones*. Swear Dr *Coatſworth*, *(which was done.)* Now, my Lord, we call theſe Gentlemen that are Doctors of Skill, to know their Opinion of them that are found floating, without Water in them, how they come by their Death.

Dr *Coatſworth*. I have not ſeen many drowned Bodies to make Obſervation upon, but it is my Opinion, That every Body that is drowned, is ſuffocated by Water paſſing down the Wind-pipe into the Lungs upon Reſpiration; and at the ſame Time, the Water preſſing upon the Gullet, there will be a Neceſſity of ſwallowing a great Part of it into the Stomach: I have been in danger of being drowned my ſelf, and I was forced to ſwallow a great Quantity of Water. If a Perſon was drowned and taken out immediately, as ſoon as the Suffocation was effected, I ſhould not wonder, if there were but little Water in the Stomach and Guts; but if it lay in the Water ſeveral Hours, it muſt be very ſtrange if the Belly ſhould not be full of Water; but I will not ſay, it is impoſſible it ſhould be otherwiſe.

Mr *Cowper*. I deſire to know, Whether this Gentleman attempted to drown himſelf, or was in danger of being drowned by Accident.

Dr *Coatſworth*. It was by Accident: I was paſſing up the Ship Side, and took hold of a looſe Rope inſtead of the Entring-Rope, which failing me, I fell into the Water.

Mr *Cowper*. But you ſtruggled to ſave your ſelf from drowning?

Dr *Coatſworth*. I did ſo: I have ſeen ſeveral Perſons that have been drowned, and they have lain ſeveral Days, until by a Fermentation, they have been rais'd; but I never made my Obſervations of any Perſons that have been drowned above ſix Hours.

Mr *Jones*. Did you ever hear of any Perſons, that, as ſoon as they were drowned, had ſwam above Water.

Dr *Coatſworth*. I have not known ſuch a Caſe.

Mr *Cowper*. Did you ever know, Sir, a Body that was otherwiſe killed, to float upon the Water?

Dr *Coatſworth*. I never made any Obſervation of That.

Mr Baron *Hatſell*. Dr *Browne* has a learned Diſcourſe, in his *Vulgar Errors*, upon this Subject, concerning the Floating of dead Bodies; I don't underſtand it my ſelf, but he hath a whole Chapter about it.

Then Dr Nailor *was Sworn.*

Mr *Jones*. We ask you the ſame Queſtion that Doctor *Coatſworth* was aked, What is your Opinion of dead Bodies? If a Body be drowned, will it have Water in it or not?

Dr *Nailor*. My Lord, I am of Opinion, That it will have a Quantity if it be drowned; but if there be no Water in the Body, I believe that the Perſon was dead before it was put into the Water.

Mr *Cowper*. I would ask the Doctor one Queſtion, my Lord, Whether he was not a conſtant Voter againſt the Intereſt of our Family in this Corporation?

Dr *Nailor*. I never did come to give a Vote, but Sir *William Cowper*, or his Son, oppos'd me, and ſaid, I had no Right to Vote.

Mr *Cowper*. I would have ask'd the ſame Queſtion of the *Dimſdales*, if I had remembred it; they are of another Party, as this Gentleman is.

Mr Baron *Hatſell*. It is not at all material, as they are Witneſſes.

Then call Doctor *Babington*, *(who was Sworn.)*

Mr *Jones*. Pray, What is your Opinion of this Matter?

Mr *Babington*. I am of Opinion that all Bodies that go into the Water alive, and are drowned, have Water in them, and ſink as ſoon as they are drowned, and don't riſe ſo ſoon as this Gentlewoman did.

Mr *Cowper*. Pray what is your Profeſſion, Sir?

Mr *Babington*. I am a Chirurgeon.

Mr *Cowper*. Becauſe Mr *Jones* called you Doctor.

Mr Baron *Hatſell*. Did you ever ſee any drowned Bodies?

Mr *Babington*. Yes, my Lord, I once had a Gentlewoman a Patient that was half an Hour under Water, and ſhe lived ſeveral Hours after, and in all that time ſhe diſcharged a great Quantity of Water; I never heard of any that went alive into the Water, and were drowned, that floated ſo ſoon as this Gentlewoman did, I have heard ſo from Phyſicians.

Mr Baron *Hatſell*. I have heard ſo too, and that they are forced to tye a Bullet to dead Bodies thrown into the Sea that they might not riſe again.

Mr *Cowper*. The Reaſon of that is, that they ſhould not riſe again, not that they will not ſink without it; but I would ask Mr *Babington* whether the Gentlewoman he ſpeaks of went into the Water voluntarily, or fell in by Accident.

Mr *Babington*. By Accident, but I believe that don't alter the Caſe.

Mr *Jones*. Swear Dr *Burnet*, *(which was done.)*

Dr *Burnet*, You hear what is the Matter in Queſtion, what is your Opinion of it?

Dr *Burnet*. My Lord, I think that if any Perſon fall into the Water by Accident, or throws himſelf in, the Body will receive Water as long as it is alive, and there are Endeavours for Reſpiration, and after theſe Endeavours are over, there is no Water will come in, for all the Parts are clos'd; ſo conſequently there muſt be Water in all probability found in her.

Mr *Jones*. What, do they ſwim or ſink?

Dr *Burnet*. They ſink, I never ſaw a Perſon drowned taken up without Water in my Life, but I have ſeen ſeveral full of Water.

Mr *Cowper*. I think you ſay when the Faculty of Reſpiratiou ceaſes, no Water comes in.

Dr *Burnet*. Yes, that is my Opinion.

Mr *Cowper*. But the Water does paſs into them while there are Endeavours for Reſpiration.

Dr *Burnet*. Yes, that is my Opinion.

Then Dr Woodhouſe *was Sworn.*

Mr *Jones*. Doctor, What is your Opinion of this Matter?

Dr *Woodhouſe*. My Opinion is, that no Perſon is ſuffocated by Water, but he muſt have a great deal of Water within him, a great deal of Water in the Stomach, and ſome in the Lungs.

Mr

Mr *Cowper*. Pray, Sir, did you ever open any of these Bodies?

Dr *Woodhouse*. Yes, I have opened a Child my self that had a great Quantity of Water in it.

Mr *Cowper*. Did you find any Quantity of Water in the Throat?

Dr *Woodhouse*. There was some, but a little, but a great deal in the Stomach.

Mr *Cowper*. Pray which Way can it pass into the Thorax?

Dr *Woodhouse*. While the Person is struggling for Respiration, there may be a Relaxtion of, and the Person must suck in Water as well as Air, and some Water may get into the Windpipe, and so enter into the Lungs.

Mr *Cowper*. Is there a Passage from the Lungs to the Thorax?

Dr *Woodhouse*. The Thorax is the Vessel wherein the Lungs lie, the Lungs in the Thorax, the Breast is the Cavity where the Lungs lie, the Windpipe is the Conveyance to the Lungs, and a Person in Respiration takes down some Water there, but no doubt the greater Quantity will be in the Stomach.

Mr Bar. *Hatsell*. Pray let me ask you a Question, some of the Witnesses said, that if a Person be drowned and lies Dead a great while, the Inwards will be putrified, what is your Opinion of it?

Dr *Woodhouse*. No doubt, my Lord, where Water gets into the Stomach, or wherever it is, it will putrifie very soon.

Mr *Jones*. Call *Edward Clement*. (*who was Sworn*) Are not you a Seaman?

E. Clement. Yes, Sir.

Mr *Jones*. How long have you been so?

E. Clement. Man I have writ my self but six Years, but I have used the Sea nine or ten Years.

Mr *Jones*. Have you known of any Men that have been kill'd, and thrown into the Sea, or who have fallen in and been drowned; pray tell us the difference as to their swimming and sinking.

E. Clement. In the Year 89, or 90, in *Beachy* Fight, I saw several thrown over-board, during the Engagement, but one particularly I took notice of that was my Friend, and kill'd by my Side, I saw him swim for a considerable Distance from the Ship, and a Ship coming under our Stern caus'd me to loose sight of him, but I saw several dead Bodies floating at the same Time; likewise in another Engagement, where a Man had both his Leggs shot off, and died instantly, they threw over his Legs, though they sunk, I saw his Body float. Likewise I have seen several Men who have died natural Deaths at Sea, they have when they have been Dead had a considerable Weight of Ballast and Shot made fast to them, and so were thrown over-board; because we hold it for a general Rule that all Men Swim if they be Dead before they come into the Water, and on the contrary I have seen Men when they have been drowned, that they have sunk as soon as the Breath was out of their Bodies, and I could see no more of them. For Instance, a Man fell out of the *Cornwal*, and sunk down to rights, and seven Days afterwards we weighed Anchor, and he was brought up grasping his Arm about the Cable; and we have observed in several Cases, that where Men fall overboard, as soon as their Breath is out of their Bodies they sink downright, and on the contrary where a dead Body is thrown over-board without Weight it will Swim.

Mr *Jones*. You have been in a Fight, how do Bodies float after a Battle?

E. Clement. Men float with their Heads just down, and the Small of their Back and Buttocks upwards, I have seen a great Number of them, some hundreds in *Beachey-head* Fight, when we Engag'd the *French*, I was in the old *Cambridge* at that Time, I saw several (what Number I will not be positive, but they were a great Number, I can't guess to a Score) that did really Swim, and I could see them float for a considerable Distance.

Mr *Jones*. Have you seen a Shipwreck?

E. Clement. Yes; the Coronation in *September* 1691. I was then belonging to the *Dutchess*, under the Command of Captain *Clement*, we look'd out and see them taking down their Masts, we saw the Men walking up and down on the right Side, and the Ship sunk down, and they swam up and down like a shoal of Fish one after another, and I see them hover one upon another, and see them drop away by Scores at a Time, and there was an Account of about nineteen that sav'd themselves, some by Boats, and others by Swimming; but there were no more sav'd out of the Ship's Complement, which was between five and six Hundred, and the rest I saw sink downright, some twenty at a Time. There was a Fisherman brought our Captain Word, that in laying in of his Nets he drew up some Men close under the Rocks that were drowned belonging to the *Coronation*, we generally throw in Bags of Ballast with them.

Mr *Jones*. I suppose all Men that are drowned you sink them with Weights.

E. Clement. Formerly Shot was allowed for that purpose, there us'd to be threescore Weight of Iron, but now 'tis a Bag of Ballast that is made fast to them.

Mr *Jones*. Then you take it for a certain Rule that those that are drowned sink, but those that are thrown over-board do not?

E. Clement. Yes, otherwise why should the Government be at that vast Charge to allow threescore or fourscore Weight of Iron to sink every Man, but only that their Swimming about should not be a Discouragement to others.

Then Richard Gin *was Sworn*.

Mr *Jones*. You hear the Question, pray what do you say to it?

R. Gin. I was at Sea a great while, and all the Men that I see turn'd over-board had a great Weight at their Heels to sink them.

Mr *Jones*. Then will they Swim otherwise?

R Gin. So they say.

Mr *Jones*. Are you a Seaman?

R. Gin. I went against my will in two Fights.

Mr *Jones*. Then Gentlemen of the Jury, I hope we have given you Satisfaction that Mrs *Stout* did not drown her self, but was carried into the Water after she was killed. That was the first Question, for if it be true that all dead Bodies when they are put into the Water do Swim, and the Bodies that go alive into the Water and are drowned do sink: This is sufficient Evidence that she came by her Death not by Drowniug, but some other Way. Now, my Lord, as to the second Matter, and that is to give such Evidence as we have against these Gentlemen at the Bar, Mr *Cowper*, it appears, was the last Man that any one can give an Account of was in her Company. What became of her afterwards, or where they went no Body can tell; but the other Witnesses have given you Evidence that he was the last Man that was with her. I shall only give this further Evidence as to Mr *Cowper*, That not

notwithſtanding all the Civility and Kindneſſes that paſs'd between him and this Family, when the Bruit and Noiſe of this Fact was ſpread abroad, Mr *Cowper* did not come no conſider and conſult with old Mrs *Stout* what was to be done; but he took no manner of Notice of it, and the next Day he rode out of Town, without further taking Notice of it.

Call George Aldridge, *and* John Archer.

John Archer *was Sworn.*

Mr *Jones.* Do you know any Thing of Mr *Cowper*'s going out of Town after this Buſineſs of Mrs *Stout*'s being drowned?

J. Archer. Yes, I did ſee him go out of Town afterwards.

Mr *Jones.* Which Way did he go?

J. Archer. He went the Back-way from the *Glove*, I ſuppoſe he came that Way.

Mr *Cowper.* What Day was it I went? Is it not the Way that I us'd to go when I go the Circuit into *Eſſex*.

J. Archer. Yes, I believe ſo.

Mr *Cowper.* I Lodg'd at Mr *Bareſoot's*, and he has a Back-door to the *Glove*, where my Horſe was, and I went the direct Way into *Eſſex*, and it was *Wedneſdny* Morning: What Day was it you ſee me go?

J. Archer. It was on the *Wedneſday* Morning.

Mr *Cowper.* That was the very Day I went into *Eſſex*.

Then George Aldridge *was Sworn.*

Mr *Jones.* When did Mr *Cowper* go out of Town the laſt Aſſizes?

G. Aldridg. On *Wedneſday*.

Mr *Jones.* Which Way did he go?

G. Aldridg. He went the Way to *Chelmsford*.

Mr *Jones.* Did you not fetch his Horſe from *Stout's*?

G. Aldridg. Yes, Sir.

Mr *Jones.* How often did you go for it?

G. Aldridg. Three Times.

Mr *Jones.* When?

G. Aldridg. On *Tueſday* Night I ſent once, and went twice my ſelf, the firſt Time there was no Body at home to deliver the Horſe, ſo I went to Mr *Stout*'s, and ask'd him about the Horſe, and he ſaid he could not deliver him till the Maid went home, and then I went about eleven of the Clock and had the Horſe.

Mr Bar. *Hatſell.* Was it eleven at Night?

G. Aldridg. Yes, my Lord.

Mr *Cowper.* When I ſent you to fetch my Horſe; what Directions did I give you?

G. Aldridg. You gave me Directions to fetch your Horſe, becauſe you ſaid you ſhould have occaſion to go out next Morning betimes with the Judge.

Mr *Cowper.* The Reaſon I ſent for my Horſe, was this, when I heard ſhe had drowned her ſelf, I think it concern'd me in Prudence to ſend a common Hoſtler for him, for fear the Lord of the Mannor ſhonld ſeize all that was there as forfeited.

Mr Bar. *Hatſell.* There was no danger of that, for ſhe was found *non compos mentis*.

Mr *Cowper.* No, my Lord, I ſent before the Verdict.

Mr *Jones.* It ſeems you did not think fit to go and take Horſe there your ſelf, though you put your Horſe there.

Now, my Lord, we will go on and give the other Evidence that we opened concerning theſe three other Gentlemen that came to Town, two of them took Lodgings at *Gurrey*'s at five in the Afternoon, but did not come in till between eleven and twelve, and then they brought another in with them, and though he had been in Town five or ſix Hours his Feet were wet and his Shoes, and his Head was of a reeky Sweat, he had been at ſome hard Labour I believe, and not drinking himſelf into ſuch a Sweat.

Call John Gurrey, Martha Gurrey, *and* Eliz. Gurrey.

John Gurrey *was Sworn.*

Mr *Jones.* Do you know any of the Gentlemen at the Bar?

J. Gurrey. Yes.

Mr *Jones.* Name who you know?

J. Gurrey. There is Mr *Stevens*, Mr *Rogers*, and Mr *Marſon*.

Mr *Jones.* Pray do you remember when they took Lodgings at your Houſe?

J. Gurrey. The laſt Aſſizes, when they firſt came there was only Mr *Stevens* and Mr *Rogers*.

Mr *Jones.* At what Time did they take it?

J. Gurrey. I was at Church and can't tell that, they hir'd the Lodging of my Wife.

Mr *Jones.* What can you ſay more?

J. Gurrey. I was in at Night when they came, there came three of them at eleven at Night, whereof Mr *Marſon* was the third Perſon, and he ſaid he was deſtitute of a Lodging, and he ask'd for a ſpare Bed, my Wife told them ſhe had one, but had let it, whereupon Mr *Stevens* and Mr *Rogers* ſaid he ſhould Lodge with them, ſo they went up all together, and they call'd for a Fire to be kindled, and ask'd for the Landlord, which was I, and they ask'd me to fetch a Bottle of Wine, and I told them I would fetch a Quart, which I did, aud then they ask'd me to ſit down and drink with them, which I did, and then they ask'd me if one Mrs *Sarah Stout* did not live in Town, and whether ſhe was a Fortune, I ſaid yes, then they ſaid they did not know how to come to the Sight of her, and I ſaid I would ſhow them her to morrow Morning, not queſtioning but I might ſee her ſome Time as ſhe was coming down the Street; ſo they ſaid they would go to ſee her. Mr *Rogers* and Mr *Stevens* charg'd Mr *Marſon* with being her old Sweat-heart, ſaith Mr *Marſon*, ſhe hath thrown me off, but a Friend of mine will be even with her by this Time.

Mr Bar. *Hatſell.* What a Clock was it then?

J. Gurrey. I reckon eleven of the Clock when they came in.

Mr Bar. *Hatſell.* Did you obſerve in what Condition Mr *Marſon* was in?

J. Gurrey. I did not obſerve, only that he was hot and put by his Wig, I ſee his Head was wet, and he ſaid he was juſt come from *London*, and that made him in ſuch a Heat.

Mr *Jones.* Had he Shooes or Boots on?

J. Gurrey. I did not obſerve that.

Mr *Jones.* What did they do the next Day?

J. Gurrey. The next Morning I heard this Party was in the Water, I ſat up all Night, and was fain to wait till my Daughter came down to look after the Shop, and then I went to ſee her, and ſhe was remov'd into the Barn, and they were wiping her Face, cloſing her Eyes, and putting up her Jaws; and

and as I came back these Persons were walking, and I met Mr *Marson* and Mr *Stevens*, and told them the News; said I, This Person is come to a sad Accident: Say they, So we hear; but nevertheless we will be as good as our Word, and go and see her: I went with them and overtook Mr *Rogers*, and *Marson* said we are a going to see Mrs *Stout*: O, Landlord, said *Rogers*, you may take up that Rogue (pointing at Mr *Marson*) for what he said last Night; but I did not think, they speaking so jocularly, that there was any Suspicion of their being concerned in the Murder. A second Time I went, the Barn-door was lock'd; I knock'd, and they open'd it and let us in, and they uncover'd her Face to let me see her, and I touch'd her; and looking about for them they were gone, and I can't say they see her or touch'd her: Then Mr *Marson* and they were consulting how to send a great Coat to *London*, and I directed them to a Coachman at the *Bell-Inn*, but I did not hear he went to enquire after the Coachman: Then they went to your Lordship's Chamber, and I went home; and about Eleven of the Clock I saw Mr *Marson* and Mr *Stevens* coming down with Mr *Spencer Cowper*.

Mr *Marson*. I did not go out that Night after I came in.

Mr *Jones*. No: We agree That. Did you see Mr *Cowper* and these Gentlemen together?

J. Gurrey. Only at Eleven of the Clock on *Tuesday* Noon, Mr *Cowper*, Mr *Marson*, Mr *Stevens*, were coming down to the Market-place.

Mr *Jones*. Did not they take their Leave of you when they went away from you that Forenoon?

J. Gurrey. No: Only in the Morning they told me they would send me Word at Noon, if they intended to lodge there.

Mr *Marson*. I desire to know of Mr *Gurrey*, if his Sister was not in the Room, when we came in?

J. Gurrey. She was in our House that Day; but whether when They came, I can't tell.

Mr *Cowper*. Pray, Have not you had some Discourse with your Sister the Widow *Davis*, concerning some Suspicion that you had of *Sarah Walker*, that hath been produc'd as a Witness?

J. Gurrey. I don't remember any such.

Mr *Cowper*. Then did not you say these Words? We must not concern our selves with *Sarah Walker*, for she is the only Witness against the *Cowpers*.

J. Gurrey. I can't remember any such Thing.

Mr Baron *Hatsell*. You may answer according to the best of what you remember; if you say you have forgotten when you have not, you are forsworn.

Mr *Cowper*. If your Lordship pleases to give Leave to Mr *Gurrey* to recollect himself. I ask him, Whether he did not talk with his Sister *Davis* about some Suspicion, Wife and He had about *Sarah Walker* the Maid-Servant of the deceased?

J. Gurrey. I believe there might be some talk of a Person that was seen to go into the *Church-yard* at some Distance with *Sarah Walker*.

Mr *Cowper*. Did your Wife say that she did suspect that Person?

J. Gurrey. Yes.

Mr *Cowper*. Did your Wife say they behaved themselves strangely, and that she would have persuaded the Widow *Blewit* to have watched her?

J. Gurrey. There was something of that.

Mr *Cowper*. Was there not some such Words that they must not meddle with *Sarah Walker*? For she is the Witness against the *Cowpers*.

J. Gurrey. I said do not concern your self with *Sarah Walker* for fear of taking off her Evidence.

Mr *Cowper*. Pray did not the Widow *Davis* warm the Sheets for these Gentlemen?

J. Gurrey. She was with my Wife, but I can't say whether she warmed the Sheets.

Mr *Cowper*. When they came home had you any Lodgers that wanted to come home? Had not you one *Gape*?

J. Gurrey. I can't say whether he was in before or after them.

Mr *Cowper*. Did not you say to your Sister *Davis*? Now these Gentlemen are in Bed, if Mr *Gape* would come home our Family would be quiet.

J. Gurrey. I do not remember that.

Mr *Cowper*. Pray did not you go to look for Mr *Gape*?

J. Gurrey. Yes, I went to *Hockleys*.

Mr *Cowper*. Who did you employ to speak to Mr *Gape* to come home?

J. Gurrey. Mrs *Hockley*.

Mr *Cowper*. When you came home to your own House, and after you had been at *Hockleys* to speak with Mr *Gape*, what Account did you give of the Time of Night, and other Particulars?

J. Gurrey. I gave no Account of the Time.

Mr *Cowper*. Not to Mrs *Davis*?

J. Gurrey. I can't tell whether I did or no.

Mr *Cowper*. Did not you say Mr *Gape* ask'd Mrs *Hockley* what a Clock it was?

J. Gurrey. No, I don't remember that, but Mrs *Hockley* went in and told him what Time of Night it was, it was Eleven or Twelve of the Clock, whether I can't say.

Mr *Jones*. Call *Martha Gurrey*. (*Who was Sworn*) Which of these Gentlemen do you know?

Mrs *Gurrey*. Mr *Marson*, Mr *Rogers*, and Mr *Stevens*.

Mr *Jones*. What Time of the Night was it when they came to your House, give an Account of it, and of what you heard them say?

Mrs *Gurrey*. It was a little after Five or thereabouts, that they came———

Mr *Jones*. Who came?

Mrs *Gurrey*. Mr *Stevens*, and Mr *Rogers*, and there was one Mr *Gilbert* that married a first Cousin of mine, he came and ask'd me for my Husband, and I ask'd him his Business, and he said he wanted to speak with him.———

Mr *Jones*. Pray come to these Men, when did they come to your House?

Mrs *Gurrey*. They hired the Lodging at Five of the Clock; when they first came to see them, I was not at home, Mr *Gilbert* brought them, and as I was coming along the Street, I saw Mr *Gilbert* walking off, and would not look at me. ——

Mr *Jones*. When did they go out?

Mrs *Gurrey*. They never staid there.

Mr *Jones*. When did they come in again?

Mrs *Gurrey*. Between Eleven and Twelve.

Mr Bar *Hatsell*. What did they do when they came in again?

Mrs *Gurrey*. I was laying on some Sheets two Pair of Stairs when they came, and then there was three of them; so they saw me a little after and beg'd my excuse for bringing in another; for they said it was so late they could not get a Lodging any where else, and said if I thought fit the Gentleman should lie with them, and I told them I liked it very well.

Mr *Jones*. What Firing had they?

Mrs *Gurrey*. The Firing I laid on in the Morning, and they sent for my Husband to fetch them some Wine.

Mr *Jones*.

Mr *Jones*. What did you hear them talk on?

Mrs *Gurrey*. They diſcours'd with my Husband, and ask'd him if he knew Mrs *Sarah Stout*, and one of them ſaid to Mr *Marſon*, I think ſhe was an old Sweet-heart of yours, ay ſaith he, but ſhe turn'd me off, but a Friend of mine is even with her; and Mr *Rogers* ſaid he was in with her, and afterwards ſaid her Buſineſs was done; they had a Bundle that was wrapt in a pure white Cloth (like to an Apron) but I can't ſay it was an Apron, and there was a Parcell hanging looſe by it, and when he laid it down, he ſaid, he would paſs his Word Mrs *Sarah Stout*'s courting Days were over, and I ſaid, I hop'd it was no hurt to the Gentlewoman, and then I looking upon Mr *Marſon*, I ſaw him put his Peruke aſide, and his Head reek'd, and he told them he was but juſt come from *London* that Night, which made him diſappointed of a Lodging.

Mr *Jones*. What did you hear them ſay about any Money.

Mrs *Gurrey*. I ask'd them how they would have their Bed warm'd, and Mr *Marſon* anſwer'd very hot, and with that I went down to ſend my Daughter up, and ſhe could not go preſently, I told her then ſhe muſt go as ſoon as ſhe could.

Mr Bar. *Hatſell*. Pray don't tell us what paſs'd between you and your Daughter, what do you know of theſe Gentlemen?

Mrs *Gurrey*. I went to the next Room, to ſee if every Thing was as it ſhould be I hearken'd, and they had ſome Diſcourſe about Money, and I heard ſome Body (I don't know who it ſhould be, except it were Mr *Stevens*) anſwer, and ſay, the uſe Money was paid to Night, but what Money they meant I can't tell.

Mr *Jones*. What did you find when they were gone?

Mrs *Gurrey*. Sir, I found a Cord at the End of the Trunk.

Mr *Jones*. Was it there in the Morning, or before they came?

Mrs *Gurrey*. No it could not, for I ſwept my Room and wip'd down the Duſt.

Mr *Jones*. Was the Cord White?

Mrs *Gurrey*. No, it was more Dirty than it is now, for my Husband and I have worn it in our Pockets.

Mr *Cowper*. Pray, who brought the Cord down from above Stairs?

Mrs *Gurrey*. My Daughter that liv'd with me, and ſhe laid it upon the Shelf.

Mr *Cowper*. Did not you hear there was a Coroner's Inqueſt ſitting?

Mrs *Gurrey*. The next Day at Night I did hear of it.

Mr *Cowper*. Why did not you go to the Coroner's Inqueſt, and give an Account of it there?

Mrs *Gurrey*. I told my Husband of it, and I ask'd my Husband if he did not hear what they ſaid concerning Mrs *Sarah Stout*, and he anſwer'd yes, they ought to be taken up for the Words they ſaid laſt Night; why, ſaith I, don't you take notice of it, I think you ought to take them up, but he went out of Doors, and I ſaw no more of him till the Afternoon; when I heard the Words I thought ſome Body had ſtole her away and got to Bed to her.

Mr *Cowper*. Pray if your Husband heard theſe Words, why did not he go to the Coroner's Inqueſt.

Mrs *Gurrey*. I did ſpeak to him to have them taken up.

Mr *Cowper*. Why did he not do it?

Mrs *Gurrey*. He ſaid he would not do it, he did not know but it might coſt him his Life.

Mr *Jones*. How came you after this to diſcover it?

Mrs *Gurrey*. Becauſe I was ſo troubled in Mind I could not reſt Night nor Day, and I told him if he would not tell of it, I would tell of it my ſelf, for I was not able to live.

Then Elizabeth Gurrey *was Sworn.*

Mr *Jones*. Pray do you know Mr *Rogers*, Mr *Stevens*, and Mr *Marſon*?

E. Gurrey. I know Mr *Marſon*, and theſe are the other Gentlemen I reckon.

Mr *Jones*. What Diſcourſe did you hear from them?

E. Gurrey. Mr *Marſon* ask'd the other Gentlemen how much Money they had ſpent, the other anſwer'd what was that to him, you have had forty or fifty Pounds to your Share; then the other ask'd him whether the Buſineſs was done, and he anſwer'd he believ'd it was, but if it was not done, it would be done to Night, then my Lord, he pull'd a handful of Money out of his Pocket, and ſwore he would ſpend it all for joy the Buſineſs was done.

Mr *Jones*. Was Mr *Cowper*'s Name mentioned?

E. Gurrey. I heard them mention Mr *Cowper*'s Name, but not Mrs *Sarah Stout*'s.

Mr *Jones*. What Condition was the Gentleman's Shooes in?

E. Gurrey. I think it was Mr *Marſon*, his Shooes were very wet and dirty, one of them was very hot, and he wip'd his Head with his Handkerchief.

Mr *Jones*. Now my Lord we have done as to our Evidence, Mr *Marſon* pretended he was juſt then alighted and come from *London*, and was in a great Heat, and his Shooes were wet, I wonder what Mr *Marſon* had been doing, for when he was Examined, he ſaid he came to Town about Eight of the Clock, and went to the *Glove* and *Dolphin* Inn, and ſtay'd there while he came to his Lodging; now 'tis a wonderful Thing that he ſhould come wet-ſhod from a Tavern where he had been ſitting four or five Hours together.

[*Then the Examination of Mr* John Marſon *was read.*]

The Examination of *John Marſon*, taken before Me, this 27th Day of *April*, 1699.

WHO *being examined where he was on* Monday *the* 13*th of* March *laſt, ſaith, That he was at the Borough of* Southwark *(he being an Attorney of the ſaid Court) till paſt Four of the Clock in the Afternoon; and ſaith, That he ſet out from* Southwark *for* Hartford *ſoon after, and came to* Hartford *about Eight of the Clock the ſame Afternoon, and put up his Horſe at the Sign of* ——— *an Inn there, and then went to the* Hand and Glove, *together with* Godfrey Gimbart, *Eſq*; Ellis Stevens, William Rogers, *and ſome others, where they ſtay'd till about Eleven of the Clock at Night, and then this Examinant went thence directly to the Houſe of* John Gurrey, *with the*

the said Stevens *and* Rogers, *who lay all together in the said* Gurrey's *House all that Night. And being asked what he said concerning the said Mrs.* Sarah Stout, *deceas'd, this Examinant saith, That on* Sunday *the* 12*th of* March *last, this Examinant being in Company with one Mr.* Thomas Marshall, *and telling him that this Examinant intended the next Day for* Hartford *with the Marshal of the* King's *Bench, the said* Thomas Marshall *desired this Examinant and the said* Stevens, *who was then also in Company, that they would go and see the said* Sarah Stout *(his Sweet-heart): He confesseth, That he did ask the said* Gurrey *if he would shew this Examinant where the said* Stout *lived, telling the said* Gurrey *that his Name was* Marshall, *and asked him if he never heard of him before, and jocularly said, That he would go to see her the next Morning; but doth not believe that he said any Thing that any Friend was even with the said* Sarah Stout, *or to such like Effect. And doth confess, That he did, the next Day, upon the said* Gurrey's *telling him that the said* Stout *was drowned, say, that he would keep his Word, and would see her. And saith, That meeting with Mr.* Cowper *(who is this Examinant's Acquaintance) he believes he did talk with him concerning the said* Stout's *being drowned, this Examinant having seen her Body that Morning.*

Cogn. Die & Anno antedict. coram *J. Holt.* John Marson.

Mr *Jones.* All that I observe from it, is this; that he had been five Hours in Town, and when he came to his Lodging he came in wet and hot, and said he was just come from *London.*

Mr *Marson.* I had rid forty Miles that Day, and could not be soon cold,

Mr Bar. *Hatsell.* They have done now for the King, come Mr *Cowper*, what do you say to it?

Mr *Jones.* If your Lordship please we will call one Witness more, *Mary Richardson.* Mrs *Richardson*, Do you know Mr *Marson*, or any of these Gentlemen.

Mrs *Richardson.* They came on *Tuesday* Night to the *Bell* at *Hodesdon* and lay there, and one of the Gentlemen when I was warming of the Sheets, ask'd me if I knew Mrs *Sarah Stout*, and I said yes; he ask'd me if I knew which Way she came to her End, and I told him I could not tell.

Mr *Jones.* Is that all, what did they say more?

Mrs *Richardson.* They did desire and wish it might be found out how it came about, and one Gentleman took no notice of her at all; they had a little Bundle, but what was in it, I can't tell, but there I see it bound up in some colour'd Stuff or other, but what it was, I can't tell.

Mr *Jones.* Is that all that you can say?

Mrs *Richardson.* Yes, that's all.

Mr *Jones.* Then we have done.

Mr Bar. *Hatsell.* Come Mr *Cowper*, what do you say to it?

Mr *Cowper.* Now they have done on the Part of the King, my Lord, and you Gentlemen of my Jury, I must beg your Patience for my Defence: I confess it was an unfortunate Accident for me (as Mr *Jones* calls it) that I happened to be the last Person (for ought appears) in the Company of a melancholy Woman. The Discourse occasioned by this Accident had been a sufficient Misfortune to me without any Thing else to aggravate it; but I did not in the least imagine that so little, so trivial an Evidence as here is could possibly have affected me to so great a Degree, as to bring me to this Place to answer for the worst Fact that the worst of Men can be guilty of.

My Lord, your Lordship did just now observe, that I have appear'd at the Bar for my Clients, but I must say too, that I never appear'd for my self under this, or the like Circumstances, as a Criminal for any Offence whatsoever.

Mr *Jones*, very well said, when he spoke on the Part of the King, that if this Gentlewoman was Murther'd, the Crime was Villanous, Base, Barbarous, and Cruel; and for my Part I think so too, the Crime would be so great, that it could never be sufficiently Condemned: But at the same Time I may averre, that to suppose a Murther without good Grounds for it, and afterwards to charge Innocent Men with it Knowingly and Maliciously, is to a Trifle as Base and Barbarous as the Murther it self could be. My Lord, I speak for my own Part, I know not at what Price other Men may value their Lives, but I had much rather my self was Murther'd than my Reputation; which yet, I am sensible hath suffer'd greatly hitherto by the Malice and Artifice of some Men, who have gone pretty far in making this Fact, as Barbarous as it is, to be Credited of me. And therefore I must beg your Lordship's, and the Juries Patience, while I not only defend my Life, but justifie my self also from these Things that have unjustly aspers'd me, by the Conspiracy and Artifice of my Accusers.

My Lord, in all the Evidence that hath been given, I must observe there is no positive Evidence, with Submission, to induce the Jury, or any one to believe the General, that this Gentlewoman was Murthered; but they go upon Suppositions and Inferences, which are contradicted by other Circumstances, in the very Evidence of the Prosecutor, that make full as strong to prove she was not Murther'd, as that she was; so that as it stands, it can amount only to a bare Supposition that she was Murther'd by any Body.

Then as to the Evidence that particularly relates to my self, or the Gentlemen who stand with me at the Bar; that they, or I were concerned in it (if she was Murther'd) there is not one Syllable of Proof; at most, it amounts but to make us suspect of a Murther; not prov'd, but only suspected: This I observe upon the Evidence, as it now stands without Answer, as it has been given on the King's Part: And how far, in the Case of Life, Men shall be affected with Evidence of this Nature, which neither proves the Murther in General, nor that they did it in Particular, though no Defence was made, or any further Answer given, I must submit to your Lordship's and the Jury's Judgment.

But, my Lord, I do not doubt but I shall be able to wipe away, even that remote Suspicion by my Defence: They have been long in their Evidence for the King, and therefore I must beg your Patience while I give a particular Answer to every Part of it, in as good a Method as I am able; and I will waste as little Time as may consist with the justifying of my Reputation; for which I know your Lordship will have as tender a Regard,

gard, to ſee it doth not ſuffer unjuſtly, as for my Life itſelf.

And, I promiſe your Lordſhip, I ſhall trouble you with no Evidence which is not Expreſs and Plain; no Inuendo's or Suſpicions; but I ſhall prove fully and clearly, in the firſt Place, That there was no Ground at all, in this Caſe, to ſuppoſe ſhe was murther'd by any one but herſelf.

The firſt Fact that they inſiſted upon to infer a Murther from it, was, that the Body was found floating; now, my Lord, that Fact I am able by the Evidence I have, as well as from that of the Proſecutor, to deny; for the Fact was directly otherwiſe, that is, ſhe was not found floating.

And whereas the Proſecutor's Witneſſes, who have been produced to this Point, are obſcure and poor Men, and your Lordſhip obſerves have been taught to ſay generally that ſhe floated, which, when they are required to explain, and deſcribe how ſhe lay, they contradict themſelves in, by ſhewing ſhe lay Sideways between the Stakes, and almoſt all under Water: Now I ſhall give your Lordſhip, and the Jury a full and particular Account and Deſcription from the Pariſh Officers, Men employed by the Coroner to take the Body out of the Water, of the very Manner and Poſture in which it was firſt found; which they are much better able to do, than the Proſecutor's Witneſſes, having ſeen her before all, or moſt of thoſe People, and theſe Officers clearly agree that her Body was under Water, when found, except ſome ſmall Appearance of her Petticoats, near, or on the Surface of the Water, which may be very eaſily accounted for; becauſe the Stakes the Witneſſes mention, and which are driven into the Ground croſs the River to prevent Weeds and Trumpery from running into the Mill-ſtand, as the Witneſſes have already ſaid, about a Foot diſtance from one another, and are ſet with their Feet from the Mill, and their Heads inclining towards the Mill with the Stream: Now, my Lord, every one knows, that though a drowned Body will at firſt ſink, yet it is buoyant, and does not go down-right, and reſt in one place like Lead; for a humane Body is ſeldom or never in a Stream found to lie where it was drowned; a Body drowned at *Chelſea*, has been often found by Fiſhermen at *London*, and that before it came to float above Water. Now if a Body is ſo buoyant, as that it is driven down by the impellant Force of the Current (though it do not float above Water) it ſeems a Conſequence that when it comes to be ſtopp'd and reſiſted by the Stakes, which lie with their Heads downwards, inclining with the Stream, the Stream bearing the Body againſt the Stakes, muſt needs raiſe it upwards to find another Paſſage, if poſſible, when the Ordinary and Natural is obſtructed. I have ſeen, I remember, that where Weeds have been driven down a River, and have been rolled along at the Bottom, when they have come down to a Board or Stakes of a Wyer, or Turnpike, they have been by the Force of the Water raiſed up againſt thoſe Boards, or Stakes, and forced over them, though without ſuch Obſtruction they had undoubtedly continued to rool under the Water. I don't know of any other Symptom they pretend to, of her not being drowned, from any thing obſerved of her in the Water. Then as to the flatneſs of her Belly, when ſhe was put into her Coffin, I ſhall ſhew it is a common and natural Accident, ſometimes drowned Bodies are ſwelled more, ſometimes leſs, ſometimes not at all; I think it hardly deſerves a Phyſician to prove that a Body may be drowned with very little Water, that a Man may be drowned by ſtrangling, or Suffocation cauſed by a little Water in the Lungs, without any great Quantity of Water received in the Body, is a certain and eſtabliſhed Truth; for I am told that when Reſpiration ceaſes, the Party dies, and can receive no more Water after that; ſo that nothing is to be inferred from a Body's having more or leſs Water found in it, eſpecially, if your Lordſhip will give me leave to obſerve this Diſtinction, where a Body is voluntarily drowned, and where it is drowned by Accident; for People that fall in by Accident do ſtruggle and ſtrive as long as they can, every time they riſe they drink ſome Water into the Stomach to prevent its paſſing into the Lungs, and are drowned no ſooner than needs muſt; but Perſons that voluntarily drown themſelves, to be ſure deſperately plunge into the Water to diſpatch a miſerable Life, as ſoon as they can; and ſo that little quantity in the Lungs, which cauſes Death, may be the ſooner taken in; after which no more is received: And I hope by Phyſicians it will appear there is good Ground for this difference.

The next is the Evidence that the Chirurgeons have given on the other Part, relating to the taking this Gentlewoman out of her Grave, after ſhe had been buried ſix Weeks, whether this ought to have been given in Evidence for the Reaſons I hinted at in a Criminal Caſe, I ſubmit to your Lordſhip. But as it is, I have no Reaſon to apprehend it, being able to make appear, that the Gentlemen who ſpoke to this Point have delivered themſelves in that manner, either out of extreme Malice, or a moſt profound Ignorance; this will be ſo very plain upon my Evidence, that I muſt take the Liberty to impute one, or both of thoſe Cauſes to the Gentlemen that have argued from their Obſervations upon that Matter.

And now, if your Lordſhip will but pleaſe to conſider the Circumſtances under which they would accuſe me of this horrid Action, I don't think they will pretend to ſay, that in the whole Courſe of my Life, I have been guilty of any mean or indirect Action; and I will put it upon the worſt Enemy I have in the World to ſay it. Now, for a Man in the Condition I was in, of ſome Fortune in Poſſeſſion, related to a better, in a good Employment, thriving in my Profeſſion, living within my Income, never in Debt, (I may truly ſay not five Pounds at any one time theſe eight Years paſt) having no poſſibility of making any Advantage by her Death, void of all Malice; and as appears by her own Evidence in perfect Amity and Friendſhip with this Gentlewoman, to be guilty of the murthering her, to begin at the Top of all Baſeneſs and Wickedneſs, certainly is incredible.

My Lord, in this Proſecution my Enemies ſeeing the Neceſſity of Aſſigning ſome Cauſe, have been ſo malicious to ſuggeſt before, (though not now, when I have this Opportunity of vindicating my ſelf publickly) that I have been concerned in the Receipt of Money for this Gentlewoman, had her Securities by me, and ſometimes that I had been her Guardian, or her Truſtee, and I know not what. I now ſee the Contrivers and Promoters of that Scandal, and they know it to be Baſe, Falſe, and Malicious; I never was concerned

cerned in Intereſt with her, directly, or indirectly, and ſo I told them when I was before my Lord Chief Juſtice; 'tis true, it was then juſt ſuggeſted by the Proſecutors, I then denied it, and I deny it ſtill ——— I thank God I have not been uſed, nor have I needed to deny the Truth.

My Lord, you find the Proſecutors have nothing to ſay to me upon this Head, after all the Slanders and Stories they have publiſh'd againſt me, of my having Money in my Hands which belonged to the Deceaſed. But though they do not ſtir it, I will, and give your Lordſhip a full Account of all that ever was in that Matter. When I lodg'd at *Hertford*, ſome time ſince, ſhe deſired me to recommend to her a Security for 200 *l.* if it came in my Way; my Lord, when I came to Town, I underſtood that one Mrs *Puller*, a Client of mine, had a Mortgage formerly made to her by one Mr *Loſtus* of *Lambeth* in *Surrey* for the like Sum, and that ſhe was willing to have in her Money; I wrote to this Gentlewoman, the Deceaſed, to acquaint her of the Security, ſhe thereupon did ſend up 200 *l.* and ſome odd Pounds for Intereſt (the Account of which I produced to my Lord Chief Juſtice;) this Money was ſent to me by Mr *Cramfield*, as I have been informed, and by him given to Mr *Toller*'s Clerk, and by him brought publickly to me; my Lord, this Mortgage I immediately transferr'd by Aſſignment, Indors'd on the Back of it, and Mrs. *Habberfield*, a Truſtee for Mrs *Puller*, Sign'd and Sealed it, and that very 200 *l.* and Intereſt due was at one and the ſame time paid to Mrs *Puller*, and by her the Principal was paid to her Daughter, in Part of her Portion. All this was tranſacted the beginning of *December* laſt, and ſhe was not drowned till the 13th of *March* following: And my Lord, theſe People that are now the Proſecutors, did own before my Lord Chief Juſtice, that they had found this Mortgage amongſt the Deceaſed's Writings in her Cabinet at the Time of her Death. Now, my Lord, I ſay, that ſaving this one Service I did her, as I ſaid in *December* laſt, I never was otherwiſe concerned with her in the receiving, or diſpoſing of any of her Money; nor had I ever any of her Securities for Money in my keeping; and I defie any Adverſary I have to ſhew the contrary.

My Lord, as there appears no Malice, no Intereſt, ſo they have proved for me that there was no Concealment of Shame, to induce me to commit ſo barbarous an Action; otherwiſe, perhaps now they find they can aſſign no other Cauſe, they would content themſelves to give that Reaſon, and fling that Scandal at me: And though I take it by the Experience I have had of them, they did not deſign to do me any Favour, yet I thank them, in endeavouring to vindicate her Honour, they have ſecured my Reputation againſt that Calumny; and though I am ſatisfied, as I ſaid, they did not intend me Kindneſs, yet I thank God they have given me a juſt Opportunity to take Advantage of their Cunning, for the clearing my Innocence in that Particular.

Then, my Lord, not to reſt it here, but to ſatisfie the Jury and the World how this Gentlewoman came to deſtroy her ſelf, I ſhall give the cleareſt Evidence that was ever given in any Court, that ſhe murthered her ſelf. When I enter upon this Proof, I muſt of neceſſity treſpaſs upon the Character of this Gentlewoman that is dead. I confeſs this is a tender Point, 'tis a Thing I would willingly be excuſed from, and 'tis not without a great deal of Reluctancy and Compulſion forced from me: That ſhe was melancholy the Proſecutors themſelves have proved; but I muſt of neceſſity ſhow you the Occaſion and Reaſons of it, and the Witneſſes will tell your Lordſhip what deſperate Reſolutions ſhe had been under formerly, and that will lead me to near the time of her Death; to ſhow why, and upon what Accidents ſhe made away her ſelf. I will not enumerate Particulars, by way of opening; only I muſt tell your Lordſhip, that ſome Letters of hers muſt of neceſſity be produced, which truly as I ſaid, I ſhould not meddle with, if I had not theſe innocent Gentlemen here to defend, as well as my ſelf; perhaps it may be ſaid, that in Honour I ought to conceal the Weakneſs of this Gentlewoman, but then in Honour and Juſtice to theſe Gentlemen that are falſely accuſed with me, I cannot do it; I hope this one Reaſon will excuſe me to the World, for I have no other that could have obliged me to bring theſe Letters upon the Stage; I ſolemnly proteſt, if I ſtood here ſingly in the Caſe of my own Life, upon the Evidence given againſt me, I take it to be ſo inconſiderable, I would not do it; but I muſt do it to ſhow that theſe Gentlemen alſo are innocent, and to preſerve them, becauſe I am ſatisfied in my own Mind they are ſo. My Lord, when I have done that, I ſhall ſhew your Lordſhip in the next Place, that it is utterly impoſſible I could be concerned in this Fact, if I had had all the Motives and Provocations in the World to have done it: I ſhall ſhow your Lordſhip in point of time it could not be.

The Maid *Sarah Walker*, who is the ſingle Witneſs, I take it, that ſays any Thing in the leaſt relating to me, ſaid but now, the Clock had ſtruck Eleven before ſhe carried up the Coals, and about a quarter of an Hour after, while ſhe was warming the Bed above Stairs, ſhe heard the Door clap, and ſometime after that ſhe came down and found that I and her Miſtreſs were gone. Now in point of time I ſhall prove it utterly impoſſible I could be guilty of the Fact I am accuſed of, being ſeen to come into the *Glove* Inn as the Town Clock ſtruck Eleven, and ſtaying there more than a quarter of an Hour, was, after ſeveral Things done at my Lodging, in Bed before twelve a Clock, and went no more out that Night as I ſhall prove. As for that little Circumſtance of ſending for my Horſe, which they have made uſe of all along to back this Proſecution; their very telling me of that matter, ſhews how they are put to their Shifts to juſtifie their accuſing me; I ſay in Prudence I ought to have done what I did: I ſent for him on the *Tueſday*, but as their Witneſs ſaith, I told him, at the Time I bid him fetch my Horſe, not to uſe then, nor till by the Courſe of the Circuit I was to go into *Eſſex* with the Judges the next Morning; and till then the Proſecutor's Witneſs, who is the Oſtler of the *Glove*-Inn, was ordered to ſet him up there, to litter him down, and to take care of him and feed him, and that he ſhould be ready for me to go to *Chelmsford* on the Morrow, whither I went with the other Council the next Morning being *Wedneſday*; and this my Lord is the Whole of that Matter.

My Lord, this Buſineſs ſlept near Two Months after the Coroner's Inqueſt before I heard of it, or imagined my ſelf to be concerned in it, and was never ſtirr'd till two Parties differing on all other Occaſions had laid their Heads together; I beg

leave to let your Lordſhip a little into that Matter, to ſhew you how this Proſecution came to be managed, with ſo much Noiſe and Violence as it hath been. I can make it appear, that one of the greateſt of the Quakers, Mr *Mead* by Name, has very much, and indirectly too, concerned himſelf in this Matter; it ſeems they fancy the Reputation of their Sect is concerned in it, for they think it a wonderful Thing, nay abſolutely impoſſible (however other People may be liable to ſuch Reſolutions) that one who was by her Education intituled to the Light within her, ſhould run headlong into the Water, as if ſhe had been poſſeſs'd with the Devil; of this they think their Sect is to be clear'd, though by ſpilling the Blood of four innocent Men. The other ſort of People that concur with the Quakers in this Proſecution, I ſhall mention, now I come to obſerve what the Witneſſes are that have been produced againſt me; ſome of them I have nothing to object to, but that they are extreme indigent and poor, and have been helped by the Proſecutor, thoſe that are ſo ſay nothing as to me; others who live in this Town, and give their Opinions of the manner of her Death, are poſſeſt with much prejudice againſt me, upon Feuds that have riſen at the Elections of my Father and Brother in this Town, and theſe with the Quakers have wholly dreſt up this Matter for ſeveral Ends, the Quakers to maintain the Reputation of their Sect, and the others to deſtroy, or break at leaſt, the Intereſt of my Family in this Place: But however effectual theſe Deſigns may have been, to have made a great Noiſe in the World out of nothing; I am ſatisfied now, that I am in a Court of Juſtice, where no Perſon's Reputation, much leſs his Life, will be ſacrificed to the Policy or Malice of a Party without Proof; and therefore I have taken up ſo much of your Time, to ſet the true Riſe of this Proſecution before you in a clear Light.

My Lord, as to my coming to this Town on *Monday*, it was the firſt Day of the Aſſizes, and that was the Reaſon that brought me hither; before I came out of Town, I confeſs, I had a Deſign of taking a Lodging at this Gentlewoman's Houſe, having been invited by Letter ſo to do; and the Reaſon why I did not was this; my Brother when he went the Circuit always favoured me with the Offer of a Part of his Lodging, which out of good Husbandry I always accepted: The laſt Circuit was in Parliament Time, and my Brother being in the Money Chair could not attend the Circuit as he us'd to do; he had very good Lodgings, I think one of the beſt in this Town, where I us'd to be with him, theſe were always kept for him, unleſs notice was given to the contrary; the *Friday* before I came down to the Aſſizes, I happened to be in Company with my Brother and another Gentleman, and then I ſhow'd them the Letter, by which I was earneſtly invited down to lie at the Houſe of this Gentlewoman, during the Aſſizes, (it is dated the *9th* of *March* laſt;) and deſigning to comply with the Invitation, I thereupon deſired my Brother to write to Mr *Barefoot*, our Landlord, and get him, if he could, to diſpoſe of the Lodgings, for ſaid I, if he keeps them they muſt be paid for, and then I cannot well avoid lying there; my Brother did ſay he would write, if he could think on't; and thus, if Mr *Barefoot* diſpoſed of the Lodgings, I own I intended to lie at the Deceas'd's Houſe, but if not, I look-ed on my ſelf as obliged to lie at Mr *Barefoot*'s. Accordingly I ſhall prove, as ſoon as ever I came to this Town in the Morning of the firſt day of the Aſſizes, I went directly to Mr *Barefoot*'s, (the Maid and all agree in this) and the Reaſon was, I had not ſeen my Brother after he ſaid he would write, before I went out of *London*; and therefore it was proper for me to go firſt to Mr *Barefoot*'s, to know whether my Brother had wrote to him, and whether he had diſpoſed of the Lodgings or not; as ſoon as I came to Mr *Barefoot*'s, there was one Mr *Taylor* of this Town came to me, and I in his hearing ask'd Mr *Barefoot*, his Wife, and Maid Servant, one after another, if they had received a Letter from my Brother to unbeſpeak the Lodgings; they told me no, that the Room was kept for us, and I think that they had made a Fire, and that the Sheets were airing; I was a little concerned he had not writ, but being ſatisfied that no Letter had been received, I ſaid immediately, as I ſhall prove by ſeveral Witneſſes, if it be ſo, I muſt ſtay with you, I will take up my Lodging here; thereupon I lighted, and ſent for my Bag from the Coffee-houſe, and lodg'd all my Things at *Barefoot*'s, and thus I took up my Lodging there as uſual: I had no ſooner done this, but *Sarah Walker* came to me from her Miſtreſs to invite me to Dinner, and accordingly I went and dined there, and when I went away it may be true, that being asked, I ſaid I would come again at Night; but that I did ſay I would lie there, I do poſitively deny, and knowing I could not lie there, 'tis unlikely I ſhould ſay ſo: My Lord, at Night I did come again and paid her ſome Money, which I received from Mr *Loftus*, who is the Mortgager for Intereſt of the 200 *l.* I before mentioned (it was Six Pounds odd Money in Guineas and half Guineas) I writ a Receipt, but ſhe declined the Signing of it, preſſing me to ſtay there that Night, which I refuſed, as engaged to lie at Mr *Barefoot*'s and took my leave of her; and that very Money which I paid her was found in her Pocket, as I have heard, after ſhe was drowned.

Now my Lord, the Reaſon that I went to her Houſe at Night was firſt, as I ſaid, to pay her the Intereſt Money; in the next Place it was but fitting, when I ound my ſelf under a Neceſſity of diſappointing her, and lying at *Barefoot*'s to go to excuſe my not lying there; which I had not an Opportunity at Dinner Time to do. My Lord, I open my Defence ſhortly, referring the Particulars to the Witneſſes themſelves, in calling thoſe who will fully refute the Suppoſitions and Inferences made by the Proſecutors, whom firſt, my Lord, I ſhall begin with, to ſhew there is no Evidence of any Murder at all committed; and this I ſay again ought to be indiſputably made manifeſt and prov'd before any Man can be ſo much as ſuſpected for it.

Mr Baron *Hatſell*. Do not flouriſh too much, Mr *Cowper*, if you have opened all your Evidence, call your Witneſſes, and when they have ended, then make your Obſervations.

Mr *Cowper*. Then my Lord I will take up no more of your Time in opening this Matter.

Call Robert Dew *(who appeared.)*

When Mrs *Sarah Stout* drowned herſelf, was not you a Pariſh Officer?

R. Dew. I was I was next Houſe to the *Coach* and *Horſes*, and about ſix of the Clock came a little Boy, (*Thom. s Parker*'s Boy) and ſaid there

there was a Woman fallen into the River, I conſidered it was not my Buſineſs, but the Coroner's, and I ſent the Boy to the Coroner, to acquaint him with it, and the Coroner ſent Word by the Boy, and deſired ſhe might be taken out, ſo I went to the River and ſaw her taken out; ſhe lay in the River, (as near as I could gueſs) half a Foot in the Water, ſhe was covered with Water, ſhe had a ſtrip'd Petticoat on, but nothing could be ſeen of it above Water; I heaved her up, and ſeveral Sticks were underneath her, and Flags, and when they took her out, ſhe froth'd at the Noſe, and Mouth.

Mr *Cowper*. How was ſhe, was ſhe driven between the Stakes?

R. Dew. She lay on the right Side, her Head leaning rather downwards, and as they pull'd her up, I cry'd, hold, hold, hold, you hurt her Arm, and ſo they kneel'd down and took her Arm from the Stakes.

Mr *Cowper*. Did you ſee any Spots upon her Arm?

R. Dew. Yes, Sir.

Mr *Cowper*. What ſort of Spot was it?

R. Dew. It was reddiſh, I believe the Stakes did it; for her Arm hit upon the Stake where ſhe lay.

Mr *Cowper*. Pray how do theſe Stakes ſtand about the Bridge of the Mill?

R. Dew. I ſuppoſe they ſtand about a Foot aſunder, they ſtand ſlanting, leaning down the Stream a little.

Mr *Cowper*. Could you diſcern her Feet?

R. Dew. No, nothing like it, nor the ſtrip'd Petticoat ſhe had on.

Mr *Cowper*. Might not her Knees and Legs be upon the Ground, for what you could ſee?

R. Dew. Truly, if I was put upon my Oath, whether they were ſo, or not, I durſt not ſwear it; ſometimes the Water there is four Feet, ſometimes three and a half, I believe her Feet were very near the Bottom.

Mr *Cowper*. Are not the Stakes nail'd with their Head againſt the Bridge?

R. Dew. They are nail'd to the Side of the Bridge.

Mr *Cowper*. Pray deſcribe the Manner in which they took her up.

R. Dew. They ſtoop'd down and took her up.

Mr *Cowper*. Did they take her up at once?

R. Dew. They had two heavings, or more.

Mr *Cowper*. What was the Reaſon they did not take her up at once?

R. Dew. Becauſe I cry'd out, they hurt her Arm.

Mr *Cowper*. Was ſhe not within the Stakes?

R. Dew. No, this Shoulder kept her out.

Mr *Cowper*. When you complained they hurt her Arm, what Anſwer did they make you?

R. Dew. They ſtoop'd down and took her Arm out from between the Stakes, they could not have got her out elſe.

Mr *Cowper*. After ſhe was taken out, did you obſerve any Froth or Foam come from her Mouth, or Noſe?

R. Dew. There was a white Froth came from her, and as they wip'd it away, it was on again preſently.

Mr *Cowper*. What was the appearance of her Face and upper Parts at that time?

R. Dew. She was ſo much diſfigured, I believe, that ſcarce any of her Neighbours knew her, the Slime of the Water being upon her.

Mr *Cowper*. Did you ſee her Maid *Sarah Walker* at that Time?

R. Dew. No.

Mr Baron *Hatſell*. Mr *Cowper*, do you intend to ſpend ſo much Time with every Witneſs, I don't ſee to what Purpoſe many of theſe Queſtions are ask'd?

Mr *Cowper*. I have done with him, call *Young*.

Mr Bar. *Hatſell*. Mr *Cowper*, I would not have you ſtraiten your ſelf, but only ask thoſe Queſtions that are Pertinent.

Mr *Cowper*. Pray give an Account of what you know of this Matter.

Young. On *Tueſday* Morning between five and ſix a Clock laſt Aſſizes ——

Mr *Cowper*. What Officer was you?

Young. I was Conſtable.

Mr *Cowper*. Was you employed by the Coroner?

Young. Not by him in Perſon. Between five and ſix a Clock ſome of the Men that came into my Yard to work, told me a Woman was drowned at the Mill, I ſtaid a little, and went down to ſee, and when I came there, I ſaw a Woman, as they had told me, and I ſaw part of her Coat lie on the top of the Water to be ſeen, and I looked ſtrictly and nicely within the Bridge, and ſaw the Face of a Woman, and her left Arm was on the outſide the Stakes, which I believe kept her from going through; ſo I looked upon her very wiſhfully, and was going back again, and as I came back I met with *R. Dew*, and two of my Neighbours, and they ask'd me to go back with them, and ſaid they were going to take her up, and being Conſtable, I told them I thought it was not proper to do it, and they ſaid they had Orders for it; ſo I being Conſtable went back with them, and when I came there I found her in the ſame Poſture as before, we viewed her very wiſhfully; her Coat that was driven near the Stakes was ſeen, but none of her other Coats, or her Legs, and after we had looked a little while upon her, we ſpake to *Dell*, and *Ulſe* to take her up, and one of them took hold of her Coat till he brought her above Water; and as her Arm drew up, I ſaw a black Place, and ſhe laid ſideway, that he could not take her up till they had let her down again, and ſo they twiſted her out ſideway; for the Stakes were ſo near together, that ſhe could not lie upon her Belly, nor upon her Back, and when they had taken her up, they laid her down upon a green Place, and after ſhe was laid down, a great Quantity of Froth (like the Froth of New Beer) work'd out of her Noſtrils.

Mr Baron *Hatſell*. How much do you call a great Quantity?

Young. It roſe up in Bladders, and run down on the Sides of her Face, and ſo roſe again; and ſeeing her look like a Gentlewoman, we deſired one *Ulſe* to ſearch her Pockets to ſee if there were any Letters, that we might know who ſhe was, ſo the Woman did, and I believe there was twenty or more of us that knew her very well when ſhe was alive, and not one of us knew her then, and the Woman ſearched her Pockets, and took out ſix Guineas ten Shillings three pence half penny, and ſome other Things; and after that, I deſired ſome of my Neighbours to go with me and tell the Money; for when it came to be known who ſhe was, I knew we muſt give an Account on't, and I laid it upon a Block and told it, and they tied it up in an Handkerchief, and I ſaid I would keep the Money, and they ſhould ſeal it up, to prevent any

Queſtion about it; and during all this while of Diſcourſe, and ſealing up the Money, the Froth ſtill work'd out of her Mouth.

Mr *Cowper*. Have you meaſured the Depth of the Water; what depth is it there?

Young. I meaſured the Water this Morning, and 'twas ſo high that it run over the Floodgate, and the Height of it was about 4 Foot 2 Inches, but ſometimes 'tis penn'd up to a greater Height than 'tis to Day.

Mr *Cowper*. Was it higher to Day than when the Body was found?

Young. To the beſt of my remembrance 'twas as high to Day as it was then.

Mr *Cowper*. Was any Part of the Body above Water?

Young. No, nor nothing like the Body could be ſeen.

Mr *Cowper*. Could you ſee where her Legs lay?

Young. No, nor nothing but her upper Coats which were driven againſt the Stakes.

Mr *Cowper*. Pray give an Account how long ſhe lay there, and when ſhe was conveyed away.

Young. I ſtaid a quarter of an Hour, and then I went and ſealed up the Money at my own Houſe, ſo that I did not ſee her removed.

Mr *Jones*. Was any Body there beſides your ſelf at this time?

Young. Yes, Twenty People at the leaſt.

Mr *Jones*. Now here is ten of them that have Sworn that the Body was above the Surface of the Water.

Mr Baron *Hatſell*. No, her Cloaths they ſay were, but the Body was ſomething under the Water.

Mr *Cowper*. Now I will trouble your Lordſhip no more with that Fact, but I will give you an Account of the Coroner's Inqueſt, how diligent they were in their Proceedings, and produce a Copy of the Inquiſition it ſelf, that ſhe was found to have drowned herſelf.

Mr Baron *Hatſell*. Mr *Cowper* that is no Evidence, if it be produced in order to contradict what theſe Witneſſes have ſaid, that have been examined for the King; but if you will prove, that they have ſworn otherwiſe before the Coroner, than they now do, then you ſay ſomething, otherwiſe the Coroner's Inqueſt ſignifies nothing as to the preſent Queſtion.

Mr *Cowper*. Call *Thomas Wall*. I am loth to be troubleſome, but if you pleaſe to favour me, I deſire to know of them, whether they do admit there was an Inquiſition, and that ſhe was found *Non Compos Mentis*, and did kill her ſelf.

Mr *Jones*. We do admit it.

Jury-man. We deſire it may be read.

Mr Baron *Hatſell*. Why won't you believe what they agree to on both Sides.

Juryman. If they do agree ſo I am ſatisfied.

Mr *Cowper*. *Thomas Wall*, pray do you give an Account of what you know of Mrs *Stout*'s being taken up?

Wall. My Lord, I was one of the Jury, that viewed her at the Place where ſhe was laid, when ſhe was taken up, and there was no Marks upon her, only a little Mark about her Ear, and ſomething near her Collar-bone, that was all I ſee upon her.

Mr *Cowper*. Do you know any Thing of any Surgeons being imploy'd to view thoſe Marks?

Wall. My Lord, we had ſeveral Perſons that came before us that we examined, we had a diſpute concerning theſe Marks what might effect them, and we deſired Mr *Dimſdale* and Mr *Camlin* to ſee them, that we might be the better ſatisfied, and they both went down and viewed the Body after it was brought down to Mrs *Stout*'s, and they came back both of them, and Mr *John Dimſdale* told us, that theſe Marks were no more than were uſual in ſuch Caſes, and it was only the Stagnation of Blood.

Mr *Cowper*. Was it the old Man or the young Man?

Wall. It was the young Man.

Mr *Cowper*. Uſual did he ſay?

Wall. I can tell the very Words, I have them writ down.

Mr *Cowper*. Pray do ſo, for he has denied it here.

Wall. (*Looks on his Paper.*) Here 'tis. Mr *Dimſdale* and Mr *Camlin* came to us, and Mr *Dimſdale* ſpake and ſaid theſe Marks are uſual, or might be uſual, or if they were Marks, it was no more than was uſual in ſuch Caſes; and that it was the Stagnation of Blood.

Mr *Cowper*. Now you have your Notes in your Hand, pray what did *Sarah Walker* ſay to you as to the time I went from Mrs *Stout*'s?

Wall. *Sarah Walker* ſaid it was about 11 a Clock when ſhe took up Coals to warm the Bed, but ſhe ſaid ſhe could not, nor did not know when Mr *Cowper* went out, for ſhe warm'd the Bed, and Mr *Cowper* not coming up, ſhe took up ſome more Coals, and tarried a little longer, and no Body coming up, ſhe went down, and found Mr *Cowper* was gone, and ſhe look'd into the Parlour, and her Miſtreſs was gone.

Mr Baron *Hatſell*. The Woman ſaid the ſame Thing.

Mr *Cowper*. 'Tis neceſſary in this particular as to the Time.

Mr Baron *Hatſell*. She told you the Clocks did differ.

(*Then Mr* Bowden *was called.*)

Mr *Cowper*. Well, what do you know of the taking up of Mrs *Stout*?

Bowden. I went with the reſt of the Neighbours to view her, and I did perceive it was Mrs *Sarah Stout*'s Body, though ſome queſtioned it; I do believe I was the ſecond Perſon that diſcovered it was ſhe; and, my Lord, I did ſee a great deal of Froth that came out of her Mouth and Noſtrils.

Mr *Cowper*. Did you go about to wipe it away?

Bowden. No, but ſome other Perſon did, it came out in a great Quantity.

Mr *Jones*. How much do you call a great Quantity?

Bowden. Her Mouth and Noſtrils were very full of it.

Mr *Jones*. Was not her Mouth ſhut?

Bowden. I did not obſerve that.

Mr *Cowper*. How long had ſhe lain there before you came?

Bowden. I believe I was there in half an Hour, as ſoon as I heard the Report of it I went down.

Mr *Cowper*. Call Mr *Shute*.

Mr Baron *Hatſell*. Well, what can you ſay to this Matter?

Shute. Sir, I was ſummoned upon the Jury upon the Coroner's Inqueſt, and I perceived when I was there, that the ſame Stuff worked out of Mrs *Stout*'s Noſtrils as worked out of the Childs.

Mr

Mr Baron *Hatsell.* What Child is that you speak of, is it the Child that was drowned in the same Place as Mrs *Stout* was?

Shute. Yes.

Mr *Cowper.* My Lord, I am very tender how I take up your Lordship's Time, and therefore I will not trouble you with any more Witnesses upon this Head, but with your Lordship's Leave, I will proceed to call some Physicians of Note and Eminence, to confront the Learning of the Gentlemen on the other Side——Dr *Sloane*, you were in Court when these Gentlemen delivered their Opinion concerning Mrs *Stout*'s having no Water in her, I desire you would give your Opinion in that Matter.

Dr *Sloane.* I have not heard them very particularly or distinctly, because of the great Croud, some of them I have; Cases of this kind are very uncommon, and none of them have fallen directly under my own Knowledge. As to my Opinion of drowning, it is plain, that if a great Quantity of Water be swallowed by the Gullet into the Stomach, it will not suffocate nor drown the Person: Drunkards, who swallow freely a great deal of Liquor, and those who are forced by the Civil Law to drink a great quantity of Water, which in giving the Question (as 'tis called) is poured into them by way of Torture to make them confess Crimes, have no suffocation or drowning happen to them: But on the other Hand, when any quantity comes into the Wind-pipe, so as it does hinder or intercept the Inspiration, or coming in of the Air, which is necessary for respiration or breathing, the Person is suffocated. Such a small quantity will do as sometimes in Prescriptions, when People have been very weak, or forced to take Medicines, I have observed some Spoonfuls in that Condition (if it went the wrong way) to have choaked or suffocated the Person. I take drowning in a great measure to be thus, and though it is very likely when one struggles he may (to save himself from being choacked) swallow some quantity of Water, yet that is not the Cause of his Death, but that which goes into the Wind-pipe and Lungs: Whether a Person comes dead or alive into the Water, I believe some quantity will go into the Wind-pipe, and I believe without Force after Death little will get into the Stomach, because that it should, swallowing is necessary, which after Death cannot be done.

Mr Baron *Hatsell.* Pray, Doctor, I understand you say this, that in Case a Person is drowned, that there may be but little Water in the Stomach?

Dr *Sloane.* That it is accidental, my Lord.

Mr Baron *Hatsell.* But what do you say to this, if there had been Water in the Body, would it not have putrified the Parts after it had lain six Weeks?

Dr *Sloane.* My Lord, I am apt to think it would have putrified the Stomach less than the Lungs, because the Stomach is a Part of the Body that is contrived by Nature, partly to receive Liquids, but the Contrivance of the Lungs is only for the receiving of Air, they being of a spongy Nature, the Water might sink more into them than the Stomach; but I believe it might putrify there too after some time. I am apt to think that when a Body is buried under Ground, according to the Depth of the Grave, and difference of the Weather and Soil, the Fermentation may be greater or lesser, and that according to the several Kinds of Meats or Liquids in the Stomach the Putrifaction will likewise vary, so that it seems to me to to be very uncertain.

Mr Baron *Hatsell.* But when they are in a Coffin, how is it then?

Dr *Sloane.* No doubt there will be a Fermentation more or less, according as the Air comes more or less to the Body. Indeed it may be otherwise, where the Air is wholly shut out, which is supposed to be the way of Embalming, or preserving dead Bodies of late, without the use of any Spices, which is thought in a great measure to be brought about by the closeness of the Coffin, and hindring of the Air from coming into the Body.

Mr *Cowper.* Is it possible in your Judgment for any Water to pass into the Thorax?

Dr *Sloane.* I believe 'tis hardly possible that any should go from the Wind-pipe into the Cavity of the Thorax, without great Violence and Force, for there is a Membrane that covers the outside of the Lungs, that will hinder the Water from passing through it into any Part without them.

Mr *Cowper.* Now, do you think it possible to find Water in a drowned Body after six Weeks time?

Dr *Sloane.* I am apt to think if there was any Quantity in the Lungs, the sponginess of the Part would suck up some Part of it. As to the Stomach I have not known it tried, but 'tis like if there was a great Fermentation, a great deal of it would rise up in Vapours or Steams, and go off that way.

Mr *Cowper.* Dr *Garth*, I can't tell whether you were in Court when the Surgeons who are Witnesses for the King gave their Evidence.

Dr *Garth.* Yes, I was.

Mr *Cowper.* Then I desire you, Sir, to give your Opinion as to those Particulars.

Dr *Garth.* I observed in this Tryal the first Gentleman call'd for the King that spoke to this Matter was Mr *Coatsworth.* He saith he was sent for to open her, upon an Asperson of her being said to be with Child. I agree with him in what he speaks to that Point, but must differ with him where he infers she was murthered because he found no great quantity of Water in her, as also her Head extreamly mortify'd, but not her Lungs (Lungs and Bowels I think were used promiscuously.) Now, my Lord, as to the Matter of putrifaction, I think 'tis not much material whether there be any Water or no in the Cavities of the Body; if Water would hasten putrifaction, it wou'd do it as well in the Lungs as otherwise; there is always some Water in the Lympheducts there, the breaking of which may be one Occasion of Catarrhs. As to what relates to the Putrifaction of the Head, it may happen from a stoppage of the refluent Blood, which is staid there in a great Quantity, through the suffocation in the Water, or from the nearness of the Brain, which is observed often to mortifie first.

The next was Mr *Dimsdale* (I would speak to them all in order if my memory would permit) I think he was of the same Opinion with Mr *Coatsworth*; he laid the Stress of his Suspicion upon the Mortification of the Head, which I think is not at all material, no more than what they infer from her floating: It being impossible the Body should have floated, unless it had rested, or had been entangled among the Stakes, because all dead Bodies (I believe) fall to the bottom, unless they be prevented by some extraordinary Tumour. My Lord, we have not only Philosophy, but Experiments for this. The Witnesses all agree she was

found

found upon her Side, which to ſuppoſe her to float in this poſture, is as hard to be conceived, as to imagine a Shilling ſhould fall down and reſt upon its Edge rather than its broad Side; or that a Deal Board ſhou'd rather float Edgeways than otherwiſe: therefore 'tis plain ſhe was entangled, or elſe the Poſture had been otherwiſe.

As to the Quantity of Water, I do not think it neceſſary it ſhould be very great. I muſt own the Water will force it ſelf into all Cavities where there's no reſiſtance, I believe when ſhe threw her ſelf in, ſhe might not ſtruggle to ſave her ſelf, and by Conſequence not ſup up much Water. Now there's no direct Paſſage into the Stomach but by the Gullet, which is contracted or purs'd up by a Muſcle in Nature of a Sphincter: For if this Paſſage was always open, like that of the Wind-pipe, the Weight of the Air would force it ſelf into the Stomach, and we ſhould be ſenſible of the greateſt Inconveniencies. I doubt not, but that ſome Water fell into her Lungs, becauſe the Weight of it, wou'd force it ſelf down, but if we conſider the Wind-pipe with its Ramifications, as one *Cylinder*, the Calculation of its Contents will not amount to above twenty three or twenty four ſolid Inches of Water, which is not a Pint, and which might imperceptibly work and fall out. I remember I offered a Wager at *Garaway*'s Coffee-Houſe to a Gentleman here in Court.

Mr Baron *Hatſell.* Pray Doctor tell us your Opinion as to what the Seaman ſaid, and alſo as to what Dr *Sloan* ſaid whether Water in the Body will putrifie it.

Dr *Garth.* I ſay not, for in ſome Places they keep Fleſh Meat from corrupting by preſerving it in Water, and 'tis well known 'twill putrify leſs ſo, than when expoſed to Air.

Mr Baron *Hatſell.* But what do you ſay as to the ſinking of dead Bodies in Water?

Dr *Garth.* If a ſtrangled Body be thrown into the Water, the Lungs being filled with Air, and a Cord left about the Neck, 'tis probable it may float, becauſe of the included Air, as a Bladder wou'd; but here is neither Cord, nor any Mark of it, nor nothing but a common Stagnation.

Mr Baron *Hatſell.* But you don't obſerve my Queſtion, the Seaman ſaid, that thoſe that die at Sea, and are thrown overboard, if you don't tye a Weight to them, they will not ſink, What ſay you to that?

Dr *Garth.* My Lord, no doubt in this they're miſtaken. The Seamen are a ſuperſtitious People, they fancy that whiſtling at Sea will occaſion a Tempeſt; I muſt confeſs I never ſaw any Body thrown overboard, but I have tried ſome Experiments on other dead Animals, and they will certainly ſink; we have tried this ſince we came hither. Now, my Lord, I think, we have reaſon to ſuſpect the Seaman's Evidence, for he ſaith, that threeſcore Pound of Iron is allowed to ſink the dead Bodies, whereas ſix or ſeven Pounds wou'd do as well. I cannot think the Commiſſioners of the Navy guilty of ſo ill Husbandry, but the Deſign of tying Weights to their dead Bodies, is to prevent their floating at all, which otherwiſe wou'd happen in ſome few Days, therefore what I ſay is this, that if theſe Gentlemen had found a Cord, or the Print of it, about the Neck of this unfortunate Gentlewoman, or any Wound that had occaſioned her Death, they might then have ſaid ſomething.

Mr *Cowper.* Do you apprehend that any quantity of Water, can enter into the Cavity of the Thorax.

Dr *Garth.* 'Tis impoſſible there ſhould till the Lungs be quite rotten, there is no way but by the Lungs, which are inveſted with ſo ſtrong a Membrane, that we cannot force Breath with our Blow-pipes through it, and there's a great Providence in ſuch a Texture, for if there were any large Pores in this Membrane, the Air would paſs thro' it into the Cavity of the Thorax, and prevent the Dilatation of the Lungs, and by conſequence there would be an end of breathing.

Mr *Cowper.* Dr *Morley* pray be pleaſed to give your Opinion of theſe Matters.

Dr *Morley.* Thoſe which ſeem to be Queſtions of greateſt Moment, are whether there was a Neceſſity for this Body (if drown'd) to have a great quantity of Water in it, and whether Bodies thrown dead into the Water float: To the firſt I anſwer poſitively, that there is no abſolute neceſſity, that ſhe ſhould have a great quantity of Water in her; and I think the Queſtion Mr *Cowper* ask'd Dr *Coatſworth*, whether he had like to have been drowned by Accident or Deſign, ſuits with my Aſſertion; for if this Gentlewoman did voluntarily drown her ſelf, ſhe then in all likelihood threw her ſelf into the Water, with a Reſolution of keeping her Breath for a ſpeedy Suffocation, and then if upon the firſt Endeavours for reſpiration (which naturally muſt be) ſhe drew into her Lungs two Ounces of Water, it was the ſame Thing to drowning of her, as if there had been two Tun. We ſee the ſame Thing done by Divers in order to ſave themſelves, as it happened to this unfortunate Gentlewoman, in her deſign of deſtroying her ſelf: If a Diver before he comes to the Surface of Water ſhould ſo far miſtake his Power of holding his Breath, that he ſhould be forced to endeavour Reſpiration, the little Water he drew into his Lungs by this Attempt to reſpire may drown him. We laſt Night drown'd a Dog, and aftewards diſſected him, and found not a Spoonful of Water in his Stomach, and I believe about two Ounces in his Lungs, while we were doing this, we drowned another, and he lay at the bottom and did not float; no more would he have done, if he had been hang'd before thrown into the Water: We took him up, and opening him we found much about the ſame Quantity of Wa in his Lungs, and little or none in his Stomach, they both froth'd at Noſe and Mouth, becauſe the Water coming into the little Bladders of the Lungs, and there meeting with Air, a Commotion aroſe between the Water and Air, which cauſed the Froth. To the ſecond Queſtion, I think if Bodies new killed ſwim, 'tis by Accident, for the Reaſon that Bodies ſwim, is becauſe by Putrifaction they rarifie, by rarifaction they grow lighter, which brings them to the Top of the Water.

Mr *Cowper.* I deſire to know if any Man of skil in Prudence would give his Opinion?——

Mr Baron *Hatſell.* That is not a proper Queſtion.

Mr *Cowper.* Then I will ask it thus, do you think, Doctor, it is to be known 6 Weeks after if a Perſon was drowned.

Dr *Morley.* I think it is morally impoſſible.

Mr *Cowper.* Can there be any Water in the Thorax?

Dr *Morley.* By an Impoſthume or ſome Violence to Nature poſſibly, but I think no otherwiſe.

Mr

Mr *Cowper*. Dr *Woollaſton*, what is your Opinion if a Perſon be drowned, whether it can be diſcovered ſix Weeks after?

Dr *Woollaſton*. My Lord, I think it is impoſſible to be known, for if there had been never ſo much Water in the Body at firſt, it could not lie there ſo long, but muſt of Neceſſity have forced its way out. We ſee in Perſons that die of Dropſies, that the Water will work it ſelf out (and ſometimes burſt the Body) before it is buried. And I am ſure, if it do ſo in Dropſies where there are no viſible Paſſages for it to get out at, it muſt do ſo much more in drowned Perſons, where the Water lies only in the Stomach and Guts; and has nothing to hinder its working out, when it ferments, as it always doth.

Mr *Cowper*. Have you ever made any Experiments in that Nature, Doctor?

Dr *Woollaſton*. I have made no Experiments, but I have ſeen a very particular Inſtance.

Mr Baron *Hatſell*. That is very well, pray let us hear it, Doctor.

Dr *Woollaſton*. My Lord, about three Years ſince, I ſaw two Men that were drowned out of the ſame Boat. They were taken up the next Day after they were drowned. One of 'em was indeed prodigiouſly ſwell'd, ſo much that his Cloaths were burſt in ſeveral Places of his Sides and Arms, and his Stockings in the Seams; his Hands and Fingers were ſtrangely extended, his Face was almoſt all over Black; but the other was not in the leaſt ſwelled in any Part nor diſcolour'd. He was as lank, I believe, as ever he was in his Life time, and there was not the leaſt Sign of any Water in him, except the watry Froth at his Mouth and Noſtrils. My Lord, this I ſaw my ſelf, and took very particular notice of it.

Mr *Jones*. Did you ſee theſe Bodies taken out of the Water your ſelf, Doctor?

Dr *Woollaſton*. No, Sir.

Mr *Jones*. How long had they been taken out when you ſaw them?

Dr *Woollaſton*. I enquired, and to the beſt of my Memory, it was that ſame Day.

Mr Bar. *Hatſell*. But what do you think Doctor, of a Perſon's being drowned, without taking in any Water.

Dr *Woollaſton*. My Lord, what is taken in, is I believe chiefly at the Surface of the Water, when they open their Mouths for Breath, and the Water that ruſhes in, they are forced to drink down, to keep it from the Lungs. But when the Head is quite under Water, I don't think it is poſſible for any quantity to get down into the Stomach: Becauſe it being Breath they open for, the very firſt Water they take in, would of Neceſſity fill the Lungs, and when the Breath is ſtop'd, I dont ſee how they can ſwallow.

Mr *Cowper*. Dr *Gelſtrop*, what is your Opinion of this Matter?

Dr *Gelſtrop*. I don't think they can make any Judgment of Perſons being drowned after ſix Weeks time.

Mr *Cowper*. Can any Water get into the Thorax?

Dr *Gelſtrop*. No, not unleſs the Lungs be putrified.

Mr *Cowper*. Is a great quantity of Water neceſſary to Perſons dying by drowning.

Dr *Gelſtrop*. No, only ſo much as may hinder Reſpiration.

Mr *Cowper*. Now, my Lord, I would call Mr *William Cowper*, and becauſe of his Name, I muſt acquaint your Lordſhip, that he is not at all related to me, though I ſhould be proud to own him if he were ſo, he is a Man of great Learning, and I believe moſt People admit him the beſt Anatomiſt in *Europe*. Mr *Cowper*. Pray will you give your Opinion of his Matter?

Mr *W. Cowper*. My Lord, I hope what I ſhall ſay, will not be ſuſpected becauſe I am of the ſame Name, for this Gentleman is an utter Stranger to me.

Mr Baron *Hatſell*. Pray, Mr *Cowper*, without any Apology, give your Opinion concerning Perſons drowned, and how 'tis with them in their inward Parts.

Mr *W. Cowper*. I will give you a ſhort Account, I hope to your Satisfaction too, my Lord. I will not only ſpeak from Reaſon, but give you the Teſtimony of the Experiments I have made upon this Occaſion. My Lord, I heard it made a mighty Argument, that this Perſon had no Water that ſeemed to flow out, but the Witneſſes agree there was a Froth. Now, my Lord, it was not reaſonable to expect any Thing but Froth. My Lord, had ſhe been thrown into the Water, and made her utmoſt Efforts, which ſhe would then have done to have ſaved herſelf, and been often buoyed up to the top of the Water, no doubt but ſhe would have ſwallowed a conſiderable quantity of Water before ſhe had been drowned; and it may be expected to flow from her, if her Head had been inclined downwards.

This is a Truth that no Man can deny, who is acquainted with any thing of this Nature, that when the Head of an Animal is under Water, the firſt Time it is obliged to inſpire (or draw in Air) the Water will neceſſarily flow into its Lungs, as the Air would do if it were out of the Water: which quantity of Water (if the Dimenſions of the Windpipe and its Branches in the Lungs be conſidered) will not amount to three Inches ſquare, which is about three Ounces of Water. Nor is a greater quantity of Water in the Windpipe neceſſary to choak any Perſon, if we do but reflect what an Ebullition is cauſed by its meeting with the Air, which remained in the Lungs, whereby a ſmall quantity of Water is converted into Froth, and the Channel of the Windpipe, and thoſe of the Bronchia are filled with it; inſomuch that no Air can enter the Lungs, for the Office of Reſpiration. After a Suffocation is thus commenced (I am apt to think) all regular Animal Actions are perverted, and particularly that of ſwallowing (or deglutition) and what Water flows into the Lungs at the inſtant or after this Suffocation, is from its own Weight; which is more or leſs as the Body is farther under, or nearer the Surface of the Water. My Lord, I don't ſpeak this by way of Conjecture or Hypotheſis, but I have made Experiments, which have ſuggeſted what I here offer. I ſhall by the by tell you how fallacious the firſt Experiment was, when I propoſed to ſatisfy my ſelf, whether a dead Body would float in Water; it happened, that a Spaniel, that had a great deal of long Hair was hanged for this Purpoſe, which I found ſwim on the Surface of the Water; but when I conſidered that his Hair might buoy him up, I cauſed another Dog, which had ſhorter and leſs Hair to be hanged

ed, and put into the Water, which (agreeable to what I had always conceived of a Human Body) ſunk directly to the bottom. In order to ſatisfie my ſelf what quantity of Water was neceſſary to enter the Body of an Animal, and cauſe a Suffocation in Water, I cauſed three Dogs when alive to be ſuddenly plunged under Water, till they were ſtifled, one was before I left *London*, the other two I made the Experiment on laſt Night, in the preſence of Dr *Sloane* and Dr *Morley*, and we could not compute there was more than three Ounces of Water in their Lungs, and none that we could perceive in their Stomachs.

Dead Bodies neceſſarily ſink in Water, if no Diſtention of their Parts buoy them up; this Diſtention ſometimes happens before Death, at other Times ſoon after, and in Bodies that are drowned after they lie under Water: This enlargement of them is cauſed by a Rarefaction of the Humours within the Cavities, and the Body neceſſarily riſes to the Surface of the Water. Your Lordſhip may infer this from what the Seaman told you, and the great Weight they uſe to faſten to their Bodies that die of Diſeaſes, was not of ſuch uſe to ſink them, as it was to prevent their floating afterwards; ſo that the Weight was neceſſary for thoſe that were killed as well as thoſe that died of Diſeaſes.

It is ſo commonly known that the Contents in the Stomach of a dead Body are diſcharged by the Mouth and Noſtrils ſo ſoon as it begins to ferment, and the Belly becomes diſtended, that 'tis no wonder that Water, if the greateſt quantity of that had been in the Stomach, or any Thing elſe that was fluid, muſt be forced from thence ſix Weeks after Death.

My Lord, I can't but think it ridiculous to expect Water in the Cavity of the Thorax; it is ſuch a Conceit as nothing in Nature can account for: Unleſs the Lungs had ſuffered ſome Apoſthumation, or the like, whereby the Water may paſs their outward Membranes into that Cavity.

Mr *Cowper*. With your Lordſhip's Favour, I now think it a proper time to make this Obſervation. The Witneſſes that have given Evidence for the King, do ſay, they believe ſhe was not drowned; but they have not pretended to ſay how ſhe died otherwiſe.

Mr Baron *Hatſell*. That is very true.

Mr *Cowper*. Dr *Crell*, I deſire you will be pleaſed to give an Account of this Matter.

Dr *Crell*. My Lord, I have little to ſay in this Affair, the Phyſicians that have been examined already, having made it out, that Perſons who are drowned may have but little Water in their Bodies; but I have taken what Pains I could, upon ſo ſhort Warning, and I will tell you the Opinion of ſeverale minent Anthors. My own Opinion is, That a very ſmall quantity of Water, not exceeding three Ounces, is ſufficient to drown any Body; and I believe that the Reaſon of the Suffocation, or of any Perſons being ſtifled under Water, is from the intercepting of the Air, that the Perſon can't breathe, without which he cannot live. Now my Lord I will give you the Opinion of ſeveral ancient Authors.

Mr Baron *Hatſell*. Pray Doctor tell us your own Obſervations.

Dr *Crell*. My Lord, it muſt be reading as well as a Man's own Experience, that will make any one a Phyſician; for without the reading of Books of that Art, the Art it ſelf cannot be attained to; beſides, my Lord, I humbly conceive, that in ſuch a difficult Caſe as this, we ought to have a great Deference for the Reports and Opinions of Learned Men: Neither do I ſee any Reaſon why I ſhould not quote the Fathers of my Profeſſion in this Caſe, as well as you Gentlemen of the Long-Robe quote *Cook* upon *Littleton* in others; but I ſhall not trouble the Court long, I ſhall only inſiſt upon what *Ambroſe Parey* relates in his Chapter of Renunciations. He was chief Surgeon to *Francis* the Firſt, employed by him in moſt of his Sieges and Battles againſt the Emperor *Charles* the Fifth, and conſequently muſt obſerve, and could not be ignorant of ſuch like Caſualties in ſuch great Bodies of Men. He tells us, that the certain ſign of a Man's being drowned, is an Appearance of Froth about his Noſtrils and Mouth. Now, my Lord, I think, that every one of the King's Evidences obſerved it in the preſent Caſe, and a Woman ſwore, that ſhe ſaw her purge at the Noſe; which could not be, as he declares, if the Perſon had been ſtrangled, or otherwiſe killed before.

As to the quantity of Water requiſite to drown a Perſon, I believe that three Ounces, or leſs, is enough, to wit, as much as will fill the Windpipe, and ſo ſtop the breathing of the Perſon drowning. I am not now to deſcant upon Matter of Fact, whether ſhe drowned her ſelf; but my firm Opinion is, that ſhe was drown'd; for though ſometimes, not always, there is Water found in the Bodies of ſuch Perſons, yet where-ever it be, beſides the Lungs, it is ſuperfluous as to this End, and accidental upon violent ſtrugglings.

Mr *Cowper*. I deſire Mr *Harriot* may be asked what Obſervations he hath made concerning this Matter.

Mr *Harriot*. My Lord, when I was a Surgeon in the Fleet, I made it always my Obſervation when we threw Men over-board that were killed, ſome of them ſwam, and ſome ſunk; and I remember particularly, when the *Sandwich* was burnt, we ſaw abundance leap off from on Board and they ſunk directly, but in a little time I obſerved ſome ſwim again.

Mr Baron *Hatſell*. When a dead Body is thrown over-board, does it ſink or ſwim?

Mr *Harriot*. I always obſerved that it did ſink; when we were in the Channel, and in time of Peace, we never threw any over-board but we put ſome Weight to them, but it was not to make them ſink, but for decency ſake, that they might not be driven to Shore when they began to float.

Mr *Cowper*. I deſire that Mr *Bartlet* may be ask'd to the ſame Purpoſe.

Mr *Bartlet*. I have been in ſeveral of the King's Ships of War that have been diſabled and forced to lye by, in ſeveral Ingagements between the *French* and *Engliſh*, and I never ſaw any Bodies float either of the Men that were killed in our Ship, or in the Ships that have been near us, I have not ſeen a Body upon the Surface of the Water.

Mr Baron *Hatſell*. Another Witneſs ſaid, that after an Engagement he ſaw them ſwiming.

Mr *Bartlet*. I can't tell what he ſaw, my Lord, but what I ſay I am ready to make Oath of.

Mr *Cowper*. Dr *Camlin*, will you pleaſe to give my Lord and the Jury an Account whether you were employed by the Coroner's Inqueſt to view the Body of Mrs *Stout*, after ſhe was drowned, and the Marks upon it, and tell my Lord your Opinion of it.

Mr

Mr *Camlin*. I was sent for by the Coroner and the Jury that sat upon the Body of Mrs *Sarah Stout*, the Coroner being then at her Mother's House, and the Coroner desired Mr *Dimsdale* and me to go and take notice of the Marks upon her Neck, and upon her Breast; we viewed all about, and perceived a Mark under her left Ear, we looked to see if there was any Contusion, and we perceived a settlement of Blood upon her Breast, and another upon her Arm; and when we came back, Mr *Dimsdale* made the Report, I stood by him at that time, That it was only a common Settlement.

Mr *Cowper*. Pray, Mr *Camlin*, was the Spot above or below the Collar-bone.

Mr *Camlin*. Below the Collar-bone.

Mr *Cowper*. What did Mr *John Dimsdale* say then, concerning this Matter?

Mr *Camlin*. I understood that he was of Opinion that it was only a common Stagnation of Blood, that happens in the Case of drowned People.

Mr Baron *Hatsell*. Did he say so to the Jury?

Mr *Camlin*. Mr *Dimsdale* spake for us both, and I understood him that it was a Stagnation that did commonly happen to drowned People, and that was my Opinion of it too.

Mr *Cowper*. And that you agreed to be your Report.

Mr *Camlin*. Yes.

Mr *Cowper*. Pray, Mr *Camlin*, was you present when the Child which was drowned in the same Place was taken up?

Mr *Camlin*. Yes, it was taken up some time after, near the same Place as I was told, and there was more and greater Signs of the Stagnation of Blood, on the Body of this Child, than on the Body of Mrs *Stout*, the Child's Face was black and discolour'd.

Mr Baron *Hatsell*. How old was the Child?

Mr *Camlin*. Between 10 and 11, as near as I could guess.

Mr Baron *Hatsell*. Had Mrs *Stout* any Signs of being strangled when you saw her first.

Mr *Camlin*. Nothing at all that I could discern.

Mr *Cowper*. My Lord, I will give you no more trouble upon this Head; I shall go now to the next Thing I opened, and shall prove substantially, that this Gentlewoman is not only more to be suspected to have murder'd her self, than to be murdered by any Body, but 'tis almost a Certainty, that she was the Cause of her own Death. Mr *Firmin* I would begin withal, if he be here.

(*But he not presently appearing.*)

Mr *Cowper*. Then my Lord if you please, I will desire Mr *Bowd* in the mean time to give your Lordship an Account of what he knows of the Melancholy of this Gentlewoman.

Mr *Bowd*. 'Twas much about this time twelve Month, I had some Business in *London*, and she sent to me, to know when I should go to *London*, and I waited upon her before I went, and she desired me to do some Business for her, and when I returned I acquainted her with what I had done, and sitting together in the Hall, I asked her what's the Matter with you? Said I, there's something more than ordinary, you seem to be melancholy. Saith she, you are come from *London*, and you have heard something or other: Said I, I believe you are in Love. In Love! said she, Yes, said I, *Cupid* that little Boy hath struck you home; She took me by the Hand, truly, said she, I must confess it, but I did think I should never be guilty of such a Folly; and I answered again, I admire that should make you uneasie; if the Person be not of that Fortune as you are, you may, if you love him, make him happy, and your self easy. That can't be, saith she, the World shall not say I change my Religion for a Husband, and some time after I had been in *London*, having bought som *India* Goods she came to my Shop and bought some of me for a Gown, and afterwards she came to pay me for it, and I asked her, how do you like it, have you made it up? No, said she, and I believe I shall never live to wear it.

Mr *Cowper*. Pray how long is it since?

Mr *Bowd*. It was about *February* or *January* before her Death. I asked her why she did not come to my House oftener, she said she had left off all Company, and applyed her self to reading, and Company was indifferent to her.

Mr *Cowper*. Mr *Firmin* will you please to inform my Lord, and the Jury, what you know of Mrs *Sarah Stout*'s being melancholy?

Mr *Firmin*. I did observe about three quarters of a Year ago that she was melancholy; I can't say that she acknowledged her self to be so, but I have charged her with it.

Mr *Cowper*. Did you believe she was melancholy when you charged her with it?

Mr *Firmin*. Yes, I did.

Mr *Cowper*. Mrs *Bendy*, if you please to inform the Court what you know of this Gentlewoman's being melancholy.

Mrs *Bendy*. Sir, I can say she always acknowledged her self extreamly melancholy, and when I have asked her how she did, she has said pretty well in Health, but so much troubled with melancholy she could not tell what to do with her self.

Mr *Cowper*. Did she tell you any Thing particularly.

Mrs *Bendy*. It disordered her so, she said, that she had rather have chosen Sickness than so much disorder in her Mind.

Mr *Cowper*. Have you any Thing more to recollect?

Mrs *Bendy*. Nothing but what I heard from Mrs *Cowper*.

Mr Baron *Hatsell*. How old was this Gentlewoman?

Mrs *Bendy*. About Six and Twenty.

Mr *Cowper*. Call Mrs *Jane Low*, *Martha Grub*, and Mrs *Cowper*. Mrs *Low*, pray do you inform my Lord and the Jury, what you know concerning the Melancholy of Mrs *Sarah Stout*, and when you first observed it.

Mrs *Low*. It was a Week before *Whitsontide* was Twelve-month.

Mr *Cowper*. What did she say then?

Mrs *Low*. She often complained to me that she was very melancholy and uneasy, one time particularly, as we were walking together in the Fields, I asked her the Occasion of it, and she told me that was a secret; but she said, she led a very melancholy Life; said I, I am apt to believe you are in Love, she did not disown it, and with a little more speaking, she own'd she was; I asked her who the Person was, she said, that should be a Secret, but it would end her Days; said I, a Woman of your Fortune may command any Body, she shook her Head, and said no; perhaps, said I,

he may not be a Quaker, and you may be afraid of disobliging your Mother; but if you tell your Mother that your Life depends upon it, your Mother (rather than lose her only Child) will consent to it; she said no, it was a Person she could not marry, and shook her Head and looked very melancholy.

Mr *Cowper*. When was this?

Mrs *Low*. This was the Week before *Whitsontide*, and in *Whitson*-week she saw me often, and said she would take her full swing of Melancholy when her Mother was away, and she used to lie a Bed that Week.

Mr *Cowper*. Have you observed any Melancholy in her since?

Mrs *Low*. Yes, at several times.

Mr *Cowper*. Do you remember any Thing of an intermitting Feaver?

Mrs *Low*. Yes, she told me her Melancholy had occasioned an intermitting Fever; and I mentioned Dr *Eales* to her, and she said her Distemper lay in her Mind, and not in her Body, and she would take nothing, and the sooner it did kill her the better.

Mr *Cowper*. Did she say any Thing of her Disposition to Reading?

Mrs *Low*. She said nothing delighted her now, neither reading nor any thing else.

Mr *Cowper*. My Lord, *Sarah Walker* when I asked her if she did not observe the Melancholy of her Mistress, and whether she had not said that her Mistress had been melancholy, denyed that she had said so, pray have you heard her say any thing to that Purpose.

Mrs *Low*. I have often ask'd her how her Mistress did, and she would answer, very much indisposed, but not otherwise.

Mr *Cowper*. Mrs *Cowper*, what do you know of Mrs *Stout*'s Melancholy.

Mr *Cowper*. My Lord, this is my Brother's Wife.

Mrs *Cowper*. About Spring was twelve-month, she came up to *London*; and I believe it was not less than once or twice a Week, I saw her; and I never had an opportunity to be an Hour alone with her at any time, but I perceived something of her Melancholy. I have asked her the Reason of it several times, and sometimes she seemed to dislike her Profession, being a Quaker, and sometimes she would say that she was uneasy at something that lay upon her Spirits, which she should never out-live, and that she should never be well while she was in this World; sometimes I have endeavoured to perswade her out of it seriously, and sometimes by raillery, and have said are you sure you shall be better in another World, and particularly I remember I have said to her, I believe you have Mr *Marshall* in your Head, either have him or do not trouble your self about him, make your self either easy one way or another, and she hath said no, in an indifferent way, I cannot make my self easy; then I have said marry him, no faith she, I can't. Sometimes with Company she would be diverted, and had frequently a way of throwing her Hands, and shewed great Disturbance and Uneasiness. This Time twelve-month, at the Summer Assizes, I was here six Days, and I saw her every Day, and one time among other Discourse, she told me she had received great Disturbance from one *Theophilus*, a Waterman and a Quaker, who coming down to old Mrs *Stout*, that was then lame, she had gathered about 20 or 30 People together to hear him preach, and she said he directed his Discourse to her, and exasperated her at that rate, that she had thoughts of seeing no Body again, and said, she took it heinously ill to be so us'd, and particularly that he told her that her Mother's falling outwardly in the Flesh, should be a warning that she did not fall inwardly, and such canting Stuff as she called it; and she said, that *Theophilus* had so used her, that she was ashamed to shew her Head. Another time the same Week, she had a Fever, and she said she was in great Hopes it would end her Days, and that she neglected her self, in doing those Things that were necessary for her Health, in hopes it would carry her off, and often wish'd her self dead; another time, which I think was the last time I saw her, was at my Sister's Lodgings, and I sent for her to drink a Dish of Tea with us, and she came in a great toss and melancholy; said I, What is the Matter you are always in this Humour, saith she, I can't help it, I shall never be otherwise; saith my Sister, for God's sake keep such Thoughts out of your Head as you have had, don't talk any more of throwing your self out of Window; saith she, I may thank God that ever I saw your Face, otherwise I had done it; but I can't promise I shall not do it.

Mr Bar. *Hatsell*. What is your Name, Madam?

Mr *Cowper*. 'Tis my Brother's Wife, my Lord. I desire Mrs *Toler* may give an account what she knows as to her being Melancholy.

Mrs *Toler*. My Lord, she was once to see me, and she look'd very melancholy, and I asked her what was the matter, and she said something had vex'd her that Day, and I asked her the cause of it, and she stop'd a little while, and then said, she would drown her self out of the way.

Mr Bar. *Hatsell*. How long ago was this?

Mrs *Toler*. About three quarters of a Year ago.

John Stout. I desire to know whether she has always said so, or not told another Story.

Mrs *Toler*. I told you no Story; it may be I did not say so much to you, but I said she talk'd something of drowning. I have been with her when Mr *Cowper*'s Conversation and Name has been mention'd, and she said she kept but little Company, that sometimes she went to Mrs *Lowe*'s, and that she kept none but civil modest Company, and that Mr *Cowper* was a civil modest Gentleman, and that she had nothing to say against him.

Mr *Cowper*. This is Mrs. *Eliz. Toler* my Lord.

Mrs *Eliz. Toler*. My Lord, she came to see me sometime after *Christmas*, and seem'd not so chearful as she us'd to be; said I, What is the matter? Why are you not so merry as you us'd to be? Why do you not come often to see me? Saith she, I don't think to go abroad so much as I us'd to do, and said, it would be as much a rarity to see her go abroad as to see the Sun shine by Night.

Mr *Cowper*. Mrs. *Grub* what do you know concerning Mrs. *Stout*'s pulling out a Letter at her Brother Mr *John Stout*'s? give an account of it, and what she said upon that occasion.

Mrs *Grub*. I have a Daughter that lives at *Guernsey*, and she sent me a Letter, and I pray'd Mrs *Sarah Stout* to read the Letter, and while she was reading it, I cry'd; saith she, why do you cry? said I, because my Child is so far off; said she, if I live till Winter is over, I will go over Sea as far as I can for the Land.

Mr Bar. *Hatsell*. What was the occasion of her saying so.

Mrs

Mrs *Grub*. I was waſhing my Maſter's Study, Mrs *Sarah Stout* came in, and I had a Letter from my Daughter at *Guernſey*, and I pray'd Mrs *Sarah Stout* to read it, and ſhe read my Letter, and I cry'd, and ſhe ask'd me why I cry'd; ſaid I, becauſe my Child is ſo far off; ſaith ſhe, if I live to Winter, or till Winter is over, I will go over Sea as far as I can for the Land.

Mr *Cowper*. Now my Lord, to bring this matter of Melancholy to the point of time, I will call one Witneſs more, who will ſpeak of a remarkable Inſtance that happen'd on Saturday before the Monday when ſhe did deſtroy her ſelf.

Call Mr *Joſeph Taylor*. Pray will you inform the Court and Jury of what you obſerv'd on *Saturday* before the *Monday* on which Mrs *Stout* deſtroy'd her ſelf.

J. Taylor. I happen'd to go in at Mr *Firmin*'s Shop, and there ſhe ſat the *Saturday* before this Accident happen'd the former Aſſizes, and I was ſaying to her, Madam, I think you look ſtrangely diſcontented, I never ſaw you dreſs'd ſo in my Life; ſaith ſhe, the dreſs will ſerve me as long as I ſhall have occaſion for a Dreſs.

Mr *Cowper*. In what poſture did ſhe appear in the Shop?

J. Taylor. She appear'd to be very Melancholy.

Mr *Cowper*. What part of her dreſs did you find fault with?

J. Taylor. It was her Head-cloaths.

Mr. *Cowper*. What was the matter with them?

J. Taylor. I thought her Head was dawb'd with ſome kind of Greaſe or Charcoal.

Mr *Cowper*. What Anſwer did ſhe make?

J. Taylor. She ſaid they would ſerve her time.

Mr *Cowper*. As to this piece of Evidence, if your Lordſhip pleaſes, I deſire it may be particularly taken notice of, it was her Head-dreſs that ſhe ſaid would ſerve her time.

Pray Mr *Taylor* was you at Mr *Bareſoot*'s when I came in there on *Monday* Morning.

J. Taylor. Yes, I went up Stairs with you into your Chamber.

Mr. *Cowper*. Pray what did I ſay to Mr *Bareſoot*?

J. Taylor. You ask'd him if they had receiv'd a Letter from your Brother, and he ſaid, no, not that he knew of, but he would call his Wife, and he did call his Wife, and ask'd her if ſhe had receiv'd a Letter, and ſhe ſaid no; then ſaid you, I will take up this Lodging for mine, and accordingly you went up Stairs, and I went with you, and ſtaid there about four times as long as I have been here.

Mr *Cowper*. Are you very ſure that I ſaid I would take up my Lodging there?

J. Taylor. Yes, I am very ſure of it.

Mr Bar. *Hatſell*. What time of the Day was it?

J. Taylor. 'Twas the fore part of the Day; while I was there, my Lord, Mrs *Sarah Stout*'s Maid came to invite Mr *Cowper* to her Houſe to Dinner.

Mr *Cowper*. Did you know any thing of my ſending to the Coffee-houſe.

J. Toylor. You ſent to the Coffee-houſe for your things.

Mr Bar. *Hatſell*. Did Mr *Cowper* uſe to lie at Mr *Bareſoot*'s?

J. Taylor. His Brother did, but I do not know whether this Gentleman did; but at that time he took up that place for his Lodging, and ſaid it was all one, my Brother muſt pay for't, and therefore I will take it up for my ſelf.

Mr *Cowper*. Call Mrs *Bareſoot* and her Maid.

(But they not preſently appearing)

Mr *Cowper*. My Lord, in the mean time I will go on to the other part of my Evidence, in opening of which I ſhall be very ſhort.

My Lord, my Wife Lodging at *Hertford*, occaſion'd me frequently to come down. Mrs *Stout* became well acquainted with her; when Buſineſs was over in the long Vacation, I reſided pretty much at *Hertford*, and Mr *Marſhall* came down to pay me a viſit, and this introduc'd his Knowledge of Mrs *Stout*; when ſhe was firſt acquainted with him ſhe receiv'd him with a great deal of Civility and Kindneſs, which induc'd him to make his Addreſſes to her, as he did, by way of Courtſhip. It happen'd one Evening, that ſhe and one Mrs *Crook*, Mr *Marſhall*, and my ſelf, were walking together, and Mr *Marſhall* and Mrs *Crook*, going ſome little way before us, ſhe took this Opportunity to ſpeak to me, in ſuch Terms I muſt confeſs ſurpriz'd me: Says ſhe, Mr *Cowper*, I did not think you had been ſo dull; I was inquiſitive to know in what my dullneſs did conſiſt: Why, ſays ſhe, do you imagine I intend to Marry Mr *Marſhall*. I ſaid I thought ſhe did, and that if ſhe did not, ſhe was much to blame in what ſhe had done; no, ſays ſhe, I thought it might ſerve to divert the Cenſure of the World, and favour our Acquaintance. My Lord, I have ſome original Letters, under her own Hand which will make this fully manifeſt, I will produce the Letters, after I have call'd Mr *Marſhall*. Mr *Marſhall*.

Mr. *Marſhall*. If your Lordſhip pleaſes, it was in the long Vacation, I came down to ſpend a little of my leaſure time at *Hertford*, the reaſon of my going thither, was becauſe Mr *Cowper* was there at that time. The firſt Night when I came down, I found Mrs *Sarah Stout* Viſiting at Mr *Cowper*'s Lodgings, and there I firſt came acquainted with her; and ſhe afterwards gave me frequent Opportunities of improving that Acquaintance; and by the manner of my Reception by her, I had not reaſon to ſuſpect the uſe it ſeems I was deſigned for; when I came to Town, my Lord, I was generally told of my Courting Mrs *Stout*, which I confeſs was not then in my Head, but it being repreſented to me as a thing eaſily to be got over, and believing the Report of the World as to her Fortune, I did afterwards make my Application to her, but upon very little Tryal of that ſort, I receiv'd a very fair Denial, and there ended my Suit: Mr *Cowper* having been ſo friendly to me as to give me notice of ſome things, that convinc'd me I ought to be thankful I had no more to do with her.

Mr Bar. *Hatſell*. When did ſhe caſt you off?

Mr *Marſhall*. I can't be poſitive as to the time my Lord, but it was in anſwer to the only ſerious Letter I ever writ to her; as I remember, I was not over importunate in this Affair, for I never was a very violent Lover.

Mr Bar. *Hatſell*. Well, but tell the time as near as you can.

Mr *Marſhall*. I believe it was the ſecond or third Time I came down to *Hertford*, which is about a Year and half ſince; and during the whole of my Acquaintance with her, I never till then found her averſe to any Propoſal of mine; but ſhe then telling me her Reſolution was not to comply with what I deſired, I took her at her Word, having partly by my own Obſervation, but more by Mr *Cowper*'s Friendſhip, been pretty well able to gueſs at her meaning.

Mr *Comper*. Becauſe what you ſay may ſtand confirmed beyond contradiction, I deſire you to ſay whether you have any Letters from her to your ſelf.

Mr *Marſhall*. Yes, I have a Letter in my Hand, which ſhe ſent me upon occaſion of ſome Songs I ſent her when I came to Town, which ſhe had before deſired of me, and this is a Letter in Anſwer to mine, 'tis her Hand-writing, and directed to me.

Mr Baron *Hatſell*. How do you know 'tis her Hand writing?

Mr *Marſhall*. I have ſeen her write, and ſeen and received ſeveral Letters from her.

Mr *Comper*. Pray ſhew it Mr *Beale*.

Mr *Beale*. I believe it to be her Hand I have ſeen her write, and have a Receipt of hers.

Clerk of Arr. 'Tis directed to Mr *Thomas Marſhall*, at *Lyons-Inn*, and dated *Sept*. 26, 1697.

Sept. 26, 1697.

SIR,

YOurs came very ſafe, but I wiſh you had explained your Meaning a little more about the Accident you ſpeak of, for I have been puzzling my Brains ever ſince, and without I ſhall ſet my ſelf to conjuring, I cannot imagine what it ſhould be, for I know of nothing that happened after you went away, nor no Diſcourſe about you, only when we were together, the Company would ſometimes drink your Health, or wiſh you had been there, or the like. So that I fancy it muſt be ſomething Mr ——. *has invented for diverſion; tho' I muſt confeſs we have a ſort of People here, that are inſpired with the gift of foreknowledge, who will tell one as much for nothing as any Aſtrologer will have a good Piece of Money for, but to leave jeſting, I cannot tell when I ſhall come to* London, *unleſs it be for a Night and away, about ſome Buſineſs with my Brother, that I muſt be obliged to attend his Motions; but when I do, I ſhall remember my Promiſe, although I do not ſuppoſe you are any more in earneſt than my ſelf in this Matter. I give you thanks for your Songs, and your good Wiſhes, and reſt your loving Duck.*

Mr *Comper*. Have you any more Letters?

Mr *Marſhall*. Yes, I have another Letter here, but before 'tis read I think 'twill be proper to give the Court an Account of the Occaſion of its being writ. I waited on Mrs *Stout* one Evening at her Lodgings in *Hounſditch*, and at our parting ſhe appointed to meet me the next Day, and to excuſe her not coming according to that Appointment, ſhe ſent me this Letter.

Cl. of Arr. 'Tis directed to Mr *Thomas Marſhall*, tis without date.

Mr Marſhall,

I Met unexpected, with one that came from H——d *laſt Night, who detained me ſo long with relating the moſt notorious Inventions, and Lies that are now extant amongſt that People, that I could not poſſible come till it was late, and this Day was appointed for Buſineſs, that I am uncertain when it will be finiſhed; ſo that I believe I cannot ſee you whilſt I am in Town. I have no more at preſent, but that I am your obliged Friend.*

Mr *Comper*. Now, my Lord, if your Lordſhip pleaſe, I proceed to ſhew you, that I went not ſo much voluntarily, as preſt by her to come to this Houſe, and for that I will produce one Letter from her to my ſelf; and, my Lord, I muſt a little inform you of the Nature of this Letter. It is on the outſide directed to Mrs *Jane Ellen*, to be left for her at Mr *Hargrave*'s Coffee-Houſe. For her to direct for me at a Coffee-houſe might make the Servants wonder, and the Poſt-man might ſuſpect, and for that reaſon ſhe directed it in that Manner. There was Mr *Marſhall* by when I received it, and I can prove the Hand by Mr *Beale*.

Mr *Marſhall*. My Lord, I verily believe I was by, and that Mr *Comper* ſhewed me this Letter immediately on Receipt of it, as he had done ſeveral others from the ſame Hand.

Cl. of Arr. This is directed for Mrs *Jane Ellen*: 'tis dated *March* the 5th, without any Year.

SIR, March the 5th.

I Am glad you have not quite forgot that there is ſuch a Perſon as I in being, but I am willing to ſhut my Eyes, and not ſee any Thing that looks like Unkindneſs in you, and rather content my ſelf with what Excuſes you are pleaſed to make, than be inquiſitive into what I muſt not know; I ſhould very readily comply with your Propoſition of changing the Seaſon, if it were in my Power to do it, but you know that lies altogether in your own Breaſt: I am ſure the Winter has been too unpleaſant for me to deſire the continuance of it. And I wiſh you were to endure the ſharpneſs of it, but for one Hour, as I have done for many long Nights and Days, and then I believe it would move that rocky Heart of yours, that can be ſo thoughtleſs of me as you are, but if it were deſigned for that End, to make the Summer the more delightful, I wiſh it may have the Effect ſo far as to continue it to be ſo too, that the Weather may never over caſt again; the which if I could be aſſured of, it would recompence me for all that I have ever ſuffered, and make me as eaſie a Creature as I was the firſt Moment I received Breath; when you come to Ti——*pray let your Steed guide you, and don't do as you did the laſt Time; and be ſure order your Affairs to be here as ſoon as you can, which cannot be ſooner, than you will be heartily welcome to your* very ſincere Friend.

For Mrs Jane Ellen *at Mr* Hargrave's
near Temple-Bar, London.

Mr *Comper*. Though 'tis directed to Mrs *Jane Ellen*, it begins in the Inſide, Sir; and 'tis dated the 5th of *March* next before the 13th.

Mr Bar. *Hatſell*. What *March* was it?

Mr *Marſhal*. I kept no Account of the Time, but I am very poſitive by the Contents, that Mr *Comper* ſhew'd me this Letter, and I read it, but by my now Remembrance, it ſhould be longer ſince than *March* laſt.

Mr *Comper*. It was *March* laſt. That which will ſet Mr *Marſhal*'s Memory to rights is this other Letter which I received at the *Rainbow*, when he was by, and he read it, and it importuning me to a Matter of this Kind, I did produce it to my Brother and him, they both knew of it, and both read it, and that will refreſh his Memory concerning the Date of the other.

Mr *Marſhal*. My Lord, I was in the Coffee houſe with Mr *Comper* when he received this Letter, and he afterwards ſhew'd it to Mr *William Comper* at the *Covent-Garden* Tavern, when I was by.

Cl. of the Arr. This is dated the 9th of *March*, and directed to Mrs *Jane Ellen*, at Mr *Hargrave*'s.

March 9.

SIR,

I Writ to you by Sunday's *Poſt, which I hope you have received; however as a Conſideration, I will aſſure you I know of no Inconvenency that can attend your cohabiting*

habiting with me, unleſs the Grand Jury ſhould thereupon find a Bill againſt us, but I won't fly for't, for come Life, come Death, I am reſolved never to deſert you, therefore according to your Appointment, I will expect you, and till then I ſhall only tell you, that I am,

Yours &c.

For Mrs Jane Ellen *at*
Mr Hargrave's *near*
Temple-Bar, London.

Mr *Cowper*. If your Lordſhip pleaſe, I will further prove this Letter by my Brother.

Mr *W. Cowper*. I can bear my Brother Witneſs, that when he has been adviſed to make theſe Letters Part of his Defence, he has expreſſed great unwillingneſs, and has ſaid, nothing but the Life of theſe Gentlemen could incline him to it.

My Lord, all I can ſay to this Matter is this, I do remember, that when ſhe was one Time in *London*, I think it was about a Year and an half ſince, I am not poſitive as to the Time, but when ſhe was in *London*, my Brother came in the Morning to my Chamber in the *Temple*, and after ſome Diſcourſe, he told me he had received a Letter from Mrs *Stout* that Day, wherein ſhe ſaid, ſhe intended him a Viſit at his Chamber that Afternoon; he told me at the ſame Time, that his Friend Mr *Marſhal* had ſome Thoughts of her, and therefore for that, as well as other Reaſons, he would decline receiving the Viſit intended him; and upon conſideration, this was the Method agreed upon: At that Time I lived with my Father in *Hatton Garden*, and this Gentlewoman having writ in the ſame Letter I now ſpeak of, that ſhe deſigned to dine there, and to come from thence in the Afternoon; ſays my Brother, you may caſually, as it were, take occaſion to ſay at Dinner, that my Buſineſs obliges me to go to *Deptford* in the Afternoon, as in good earneſt it did, as he then told me, and from that ſhe may take a hint of my not being at home, and ſo ſave her ſelf the Diſappointment of coming to my Chamber; I told him, I would find an opportunity of doing it if I could. At Dinner my Father hapened to ask me, as he often did, when I ſaw my Brother; I took this hint, and ſaid, I had ſeen him at my Chamber in the Morning, and that he was gone to *Deptford* that Afternoon about ſome Law Buſineſs. My Lord, Mrs *Stout* was then at the Table. I no ſooner ſaid it, but I obſerv'd ſhe chang'd colour preſently, and roſe with her Napkin, and went into the Back yard, and we ſaw her through a Saſh-window fall into a Woman's Fit of Sowning, and they gave her the Aſſiſtance that is uſual in ſuch Caſes.

My Lord, the next Thing I can ſpeak to is this, the Parliament ſitting late the *Friday* before the *Monday* of the laſt Aſſizes at *Hertford*, I came late from Dinner, I had din'd about ſeven a Clock, as I remember, and having occaſion to ſpeak with my Brother, I found him out by enquiry at the *Covent-Garden* Tavern and there was Mr *Marſhal* of *Lions-Inn* with him. I had not drunk above a Glaſs or two of Wine, but my Brother began with me, and ſaid, I ſeldom trouble you with Affairs of mine, but now I do not know well how to avoid it. I have received an importunate Letter, which I will ſhew you, it came from a Lady whoſe Name I believe you will gueſs; ſo he pull'd it out of his Pocket, and I read it ſo often, becauſe of the oddneſs of the Expreſſion, that I can ſay, I am ſure this is the very Letter he ſhew'd me at the *Covent-Garden* Tavern, the *Friday* before the laſt Aſſizes; ſaith he, the Occaſion of my ſhewing it, is not to expoſe a Woman's Weakneſs, but I would not willingly lie under too many Obligations, nor engage too far; nor on the other Hand, would I be at an unneceſſary Expence for a Lodging. Upon this Subject there was ſome Diſcourſe I think Foreign to this purpoſe, and therefore I would not trouble your Lordſhip with the Repetition of it, that which is Material is this, I did undertake to write to Mr *Bareſoot* to diſpoſe of his Lodgings, where I us'd to be at the Time of the Aſſizes, and my Brother with me. I ſaid I would write the next Day, being *Saturday*, but when I ſhould have writ, it was very late, and I was weary, being then tied down to the Buſineſs of Parliament and partly for that Reaſon, and partly in Point of Diſcretion, which I had upon my ſecond Thoughts, that 'twould be better for my Brother's Buſineſs to be at Mr *Bareſoot*'s, which is near the Court, and in the Market place. I did neglect writing; and though I thought of it about eleven a Clock, yet as I ſaid, partly for one Reaſon and partly for the other, I did not write that Time. My Lord, my Brother could know nothing of this Matter, for I did not ſee him from the *Friday* he ſhew'd me the Letter, till he went to the Aſſizes, ſo that he could not know before he was at *Hertford*, that I had not writ. My Lord, I ſay as to this Letter I am ſure he ſhew'd me the *Friday* next before the laſt Aſſizes.

Mr Bar. *Hatſell*. Let me ſee that Letter, (which was ſhewn his Lordſhip.)

Mr *Cowper*. My Lord, one or two of the Jury ſeem to queſtion whether the Letters are ſufficiently prov'd; for their Satisfaction, I will further prove them. Call Mr *John Beale*, *William Oker*, and Mrs *Low*. My Lord, Mr *Beale* is one of their own Sect.

(*The Witneſſes prov'd her Hand.*)

Jury. My Lord, we are ſatisfied.

Mr Bar. *Hatſell*. I believe you may ask her Mother, ſhe will tell you whether it be her Daughter's Hand.

Mrs *Stout*. How ſhould I know! I know ſhe was no ſuch Perſon, her Hand may be counterfeited.

Mr Bar. *Hatſell*. But if they were written in a more ſober Stile, what would you ſay then?

Mrs *Stout*. I ſhan't ſay it to be her Hand, unleſs I ſaw her write it.

Then the Letter was ſhew'd to Mr Stout.

Mr *Stout*. 'Tis like my Siſter's Hand.

Mr Bar. *Hatſell*. Do you believe it to be her Hand?

Mr *Stout*. No, I don't believe it, becauſe it don't ſuit her Character.

Mr Bar. *Hatſell*. But do you think ſhe might not conceal from you what were her inward Thoughts.

Mr *Stout*. Not in ſuch a Degree as this.

Mr *Cowper*. Call Mrs *Bareſoot* and her Maid. I deſire they may be ask'd what they know about my taking of Lodgings at their Houſe.

Mr Bar. *Hatſell*. That is taken for granted.

Mrs *Bareſoot*. When you came to my Houſe, you ask'd me, if I had receiv'd a Letter from your Brother, and I told you no.

Mr *Cowper*. What did I ſay to that?

Mrs *Bareſoot* Then you ask'd me if I expected you, and I told you yes, by reaſon I had heard nothing from you.

Mr *Cowper*. Where did I lodge that Night?

Mrs.

Mrs *Barefoot.* I had prepar'd the Lodging before you came, expecting you or Mr *Cowper* your Brother.

Mr *Cowper.* And did I come?

Mrs *Barefoot.* Yes, as you us'd to do.

Mr *Cowper.* Did I ſend for my Things from the Coffee-houſe?

Mrs *Barefoot.* Yes, you did, and I carried them up into your Chamber as I us'd to do.

Mr Bar. *Hatſell.* Where did Mr *Cowper* dine that Day?

Mrs *Barefoot.* Mrs *Stout* ſent her Maid to deſire him to come to Dinner at their Houſe, whether he went thither or no I can't ſay, but he went out.

Mr *Cowper.* What Time did I come into my Lodging at Night?

Mrs *Barefoot.* It was a little after Eleven.

Mr *Cowper.* You are ſure I came in a little after Eleven.

Mrs *Barefoot.* Yes.

Mr *Jones.* By what Clock? By the Town Clock?

Mrs *Barefoot.* Yes.

Mr *Cowper.* Did I go out any more that Night?

Mrs *Barefoot.* No.

Mr *Cowper.* Is your Maid there?

Mrs *Barefoot.* Yes.

Mr Bar. *Hatſell.* What is your Name?

Mrs *Hanwell.* Mary *Hanwell.*

Mr *Cowper.* Pray what Time was it I came to my Lodging?

Mrs *Hanwell.* You came in a little after eleven a Clock.

Mr *Cowper.* Are you very poſitive in that?

Mrs *Hanwell.* Yes, I am very poſitive.

Mr *Cowper.* What was done before I went to Bed?

Mrs *Hanwell.* My Lord, I went up and made a Fire, and then I came down again, and then I went up and warm'd Mr *Cowper*'s Bed, and then he deſir'd another Blanket, and I came down for it; and all this took up a conſiderable Time; and Mr *Cowper* was in Bed before twelve a Clock.

Mr *Cowper.* Did I go out again that Night?

Mrs *Hanwell.* No, you went out no more.

Mr *Cowper.* Now, if your Lordſhip pleaſes, I would explain that Part of *Sarah Walker* the Maid's Evidence; where ſhe ſays, her Miſtreſs ordered her to warm the Bed, and I never contradicted it: Your Lordſhip obſerves the Words in the laſt of the two Letters, *No Inconvenience can attend your cohabiting with me*; and afterwards, *I won't Fly for it: For come Life come Death I am reſolv'd, and ſo on,* —— I had rather leave it to be obſerved than make the Obſervation my ſelf, wh. might be the Diſpute between us at the Time the Maid ſpeaks of. I think it was not neceſſary ſhe ſhould be preſent at the Debate; and therefore I might not interrupt her Miſtreſs in the Orders ſhe gave; but as ſoon as the Maid was gone, I made uſe of theſe Objections; I told Mrs *Stout*, by what Accident I was obliged to take up my Lodging at Mr *Barefoot*'s, and that the Family was ſitting up for me: That my ſtaying at her Houſe under theſe Circumſtances, would in probability provoke the Cenſure of the Town and Country; and that therefore I could not ſtay, whatever my Inclination otherwiſe might be; but, my Lord, my Reaſons not prevailing, I was forc'd to decide the Controverſie by going to my Lodging, ſo that the Maid may ſwear true, when ſhe ſays I did not contradict her Orders.

Mr Bar. *Hatſell.* I believe you have done now Mr *Cowper?*

Mr *Cowper.* No my Lord, I have more Evidence to give. Call *Elizabeth Spurr.*

If your Lordſhip pleaſes to obſerve, I have already proved by two Witneſſes that I was actually at Mr *Barefoot*'s a little after Eleven; ſo that if I was to reſt upon this Proof, here is not the leaſt Article of Time, in which it can be ſuppoſed I was employ'd in this Matter: But, ſays *Sarah Walker*, the Maid, to obviate (I preſume) this Evidence of mine, our Houſe-Clock went faſter than the Town-Clock: Now to anſwer this too, I ſhall further prove to your Lordſhip, that before I came to my Lodging, I was at the *Glove and Dolphin* Inn, where I had a little Account of about ſix or ſeven Shillings, as I remember, for Horſe-keeping, and which I then paid.

Mr *Cowper.* Do you remember my coming to your Houſe, and at what Time?

E. Spurr The Clock ſtruck Eleven, juſt as you came into the Door.

Mr *Cowper.* How long did I ſtay at the *Glove?*

E. Spurr. About a quarter of an Hour.

Mr *Cowper.* How far is it from the *Glove and Dolphin* to Mrs *Stout*'s Houſe?

E. Spurr. About a quarter of a Mile, or not quite ſo far.

Mr *Cowper.* Call *Mary Kingitt*, and *George Man*, *(who not then appearing)* in the mean Time, I would obſerve to your Lordſhip, That to go from Mrs *Stout*'s Houſe to the Place where ſhe was drown'd, and to return from thence to the *Glove and Dolphin*, will take up at leaſt half an Hour, as I ſhall prove; and then the Matter will ſtand thus: Says *Sarah Walker*, you went about a quarter after Eleven; but our Clock went half an Hour too faſt: Then according to her Account, I went three quarters after Ten by the Town-Clock; and if it requires, (as I ſay, I ſhall prove it does) half an Hour to go to the Place where ſhe was drown'd, and to return from thence to the *Glove* Inn, that would make it a quarter paſt Eleven when I came to that Inn, by the Town-Clock, which it was not; and if I ſtaid there a quarter of an Hour (which is proved I did) it muſt be half an Hour after Eleven when I came to my Lodging by the ſame Clock, which it was not; ſo that I think this Matter as to the Time is very clear: My Lord, to prove the Time it requires to go from Mrs *Stout's* to the Place where ſhe drown'd her ſelf, and to return to the *Glove*, I deſire Sir *William Aſhurſt* may be called.

Sir *William Aſhurſt.* My Lord, I can't ſay I walk'd as faſt as I could, but I went with a Gentleman I ſee here to ſatisfie my ſelf about the Probability of this Matter; I walk'd as People uſually do, and I found it took up half an Hour and a Minute, when I walk'd with that Gentleman.

Mr Bar. *Hatſell.* Who was with you Sir?

Sir *William Aſhurſt.* Mr *Thompſon* was with me, the Time I mention, I walk'd it before with Sir *Thomas Lane.*

Mr *Thompſon.* My Lord, indeed it will take a compleat half Hour.

Mr *Cowper.* I deſire Sir *Thomas Lane* may give you an Account of the Diſtance between one Place and the other.

Sir *Thomas Lane.* Sir *William Aſhurſt* and I did walk to the Place mentioned, and we were careful to take notice of the Time, and it took up about three quarters of an Hour, according to my Obſervation; and we did not ſtay at all by the Way, except juſt to look upon the Hoſpital.

Mr *Cowper.* Now my Lord, *Mary Kingitt* and *George Man*, the Servants at the *Glove* are come: Pray

Pray Mrs *Kingitt* do you remember my coming into the *Glove and Dolphin* ?

Mary Kingitt. Yes.

Mr *Cowper*. How long did I ſtay there ?

Mary Kingitt. About a quarter of an Hour.

Mr *Cowper*. What was my Buſineſs there ?

Mary Kingitt. You came and enquir'd what you ow'd.

Mr Bar. *Hatſell*. What a Clock was it then ?

Mary Kingitt. I thought it was about Eleven, our t'other Maid told it Eleven.

Mr *Jones*. How came you to take notice of the Time ?

Mary Kingitt. She heard the Clock go Eleven, but I did not.

Mr *Cowper*. Was there any Diſpute about the Account ?

Mary Kingitt. You ask'd the Hoſtler how that came to ſtand in the Book, concerning the Horſe ; for you told him, you thought you had paid ſome Part of it, and he told you, you had not.

Mr *Cowper*. My Lord, with your Lordſhip's favour I would ask *George Man* a Queſtion to the ſame Point. Do you remember my coming into the *Glove and Dolphin* ?

G. Man. Yes.

Mr *Cowper*. How long did I ſtay there ?

G. Man. You ſtaid about a quarter of an Hour, as near as I can gueſs.

Mr *Cowper*. I will now call a Witneſs to prove that this Maid *Sarah Walker* is not ſo cautious and careful how ſhe Swears, as I think ſhe ought to be.

Call Mrs Mince.

Mr Bar. *Hatſell*. Pray wherein has *Sarah Walker* ſaid any Thing that is falſe ?

Mr *Cowper*. In this ; I ask'd her when ſhe gave Evidence, Whether ſhe went out to ſee for her Miſtreſs all that Night, and whether her Miſtreſs did not uſe to ſtay out a Nights ; and whether ſhe her ſelf had not uſed to ſay ſo ? If your Lordſhip pleaſes to remember ſhe ſaid no. Pray Mrs *Mince* what have you heard Mrs *Stout*'s Maid ſay concerning her Miſtreſs, particularly as to her ſtaying out all Night.

Mrs *Mince*. She hath ſaid, That her Miſtreſs did not love to keep Company with Quakers ; and that ſhe paid for her own Board and her Maid's ; and that when ſhe entertain'd any Body, it was at her own Charge. And ſhe hath ſaid that Mrs *Stout* us'd to ask who is with you Child ? And ſhe would not tell her ; aud that ſhe did entertain her Friends in the Summer-houſe, now and then with a Bottle of Wine. And when her Mother ask'd who was there, her Miſtreſs would ſay bring it in here, I ſuppoſe there is none but Friends ; and after the Company was gone, ſhe us'd to make her Mother believe that ſhe went to Bed ; but ſhe us'd to go out and take the Key with her, and ſometimes ſhe would go out at the Window, and ſhe ſaid particularly one Time ſhe went out at the Garden Window, when the Garden Door was lock't, and that ſhe bid her not ſit up for her, for ſhe would come in at any Time.

Mr Bar. *Hatſell*. Did ever *Sarah Walker* tell yon that Mrs *Stout* had ſtaid out all Night ?

Mrs *Mince*. She hath ſaid ſhe could not tell what Time ſhe came in, for ſhe went to Bed.

Mr *Cowper*. Now if your Lordſhip pleaſe, I will prove to you, if it may be thought material, that *Gurrey*, at whoſe Houſe theſe Gentlemen lodged, ſhould ſay, That if I had viſited Mrs *Stout* none of all this had been (upon ſo little an Omiſſion it ſeems did this Proſecution depend.) To which I give this Anſwer, my Lord, I never did once go to viſit her in my Life ; ſhe knows it. Now for a Man officiouſly to make a new Viſit in the Time of the Aſſizes, one engaged in Buſineſs as I was, and eſpecially upon ſo melancholy an Occaſion, I ſay for me to go officiouſly to ſee a Woman I never had the leaſt Knowledge of, would have been thought more ſtrange (and juſtly might have been ſo) than the Omiſſion of that Ceremony. For my Part I cannot conceive what Mr *Gurrey* could mean, this being the Caſe, by ſaying, that if I had viſited Mrs *Stout*, nothing of this had happened.

Mr Bar. *Hatſell*. Mr *Cowper*, he is not the Proſecutor, I think it is no Matter what he ſaid.

Mr *Cowper*. I take it my Lord, with humble ſubmiſſion, it is material as he is a principal Witneſs againſt theſe Gentlemen, and the rather for that he now pretends, that what he did was out of Conſcience. My Lord, I have only one Thing more to ſay, I know not whether it will be requiſite for me or no to give ſome Account of my ſelf. Sir *William Aſhurſt*, if you pleaſe.

Sir *William Aſhurſt*. My Lord, if I had not had a good Opinion of this Gentleman I had not come on purpoſe to hear this Cauſe, which has made ſo great a Noiſe all *England* over.

Mr Bar. *Hatſell*. But what do you ſay as to Mr *Cowper*'s Reputation, for which you are called ?

Sir *William Aſhurſt*. I always thought Mr *Cowper* to be a Gentleman of ſingular Humanity and Integrity ; he is an Officer in *London*, and as to his Management of his Office, I think no Man ever performed it better, or has a better Reputation in the Place where he lives.

Sir *Thomas Lane*. My Lord, I came hither on purpoſe to own this Gentleman, and indeed he deſerves to be owned by his Friends, and thoſe that know him ; his Character is altogether untainted with us, he has gained a good Reputation in the Buſineſs wherein he is concerned ; he has behaved himſelf in his Office which he holds of the City of *London*, very honeſtly and well ; I never knew him diſcover any ill Nature in his Temper, I think he cannot be ſuſpected of this or any other Act of Barbarity.

Mr *Cowper*. My Lord, in the next Place, I would call Mr *Cox*, who has the Honour to ſerve in Parliament, for the Burrough of *Southwark* ; and has been my near Neighbour theſe eight or nine Years. If you pleaſe Mr *Cox*, give an Account what Reputation and Character I have in that Place.

Mr *Cox*. My Lord, I live in *Southwark*, where Mr *Cowper* lives ; I have lived by him eight or nine Years, I know him to be a Perſon of Integrity and Worth ; all the Neighbours court his Company. I take him to have as much Honour and Honeſty as any Gentleman whatſoever ; and of all Men that I know, he would be the laſt Man, that I ſhould ſuſpect of ſuch a Fact as this is : I believe nothing in the World could move him to entertain the leaſt Thought of ſo foul a Fact.

Mr *Cowper*. Mr *Thompſon*, I deſire you would be pleas'd to give an Account of what you know of me.

Mr *Thompſon*. If you pleaſe, my Lord, the firſt Acquaintance I had with Mr *Cowper*, was in our Childhood, I had the Honour to go to *Weſtminſter* School with him ; I did not renew my Acquaintance with him till about five Years ago ; ſince that Time I have been often with him, and have ſeveral

Times

Times had occaſion to ask his Advice, in Matters relating to his Profeſſion; and I think no Man more faithful in the Service of his Client than he is, and I am ſure he is very deſerving of the Eſteem of any Man, and I believe he never entertain'd a Thought of ſo foul and barbarous a Fact as this, of which he is accuſed.

Mr Bar. *Hatſell.* Mr *Marſon*, you have heard the Evidence, what do you ſay to it?

Mr *Marſon.* My Lord, our Buſineſs at *Hertford* was this; Mr *Ellis Stephens* and I went down, he is Clerk of the Papers of the *King*'s *Bench*, and Mr *Rogers* is Steward of the *King*'s *Bench*, and it was their Duty to wait upon my Lord Chief Juſtice with the Marſhal of the *King*'s *Bench* out of Town; and on *Monday* Morning we went to my Lord Chief Juſtice's Houſe in *Lincolns-Inn Fields* as we uſed to do, and there ſet out; but I being an Attorney of the Borough Court could not with any Convenience go farther with them than to a Place which I think is called *Kingſland*, and therefore I returned to my Buſineſs in *Southwark*, where I attended the Court as was cuſtomary and neceſſary for me to do, and ſet forth from thence at paſt Four in the Afternoon; by the Way as I remember about *Waltham-Croſs* I met one Mr *Hanks* a Clergyman of my Acquaintance, who had been likewiſe to attend my Lord Chief Juſtice to *Hertford*, and was returning from thence; with ſome perſuaſion I prevailed with him to go back again with me to *Hertford*, telling him, I did not know the Way, and we gallop'd every ſtep of it becauſe Night was coming on, it was about eight a Clock when we came in. Mr *Hanks* and I found the Marſhal, Mr *Stevens*, Mr *Rogers*, Mr *Rutkin*, and others of the Marſhal's Acquaintance at the Coffee-houſe; and truly when I came in I might for ought I know be in a Sweat with riding ſo hard as we did, but even then I was not in ſuch a Sweat as the Witneſs would have it. My Lord, we went from thence to the *Glove and Dolphin* and ſtayed there till about eleven a Clock, Mr *Rogers* and I had a Diſpute who ſhould lie with Mr *Stevens* at the now Witneſs Mr *Gurrey*'s, at laſt it was agreed between us to go to *Gurrey*'s to ſee what Convenience he could make for us, and Mr *Rutkin* and Mr *Hanks* went with us with deſign to drink a Glaſs of Wine at our Lodging; but afterwards it came in Mr *Rutkin*'s Head, that he was to lie with the Marſhal, and for that Reaſon he ſaid he would go back again, and accordingly he went, and Mr *Hanks* with him after they had ſeen us into our Lodgings, and Mr *Stevens* and Mr *Rogers* and I drank three Bottles of Wine together, Mr *Gurrey* our Landlord was ſent to fetch it; and afterwards in jocular Converſation I believe Mr *Stevens* might ask Mr *Gurrey* if he knew one Mrs *Sarah Stout*, and the Reaſon why he ask'd that Queſtion our Witneſſes will explain; I believe he might likewiſe ask, what ſort of Woman ſhe was; and poſſibly I might ſay the Words, *My Friend may be in with her*, tho' I remember not I did ſay any Thing like it, but I ſay there is a Poſſibility I might; becauſe I had heard ſhe had deny'd Mr *Marſhal*'s Suit, and that might induce me to ſay, *My Friend may be in with her*, for all that I remember; I confeſs Mr *Rogers* ask'd me what Money I had got that Day, meaning at the Borough Court, I anſwer'd, fifty Shillings; ſaith he, we have been here a ſpending our Money, I think you ought to treat us, or to that purpoſe; as for the Bundle mention'd, I had no ſuch, except a Pair of Sleeves and a Neckcloth: As to the Evidence which goes to Words ſpoken, the Witneſſes have fruitful Inventions, and as they have wreſted and improved the Inſtances I have been particular in, ſo have they the reſt, or otherwiſe forged them out of their own Heads.

Mr Bar. *Hatſell.* Mr *Rogers*, What do you ſay to it?

Mr *Rogers.* We came down with the Marſhal of the *King*'s *Bench*, it rained every Step of the Way, ſo that my Spitter-daſhers and Shoes were fain to be dried; and it raining ſo hard, we did not think Mr *Marſon* would have come that Day, and therefore we provided but one Bed, tho' otherwiſe we ſhould have provided two, and were to give a Crown for our Night's Lodging: We went from the Coffee-houſe to the Tavern, as Mr *Marſon* has ſaid, and from the Tavern the next Way to our Lodging, where there was ſome merry and open Diſcourſe of this Gentlewoman, but I never ſaw her in my Life, nor heard of her Name before ſhe was mention'd there.

Mr *Stevens.* We never ſtir'd from one another, but went along with the Marſhal of the *King*'s *Bench* to accompany my Lord Chief Juſtice out of Town, as is uſual.

Mr Bar. *Hatſell.* I thought it had been uſual for him to go but half the Way with my Lord Chief Juſtice.

Mr *Rogers.* They generally return back after they have gone half the Way, but ſome of the head Officers go throughout.

Mr *Stevens.* It was the firſt Circuit after the Marſhal came into his Office, and that's the Reaſon the Marſhal went the whole Way.

Mr Bar. *Hatſell.* Did not you talk of her Courting days being over?

Priſoners. Not one Word of it: We abſolutely deny it.

Mr *Stevens.* I never ſaw her.

Mr *Jones.* Mr *Marſon*, Did you ride in Boots?

Mr *Marſon.* Yes.

Mr *Jones.* How came your Shoes to be wet?

Mr *Marſon.* I had none.

Call Mr Heath, *Mr* Hunt, *and Mr* Foſter.

Mr *Marſon.* Mr *Hunt*, Will you pleaſe to acquaint my Lord and the Jury with what Diſcourſe we had on *Sunday* Night, before the Aſſizes, at the *Old Devil Tavern* at *Temple-bar*.

Mr *Hunt.* On *Sunday* Night I happened to be in Company with Mr *Marſon* and three or four more of *Clifford*'s *Inn*, and there was a Diſcourſe of the Marſhal's attending my Lord Chief Juſtice out of Town, to *Hertford*, and Mr *Marſon* ſaid, *It may be the Marſhal may require my waiting upon him too*; and the whole Company being known to Mr *Marſhall*, and there being a Diſcourſe of Mr *Marſhall*'s courting of Mrs *Stout*, ſaith one of the Company, *If you do go to* Hertford, *pray enquire after Mr* Marſhall's *Miſtreſs, and bring us an Account of her.*

Mr *Jones.* Who was in Company?

Mr *Hunt.* There was Mr *Heath*, Mr *Foſter*, Mr *Marſon*, Mr *Stevens*, Mr *Bevor*, and Mr *Marſhall*.

Mr *Marſon.* Now it was this Diſcourſe that gave us Occaſion to talk of this Woman at *Gurrey*'s Houſe, which we did openly and harmleſly. Mr *Foſter*, Do you remember any Thing of our talking of this Gentlewoman on *Sunday* Night?

Mr *Foſter.* Yes: I and they were talking that they ſhould go to *Hertford* the next Day, to wait on the Marſhal, in compliment to my Lord Chief Juſtice, and go as far as *Hertford*; and there being a Report, that Mr *Marſhall* courted this Woman,

man, we put it in a jesting Way, *Pray enquire after Mr* Marshall's *Mistress, how the Match goes on*; *for there was some Wagers between him and the Company, who should be marry'd first:* And so, in a jocular Way, it went about, and Mr *Marson* or Mr *Stevens* said, *They would do their Endeavour, and they would enquire after the Lady, and give as good an Account of her as they could.*

Mr *Stevens.* If you please, my Lord, we will call another to this Purpose.

Mr Bar. *Hatsell.* No: I think you need not, for it seems not material.

Then Mr Hanks *was call'd.*

Mr *Hanks.* I came as far as *Waltham*'s *Cross* to wait upon my Lord Chief Justice, I stay'd there till about four or five a Clock, and then set out for *London*, and I met with Mr *Marson*, who importun'd me to go back with him to *Hertford*, and accordingly I did so, and we came in about Seven or Eight at Night, and we enquired after the Marshal of the *King*'s *Bench*, and where he had set up his Horses, and we found him in the Coffee-House just by the Court, and we went and set up our Horses, and came again to him; from thence we went to the *Glove* and *Dolphin* Tavern, these three Gentlemen and the Marshal, and one Mr *Rutkin* came afterwards to us, and we stay'd till about Eleven at the *Glove* and *Dolphin*.

Mr *Marson.* Do you remember how we rid?

Mr *Hanks.* Yes: Very hard.

Mr Bar. *Hatsell.* What Time did you come in to the Tavern?

Mr *Hanks.* Between Seven and Eight, as I remember.

Mr Bar. *Hatsell.* And did you stay there till past Eleven?

Mr *Hanks.* Till about Eleven, little more or less, we went away together in order to drink a Glass of Wine with them at their Lodging, but Mr *Rudkin* considering that he was to drink a Glass of Wine, and lie with the Marshal, thought it would disturb the Marshal; so, saith he, *I will not go in*; but we saw them go into their Lodgings and returned to the *Bull*, where we eat Part of a Fowl, and I was never out of Mr *Marson*'s Company all that Time.

Mr *Marson.* When you took your Leave of me, Don't you remember that the Door was clap'd too?

Mr *Hanks.* I can't remember that.

Mr *Marson.* Mr *Gurrey* saith, I never went out after I came home. Mr *Rutkin*, Pray give an Account to my Lord, and the Gentlemen of the Jury, of what you know of my coming to *Hertford.*

Mr *Rutkin.* My Lord, I came to wait on the Marshal of the *King*'s *Bench* to *Hertford*, and when we were come to *Hertford* we put up our Horses at the *Bull*, and made our selves a little clean, we went to Church, and din'd at the *Bull*, and then we walk'd in and about the Court, and diverted our selves till about Seven a-Clock; and between Seven and Eight a-Clock came Mr *Marson* and Doctor *Hanks* to Town, and then we agreed to go to the *Dolphin* and *Glove* to drink a Glass of Wine, the Marshal went to see an ancient Gentleman, and we went to the *Dolphin* and *Glove* and stay'd there till past Ten a-Clock; and after the Reckoning was paid, we went with them to their Lodging with a Design to take a Glass of Wine; but then I consider'd I was to lie with the Marshal, and for that Reason I resolv'd not to go in, but came away, and went to the *Bull-Inn*, and after I drank Part of a Pint of Wine, and afterwards I went to the next Door to the *Bull-Inn*, where I lay with the Marshal.

Mr *Jones.* What Time did the Gentlemen go to their Lodging?

Mr *Rutkin.* I am not positive as to That; but I believe it was about Eleven a-Clock.

Mr *Marson.* If your Lordship pleases, now I'll call some Persons to give an Account of me. Mr *Cox.*

Mr *Cox.* I have known Mr *Marson* a long Time, and had always a good Opinion of him; I don't believe 5000 *l.* would tempt him to do such a Fact.

Mr *Marson.* Capt. *Wise*, I desire you would please to speak what you know of me.

Mr *Cowper.* My Lord, because these Gentlemen are Strangers in the Country, I think, if in taking an Account of any Evidence for my self, there is any Thing occurs to me, that they may have a just Advantage of, I think I ought not to conceal it; for I am as much concern'd to justify their Innocence as my own. The principal Witness against them is one *Gurrey*, and I will prove to you, That since he appear'd in this Court and gave his Evidence, he went out in a triumphant Manner, and boasted, That he, by his Management, had done more against these Gentlemen, than all the Prosecutor's Witnesses could do besides: To add to That, I have another Piece of Evidence that I have been just acquainted with. My Lord, it is the Widow *Davis*, *Gurrey*'s Wife's Sister that I would call.

Major *Lane.* My Lord, I have known Mr *Marson* ever since he was two Years old, and never saw him but a civiliz'd Man in my Life; he was well bred up among us, and I never saw him given to Debauchery in all my Life.

Mr Bar. *Hatsell.* Where do you live?

Major *Lane.* In *Southwark*, my Lord.

Mr Bar. *Hatsell.* Well; What do you say, Mrs *Davis?*

Mrs *Davis.* I came to the House where these Gentlemen lodg'd; I was in about half an Hour, and my Sister ask'd me to air two or three Pair of Sheets: When I had air'd the Sheets, she ask'd me to go up and help to lay them on; and before I had laid them on, these Gentlemen came into the Room.

Mr Bar. *Hatsell.* What Hour?

Mrs *Davis.* By the Time of my going out again, I believe it might be about Ten, or something better, and they drank three Quarts of Wine, and they had some Bread and Butter and Cheese carry'd up, and so they went to Bed; and after my Brother went to fetch Mr *Gape*, that lay at his House, from *Hockley*'s.

Mr *Cowper.* I only beg leave to observe, that *Gurrey* deny'd that he went for him.

Mr Bar. *Hatsell.* Ay; but this signifies very little whether it be true or false.

Mrs *Davis.* The next Day after, these Gentlemen were about the Town, and she said, she did believe they were come to clear a young Man (a Minister's Son) that was tried at the Bar for robbing the Mail: I ask'd, Why she thought so; she said, She was sure of it: And I ask'd her, How she could be sure of it, when she was never told so? Why, said I, do they accuse these Gentlemen? they ought rather to take up the Gentleman that was with Mrs *Stout*'s Maid; and she said, If they

took up Mrs *Stout*'s Maid they ſhould have never a Witneſs.

Mr Bar. *Hatſell.* Who was That that was talking with Mrs *Stout*'s Maid?

Mrs *Davis.* I don't know, but ſhe ſaid ſhe did not like their Actions; and therefore ſhe ought to have been examined who ſhe was with.

Capt. *Wiſe.* I have known Mr *Marſon* ſeveral Years, and he is a Perſon of as fair Reputation as any in the *Borough.*

Mr *Reading.* I have been acquainted with Mr *Marſon* Twenty Years, he lives near the Houſe where I now do: He has a general good Character among his Neighbours, for a fair Man in his Practice, an honeſt Man, and a Man of good Converſation.

Mr Bar. *Hatſell.* Well, Mr *Stevens*, What do you ſay?

Mr *Stevens.* I deſire Sir *Robert Auſtin* to give an Account of me.

Sir *Robert Auſtin.* I have known Mr *Stevens* many Years; his Brother is Captain in a neighbouring County, he is reckon'd not only an honeſt Man in his Practice, but has the general Character of a good-natur'd Man, and he is ſo far from being a Perſon likely to do ſuch an Action, that, for a younger Brother, he was very well provided for; his Father left him a Thouſand Pounds, and he is Clerk of the Papers, which is reputed worth a Hundred Pounds a Year, and is in good Practice beſides.

Juryman. I have known him ſeveral Years, and he hath the ſame Reputation Sir *Robert* hath given him.

Sir *John Shaw.* I know Mr *Stevens*, and his Brother Captain *Stevens:* As to this Gentleman, he hath always behav'd himſelf well in our Country, and hath the Character of an honeſt Gentleman.

Mr *Evans.* I have known him for theſe eight Years, and to be a very civil Perſon, and well educated, and never heard but a good Character of him: I have alſo known Mr *Marſon* theſe Ten Years, and never ſaw any Ill by him, and do believe, that he or the other would not have done ſuch an ill Thing to have gain'd this County.

Mr *Menlove.* My Lord, Mr *Stevens* was my Clerk, and he behav'd himſelf very honeſtly with me. And ſince That, I have kept a Correſpondence with him, and I believe he would not do ſuch a Thing for all the World.

Mr Bar. *Hatſell.* Call ſome Body to ſpeak for Mr *Rogers*, if there be any.

Mr *Evans.* My Lord, Mr *Rogers* hath a general Character in *Southwark*, for a very honeſt Man.

Mr *Rogers.* Pray call Mr *Lygoe.* Sir, pleaſe to give my Lord and the Court an Account what you know of me.

Mr *Lygoe.* My Lord, I have known all the three Gentlemen at the Bar, but particularly Mr *Rogers* and Mr *Stevens*, from their Infancy. I have employ'd them both in Buſineſs ſeveral Times, and always found them fair Practicers; and believe neither of them would be guilty of doing an ill Act.

Mr *Rogers.* Call Mr *Thurlby.* Sir, Pray give the Court an Account how I behaved my ſelf in your Service.

Mr Bar. *Hatſell.* Come Mr *Thurlby*, What do you ſay of Mr *Rogers?*

Mr *Thurlby.* My Lord, Mr *Rogers* lived with me about eight Years, in which Time I frequently truſted him with very great Sums of Money, I ever found him juſt and faithful, and can't believe, that any Money could tempt him to do an Act of this Kind.

Mr *Jones.* My Lord, we inſiſt upon it, That Mr *Cowper* hath given a different Evidence now from what he did before the Coroner; for there he ſaid he never knew any Diſtraction or Love-fit, or other Occaſion ſhe had to put her upon this extravagant Action. Now, here he comes, and would have the whole Scheme turn'd upon a Love-fit. Call *John Maſon (who was Sworn.)*

Mr Bar. *Hatſell.* What do you ſay, Sir, to this Matter?

Mr *Stout.* When Mr *Cowper* was examined before the Coroner, he was ask'd, If he knew any Reaſon why ſhe ſhould do ſuch a Thing? and he ſaid, She was a very modeſt Woman, and he knew no Cauſe why ſhe ſhould do ſuch a Thing as this. *John Maſon*, Was you by when Mr *Cowper* gave Evidence before the Coroner.

Maſon. Yes.

Mr *Jones.* What did he ſay?

Maſon. He ſaid he did not know any Thing was the Cauſe of it, but ſhe was a very modeſt Perſon.

Mr *Jones.* Was he upon his Oath?

Maſon. Yes, he was.

Mr Bar. *Hatſell.* When did he ſay this?

Maſon. It was the ſame Day ſhe was found.

Mr *Jones.* Did they ask him any Queſtion, If he knew any Perſon that ſhe was in Love with?

Maſon. He ſaid he knew but of one, and his Name was *Marſhall*, and Mr *Marſhall* told him, That he was always repulſed by her.

Mr *Stout.* I deſire *John Archer* may be asked the ſame Queſtion, *(who was Sworn.)*

Mr *Jones.* Was you preſent with the Coroner's Inqueſt?

J. Archer. Yes.

Mr *Jones.* Was Mr *Cowper* examined by them?

J. Archer. Yes, he was.

Mr *Jones.* What did he ſay concerning Mrs *Stout* then?

J. Archer. They ask'd him, If he knew any Occaſion for Mrs *Stout*'s Death? and he ſaid, He knew nothing of it, or of any Letters.

Mr *Cowper.* Then I muſt call over the whole Coroner's Inqueſt to prove the contrary.

Mr Bar. *Hatſell.* Did they ask him concerning any Letters?

J. Archer. They ask'd him, If he knew of any Thing that might be the Occaſion of her Death.

Mr Bar. *Hatſell.* I ask you again, If they ask'd him if he knew of any Letters?

J. Archer. My Lord, I don't remember That.

Mr *Stout.* I would have called ſome of the Coroner's Inqueſt, but I was ſtop'd in it.

Juryman. We have taken Minutes of what has paſs'd: If your Lordſhip pleaſe, we will withdraw.

Mr Bar. *Hatſell.* They muſt make an End firſt.

Mr *Jones.* If your Lordſhip pleaſe, we will call one Witneſs to falſify one Piece of their Evidence, and that is one Widow *Larkin*, *(who was Sworn.)*

Mr *Jones.* Do you remember one Mr *Rutkin*'s being at your Houſe?

Larkin. Yes.

Mr *Jones.* At what Time did he come in?

Larkin. Between Nine and Ten of the Clock.

Mr *Jones.* Was the Marſhal then in the Houſe?

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Larkin. No: The Marſhal did not come till near an Hour after.

Mr *Jones.* Did not he go out afterwards?

Larkin. Not that I know of.

Mr *Rutkins.* I am ſatisfied it was paſt Eleven when I came in.

Mr Bar. *Hatſell.* It is likely it may be true; for, I believe, they did not keep very good Hours at that Time.

Mr *Stout.* I deſire to call ſome Witneſſes to my Siſter's Reputation.

Mr *Jones.* My Lord, they would call Witneſſes to this Gentlewoman's Reputation; I believe the whole Town would atteſt for That, that ſhe was a Woman of a good Reputation: Indeed they have produced ſome Letters without a Name, but if they inſiſt upon any Thing againſt her Reputation, we muſt call our Witneſſes.

Mr Bar. *Hatſell.* I believe no Body diſputes That; ſhe might be a vertuous Woman, and her Brains might be turned by her Paſſion, or ſome Diſtemper.

Gentlemen of the Jury, You have heard a very long Evidence; I am ſure that you can't expect that I ſhould ſum it up fully; but I will take Notice of ſome Things to you, that I think are moſt material, and if I omit any Thing that is material, I would deſire Mr *Jones* (that is Council for the King) and Mr *Cowper*, to put me in Mind of it.

The Indictment againſt the Priſoners at the Bar, is for a very great Crime, it is for Murther, which is one of the moſt horrid of all Crimes: You are to conſider firſt, what Evidence you have heard to prove it; and though there be no direct Proof, you are to conſider what is Circumſtantial.

They do begin with *Sarah Walker*, who was Mrs *Sarah Stout*'s Maid, and ſhe tells you, That Mr *Cowper*, when he came to this Town upon *Monday* the 13th of *March* laſt, came to Mrs *Stout*'s Houſe and dined there, and went away about Four of the Clock in the Afternoon; but ſhe tells you, That the *Friday* before, there came a Letter from Mr *Cowper*'s Wife to Mrs *Stout*, to let her know that Mr *Cowper* would come and lodge at their Houſe at *Hertford*, at the Aſſizes; ſo that when he came, ſhe thought that he had intended to have done according to that Letter. She ſaith, That after Dinner Mr *Cowper* went away, and came again at Nine at Night, and there he ſupped, he was deſired ſo to do, (and indeed had been invited to Dinner alſo that Day) and ſhe doth ſay, that after Supper there was a Fire made in his Chamber (for this young Gentlewoman, Mrs *Stout*, preſs'd him to lie at their Houſe) and ſhe ordered the Maid to warm his Bed, and I believe, ſays ſhe, Mr *Cowper* heard her ſay ſo, for he was nearer to her than I, at that Time; and he doth not deny but that he heard it: She ſays, that accordingly ſhe went up to warm the Bed, and having ſtay'd there a While, ſhe heard the Door clap; and when ſhe came down into the Parlour, where ſhe had left them, they were both gone, and that ſhe could not tell what the Meaning of it was, and they waited for her all Night, old Mrs *Stout* and this Maid, and ſhe did not come in all Night, nor was afterwards ſeen alive. But Mr *Cowper* was the laſt Perſon ſeen in her Company.

The other Witneſſes that came afterwards ſpeak concerning the finding of the Body in the River, and tell you in what Poſture it was: I ſhall not undertake to give you the Particulars of their Evidence, but they tell you, She lay on her right Side, the one Arm up even with the Surface of the Water, and her Body under the Water, but ſome of her Cloaths were above the Water; particularly, one ſays, the Ruffles of her left Arm were above the Water; you have heard alſo what the Doctors and Surgeons ſaid on the one Side and the Other, concerning the Swimming and Sinking of dead Bodies in the Water, but I can find no Certainty in it, and I leave it to your Conſideration.

Another Circumſtance they build on, and which ſeems to be material, is, of her Belly being lank, and that there was no Swelling; whereas, ſay they, when a Perſon is drowned, there is a great deal of Water goes in, and makes the Belly to ſwell, but here was no Swelling that Morning ſhe was taken out, and no Water come out of her Mouth and Noſtrils, only a little Froth there was, and her Belly was lank. But, ſay they, on the other Side, that may very well be; for, perhaps, ſhe might be choaked immediately, as ſoon as ſhe was in the Water, and, ſay they, you may not wonder at That, for if ſhe went to drown her ſelf, ſhe would endeavour to be choaked as ſoon as ſhe could, for thoſe Perſons that are drowned againſt their own Conſent, do ſwallow a great deal of Water; but thoſe that drown themſelves, don't ſwallow much Water, for they are choaked immediately by the Water going into the Windpipe, that we commonly call going the wrong Way. The Doctors and Surgeons have talk'd a great deal to this Purpoſe, and of the Water's going into the Lungs or the Thorax; but unleſs you have more Skill in Anatomy than I, you won't be much edified by it: I acknowledge I never ſtudied Anatomy, but I perceive that the Doctors do differ in their Notions about theſe Things; but as to Matter of Fact, it is agreed to by all the Witneſſes for the King, that her Body was lank, her Belly was thin, and there was no Sign of any Water to be in it. They on the other Side tell you, That her Stays was on, and ſhe was ſtrait-laced, and that might occaſion her Belly's being ſo ſmall, and hinder the Water from going in.

Gentlemen, I was very much puzzled in my Thoughts, and was at a Loſs to find out what Inducement there could be to draw in Mr *Cowper*, or theſe three other Gentlemen, to commit ſuch a horrid, barbarous Murder. And, on the other Hand, I could not imagine what there ſhould be, to induce this Gentlewoman, a Perſon of a plentiful Fortune, and a very ſober good Reputation, to deſtroy her ſelf.

Now, Gentlemen, I muſt confeſs, the Evidence that the Defendants have given by theſe Letters, if you believe them to be this Gentlewoman's Hand-writing, do ſeem to fortify all that Mr *Cowper*'s Witneſſes have ſaid, concerning her being melancholy; it might be a Love-diſtraction, and ſhe might have been a vertuous Woman for all that, for it might be a Diſtemper which came upon her, and turned her Brains, and diſcompos'd her Mind, and then no Wonder at her Writing thus, in a Manner different from the Reſt of the Actions of her Life. Gentlemen, You are to conſider and weigh the Evidence, and I will not trouble you any more about that Matter.

As to theſe three other Gentlemen that came here to this Town, at the Time of the laſt Aſ-

ſizes, what there is againſt them you have heard: They talk'd at their Lodging at a ſtrange Rate, concerning this Mrs *Sarah Stout*, ſaying, Her Buſineſs is done, and that there was an End of her Courting-days, and that a Friend of theirs was even with her by this Time. What you can make of it, That I muſt leave to you, but they were very ſtrange Expreſſions; and you are to judge, Whether they were ſpoken in Jeſt, as they pretend, or in Earneſt. There was a Cord found in the Room, and a Bundle ſeen there, but I know not what to make of it. As to Mrs *Stout*, there was no Sign of any Circle about her Neck, which, as they ſay, muſt have been if ſhe had been ſtrangled. Some Spots there were, but it is ſaid, poſſibly thoſe might be occaſioned by rubbing againſt ſome Piles or Stakes in the River. Truly, Gentlemen, theſe three Men, by their talking, have given great Cauſe of Suſpicion; but whether They, or Mr *Cowper*, are guilty or no, That you are to determine. I am ſenſible I have omitted many Things, but I am a little faint, and cannot repeat any more of the Evidence.

Jury. We have taken Minutes, my Lord.

Mr Bar. *Hatſell.* Well then, Gentlemen, go together, and conſider your Evidence, and I pray God direct you in giving your Verdict.

[*Then One was Sworn to keep the Jury, and, in about half an Hour, the Jury returned.*]

Cl. of Arr. Gentlemen, are you all agreed in your Verdict?

Omnes. Yes.

Cl. of Arr. Who ſhall ſay for you?

Omnes. Foreman.

Cl. of Arr. Spencer Cowper, hold up thy Hand, *(which he did)* Look upon the Priſoner; How ſay you? Is he guilty of the Felony and Murther whereof he ſtands Indicted, or not guilty?

Foreman. Not guilty.

[*In like Manner the Jury did give their Verdict, that* John Marſon, Ellis Stevens, *and* William Rogers, *were not guilty.*]

The TRYAL of Mary Butler alias *Strickland,*

At *Juſtice-Hall* in the *Old-Baily*, in *London*, on the 12th Day of *October*, 1699.

Cl. of Arr. CRYER *Mary Butler* to the Bar.

Accordingly ſhe was brought.

Mary Butler *alias* Strickland, *you ſtand Indicted by the Name of* Mary Butler *alias* Strickland, *late of* London, *Widow, for that you endeavouring, and maliciouſly intending, to deceive and oppreſs Sir* Robert Clayton, *Knight and Alderman of* London, *the firſt Day of* December, *in the Seventh Year of his now Majeſty's Reign, at* London *aforeſaid, in the Pariſh of St.* Mary Woolnoth, *in the Ward of* Langborne, *a certain falſe Writing, ſealed in Form of a Bond, bearing Date the fourteenth Day of* April, 1687, *in the Name of the ſaid Sir* Robert Clayton, *for the Payment of the penal Sum of Forty Thouſand Pounds, to be made by the ſaid Sir* Robert Clayton *to you* Mary Butler *alias* Strickland, *with Condition there underwritten; concerning, among other Things, the Payment of Twenty Thouſand Pounds, to be made to you* Mary Butler *alias* Strickland, *after the Death of the ſaid Sir* Robert Clayton, *by his Heirs, Executors and Adminiſtrators; falſely, knowingly, unlawfully, and ſubtilly did make, counterfeit and write, and cauſe to be made, counterfeited and written: And further, That you* Mary Butler *alias* Strickland, *afterwards,* viz. *the firſt Day of* December, *in the ſeventh Year aforeſaid, at* London *aforeſaid, in the Pariſh and Ward aforeſaid, a certain falſe and forged Writing, ſealed in Form of a Bond, in the Name of the ſaid Sir* Robert Clayton, *for the Payment of the penal Sum of Forty Thouſand Pounds by the ſaid Sir* Robert Clayton, *to you* Mary Butler *alias* Strickland, *with Condition under-written, concerning, among other Things, the Payment of Twenty Thouſand Pounds, to be made to you* Mary Butler *alias* Strickland, *after the Death of the ſaid Sir* Robert Clayton, *by his Heirs, Executors, or Adminiſtrators, as a true Bond of the ſaid Sir* Robert Clayton, *as if really made by him; falſely, ſubtilly, and deceitfully, did publiſh, you* Mary Butler *alias* Strickland, *well knowing the ſaid Writing to be falſe, forged, and counterfeited, and not the Deed of the ſaid Sir* Robert Clayton, *to the great Damage of the ſaid Sir* Robert Clayton, *to the evil Example of all others in the like Caſe, offending againſt the Peace of our Sovereign Lord the King, his Crown and Dignity.*

Cl. of Arr. How ſay'ſt thou, *Mary Butler* alias *Strickland*, art thou guilty of this Forgery whereof thou ſtands Indicted, or not guilty?

Priſoner. Not guilty.

Cl. of Arr. Priſoner, look to your Challenges. Cryer, ſwear the Jury, which follow.

JURY Sworn.

William Clark,	*George Ludlam,*
William Chriſtopher,	*Richard Kemble,*
Thomas Wharton,	*John Clarke,*
George Kimble,	*Stephen Broughton,*
James Church,	*Joſeph Sheppard,*
John Whiſtler,	*Thomas Wickham.*

Cl. of

Cl. of Arr. You of the Jury that are ſworn, look upon the Priſoner, and hearken to her Cauſe. She ſtands indicted, *&c.*

Mr *Mountague.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, this Indictment does charge the Priſoner at the Bar, *Mary Butler*, alias *Strickland*, with a Fraud and intended Cheat. It ſets forth, That the Priſoner at the Bar, intending to cheat Sir *Robert Clayton*, did counterfeit a certain Writing, purporting to be the Bond of Sir *Robert Clayton* for Payment of Twenty Thouſand Pounds, and that it was to be paid to the ſaid *Mary Butler*, alias *Strickland*, after the Death of the ſaid Sir *Robert Clayton*. Likewiſe, that ſhe did publiſh this Writing as Sir *Robert Clayton*'s Deed. To this Indictment ſhe has pleaded not guilty. If we prove the Fact, I do not queſtion but you will find her guilty, that ſhe may have her due Puniſhment.

Mr Serj. *Wright.* My Lord, I am of Council for the King in this Cauſe. You hear what ſort of Crime it is that is charged on the Priſoner. It is for Forging a Bond of no leſs Penalty than Forty Thouſand Pounds, for the Payment of Twenty Thouſand Pounds. This is made in the Name of Sir *Robert Clayton*, and the twenty Thouſand Pounds were to be paid a little after his own Death, by his Executors or Adminiſtrators: And that in the mean time twelve Hundred Pounds a Year were to be paid for the Intereſt of this Sum. But my Lord, the Priſoner did not reſt here; (a Second Contrivance will be opened to you.) That which ſhe is now charged with, is the forging of a Bond of the Penalty of Forty Thouſand Pound.

My Lord, the Priſoner for ſome Years had a great Intimacy with a great Peer, the late Duke of *Buckingham.* And ſhe either had, or pretended to have, a Bond from him for Five Thouſand Pounds, payable to her ſelf after his Death, and an Annual Intereſt in the mean time, till the Principal was paid. Sir *Robert Clayton* being a Truſtee of the Duke's Eſtate for the Payment of his Debts, the Priſoner came frequently to Sir *Robert Clayton*, to ſollicite his Favour and Intereſt for the Payment of this Debt. On this Account ſhe inſinuated her ſelf into his Company and into his Family. Sometimes ſhe pretended to be a great Penitent, and that ſhe was ſorry for the Converſation ſhe had with the Duke, that her own Relations were Papiſts, and if ſhe ſhould go to them, they would ſend her into a Nunnery. All which was but Counterfeit; and in order to win upon Sir *Robert Clayton*, and he finding ſhe was an ill Woman, notwithſtanding all her Pretences, he at laſt, about twelve Years ago, forbid her his Houſe, and ſince that ſhe never was there.

About the Year 1695. Sir *Robert Clayton* had ſome private Intimation given him, that the Priſoner had a great Demand on him, no leſs than Twenty Thouſand Pounds. Upon this Sir *Robert Clayton* took the beſt Courſe he could to find it out, and exhibited a Bill in *Chancery* againſt her, and ſome of her Accomplices, to diſcover whether they had any Pretences upon him or his Eſtate. To this Bill the Priſoner put in an Anſwer, that ſhe had no Claim or Demand againſt him upon any Account whatſoever. While this was in agitation, the Priſoner came to Mr *Woodward*, an Attorney of this City, and brought him a Writing, purporting a Bond, with the Name *Robert Clayton* ſubſcribed to it, ſealed and atteſted by four Witneſſes, as the Bond of Sir *Robert Clayton*; and told Mr *Woodward*, "That Bond was "given to her by Sir *Robert Clayton*, upon ſome "good Conſiderations; but it having taken Air, "ſome Uneaſineſs had ariſen about it in Sir *Robert* "*Clayton*'s Family; and (as ſhe pretended) upon "this Account he had exhibited a Bill in Equi- "ty againſt her, therefore this Bond muſt be de- "livered up; and Sir *Robert* had promiſed to "give her a new Bond for Twenty Thouſand "Pounds, and that all the Money in Arrears for "Intereſt, was to be turned to Principal, and "put into the new Bond. But this was to be done "very privately, ſo as not to be known by any "of Sir *Robert Clayton*'s Family, and therefore "none of his Servants were to be privy to it." Thereupon ſhe gives to Mr *Woodward* the Bond, deſiring him to make a new Bond by it, and to turn all the Intereſt that was due into Principal. Upon this Mr *Woodward* made her a Bond of the Penalty of Fifty Four Thouſand Pounds Conditioned, for Payment of Twenty Seven Thouſand Pounds after Sir *Robert Clayton*'s Death, and Intereſt in the mean time. This Bond ſhe took away with her, and likewiſe the firſt Bond; but what ſhe did with them ſince we are not privy to. And a great Charge ſhe laid upon Mr *Woodward*, to carry it with all poſſible Privacy, that no notice might be taken in Sir *Robert*'s Family.

Some few Months ago there was another Intimation ſent to Sir *Robert Clayton*, that this Gentlewoman pretended to have a great Claim upon him of a great Sum of Money that was to be paid her, either at preſent, or after his Death; and that Mr *Woodward* made the Bond, and he could give an Account of it. Upon this Sir *Robert Clayton* ſent to Mr *Woodward*, who like a very honeſt Man, told the whole Buſineſs, in what manner it was the Priſoner came to him, and how he came to make the Bond; and that he was deſired to be ſilent in it, Sir *Robert Clayton* having deſired this Bond ſhould be made out of his own Houſe, that none of his Family might take notice of it.

Sir *Robert Clayton* having this notice, and finding from Mr *Woodward*, the Priſoner had taken this Courſe to carry on this Deſign to charge his Eſtate, he got a Warrant from the Lord Chief Juſtice to have her before him, to be examined before his Lordſhip. Where being brought, ſhe upon her Examination, has confeſs'd the whole Matter, her having the firſt Bond, and where it was made. What is become of the latter Bond, we cannot get out of her, nor whether ſhe ever affixed the Name of Sir *Robert Clayton* to that. But we will produce credible Witneſſes to prove her guilty of Forging the firſt Bond for the Payment of Twenty Thouſand Pounds; and that it had the Name and Seal of Sir *Robert Clayton* affix'd to it, and that ſhe affirmed it to be a good Bond, well executed by Sir *Robert Clayton*, and that there was Intereſt due upon it from Sir *Robert Clayton*, and that the Intereſt was in the Second Bond to be turned into Principal. We will call Witneſſes to prove this, and then I hope ſhe ſhall have ſuch Puniſhment as ſhe deſerves.

Mr *Northey.* My Lord, What the Nature of our Evidence will be, I ſhall inform you. It cannot be expected from us to produce the Bond, for that ſhe carried away from Mr *Woodward*, ſo that we cannot give the Writing it ſelf in Evidence; but if ſhe inſiſt on it, we hope ſhe will produce the Bond. We have the Copy (taken by Mr *Woodward*) of the firſt Bond, which he had from her, that he might draw the Second Bond by it. But we can

prove

prove from that which agrees with our Record, that ſhe affirmed, that the firſt Bond that ſhe produced was Sir *Robert Clayton*'s; That that Bond which ſhe produced, of which this is the Copy, ſhe affirmed to be Sir *Robert Clayton*'s Deed. We ſhall do that, and afterwards prove her publiſhing it: For our Indictment is againſt her for Forging a Bond, and publiſhing that forged Bond, knowing it to be ſuch; and cloſe all with her own Confeſſion. And, my Lord, there is this to ſhow there could be nothing in the Bond, that from the Time ſhe pretended to have this Bond, when ſhe was to have Twelve Hundred Pounds a Year, ſhe remained a Priſoner all that time, and got her ſelf out by ſwearing ſhe was not worth Five Pounds in all the World. Call Mr *Woodward*, (*who appeared and was ſworn.*)

Mr Serj. *Wright*. Mr *Woodward*, you hear what the Charge is, pray give an Account of what you know in reference to it.

Mr *Woodward*. My Lord, Mrs *Butler* has been my Client many Years. About two or three Years ago, more or leſs, Mrs *Butler* came to me, and brought me a Bond; ſhe gave it me to peruſe, and told me another muſt be drawn by it. When I had peruſed the Bond, I found it was ſigned *Robert Clayton*, and four Witneſſes Names ſet to the Bond. It was a Bond of the Penalty, as I remember, of Forty Thouſand Pounds, and I think it was in the Year 1687, for to pay, I think, Twelve Hundred Pounds a Year, by four quarterly Payments Yearly, during Sir *Robert Clayton*'s Life. And twenty Thouſand Pounds within ſix Months after his Death. There were ſome other Things in that Bond, which will appear by the Copy, which indeed I did take: For Mrs *Butler* deſired it might be a Secret, being of a very great Concern. And I asked her why ſuch a Bond ſhould be given, I thought it muſt be great Generoſity, and not for Money lent. But ſhe told me the Forty Thouſand Pound Bond was to be delivered up to Sir *Robert*. I asked her why, ſince ſhe had it, ſhe did not keep it; ſhe ſaid, that he would give her another Bond. She told me it had taken Air, and my Lady *Clayton* had ſome Diſquiet about it; and for my Lady's Satisfaction, a Bill in *Chancery* was exhibited againſt her, to which ſhe was to put in her Anſwer, and thereby diſclaim any ſort of Bond, or Intereſt, or any Pretence that ſhe had upon Sir *Robert Clayton*.

Mr Serj. *Wright*. She told you this her ſelf?

Mr *Woodward*. Yes, and when ſhe gave me the Bond, ſhe told me it was Sir *Robert Clayton*'s Bond, or to that Purpoſe. But there being about nine or ten Years Arrears of Intereſt, ſhe deſired me to caſt up the Intereſt that was in Arrear, and that it might be put to the Principal in the new Bond; ſaying, That Sir *Robert* would give her a Bond for the whole together.

Serj. *Wright*. Was the whole Intereſt pretended to be in Arrear?

Mr *Woodward*. I cannot ſay all the Intereſt.

Mr Serjeant *Wright*. How did you compute it, from the Date of the Bond, or from what ſhe told you?

Mr *Woodward*. She ſaid ſhe had received ſome Money, and I computed the reſt, rather under than over, and ſo made the Intereſt to come to Seven Thouſand Pounds, (the Intereſt payable by the Bond, being twelve Hundred Pounds a Year.) Whereupon ſhe deſired I would draw a Bond for it my ſelf; and accordingly ſhe left the firſt Bond with me. I took ſome time, and drew it; and made the Penalty thereof Fifty Four Thouſand Pounds, conditioned for the Payment of Twenty Seven Thouſand Pounds. And it was to be made in the ſame Nature as the former was, in reſpect of the Principal, and in the mean time to continue the Payment of the Intereſt Yearly, by proportionable Quarterly Payments.

Mr *Mountague*. What Diſcourſe had you with her about it?

Mr *Woodward*. I did draw a Bond, and did take notice, That whereas Sir *Robert Clayton* had given her this Bond of Forty Thouſand Pounds, and at his Requeſt, ſhe had delivered it up to him; and upon an Account ſtated, there did remain Seven Thouſand Pounds in Arrears for Intereſt, which in all, amounted to Seven and Twenty Thouſand Pounds, or thereabouts; when I gave it her, I ſaid, It is a very great Sum, it concerns you to have Witneſſes of Credit, for no Body will believe Sir *Robert Clayton* did give you this Bond, eſpecially after his Death, unleſs it be very well atteſted. I told her, if ſhe pleaſed, I would go and be a Witneſs for her to ſee it executed. So ſhe went away. And when ſhe came to me again, ſhe told me, that Sir *Robert* knew me very well, but did not think fit to have me for a Witneſs. I anſwered, I do not care; but it being a very great Sum, take care it be well executed. I gave her both the Bonds, and from that time heard no more of it till about two Months ſince.

Mr *Northey*. Was there any Body came to diſcourſe with you of making a new Bond, beſides her ſelf?

Mr *Woodward*. Not that I know of, I do not remember any. It was an extraordinary Sum, I did take a Copy of the Bond.

Mr *Northey*. Have you it here?

Mr *Woodward*. Yes, I have it here.

Mr *Northey*. He ſwears he took a Copy of it, and delivered it to the Priſoner again. We deſire it may be read.

Mr *Mallet*. Is it a true Copy?

Mr *Woodward*. I cannot ſay I examined it.

Mr *Northey*. Did you write it from the Bond?

Mr *Woodward*. I did.

Mr *Northey*. Do you believe it is a true Copy?

Mr *Woodward*. I believe it is. The Reaſon why I did not examine it, was becauſe it was to be a Secret.

Mr *Mallet*. Do you look upon your ſelf to be infallible?

Mr Serj. *Wright*. Had you any Direction from the Priſoner to take a Copy?

Mr *Woodward*. I cannot ſay that.

L. C. J. *Holt*. Why did you write it out, for your Direction to draw the new Bond?

Mr *Woodward*. I did write it out, becauſe it is a ſpecial Condition, more than is uſual in Bonds: For it is expreſſed, that there ſhould be no Proſecution againſt her by Sir *Robert Clayton*, or his Executors, either at Law, or in Equity, for the 20000 *l.* or the Intereſt, or to do any Act to obſtruct her in receiving the ſame.

L. C. J. *Holt*. When did you take a Copy of it?

Mr *Woodward*. At the ſame time, and before I returned it.

L. C. J. *Holt*. Did you make the New Bond by this Copy, or by the former Bond?

Mr *Woodward*. Very likely I might uſe both.

L. C. J. *Holt*. Did you keep them both?

Mr *Woodward*. I did keep them both by me till I delivered the new Bond.

Mr

Mr Serj. *Wright*. Is the Copy your own Hand writing?

Mr *Woodward*. Yes.

Mr *Mountague*. What did you take it from?

Mr *Woodward*. From the Original.

Mr *Wright*. And do you take that to be a true Copy?

Mr *Woodward*. I believe it is a true Copy.

Mr *Hall*. Did you read it over at that time?

Mr *Woodward*. I did read it over.

L. C. J. *Holt*. Did you write it?

Mr *Woodward*. I did write it.

Mr *Mallet*. And did you examine it afterward?

Mr *Woodward*. No, I did not examine it, it was not to be taken notice of.

Mr *Hall*. Can you say you read it carefully over at that time?

Mr *Cutts*. It may not be the very same Bond, if he did not examine it by the Original, signed by Sir *Robert Clayton*.

Mr *Northey*. They may show that Bond.

Mr *Mallet*. Did the Prisoner bring the Bond to you, of which this is the Copy, and tell you this was her Bond?

Mr *Northey*. We will prove it by her own Confession.

Mr *Mallet*. If it be not the same Bond, she cannot be convicted.

Mr *Northey*. No doubt of it.

Mr Serj. *Wright*. Produce the Copy; and if your Lordship please, it may be read.

L. C. J. *Holt*. Let it be read.

NOverint Universi per presentes me Robertum Clayton, *Militem & Decurionem Anglice, Kt. & Alderman de London, teneri & firmiter obligari* Mary Butler, *alias* Strickland, *de South-street in parochia de Edmonton, in Comitatu Middlesex. vidue Quadraginta mille libris bone & legalis monet' Anglie solvend' eidem* Mary Butler, *alias* Strickland, *aut suo certo Attornat' Executor' vel Administrator' suis, ad quam quidem solutionem bene & fideliter faciendam obligo me heredes Executores & Administratores meos, firmiter per presentes Sigillat' dat' decimo quarto die Aprilis, Anno Regni Domini nostri Jacobi Secundi Dei Gratia Anglie, &c. Regis tertio Annoq; Domini*, 1687.

THE Condition of this Obligation is such, That if the above bounden Sir *Robert Clayton*, or his Assigns, do, and shall well and truly pay, or cause to be paid unto the above-named *Mary Butler*, alias *Strickland*, her Executors, Administrators, or Assigns, or any of them, yearly and every Year, during the Term of his natural Life, the full and just Sum of 1200 *l.* of Lawful Money of *England*, by four equal quarterly Payments, being the just and legal Interest; to grow due of, and for the Principal Sum of Twenty Thousand Pounds hereinafter-mentioned, in Manner and Form following, that is to say, 300 *l.* on the 14th of *July* next ensuing the Date of these Presents, 300 *l.* on the Fourteenth of *October* next coming; 300 *l.* on the 14th of *January*, which shall be in the Year of our Lord, 1688. and 300 *l.* on the 14th of *April* following; and so on every the said 14th Day of the said Months in every Year, one next, and consequently coming after another the like Sum of 300 *l.* during the Time and Term of the natural Life of the said Sir *Robert Clayton*: And also, if the Heirs, Executors and Administrators of the said Sir *Robert Clayton*, do, and shall, on or before the End and Expiration of Six Months next after the Death or Decease of him the said Sir *Robert Clayton*, not only well and truly pay, or cause to be paid unto the said *Mary Butler*, alias *Strickland*, her Executors, Administrators, or Assigns, the full and just Sum of Twenty Thousand Pounds of Lawful Money of *England* above expressed; but also all such Interest thereof, after the Rate aforesaid, as shall be in Arrear and unpaid at the Death of the aforesaid Sir *Robert Clayton*, and also all such as shall grow due to be paid for the same, for so long time of the said six Months as the said Sum of 20000 *l.* shall be unsatisfied and unpaid after the Death or Decease of the said Sir *Robert Clayton*, without Coven, Fraud, or Deceit; nor shall not commence any Suit either in Law or Equity, against the said *Mary Butler*, alias *Strickland*, her Heirs, Executors, or Administrators, for, concerning, or in respect of the said 20000 *l.* and Interest, or any Part thereof; and shall not do any Act or Thing, to obstruct, molest, or hinder her, them, or any of them, from receiving, having, or enjoying the same, then this Obligation to be void, and of none Effect, or else to remain in full Force,

Robt. Clayton.

Sealed and delivered in
the Presence of us,

J. Pennington,
Edw. Spencer,
John Hebden,
Eliz. Rivers.

Mr Serj. *Wright*. Did the Prisoner bring you the Bond, of which this is a Copy, as a true Bond?

Mr *Woodward*, Yes, my Lord.

Mr Serj. *Wright*. I ask you this, had you a Charge from her to keep this Matter secret?

Mr *Woodward*. Yes; and that I would write the Bond with my own Hand.

Mr Serj. *Wright*. She giving you this Charge, how came this Matter to be known then?

Mr *Woodward*. Mr *Nicholas Baker* came to me from Sir *Robert Clayton*, and asked me if I did not know the Prisoner, and particularly about a Bond, and whether I did not make one for her. It was not in my Memory at first, till further Discourse occasioned me to remember it, and I told him that I did do some Business for her. He told me Sir *Robert Clayton* had some Information given him, that there was such a Bond drawn by me. Then I told him, I did remember there was such a Bond brought to me, and that I had made a Bond for Mrs *Butler*, and had taken a Copy of the first Bond, which I had by me; and also of the second Bond, in which I had left out a material Word in the Obligation, and was fain to write it over again, and had the first Draught by me till about a Month before that time, when meeting with it among my Papers, I threw it into the Fire in my Closet, but this Copy did remain by me.

Mr *Hall*. You say this Copy is all your own Hand-writing?

Mr *Woodward*. Yes it is.

Mr *Hall*. Was it Sealed, or Cancell'd?

Mr *Woodward*. No, it was sealed, I am very positive.

Mr

Mr *Hall.* Are you positive the Seal was on it at that Time?

Mr *Woodward.* Yes, Sir.

Mr *Mallet.* Did she tell you that Bond was to be Cancell'd?

Mr *Woodward.* She told me she was to deliver up that Bond to Sir *Robert Clayton*, and that he would give her another instead of it.

Mr *Mallet.* Was the Bond then delivered up, or no?

Mr *Woodward.* I cannot say she did.

Mr *Cutts.* Did you never hear of any Bill in *Chancery?* To what end was this Bond delivered to you, for what Reason?

Mr *Woodward.* I asked her why the Bond was to be delivered up, and she told me there was some Uneasiness, in the Family, and my Lady *Clayton* had got the Air of it; and therefore to satisfie her, there was a Bill preferr'd against her in *Chancery*, and she was to put in her Answer; and that he would give her another Bond, and that was to be delivered up.

Mr *Northey.* We have other Witnesses to prove the Forging of it. Call Mr *Baker*, *(who appeared and was Sworn.)*

Mr *Serj. Wright.* Mr *Baker*, were you present when the Prisoner Mrs *Butler* was before my Lord Chief Justice concerning this Bond? Look on that Copy.

Mr *Baker.* I was present at my Lord Chief Justice's Chamber, when the Prisoner was brought before his Lordship; and she did there acknowledge that the Bond of which she was accused she had ordered to be made.

Mr *Serj. Wright.* Was that the Bond in Question?

Mr *Baker.* Yes, she did confess she caused Sir *Robert Clayton*'s Name to be set to it, and the Witnesses Names, and that it was done by one Mr *Lewkar*, a Scrivener, in *Bishopsgate-street.*

Mr *Serj. Wright.* She said so.

Mr *Baker.* Yes, Sir.

Mr *Hall.* Did she confess it? Where was it?

Mr *Baker.* At my Lord Chief Justice's Chamber, she confest it was her own Act, she caused it to be made, and directed the Scrivener to set Sir *Robert Clayton*'s Name, and the Witnesses Names to it.

Mr *Mallet.* Was there not at that Time a Discourse of a Bond that she had on the late Duke of *Buckingham?*

Mr *Baker.* I cannot be positive in that; but this was the Fact she was charged with, and she did confess that she caused it to be done, and that the Persons as Witnesses were innocent of it, and that she did direct Mr *Lewkar* to set Sir *Robert Clayton*'s Name to it.

Mr *Hall.* How do you know this is the very same Bond?

Mr *Baker.* Mr *Woodward* showed me this very Bond, when I went to him from Sir *Robert Clayton*, to know whether he was acquainted with the Prisoner; who after some Discourse with him relating to this Bond, he very frankly and ingenuously told me the whole Matter of Fact, as he has done here.

Mr *Mallet.* But we ask you about her Confession, did you shew her that Copy? Did she confess that?

L. C. J. *Holt.* What was the Discourse of, at that Time?

Mr *Baker.* It was about the Bond of forty thousand Pounds, with which she was charged before your Lordship, to have counterfeited.

Mr *Northey.* Did he give an Account then of this Bond?

Mr *Baker.* Yes, Mr *Woodward* produced this Copy before my Lord Chief Justice, and she owned she had ordered Mr *Lewkar* to make it, and to put Sir *Robert Clayton*'s Name to it.

Mr *Serj. Wright.* Now, my Lord, we will show you that she is going on still, and that very lately she has owned it, and that she is going about to make the Bond of fifty thousand Pounds a very good Bond.

Mr *Mallet.* When it is in Question, you may then invalidate it.

Mr *Serj. Wright.* Mr *Woodward* has told you he did make the Bond of fifty four thousand Pounds. But I think we have no need of it.

Mr *Hall.* They have failed in the Indictment, so that it cannot be supported by this Bond; it should be laid specially, according to the Condition of the Bond to be paid: For it is a Bond of forty thousand Pounds, to be paid by his Heirs after his Death twenty thousand Pounds. Now the Bond, whereof they produce a Copy, is of other Things.

Mr *Northey.* It is for the same.

Mr *Hall.* It is a different Thing.

L. C. J. *Holt.* Not at all.

Mr *Mallet.* It is laid in the Indictment to be paid by Sir *Robert Clayton.* In the Bond it is said it is not to be paid till after his Death.

Mr *Serj. Wright.* It is laid in the Indictment, that the Bond was of the Penalty of forty thousand Pounds to be paid by Sir *Robert Clayton*, with Condition thereto underwritten concerning, among other Things, the Payment of twenty thousand Pounds to the Prisoner, after the Death of *Sir Robert Clayton*, by his Executors.

L. C. J. *Holt.* Let your Exceptions proceed from the Indictment, it is to be paid after the Death of Sir *Robert*, by his Executors.

Mr *Serj. Wright.* Have you any more to say for your selves?

Mr *Hall.* We have a great many Witnesses here to prove her Reputation. It is a strange Thing any one should go to forge a Bond on such an eminent Person.

L. C. J. *Holt.* It is strange indeed, but the Question is, whether it be not true.

Mr *Hall.* Her Confession is proved by Mr *Baker.* But we have many Witnesses as to her Reputation.

Mr *Mallet.* This Bond is not in the Indictment. The Bond of forty thousand Pounds is several Years since. Now there are two Bonds. Now that of fifty four thousand Pounds is not in this Indictment, and this of forty thousand Pounds is several Years since that it was shown to him. It is strange he should be so very exact, and yet did not examine it. And probably he might mistake in the Copy, and it may not be the very Bond in the Indictment. Now as to Mr *Baker*, it is true, we have a Bond of five thousand Pounds from the Duke of *Buckingham*, and we are sueing Sir *Robert Clayton* for this Money, and hope to have it, now after so many Years. And Sir *Robert Clayton* did prefer a Bill in *Chancery* against us, and we in Answer did disclaim having any such Bond. And now when we are like to have a Decree for this Sum against this Trustee of the Duke of *Buckingham*'s Estate, he comes and would take off our Credit in this Matter. We did in the Year 1695. disclaim any such Bond.

Mr *Northey.* Then you do admit that she owned the Bond.

Then her Witnesses were called.

Mr

Mr *Mallet*. Mr *Glover*, do you know Mrs *Butler?*

Mr *Glover*. Yes.

Mr *Mallet*. Give an Account of what you know, as to her Reputation.

Glover. I have known her fifteen or ſixteen Years. All that I know of her is fair and clear.

L. C. J. *Holt*. Where do you live?

Glover. In *Red-Lyon-ſtreet*.

L. C. J. *Holt*. What Profeſſion are you of?

Glover. I belonged to *Lincolns-Inn*.

L. C. J. *Holt*. A Gentleman of *Lincolns-Inn*.

Glover. I was brought up at the Univerſity, but have not reſided there lately.

L. C. J. *Holt*. How do you live? Are you a Houſe-keeper?

Glover. I live privately at preſent.

L. C. J. *Holt*. Who knows you?

Glover. I cannot tell who knows me here. I believe Mr *Northey* does.

Mr *Northey*. I do not intend to give any Character of you, I do not uſe to give Characters of my Clients.

L. C. J. *Holt*. How long have you lived in *Red-Lyon-ſtreet?*

Glover. Ten or Eleven Years.

Mr *Mallet*. How did ſhe live?

Glover. I knew her live in *Devonſhire-Square* very reputably, I always thought ſo.

Mr *Serj. Wright*. Had ſhe any Eſtate of her own?

Glover. I cannot ſay ſo certainly, it was thought ſo. She paid every Body very punctually.

Mr *Hall*. Acquaint my Lord how long you have known her, and whether you think ſhe would be guilty of ſuch a Forgery.

Glover. I have known her fourteen or fifteen Years, I cannot believe ſhe would.

Mr *Mountague*. Have you heard the Evidence?

Glover. Yes.

Mr *Mountague*. What do you think of it then?

Glover. I know not what to think.

Mr *Mountague*. Do you think ſhe would confeſs her ſelf guilty of a Forgery, if ſhe were not?

Glover. I cannot tell what to ſay to that. I ſuppoſe no Body would confeſs, if they were not guilty.

Mr *Serj. Wright*. Do you know one *Hebdon?*

Glover. I know *Hebdon*.

Mr *Serj. Wright*. He is a Witneſs to the Bond. Was he Sir *John Hebdon*'s Son?

Glover. I can give no Account of that, but he has had a very honourable Character.

Mrs Rodum *called, and appeared.*

Mr *Hall*. Mrs *Rodum*, do you know Mrs *Butler?*

Rodum. Yes.

Mr *Hall*. How long have you known her?

Rodum. Five or Six Years.

Mr *Hall*. What do you know of her Character?

Rodum. I am the Widow of one of them that kill'd one another by the *Temple*. I never knew of any Bond, nor ever heard her lay claim to any ſuch Bond. She lived in good Reputation. She was in my Houſe when my Husband was killed. She lived in my Houſe about a Year, I never heard ſhe made any ſuch Pretenſion. She lived honeſtly and decently. She owes me upwards of three hundred Pounds.

L. C. J. *Holt*. For what? How came ſhe to owe you three hundred Pounds?

Rodum. I kept a Shop in the *Exchange*, and my Husband was a Broker. She owed it me partly for Goods out of my Shop, and partly for Goods out of *Scotland*. He was killed about half a Year agoe, and I have kept the Shop ſtill. About three or four Months agoe ſhe left me, and I never heard of any Bond.

Mr *Serj. Wright*. Did you never hear of a Bill in *Chancery* againſt her?

Rodum. No Sir.

Mr *Mallet*. Did you hear of any Money that was due to her from the Duke of *Buckingham?*

Rodum. I was told ſhe was ſueing Sir *Robert Clayton* for Money that was to be paid her on the Duke of *Buckingham*'s Account, and upon the Credit of that I truſted her.

Shaw *called.*

Mr *Hall*. How long have you known Mrs *Butler?*

Shaw. About ſixteen Years.

Mr *Hall*. Do you think ſhe would Forge a Bond?

Shaw. Indeed I cannot give any Account of that.

Mr *Hall*. How has ſhe behaved her ſelf?

Shaw. I never knew her guilty of any Rudeneſs.

Mr *Serj. Wright*. Put up more Witneſſes, if you have any.

Mr *Hall*. We have done.

L. C. J. *Holt*. Mrs *Butler*, will you ſay any Thing for your ſelf?

Mrs *Butler*. I am altogether Innocent in the Matter, I never wrong'd Sir *Robert Clayton*, nor any Body elſe, in my Life.

L. C. J. *Holt*. Gentlemen of the Jury, This Mrs *Butler*, alias *Strickland*, ſtands indicted for forging a Bond in the Name of Sir *Robert Clayton*, in the Penalty of forty thouſand Pounds, the Condition for the Payment of twenty thouſand Pounds, among other Things, within ſix Months after the Death of Sir *Robert Clayton*. And alſo, That ſhe did publiſh this Bond as the true Bond of Sir *Robert Clayton*. You have heard what Evidence has been given, to prove her guilty of this Forgery, and the Publication of it.

It ſeems, ſome Time ſince, as is proved to you by Mr *Woodward*, this Gentlewoman came to him with this Bond of forty thouſand Pounds. And it was upon this Account, as ſhe ſaid: To wit, Sir *Robert Clayton* having given her this Bond, it had taken Air, and was come to the Lady *Clayton*'s Ear; which occaſioned ſome Difference between Sir *Robert Clayton* and his Lady. She ſaid, That this Bond, by Direction from Sir *Robert*, was to be delivered up to him to be Cancell'd; and that Sir *Robert Clayton* had engaged to enter into a new Bond in the Penalty of fifty four thouſand Pounds, for the Payment of twenty ſix thouſand Pounds (there being at that Time ſuppoſed an Arrear of Intereſt for twenty thouſand Pounds.) payable after Sir *Robert*'s Death, and Intereſt in the mean Time. She delivered this Bond to Mr *Woodward*. He takes a Copy of it, which is produced and read. And ſo, according to her Direction, Mr *Woodward* does draw another Bond, with the Penalty of fifty four thouſand Pounds. And ſhe then told Mr *Woodward* Sir *Robert* would ſeal this Bond upon the Delivery up of the Bond of forty thouſand Pounds. Mr *Woodward* having conſidered, that it was an extraordinary Sum for Sir *Robert* to engage himſelf in, and he being a very conſiderable Man, he adviſed her to have this new Bond well atteſted; and to be ſure to get Witneſſes of unqueſtionable Credit to ſee it executed. And thereupon he offered himſelf to go with her to Sir

Robert, to be a Witneſs to this new Bond. No, ſays ſhe, Sir *Robert* is not willing that this ſhould be known, you are not a proper Perſon to be a Witneſs to it; therefore, ſays ſhe, I will get ſome other Witneſſes to atteſt it. Whereupon he gives her this firſt Bond for forty thouſand Pounds, which ſhe brought to him, for the Payment of twenty thouſand Pounds, and gave her alſo the Draught of the new Bond. He ſays, this Bond that ſhe brought to him, was atteſted by four Witneſſes. Sir *Robert*, it ſeems, upon her Anſwer in *Chancery*, not imagining any Thing of this, ſhe having diſclaimed in *Chancery* the having of any; ſome Time after he had heard a Report as if ſhe was ſetting up of a new Bond, and that Mr *Woodward* could give an Account of it. Wherefore he ſends Mr *Baker* to Mr *Woodward*, who gave him the ſame Account that he has done here. Then Sir *Robert* makes a Complaint, and has her brought before me; and there was Mr *Woodward* with this Copy. And this was objected to her, as if ſhe had forged this Bond. And it ſeems, when ſhe was there under Examination, as is proved to you by Mr *Baker*, ſhe did plainly confeſs, that ſhe had forged this Bond of forty thouſand Pounds, and that ſhe had procured one *Lewkar* to do it for her, who ſet Sir *Robert*'s Name to it: and ſaid, that the Witneſſes, whoſe Names were ſet to it, were innocent, and knew nothing of the Matter.

Now what is ſaid for her on the other Side? They bring ſome Perſons for her, that ſay they have known her. One, that ſays he belonged to *Lincolns-Inn*, and had been acquainted with her fourteen or fifteen Years, and did look upon her as a civil Woman; and for his Part, he does not believe ſhe would be guilty of ſuch a Forgery. Another, who is a Woman, ſays ſhe has known her ſome Time, and ſhe ſays, ſhe has truſted her much, and did never hear her ſay any Thing of this Bond, but ſhe behaved her ſelf civilly, and ſhe took her to be a very ſober Perſon. Another Witneſs ſays, ſhe look'd on her to be a very honeſt Perſon. This is the Sum of the Evidence.

There is a very ſtrong Evidence to induce you to believe that ſhe did forge the Bond. Such a Bond ſhe had, that is plain. She does give no Account what is become of it; and ſhe does not ſhow any manner of Pretence of having ſo much Money from Sir *Robert Clayton* due to her, ſhe does not make it appear why Sir *Robert* ſhould give her a Bond upon any Account. Now for any to ſay that they knew her, and they do not believe ſhe would forge a Bond, that is no Evidence; no Body ought to believe Ill of Mrs *Butler*, or any one elſe, unleſs it be made to appear. But the Queſtion is not, what they do believe; but whether the Matter be not proved to you to your Satisfaction, that ſhe has forged this Bond. And if you are ſatisfied that ſhe did forge it, you ought to find her guilty; and if you do not believe the Evidence to be ſatisfactory, you ought to acquit her.

Then the Jury withdrew, and being returned, gave their Verdict as follows.

Cl. of Arr. Are you agreed of your Verdict?

Jury. Yes.

Cl. of Arr. Who ſhall ſay for you?

Jury. Foreman.

Cl. of Arr. Bring *Mary Butler* to the Bar. How ſay ye? Is the Priſoner at the Bar guilty of the Forgery whereof ſhe ſtands Indicted, or not guilty?

Foreman. Guilty.

The Judgment which the Court pronounced againſt her was, That ſhe ſhould pay a Fine of five hundred Pounds to the King, and continue in Priſon till ſhe paid it.

The TRYAL *of* Captain WILLIAM KIDD, *for Murther and Piracy, upon Six ſeveral Indictments.*

Publiſhed by AUTHORITY.

As alſo, The TRYALS *of* Nicholas Churchill, James Howe, Robert Lamley, William Jenkins, Gabriel Loff, Hugh Parrot, Richard Barlicorn, Abel Owens, *and* Darby Mullins, *at the ſame Time and Place for* PYRACY.

At the Admiralty Seſſions held at the Old-Baily, London, *on the 8th, and 9th of* May, 1701.

THE *King's Commiſſion for holding the Court being firſt read, the Court proceeded to call the Gentlemen ſummoned upon the Grand Jury, and the Perſons Sworn were theſe Seventeen following,* viz.

William Broughton,	*Stephen Thompſon,*
Thomas Hanwell,	*Thomas Cooper,*
Daniel Borwell,	*Robert Gower,*
Humphry Bellamy,	*Robert Clement,*
Nath. Rolſton, Senior,	*Thomas Seſſon,*
Joſhua Bolton,	*William Goodwin,*
Benjamin Pike,	*Robert Callow,*
Joſeph Marlow,	*Thomas Haws.*
Benjamin Travis,	

Cl. of Arr. Gentlemen of the Grand Jury, ſtand together, and hear the Charge.

The King's Majeſty commands all Juſtices of the High Court of Admiralty, that have any Authority to take any Inquiſitions, Recognizances, Examinations, or Informations of Offences committed within the Juriſdiction of the Admiralty of England, *to deliver the Records of the ſame into this Court,* &c. *And all others are commanded to keep Silence upon Pain of Impriſonment.*

Then Dr Oxenden *gave the Charge to the Grand Jury, explaining the Nature of the Commiſſion, and the Crimes inquirable by vertue of it by the Grand Jury.*

Then the Grand Jury withdrew, and after ſome time returned into Court, and found the Bill of Indictment againſt Captain Kidd *for Murther, and another againſt him and* Nicholas Churchhill, James Howe, Robert Lamley, William Jenkins, Gabriel Loff, Hugh Parrot, Richard Barlicorn, Abel Owens, *and* Darby Mullins, *for Piracy. Then Proclamation (as uſual) being made, the foreſaid Priſoners were brought to the Bar, and Arraigned.*

Cl. of Arr. William Kidd, hold up thy Hand.

Kidd. May it pleaſe your Lordſhips, I deſire you to permit me to have Council.

Mr *Recorder.* What would you have Council for?

Kidd. My Lord, I have ſome Matter of Law relating to the Indictment, and I deſire I may have Council to ſpeak to it.

Dr *Oxenden.* What Matter of Law can you have?

Cl. of Arr. How does he know what it is he is charged with? I have not told him.

Mr *Recorder.* You muſt let the Court know what thoſe Matters of Law are, before you can have Council aſſigned you.

Kidd. They be Matters of Law, my Lord.

Mr *Recorder.* Mr *Kidd,* do you know what you mean by Matters of Law?

Kidd. I know what I mean, I deſire to put off my Tryal as long as I can, till I can get my Evidence ready.

Mr *Recorder.* Mr *Kidd,* You had beſt mention the Matter of Law you would inſiſt on.

Dr *Oxenden.* It cannot be Matter of Law to put off your Tryal, but Matter of Fact.

Kidd. I deſire your Lordſhip's Favour, I deſire Dr *Oldiſh* and Mr *Lemmon* may be heard as to my Caſe.

Cl. of Arr. What can he have Council for before he has pleaded?

Mr *Recorder.* Mr *Kidd,* The Court tells you, you ſhall be heard what you have to ſay when you have pleaded to your Indictment. If you plead to it, if you will, you may aſſign Matter of Law, if you have any; but then you muſt let the Court know what you would inſiſt on.

Kidd. I beg your Lordſhip's Patience till I can procure my Papers, I had a Couple of *French* Paſſes, which I muſt make uſe of in order to my Juſtification.

Mr *Recorder.* That is not Matter of Law. You have had long Notice of your Tryal, and might have prepared for it. How long have you had Notice of your Tryal?

Kidd. A matter of a Fortnight.

Dr *Oxenden*. Can you tell the Names of any Perſons that you would make uſe of in your Defence?

Kidd. I ſent for them, but I could not have them.

Dr *Oxenden*. Where were they then?

Kidd. I brought them to my Lord *Bellamont* in *New-England*.

Mr *Recorder*. What were their Names? You cannot tell without Book. Mr *Kidd*, the Court ſees no Reaſon to put off your Tryal, therefore you muſt plead.

Cl. of Arr. *W. Kidd*, hold up thy Hand.

Kidd. I beg your Lordſhips I may have Council admitted, and that my Tryal may be put off, I am not really prepared for it.

Mr *Recorder*. Nor never will if you could help it.

Dr *Oxenden*. Mr *Kidd*, You have had reaſonable Notice, and you knew you muſt be tried, and therefore you cannot plead you are not ready.

Kidd. If your Lordſhip permit thoſe Papers to be read, they will juſtifie me. I deſire my Council may be heard.

Mr *Coniers*. We admit of no Council for him.

Mr *Recorder*. There is no Iſſue joined, and therefore there can be no Council aſſigned. Mr *Kidd*, you muſt plead.

Kidd. I cannot plead till I have thoſe Papers that I inſiſted upon.

Mr *Lemmon*. He ought to have his Papers delivered to him, becauſe they are very material for his Defence. He has endeavoured to have them, but could not get them.

Mr *Coniers*. You are not to appear for any one till he pleads, and that the Court aſſigns you for his Council.

Mr *Recorder*. They would only put off the Tryal.

Mr *Coniers*. He muſt plead to the Indictment.

Cl. of Arr. Make Silence.

Kidd. My Papers were all ſeized, and I cannot make my Defence without them. I deſire my Tryal may be put off till I can have them.

Mr *Recorder*. The Court is of Opinion, they ought not to ſtay for all your Evidence, it may be they may never come. You muſt plead, and then if you can ſatisfie the Court, that there is Reaſon to put off your Tryal, you may.

Kidd. My Lord, I have Buſineſs in Law, and I deſire Council.

Mr *Recorder*. Mr *Kidd*, The Courſe of Courts is, when you have pleaded, the Matter of Tryal is next; if you can then ſhow there is Cauſe to put off the Tryal, you may; but now the Matter is to plead.

Kidd. It is a hard Caſe, when all theſe Things ſhall be kept from me, and I be forced to plead.

Mr *Recorder*. If he will not plead there muſt be Judgment.

Kidd. My Lord, would you have me plead, and not have my Vindication by me?

Cl. of Arr. Will you plead to the Indictment?

Kidd. I would beg that I may have my Papers for my Vindication.

Cl. of Arr. *Nicholas Churchill*, hold up thy Hand.

Churchill. My Lord, I deſire I may have the Benefit of the Proclamation, I came in upon the King's Proclamation.

Mr *Recorder*. If you do not plead, the Court muſt paſs Judgment upon you. You can have no Benefit in what you ſay, till you have pleaded. If you were Indicted for Felony, and you will not plead, the Law takes it in Nature of a Confeſſion, and Judgment muſt paſs, as if you were proved guilty.

Cl. of Arr. *Nich. Churchill*, hold up thy Hand. *James How*, hold up thy Hand. *Robert Lamley*, hold up thy Hand. *(which they did.)*

Mr *Recorder*. *W. Kidd* has not held up his Hand.

Cl. of Arr. He does hold up his Hand. *William Jenkins*, hold up thy Hand. *Gabriel Loff*, hold up thy Hand. *Hugh Parrot*, hold up thy Hand. *Richard Barlicorn*, hold up thy Hand. *Abel Owens*, hold up thy Hand.

Owens. I came in upon the King's Proclamation, and entered my ſelf into the King's Service.

Mr *Recorder*. You muſt plead firſt, and then, if there be Occaſion, you will have the Benefit of it. *(Then he held up his Hand.)*

Cl. of Arr. *Darby Mullins*, hold up thy Hand.

Mullins. May it pleaſe your Lordſhips, I came in voluntarily on the King's Proclamation.

Mr *Recorder*. This is the ſame Caſe with *Owens*, you muſt ſpeak to that afterwards.

Cl. of Arr. *W. Kidd*, You ſtand Indicted by the Name of *William Kidd*, &c. Art thou guilty, or not guilty.

Kidd. I cannot plead to this Indictment, till my *French* Paſſes are delivered to me.

Cl. of Arr. Are you guilty, or not guilty?

Kidd. My Lord, I inſiſt upon my *French* Papers, pray let me have them.

Mr *Recorder*. That muſt not be now, till you have put your ſelf on your Trial.

Kidd. That muſt juſtifie me.

Mr *Recorder*. You may plead it then, if the Court ſee Cauſe.

Kidd. My Juſtification depends on them.

Mr *Recorder*. Mr *Kidd*, I muſt tell you, if you will not plead, you muſt have Judgment againſt you, as ſtanding mute.

Kidd. I cannot plead till I have theſe Papers, and I have not my Witneſſes here.

Mr *Recorder*. You do not know your own Intereſt; if you will not plead, you muſt have Judgment againſt you.

Kidd. If I plead, I ſhall be acceſſary to my own Death, till I have Perſons to plead for me.

Mr *Recorder*. You are acceſſary to your own Death, if you do not plead. We cannot enter into the Evidence, unleſs you plead.

Cl. of Arr. Are you guilty, or not guilty?

Mr *Recorder*. He does not underſtand the Law, you muſt read the Statute to him.

Cl. of Arr. Mr *Kidd*, are you guilty of this Piracy, or not guilty?

Kidd. If you will give me a little Time to find my Papers, I will plead.

Cl. of Arr. There is no Reaſon to give you Time; will you plead or not?

Mr *Coniers*. Be pleaſed to acquaint him with the Danger he ſtands in by not pleading. What ever he ſays, nothing can avail him till he pleads.

Mr *Recorder*. He has been told ſo, but he does not believe us.

Mr *Coniers*. If there be any Reaſon to put off his Tryal, it muſt be made appear after Iſſue is joined.

Mr *Recorder*. If you ſay guilty, there is an End of it; but if you ſay, not guilty, the Court can examine into the Fact.

Officer. He ſays he will plead.

Cl. of Arr. *W. Kidd*, art thou guilty, or not guilty?

Kidd. Not guilty.

Cl.

Cl. of Arr. How wilt thou be tried?

Kidd. By God and my Country.

Cl. of Arr. God ſend thee a good Deliverance.

(*And ſo of all the reſt.*)

Kidd. My Lord, I beg I may have my Tryal put off for Three or Four Days, till I have got my Papers.

Mr *Recorder.* The Judges will be here by and by, and you may move the Court then; we are only to prepare for your Tryal. We do not deny your Motion; but when the Court is full, they will conſider of the Reaſons you have to offer.

Then William Kidd *was tried upon the Indictment for Murther.*

Cl. of Arr. W. Kidd, Hold up thy Hand, Thou ſtandeſt Indicted by the Name of *William Kidd,* late of *London,* Mariner, *&c.*

The First Indictment for MURTHER.

THE *Jurors for our Sovereign Lord the King, do, upon their Oath, preſent, That* William Kidd, *late of* London, *Mariner, not having the Fear of God before his Eyes, but being moved and ſeduced by the Inſtigation of the Devil, the* 30*th Day of* October, *in the Ninth Year of the Reign of our Sovereign Lord,* William *the Third, by the Grace of God, of* England, Scotland, France, *and* Ireland, *King, Defender of the Faith,* &c. *by Force and Arms,* &c. *upon the High-Sea, near the Coaſt of* Malabar, *in the* Eaſt-Indies, *and within the Juriſdiction of the Admiralty of* England, *in a certain Ship called the* Adventure-Galley, *(whereof he the ſaid* William Kidd, *then was Commander;) then and there being, feloniouſly, voluntarily, and of his Malice afore-thought, then and there did make an Aſſault, in and upon one* William Moore, *in the Peace of God, and of our ſaid Sovereign Lord the King, to wit, then and there being, and to the Ship aforeſaid, call'd the* Adventure-Galley, *then and there belonging; and that the aforeſaid* William Kidd, *with a certain Wooden Bucket, bound with Iron Hoops, of the Value of Eight Pence, which he the ſaid* William Kidd, *then and there had and held in his right Hand, did violently, feloniouſly, voluntarily, and of his Malice afore-thought, beat and ſtrike the aforeſaid* William Moore, *in and upon the right Part of the Head of him the ſaid* William Moore, *a little above the right Ear of the ſaid* William Moore, *then and there upon the High-Sea, in the Ship aforeſaid, and within the Juriſdiction of the Admiralty of* England *aforeſaid, giving to the ſaid* William Moore, *then and there with the Bucket aforeſaid, in and upon the aforeſaid right Part of the Head of him the ſaid* William Moore, *a little above the right Ear of the ſaid* William Moore, *one mortal Bruiſe, of which mortal Bruiſe the aforeſaid* William Moore, *from the ſaid* 30*th Day of* October, *in the Ninth Year aforeſaid, untill the One and Thirtieth Day of the ſaid Month of* October, *in the Year aforeſaid, upon the High-Sea aforeſaid, in the Ship aforeſaid, and within the Juriſdiction of the Admiralty of* England *aforeſaid, did languiſh, and languiſhing did live; upon which One and Thirtieth Day of* October, *in the Ninth Year aforeſaid, the aforeſaid* William Moore *upon the High Sea aforeſaid, near the aforeſaid Coaſt of* Malabar, *in the* Eaſt-Indies *aforeſaid, in the Ship aforeſaid, called the* Adventure-Galley, *and within the Juriſdiction of the Admiralty of* England *aforeſaid, did die; and ſo the Jurors aforeſaid, upon their Oath aforeſaid, do ſay, That the aforeſaid* William Kidd, *feloniouſly, voluntarily, and of his Malice afore-thought, did kill and murther the aforeſaid* William Moore, *upon the High Sea aforeſaid, and within the Juriſdiction of the Admiralty of* England *aforeſaid, in manner and form aforeſaid, againſt the Peace of our ſaid Sovereign Lord the King, his Crown and Dignity,* &c.

How ſay'ſt thou, *William Kid,* art thou guilty of this Murther, whereof thou ſtandeſt Indicted, or not guilty?

Kidd. Not guilty.

Cl. of Arr. How wilt thou be tried?

Kidd. By God and my Country.

Cl. of Arr. God ſend thee a good Deliverance. *Nicholas Churchill, James Howe, Robert Lamley, William Jenkins, Gabriel Loff, Hugh Parrot, Richard Barlicorn, Abel Owens, Darby Mullins,* hold up your Hands. You the Priſoners at the Bar, thoſe Men that you ſhall hear called, and perſonally appear, are to paſs between our Sovereign Lord the King, and you, upon Tryal of your ſeveral Lives and Deaths: If therefore you, or any of you, will challenge them, or any of them; your time is to ſpeak to them as they come to the Book to be ſworn, and before they be ſworn.

Kidd. My Lord, I deſire Council may be aſſigned me.

Mr *Recorder.* Capt. *Kidd,* I told you it would be your time, when the Jury was called, to offer what you had to offer; therefore if you have any Thing now to ſay to the Court, you had beſt ſay it.

Kidd. I beg I may have Council, Dr *Oldiſh,* and Mr *Lemmon,* that they may be heard on my behalf.

Mr *J. Powel.* If he deſires it, you may be Council for him, provided there may be any Matter of Law that he has to plead; otherwiſe he muſt be tried.

Dr *Oldiſh.* My Lord, he moves that his Tryal for Piracy may be put off for ſeveral Reaſons; one is, there is one *Davis,* that is a neceſſary Witneſs for him; he was taken a Paſſenger into the Ship, and therefore could not be concerned in any Piracy: Now this *Davis* ſtands Indicted, ſo that he is deprived of this Perſon, who is a neceſſary Witneſs for him in this Caſe.

Mr *Coniers.* He is not Indicted yet, he may call him if he thinks fit.

Mr *J. Powel.* If he be Indicted, yet he may be a Witneſs.

Dr *Oldiſh.* My Lord, we deſire he may be here.

Mr *J. Powel.* Where is he?

Cl. of Arr. He is in *Newgate.*

Mr *J. Powel.* Let him be ſent for.

Dr *Oldiſh.* My Lord, it is very fit his Tryal ſhould be delayed for ſome time, becauſe he wants ſome Papers very neceſſary for his Defence. It's very true, he is charged with Piracies in ſeveral Ships; but they had *French* Paſſes when the ſeizure was made. Now if there were *French* Paſſes, it was a lawful Seizure.

Mr *J. Powel.* Have you thoſe Paſſes?

Kidd. They were taken from me by my Lord *Bellamont,* and theſe Paſſes would be my Defence.

Dr *Oxenden.* Had you any other Paſſes when you took the *Armenian* Ship?

Dr *Oldiſh.* If thoſe Ships that he took had *French* Paſſes, there was juſt Cauſe of Seizure, and it will excuſe him from Piracy.

Kidd.

Kidd. The Paſſes were ſeized by my Lord *Bellamont*, that we will prove as clear as the Day.

Mr *Lemmon.* My Lord, I deſire one Word as to this Circumſtance; he was doing his King and Country Service, inſtead of being a Pirate: For in this very Ship there was a *French* Paſs, and it was ſhown to Mr *Davis*, and carried to my Lord *Bellamont*, and he made a Seizure of it. And there was a Letter writ to teſtifie it, which was produced before the Parliament; and that Letter has been tranſmitted from Hand to Hand, ſo that we cannot at preſent come by it. There are ſeveral other Papers and Letters that we cannot get; and therefore we deſire the Tryal may be put off till we can procure them.

L. C. B. *Ward.* Where are they?

Mr *Lemmon.* We cannot yet tell whether they are in the Admiralty Office, or whether Mr *Jodrell* hath them.

Mr *J. Powell.* Let us ſee on what you go. You talk of *French* Paſſes, you ſhould have been prepared to make Affidavit of it. What Ship was that which had the *French* Paſſes?

Mr *Lemmon.* The ſame we were in, the ſame he is Indicted for.

Mr *J. Powell.* Make out this, Mr *Lemmon.*

Mr *Lemmon.* My Lord, we deſire Mr *Davis* may be ſent for, he will prove it.

L. C. B. *Ward.* Send for *Edward Davis.*

Mr *Fell.* My Lord, will you have him brought into Court?

L. C. B. *Ward.* Yes.

Mr *Soll. Gen.* They have had a Fortnight's Notice to prepare for the Tryal.

Dr *Oldiſh.* We petitioned for Money, and the Court ordered fifty Pounds; But the Perſon that received it went away, and we had none till laſt Night.

Dr *Oxenden.* I ordered that the Money might be paid into his own Hands, that he might be ſure to have it.

Mr *Crawley.* Regiſter, declar'd, That he paid the fifty Pound into his own Hands on *Tueſday* Morning.

L. C. B. *Ward.* You ought to make it out, that there is a reaſonable Cauſe to put off the Tryal, or elſe it cannot be allowed.

Mr *Lemmon.* My Lord, we will be ready to morrow Morning.

L. C. B. *Ward.* They ought to have had due Notice, What Notice have they had?

Mr *Soll. Gen.* A Fortnight's Notice, this Day Fortnight.

Dr *Oldiſh.* My Lord, he ſhould have had his Money delivered to him.

Kidd. I had no Money nor Friends to prepare for my Tryal till laſt Night.

L. C. B. *Ward.* Why did you not ſignifie ſo much to the King's Officers?

Mr *Soll. Gen.* My Lord, this we will do, let *Davis* be brought into Court; and if that be a juſt Excuſe, we are contented. In the mean Time, let him be tryed for the Murther, wherein there is no pretence of want of Witneſſes or Papers.

Officer. Davis is here, my Lord

Cl. of Arr. Set all aſide but Captain *Kidd. William Kidd*, You are now to be tried on the Bill of Murther, the Jury is going to be ſworn; if you have any Cauſe of Exception, you may ſpeak to them as they come to the Book.

Will. Kidd. I ſhall challenge none, I know nothing to the contrary but they are honeſt Men.

The JURY Sworn, were.

Nathaniel Long,	*Henry Sherbrook,*
Jo. Ewers,	*Henry Dry,*
Jo. Child,	*Richard Greenaway,*
Ed. Reeves,	*Jo. Sherbrook,*
Tho. Clark,	*Tho. Emms,*
Nath. Green.	*Rog. Mott.*

After Proclamation made, (as uſual) the Court proceeded to the Tryal, as follows:

Cl. of Arr. W. Kidd, hold up thy Hand. (*which he did*) You Gentlemen of the Jury, look upon the Priſoner, and hearken to his Cauſe. He ſtands Indicted by the Name of *William Kidd*, &c. as before in the Indictment. Upon this Indictment he has been arraigned, and thereunto has pleaded, *Not Guilty*, and for his Tryal has put himſelf on God and his Country, which Country you are. Your Charge is to enquire, Whether he be guilty of the Murther whereof he ſtands Indicted, in Manner and Form as he ſtands Indicted, or Not Guilty, &c.

Mr *Knap.* My Lord, and you Gentlemen of the Jury,

This is an Indictment of Murther. The Indictment ſets forth, *That* William Kidd, *on the* 30*th of* October, *on the high Sea, on the Coaſt of* Malabar, *did aſſault one* William Moore, *on Board a Ship called the* Adventure, *whereof* William Kidd *was Captain, ſtruck him with a wooden Bucket, hooped with Iron, on the Side of the Head, near the right Ear, and that of this Bruiſe he died the next Day, and ſo that he has murdered the ſaid Perſon.* To this Indictment he has pleaded not Guilty; if we prove him Guilty, you muſt find him ſo.

Mr *Soll. Gen.* My Lord, and Gentlemen of the Jury, We will prove this as particularly as can be, that *William Kidd* was Captain of the Ship, and that *William Moore* was under him in the Ship, and that without any Provocation he gave him this Blow, whereof he died.

Mr *Coniers.* My Lord, It will appear to be a moſt barbarous Fact, to murther a Man in this Manner; for the Man gave him no Manner of Provocation. This *William Moore* was a Gunner in the Ship, and this *William Kidd* abuſes him, and calls him *Louſie Dog*; and upon a civil Anſwer he takes this Bucket, and knocks him on the Head, whereof he died the next Day. Call *Joſeph Palmer*, and *Robert Bradinham*, (*who appeared and were Sworn.*) *Joſeph Palmer*, give my Lord and the Jury an Account of what you ſaw done by *William Kidd*, on the Coaſt of *Malabar*, as to *William Moore* his Gunner.

Joſeph Palmer. About a Fortnight before this Accident fell out, Captain *Kidd* met with a Ship on that Coaſt, that was called the *Loyal Captain.* And about a Fortnight after this, the Gunner was grinding a Chiſſel aboard the *Adventure*, on the high Sea, near the Coaſt of *Malabar*, in the *Eaſt-Indies.*

Mr *Coniers.* What was the Gunner's Name?

Joſeph Palmer. William Moore: And Captain *Kidd* came and walked on the Deck, and walks by this *Moore*; and when he came to him, ſays, *Which way could you have put me in a way to take this Ship, and been clear*; Sir, ſays *William Moore*, *I never ſpoke ſuch a Word, nor ever thought ſuch a Thing.* Upon which Captain *Kidd* called him a *Louſie Dog.* And ſays *William Moore*, *If I am a Louſie Dog, you have made me ſo*; *you have brought me to Ruin, and many more.* Upon his ſaying this, *ſays Captain* Kidd, *Have I ruin'd you, you Dog?* and took a Bucket bound with

with iron Hoops, and ſtruck him on the right Side of the Head, of which he died the next Day.

Mr *Cowper.* What was the Gunner doing at that Time, when he gave him that Blow?

Joſeph Palmer. He was grinding a Chiſſel at the Time that he ſtruck him.

Mr *Cowper.* Did he give him the Blow immediately after he gave him that Anſwer?

Joſeph Palmer. He walked two or three Times backward and forward upon the Deck, before he ſtruck the Blow.

Mr *J. Turton.* What did Captain *Kidd* ſay firſt?

Joſeph Palmer. Which way could you have put me in a way of taking this Ship, and been clear; Says the Gunner, *I never ſaid ſo, nor thought any ſuch Thing.*

Mr *Cowper.* Hark you, Friend, explain that Matter.

Mr Baron *Hatſell.* What was the Occaſion of thoſe Words?

Palmer. It was concerning this Ship.

L. C. B. *Ward.* What Ship was it? Name the Ship.

Palmer. It was the *Loyal Captain.* Captain *Kidd* ſaid to *William Moore, Which way could you have put me in the way to have taken this Ship, and been clear?* Says *William Moore, I never ſaid ſuch a Thing, nor thought it.* And upon that he called him *Louſie Dog.*

L. C. B. *Ward.* Was that Ship taken?

Palmer. No, ſhe was gone.

Mr *Coniers.* You ſay he call'd him *Louſie Dog.*

Palmer. Yes.

Mr *Coniers.* What did *William Moore* ſay to him then?

Palmer. He ſaid, *If I am a Louſie Dog, you have brought me to it; you have ruined me and many more.* Upon this, *ſays Captain* Kidd, *Have I brought you to ruin, you Dog?* Repeating it two or three times over, and took a turn or two upon the Deck, and then takes up the Bucket, and ſtrikes him on the Head.

Mr *Cowper.* You ſay he made a turn or two on the Deck, and then ſtruck him.

Palmer. Yes.

Mr *Coniers.* Tell my Lord what paſs'd next after the Blow.

Palmer. He was let down the Gun-Room, and the Gunner ſaid, *Farewel, farewel, Captain* Kidd *has given me my laſt.* And Captain *Kidd* ſtood on the Deck, and ſaid, *You are a Villain.*

Mr *Cowper.* How near was Captain *Kidd* to him when he ſaid he had given him his laſt?

Palmer. He was near him.

Mr *Cowper.* Was he within hearing of what *Moore* ſaid?

Palmer. Yes, he was within Seven or Eight Foot.

Mr *Soll. Gen.* Did you apprehend that he died of that Blow?

Palmer. He was in perfect Health before that.

Mr *Soll. Gen.* What did the Surgeon think of it?

Palmer. The Surgeon is here.

Mr *Soll. Gen.* Did you ſee him afterwards?

Palmer. No, I did not ſee him after till he was dead.

Mr *Cowper.* How did the Wound appear when you ſaw him?

Palmer. After he was dead, the Surgeon was called to open his Head, and Captain *Kidd* ſaid, *You are damn'd buſie without Orders.*

Mr *Cowper.* Though we ask you Queſtions, you muſt turn your Face there towards the Jury. Give the Jury an Account of what you ſaw.

Palmer. I felt on his Head, and I felt ſomething give way, and about the Wound, there was a Bruiſe.

Mr *Cowper.* You ſay you ſaw him when he was carried off after the Blow, how did his Head appear then? Was he bloody.

Palmer. There was not much Blood came from him.

L. C. B. *Ward.* Was you by when theſe Words were ſpoken?

Palmer. Yes, my Lord.

L. C. B. *Ward.* Did you ſee the Priſoner give the Blow with the Bucket upon thoſe Words?

Palmer. Yes, my Lord.

L. C. B. *Ward.* How long was it before he went down the Deck?

Palmer. Preſently.

L. C. B. *Ward.* Did he complain of the Wound?

Palmer. He ſaid, *Farewel, farewel, Captain* Kidd *has given me my laſt.*

L. C. B. *Ward.* Was this *Moore* in a good Condition of Health before this Blow was given him?

Palmer. Yes, my Lord.

L. C. B. *Ward.* And afterwards he complained.

Palmer. Yes, my Lord.

L. C. B. *Ward.* When he was dead, what Marks were on his Head?

Palmer. On the right ſide of his Head, on this Place *(pointing to his own Head)* it was bruiſed a conſiderable Breadth; and in one Place I could feel the Skull give way.

Mr *Cowper.* How long after the Blow did he die?

Palmer. The next Day following.

Mr *Cowper.* And you ſay you ſaw him dead then.

Palmer. Yes, Sir.

L. C. B. *Ward.* Captain *Kidd*, if you will ask him any Queſtions, you may.

Kidd. My Lord, I would ask this Man what this *Moore* was doing when this Thing happened.

L. C. B. *Ward.* Mr *Palmer*, you hear what he ſays; what was *Moore* doing?

Palmer. He was grinding a Chiſſel.

Kidd. What was the Occaſion that I ſtruck him?

Palmer. The Words that I told you before.

Kidd. Was there no other Ship?

Palmer. Yes.

Kidd. What was that Ship?

Palmer. A *Dutch* Ship.

Kidd. What were you doing with the Ship?

Palmer. She was becalmed.

Kidd. This Ship was a League from us, and ſome of the Men would have taken her, and I would not conſent to it, and this *Moore* ſaid I always hindred them making their Fortunes; was not that the Reaſon I ſtruck him? Was there not a Mutiny on Board?

Palmer. No, you chaced this *Dutchman*, and in the way took a *Malabar* Boat, and chaced this Ship all the whole Night; and they ſhowed their Colours, and you put up your Colours.

Kidd. This is nothing to the Point, was there no Mutiny aboard?

Palmer. There was no Mutiny, all was quiet.

Kidd. Was there not a Mutiny, becauſe they would go and take that *Dutchman?*

Palmer. No, none at all.

Mr *Coniers.* Call *Robert Bradinham.*

Jury. What was the Cauſe that he ſtruck him?

Palmer.

Palmer. A Fortnight before this was done, we met with this *Loyal Captain*, of which Captain *Hoar* was Commander, and he came on Board Captain *Kidd*'s Ship, and Captain *Kidd* went on Board his, and then Captain *Kidd* let this Ship go. About a Fortnight after this, the Gunner was grinding his Chiſſel on the Deck; and Captain *Kidd* ſaid to him, *Which way could you have put me in a way to take this Ship, and been clear?* To which he reply'd, *I never ſaid ſuch a Thing, nor thought of ſuch a Thing.* Whereupon Captain *Kidd* called the Gunner *Louſie Dog.* And ſays *Moore, if I am a Louſie Dog, you have made me ſo; you have brought me to Ruin, and a great many more.* And ſays Captain *Kidd, Have I brought you to Ruin, you Dog?* and after ſtruck him with the Bucket. Theſe were all the Words that paſt.

Mr *J. Powell.* Was Captain *Kidd* aboard that Ship;

Palmer. Yes, and Captain *Hoar* was aboard him.

Mr *J. Powell.* Was there any Body nigh at that Time?

Palmer. Yes, there were eight or nine Men, that had Muskets and other Arms, and they were for taking the Ship, and Captain *Kidd* was againſt it, ſo it was not done.

Kidd. My Lord, I was in the Cabin, and heard a Noiſe, and came out; and *William Moore* ſaid, *You Ruin us becauſe you will not conſent to take Captain* Hoar's *Ship.* Says a *Dutchman, I will put Captain* Kidd *in a way to take this Ship, and come off fairly.*

L. C. B. *Ward.* You may ask him any Queſtions you have a Mind to, but you muſt reſerve what you have to ſay for your ſelf till you come to make your Defence.

Mr *Soll. Gen.* Mr *Palmer*, Do you know of any other Provocation to ſtrike him, beſides thoſe Words?

Palmer. I know of no other Provocation.

Mr *Coniers.* Set up *Robert Bradinham. (who appeared.)* Mr *Bradinham*, In what Office was you in the Ship?

Bradinham. I was Surgeon of the Ship.

Mr *Coniers.* Of what Ship?

Bradinham. The *Adventure* Galley; whereof Captain *Kidd* was Maſter.

Mr *Coniers.* Was you there when the Blow was given?

Bradinham. No.

Mr *Coniers.* Was you ſent for when Captain *Kidd* had given the Gunner the Wound upon the Head?

Bradinham. I was ſent for to his Aſſiſtance after he was wounded, and I came to him, and asked him how he did; he ſaid, He was a dead Man, Captain *Kidd* had given him his laſt Blow. And I was by the Gun-Room, and Captain *Kidd* was walking there, and I heard *Moore* ſay, *Farewel, Farewel, Captain* Kidd *has given me my laſt Blow*; and Captain *Kidd*, when he heard it, ſaid, *Damn him, he is a Villain.*

Mr *Coniers.* Did you hear him ſay ſo?

Bradinham. I did hear it.

Mr *Cowper.* Was it in a Way of Anſwer to what he ſaid?

Bradinham. Yes.

Mr *Cowper.* How long did he live after the Blow?

Bradinham. He died the next Day. The Wound was but ſmall, the Scull was fractured.

Mr *Cowper.* Do you believe he died of that Wound?

Bradinham. Yes.

Mr *Cowper.* Had you any Diſcourſe with Captain *Kidd* after this, about this Man's Death?

Bradinham. Some Time after this, about two Months, by the Coaſt of *Malabar*, Captain *Kidd* ſaid, *I do not care ſo much for the Death of my Gunner, as for other Paſſages of my Voyage; for I have good Friends in* England, *that will bring me off for that.*

L. C. B. *Ward.* Mr *Kidd*, Will you ask him any Queſtions?

Kidd. I ask him whether he knew of any Difference between this Gunner and me before this happened.

Bradinham. I knew of no Difference between them before at all.

Mr *Soll. Gen.* Mr *Kidd*, Have you any Thing more to ask him?

Kidd. No.

Mr *Coniers.* Then we have done for the King.

L. C. B. *Ward.* Then you may make your Defence, you are charged with Murther, and you have heard the Evidence that has been given, What have you to ſay for your ſelf?

Kidd. I have Evidence to prove it is no ſuch Thing, if they may be admitted to come hither. My Lord, I will tell you what the Caſe was, I was coming up within a League of the *Dutch*-man, and ſome of my Men were making a Mutiny about taking her; and my Gunner told the People he could put the Captain in a Way to take the Ship, and be ſafe. Says I, *How will you do that?* The Gunner anſwered, *We will get the Captain and Men aboard.* And what then? *We will go aboard the Ship, and plunder her, and we will have it under their Hands that we did not take her.* Says I, *This is Judas like, I dare not do ſuch a Thing.* Says he, *We may do it, we are Beggars already.* Why ſays I, *May we take this Ship becauſe we are Poor?* Upon that a Mutiny aroſe, ſo I took up a Bucket, and juſt throwed it at him, and ſaid, *You are a Rogue to make ſuch a Motion.* This I can prove, my Lord.

L. C. B. *Ward.* Call your Evidence.

Mr *Cowper.* Mr *Palmer*, Was there any Mutiny in the Ship, when this Man was killed?

Palmer. There was none.

L. C. B. *Ward.* Captain *Kidd*, Call what Evidence you will.

Kidd. They are Priſoners I deſire they may be called up.

L. C. B. *Ward.* Whatever other Crimes they may be guilty of, they may be Witneſſes for him in this Caſe.

Mr Baron *Hatſell.* Mr *Palmer*, Did he throw the Bucket at him, or ſtrike him with it?

Palmer. He held it by the Strap in his Hand.

Kidd. Call *Abel Owens. (who appeared)* Can you tell which Way this Bucket was thrown?

Mr *J. Powell.* What was the Provocation for throwing this Bucket?

Owens. I was in the Cook-room, and hearing ſome Difference on the Deck, I came out; and the Gunner was grinding a Chiſſel on the Grindſtone, and the Captain and he had ſome Words; and the Gunner ſaid to the Captain, *You have brought us to Ruin, and we are Deſolate.* And ſays he, *Have I brought you to Ruin? I have not brought you to Ruin, I have not done an ill Thing to Ruin you, you are a ſawcy Fellow to give me theſe Words*; and then he took up the Bucket, and did give him a Blow.

Kidd. Was there not a Mutiny among the Men?

Owen. Yes, and the bigger Part was for taking the Ship; and the Captain ſaid, *You that will take the* Dutch-*man, you are the ſtrongeſt, you may do what you pleaſe; if you will take her, you may take her; but if you go from aboard, you ſhall never come aboard again.*

L. C. B.

L. C. B. *Ward.* When was this Mutiny you ſpeak of?

Abel Owens. When we were at Sea.

L. C. B. *Ward.* How long was it before this Man's Death?

Owens. About a Month.

Mr *J. Powel.* At this time when the Blow was given, did *Moore* the Gunner endeavour to make any Mutiny?

Owens. No.

Mr J. *Powel.* Was there any Mutiny then?

Owens. None at all.

Kidd. Did not he ſay, he could put me in a way to take the *Dutchman*, and be clear?

Owens. I know there were ſeveral of them would have done it, but you would not give Conſent to it.

Kidd. No, but this was the Reaſon I threw the Bucket at him.

L. C. B. *Ward.* Captain *Kidd*, he tells you this was a Month before you ſtruck him.

Jury. My Lord, we deſire he may be asked, whether he did throw the Bucket, or ſtrike him with it.

L. C. B. *Ward.* Anſwer the Jury to that Queſtion.

Owens. He took it with the Strap, and ſtruck him with it.

Kidd. Did not I throw it at him?

Owens. No, I was near you when you did it.

Mr *Coniers.* Did you ſee the Stroke given?

Owens. I did ſee the Stroke given.

L. C. B. *Ward.* Captain *Kidd*, Will you call any more?

Kidd. Yes, my Lord. Call *Richard Barlicorn.*

Mr J. *Powel.* What Queſtions would you have him ask'd?

Kidd. R. Barlicorn, what was the Reaſon that Blow was given to the Gunner?

Barlicorn. At firſt when you met with the Ship there was a Mutiny, and Two or Three of the *Dutchmen* came aboard; and ſome ſaid ſhe was a rich Veſſel, and they would take her: And the Captain ſaid, *No, I will not take her.* And there was a Mutiny in the Ship, and the Men ſaid, *If you will not, we will.* And he ſaid, *If you have a Mind, you may; but they that will not, come along with me.*

Kidd. Do you think *William Moore* was one of thoſe that was for taking her?

Barlicorn. Yes.

L. C. B. *Ward.* How long was that before *Moore* died, do you know?

Barlicorn. No, I did not keep a Journal.

L. C. B. *Ward.* Was it after *Moore* died?

Barlicorn. No Sir, it was before *Moore* died.

Mr *Coniers.* How long before?

Barlicorn. I believe it was about a Month or Three Weeks, I cannot tell which.

L. C. B. *Ward.* You ſay there was a Mutiny in the Ship, what was the Mutiny about?

Barlicorn. About taking the Ship.

L. C. B. *Ward.* What was the Ship's Name?

Barlicorn. The *Loyal Captain.* And the Captain ſaid, *If they take the Ship, they ſhall never come aboard again.*

L. C. B. *Ward.* Was you by when *Moore* received this Blow?

Barlicorn. No, I was not by then.

Kidd. Do you know of any Quarrel between this *Moore* and I before that Accident?

Barlicorn. No, I did not.

Mr J. *Powel.* Was there any Mutiny in the Ship when this *Moore* died?

Barilcorn. They were talking of it.

Kidd. Was there not a *Dutchman* cloſe by us, when this Blow was given?

Barlicorn. Yes, Sir.

Kidd. He was going to make another Mutiny, and I prevented him.

Mr J. *Powel.* Did *Moore* endeavour to make any Mutiny at that time?

Barlicorn. The Ship was gone at that time.

Mr J. *Powel.* How long had ſhe been gone?

Barlicorn. About a Week.

Mr B. *Hatſell.* Was there any Mutiny about the *Dutch* Ship you ſaw?

Barlicorn. The *Dutch* Ship? Not that I know of; but there was a Mutiny about the *Loyal Captain.*

Kidd. Do you not know of another Mutiny?

Mr B. *Hatſell.* Do you know of any other Mutiny?

Barlicorn. No.

Kidd. At that very time they were going to make a Mutiny.

L. C. B. *Ward.* Will you ask him any more Queſtions?

Kidd. What Diſcourſe had I with *Moore* at that time?

Barlicorn. I was aboard our Ship, but did not ſee the Blow given.

Kidd. They were ſaying they would take her, and He ſaid, he could put me in a way to take her, without coming to any harm.

L. C. B. *Ward.* What occaſion could thoſe Words be of a Mutiny?

Barlicorn. There were many of the Men would have gone with Arms, and taken that Ship without the Captain's Conſent.

L. C. B. *Ward.* At that Time when this *Moore* was killed, was there any Mutiny?

Barlicorn. No.

L. C. B. *Ward.* When was it that *Moore* ſaid, they might have taken this Ship?

Barlicorn. At the ſame time when the Ship was in Company with us.

L. C. B. *Ward.* That was a Week or Fortnight before?

Barlicorn. No, Sir, the *Loyal Captain* was within ſight of us.

Mr B. *Hatſell.* What, when *Moore* was killed?

Barlicorn. No, not then. *William Moore* lay ſick a great while before this Blow was given; and the Doctor ſaid, when he viſited him, This Blow was not the Cauſe of his Death.

L. C. B. *Ward.* Then they muſt be confronted. Do you hear, *Bradinham*, what he ſays? He ſays you ſaid, That Blow was not the Cauſe of his Death. Did you ever ſay ſo?

Bradinham. My Lord, I never ſaid ſo.

L. C. B. *Ward.* Did you ſee that young Man there?

Bradinham. Yes, he was aboard the Ship.

L. C. B. *Ward.* Was *Moore* ſick before that Blow?

Bradinham. He was not ſick at all before.

Barlicorn. He was ſick ſome time before, and this Blow did but juſt touch him; and the Doctor ſaid, he did not die on the Occaſion of this Blow.

Mr *J. Gold.* Did you ever ſay ſo, Mr *Bradinham?*

Bradinham. No, my Lord.

Mr *Soll. Gen.* You ſay he did but juſt touch him, were you preſent when the Blow was given.

Barlicorn. No, but I ſaw him after he was dead, and I was by when the Doctor ſaid, he did not die of that Blow.

Mr *Cowper.* What did he die of?

Barlicorn. I cannot tell, he had been ſick before, we had many ſick Men aboard.

Mr *Soll. Gen.* How long did he lie after this Blow, before he died?

Barlicorn. I cannot tell juſtly how long it was.

L. C. B. *Ward.* How long do you think? You took notice of the Blow, how long did he live after that?

Barlicorn. I believe about a Week.

L. C. B. *Ward.* And the two Witneſſes ſwore he died the next Day.

Barlicorn. I cannot tell juſtly how long he lived afterwards.

Jury. We deſire to know whether he knew what was the Occaſion of this Blow.

Barlicorn. All the Reaſon I can give is, becauſe it was thought he was going to breed a Mutiny in the Veſſel.

L. C. B. *Ward.* Did you hear of that by any Body?

Kidd. Was *Bradinham* in the Mutiny? declare that.

L. C. B. *Ward.* Mr *Kidd*, why do you ask that Queſtion?

Kidd. I ask him whether *Bradinham* was not in any Mutiny in the Ship.

L. C. B. *Ward.* Why do you ask that?

Barlicorn. If any Thing was to be, he was as forward as any one.

L. C. B. *Ward.* You ſay he was as forward as any, but it does not appear any one made a Mutiny at this time.

Barlicorn. I do not know, Sir.

L. C. B. *Ward.* Have you any more to call?

Kidd. My Lord, here is another Witneſs.

L. C. B. *Ward.* What is your Name?

Hugh Parrot. Hugh Parrot.

L. C. B. *Ward.* Mr *Kidd*, what do you ask him?

Kidd. I ask you whether *Bradinham* was in a Mutiny in my Ship.

Hugh Parrot. I cannot ſay whether he was or no.

L. C. B. *Ward.* Captain *Kidd*, you are tried for the Death of this *Moore*, now why do you ask this Queſtion? what do you infer from hence? You will not infer, that if he was a Mutineer, it was lawful for you to kill *Moore*.

Kidd. Do you know the Reaſon why I ſtruck *Moore*?

Hugh Parrot. Yes, becauſe you did not take the *Loyal Captain*, whereof Captain *Hoar* was Commander.

L. C. B. *Ward.* Was that the Reaſon he ſtruck *Moore*, becauſe the Ship was not taken?

Hugh Parrot. I ſhall tell you how it happened, according to the beſt of my Knowledge. My Commander fortuned to come up with this Captain *Hoar*'s Ship, and ſome were for taking her, and ſome not; and afterwards there was a little ſort of Mutiny, and ſome roſe in Arms, the greateſt Part, and they ſaid they would take this Ship, and the Commander was not for it; and ſo they reſolved to go away in the Boat, and take her. Captain *Kidd* ſaid, *If you deſert my Ship, you ſhall never come aboard again, and I will force you into* Bombay, *and I will carry you before ſome of the Council there:* Inſomuch as my Commander ſtilled them again, and they remained on Board. And about a Fortnight afterwards there paſſed ſome Words between this *William Moore*, and my Commander; and then ſays he, *Captain, I could have put you in a way to have taken this Ship, and been never the worſe for it.* He ſays, *Would you have me take this Ship? I cannot anſwer it, they are our Friends*, and my Commander was in a Paſſion; and with that I went off the Deck, and I underſtood afterwards the Blow was given, but how I cannot tell.

Mr *J. Powel.* Captain *Kidd*, have you any more to ask him, or have you any more Witneſſes to call?

Kidd. I could call all of them to teſtifie the ſame thing, but I will not trouble you to call any more.

L. C. B. *Ward.* Have you any more to ſay for your ſelf?

Kidd. I have no more to ſay, but I had all the Provocation in the World given me; I had no deſign to kill him, I had no Malice or Spleen againſt him.

L. C. B. *Ward.* That muſt be left to the Jury to conſider the Evidence that has been given; you make out no ſuch Matter.

Jury-man. My Lord, I deſire the Priſoner may give an Account whether he did do any Thing in order to his Cure.

L. C. B. *Ward.* He is to be tried according to Law; the King's Evidence hath been heard, and he has the Liberty to produce what Evidence he can for himſelf; will you put him to produce more Evidence than he can? If he has any more to ſay, it will be his Intereſt to ſay what he can, the Court is willing to hear him as long as he hath any thing to offer for himſelf, either upon that Account or any Thing elſe.

Kidd. It was not deſignedly done, but in my Paſſion, for which I am heartily ſorry.

L. C. B. *Ward.* Gentlemen of the Jury, the Priſoner at the Bar, *William Kidd*, is Indicted for the Murther of *William Moore*; and whether he be guilty of this Murther, or not guilty, it is your part to determine on the Evidence that has been given. The Fact charged againſt him is this, That the Priſoner at the Bar, *William Kidd*, being the Commander of the Ship, called the *Adventure-Galley*, and the deceaſed *William Moore*, the Gunner in that Ship; That upon the High Sea, near the Coaſt of *Malabar*, in the *Eaſt-Indies*, and within the Juriſdiction of the Admiralty of *England*, in *October*, in the Ninth Year of his Majeſty's Reign, 1697, the Priſoner, *William Kidd*, out of his Malice fore-thought, did ſtrike the Deceaſed, *William Moore*, with a Bucket hoop'd with Iron, on the right Side of his Head, and that that Blow was the Occaſion of the Death of the ſaid *William Moore*; that this was done on the 30th of *October*, and that his Death enſued on the 31ſt of *October*, being the next Day. This is the Fact charged upon him.

Now you have heard the Evidence that has been given on the King's Part, and you will weigh it well. You hear the firſt Witneſs that has been produced on behalf of the King, is *Joſeph Palmer*. He tells you he was preſent on board this Ship, at the time when this Blow was given. And he ſays there had been ſome Diſcourſe between the Priſoner *William Kidd*, and the Deceaſed *Moore*, concerning taking a Ship that was called the *Loyal Captain*, and that Captain *Kidd* ſaid to him, *How could you have put me in a way to take that Ship, and be clear? No*, ſays *Moore*, *I ſaid no ſuch Thing.* The Reply Captain *Kidd* made to him

him was, *He was a Louſie Dog.* The Anſwer of the Deceaſed was this, *If I am ſo, you have made me ſo, you have ruined me and a great many others.* With that ſays Captain *Kidd*, *Have I ruined you, you Dog?* And up he took a Bucket, hoop'd with Iron, and gave him a Blow on the right ſide of his Head. And thereupon he complained and ſaid, *You have given me my laſt Blow.* And then *Moore* went down below Deck, and he ſaw him no more till the next Day, and then he was dead; and he felt upon his Head, and perceived a Bruiſe in one part of it, as broad as a Shilling, and he felt the Skull was broke; and he does take on him to ſay, that he believes that Blow was the Occaſion of his Death. Being asked whether he knew in what State of Health he was before, he ſays, he was in a healthy Condition; he was grinding a Chiſſel at that time when the Blow was given; and that Blow he believes was the Occaſion of his Death. And being asked whether he heard any other Words, or ſaw or knew any Thing that could be any Cauſe of Provocation, he ſays, he knew no more than the Reply of the Party deceaſed, *If I am a Louſie Dog, you have made me ſo, and have been my Ruin:* And then having taken two or three Turns upon the Deck, he gave him the Blow; and then *Moore* went down the Deck, and uſed theſe Words, *You have given me my laſt Blow*, or to that Effect.

Gentlemen, You have heard the Surgeon alſo, *Robert Bradinham*, and he tells you he did not ſee the Blow given, but he was ſent for after, and the Deceaſed ſaid, Captain *Kidd* had given him his laſt Blow: And thereupon he did examine him, as a Surgeon, and does believe that Blow on the Head was the Occaſion of his Death, and he did obſerve it as well as he could.

Jury-man: My Lord, I think *Bradinham*, ſaid he was not then by, when the Priſoner gave the Blow.

L. C. B. *Ward.* I did not ſay he was: He ſays he was ſent for after the Blow; and when he came, the Deceaſed ſaid he gave it him, and what would be the Conſequence.

Now theſe two being croſs-examined by the Priſoner *William Kidd*, whether they did not know of ſome Mutiny in the Ship, that might be the Occaſion of his giving this Blow; they have told both their Stories, of what Diſcourſe there was of taking this Ship the *Loyal Captain*, and of what Deſign there was upon the *Dutch* Ship after. Now the firſt of theſe was a Fortnight before this happen'd, and the other a Week; ſo that there was then no Occaſion of Mutiny, nor do they know of any Mutiny at that time.

Now, Gentlemen, he has produced for himſelf Three Witneſſes. The firſt that he calls is *Abel Owens*; and this Witneſs has not in his Teſtimony made for the Priſoner, but in effect confirmed what the other Witneſſes for the King ſaid: For he tells you he was by when the Blow was given, and gives you an Account how this Thing was, That there was ſome Diſcourſe between them, much what to the Effect aforeſaid, both as to what Capt. *Kidd* ſaid to *Moore*, and what *Moore* replyed; and that Capt. *Kidd* ſhould ſay to *Moore*, *You are a ſawcy Fellow*, or to that purpoſe; and *Moore* ſaid, *You have ruined me, and a great many others*; and with that the Priſoner took up the Bucket, and ſtruck him with it. And he being asked if there was any Provocation or Occaſion why this Blow was given, and whether there was any Mutiny at that time, as pretended, he ſays he knew of none, only he ſpeaks of one about a Month before.

They have call'd two other Witneſſes, one is *Richard Barlicorn:* He is the Priſoner's Servant; and though he be his Servant, yet the Law allows him to be a Witneſs for him, and the Credit of his Teſtimony is left to you. Now what has he ſaid? He has told you ſomething different Stories. He thinks there was a Mutiny in the Ship. And being ask'd about what time; he thinks it was about a Month or three Weeks before; and, upon further Examination ſaith, there was no Mutiny when *Moore* was killed. He is willing to ſay what he can for his Maſter, and believes Mr *Kidd* did not deſign to do any harm to that Man; for he heard the Surgeon ſay, that Blow was not the Occaſion of his Death. Now, in Contradiction to that, *Bradinham* the Surgeon ſays he never did ſay ſo, but believes that this Blow was the Occaſion of his Death. You have heard what Objections the young Man's Teſtimony is liable to, and you will conſider his whole Evidence.

The laſt Witneſs the Priſoner has called is *Hugh Parrot.* He ſays there was ſomething of theſe Words, and that the Deceaſed did ſay, he could have put the Captain in a way to have taken the Ship, and hereupon Words aroſe, and the Captain was in a Paſſion; and that then he went away, and underſtood afterwards the Blow was given, but how he could not tell.

Now, Gentlemen, this being the Matter of Fact, the Priſoner is indicted upon it for Murther. Now to make the killing of a Man to be Murther, there muſt be Malice prepenſe, either expreſs or implied: The Law implies Malice, when one Man, without any reaſonable Cauſe or Provocation, kills another. You have had this Fact opened to you. What Mutiny or Diſcourſe might be a Fortnight or Month before, will not be any Reaſon or Cauſe for ſo long continuance of a Paſſion. But what did ariſe at that time, the Witneſſes tell you. The firſt Witneſs tells you, the firſt Words that were ſpoken, were by Mr *Kidd*; and upon his Anſwer, Mr *Kidd* calls him *louſie Dog.* The Reply was, *If I am ſo, you have made me ſo*; *You have ruined me, and a great many more.* Now, Gentlemen, I leave it to you to conſider whether that could be a reaſonable Occaſion or Provocation for him to take a Bucket and knock him on the Head, and kill him. You have heard the Witneſſes have made it out that he was a healthy Man, and they are of Opinion that that Blow was the Occaſion of his Death. Now for the Priſoner, on ſuch a Saying, and without any other Provocation, to take a Bucket and knock the Deceaſed on the Head, and kill him, muſt be eſteemed an unjuſtifiable Act. For, as I ſaid, if one Man kill another without Provocation, or reaſonable Cauſe, the Law preſumes and implies Malice; and then ſuch Killing will be Murther, in the Senſe of the Law, as being done out of Malice prepenſe. If there be a ſudden falling out, and fighting, and one is killed in heat of Blood, then our Law calls it Manſlaughter: But in ſuch a Caſe as this, that happens on ſlight Words, the Priſoner called the Deceaſed a *Louſie Dog*; and the Deceaſed ſaid, *If I be ſo, you made me ſo*; Can this be a reaſonable Cauſe to kill him? And if you believe them to be no reaſonable Cauſe of Provocation, and that this Blow was given by the Priſoner, and was the Oc-

caſion of *Moore*'s Death, as the Witneſſes alledge, I cannot ſee what diſtinction can be made, but that the Priſoner is guilty of Murther. Indeed, if there had been a Mutiny at that time, and he had ſtruck him at the time of the Mutiny, there might have been a reaſonable Cauſe for him to plead in his Defence, and it ought to have been taken into Conſideration; but it appears, that what Mutiny there was, was a Fortnight at leaſt before. Therefore, Gentlemen, I muſt leave it to you; if you believe the King's Witneſſes, and one of the Priſoner's own, that this Blow was given by the Priſoner, in manner aforeſaid, and are ſatisfied that it was done without reaſonable Cauſe or Provocation, then he will be guilty of Murther; and if you do believe him guilty of Murther, upon this Evidence, you muſt find him ſo: If not, you muſt acquit him.

Kidd. My Lord, I have Witneſſes to produce for my Reputation.

L. C. B. *Ward.* Mr *Kidd*, we gave you Time to make your Defence; why did not you produce them? You were asked more than once, if you had any more to ſay; and you ſaid you would call no more Witneſſes.

Kidd. I can prove what Service I have done for the King.

L. C. B. *Ward.* You ſhould have ſpoken ſooner; but what would that help in this Caſe of Murther? You ſaid you had no more to ſay, before I began.

Then an Officer was ſworn to keep the Jury; and about an Hour after, the Jury returned, and gave in their Verdict.

Cl. of Arr. Gentlemen, anſwer to your Names. *Nath. Long.*

Nath. Long. Here, *&c.*

Cl. of Arr. Are you all agreed of your Verdict?

Omnes. Yes.

Cl. of Arr. Who ſhall ſay for you?

Omnes. Foreman.

Cl. of Arr. William Kidd, hold up thy Hand; (*which he did.*) Look upon the Priſoner. Is he guilty of the Murther whereof he ſtands indicted, or not guilty?

Foreman. Guilty.

Cl. of Arr. Look to him, Keeper.

The TRYAL of *William Kidd*, *Nicholas Churchill*, *James Howe*, *Robert Lamley*, *William Jenkins*, *Gabriel Loffe*, *Hugh Parrot*, *Richard Barlicorn*, *Abel Owens*, and *Darby Mullins*, for Piracy and Robbery on a Ship called the *Quedagh Merchant*.

THE *Jurors for our Sovereign Lord the King, do, upon their Oath, preſent, That* William Kidd, *late of* London, *Mariner*; Nicholas Churchill, *late of* London, *Mariner*; James Howe, *late of* London, *Mariner*; Robert Lamley, *late of* London, *Mariner*; William Jenkins, *late of* London, *Mariner*; Gabriel Loffe, *late of* London, *Mariner*; Hugh Parrot, *late of* London, *Mariner*; Richard Barlicorn, *late of* London, *Mariner*; Abel Owens, *late of* London, *Mariner*; *and* Darby Mullins, *late of* London, *Mariner*: *The* 30*th Day of* January, *in the Ninth Year of the Reign of our Sovereign Lord*, William *the Third, by the Grace of God, of* England, Scotland, France, *and Ireland*, King, *Defender of the Faith*, &c. *by Force and Arms*, &c. *upon the High Sea, in a certain Place diſtant about Ten Leagues from* Cutſheen *in the* Eaſt-Indies, *and within the Juriſdiction of the Admiralty of* England, *did Piratically and Felonioufly ſet upon, board, break, and enter a certain Merchant-Ship called the* Quedagh Merchant, *then being a Ship of certain Perſons, (to the Jurors aforeſaid unknown) and then and there Piratically and Felonioufly did make an Aſſault in and upon certain Mariners (whoſe Names to the Jurors aforeſaid are unknown) in the ſame Ship, in the Peace of God, and of our ſaid now Sovereign Lord the King, then and there being, Piratically and Felonioufly did put the aforeſaid Mariners of the ſame Ship, in the Ship aforeſaid then being, in corporal Fear of their Lives, then and there, in the Ship aforeſaid, upon the high Sea, in the Place aforeſaid, diſtant about Ten Leagues from* Cutſheen *aforeſaid, in the* Eaſt-Indies *aforeſaid, and within the Juriſdiction aforeſaid, Piratically and Felonioufly did Steal, Take, and carry away the ſaid Merchant Ship called the* Quedagh Merchant, *and the Apparel and Tackle of the ſame Ship, of the Value of* 400 l. *of lawful Money of* England; *Seventy Cheſts of* Opium, *of the Value of* 1400 l. *of lawful Money of* England; *Two Hundred and Fifty Bags of Sugar, of the Value of* 100 l. *of lawful Money of* England; *Twenty Bales of Raw Silk, of the Value of* 400 l. *of lawful Money of* England; *an Hundred Bales of Callico's, of the Value of* 200 l. *of lawful Money of* England; *Two Hundred Bales of Muſlin's, of the Value of* 1000 l. *of lawful Money of* England; *and three Bales of Romels, of the Value of* 30 l. *of lawful Money of* England: *The Goods and Chattels of certain Perſons (to the Jurors aforeſaid unknown;) then and there, upon the High Sea aforeſaid, in the aforeſaid Place, diſtant about ten Leagues from* Cutſheen *aforeſaid, in the* Eaſt-Indies *aforeſaid, and within the Juriſdiction aforeſaid, being found in the aforeſaid Ship in the Cuſtody and Poſſeſſion of the ſaid Mariners in the ſame Ship, from the ſaid Mariners of the ſaid Ship, and from their Cuſtody and Poſſeſſion, then and there, upon the High Sea aforeſaid, in the Place aforeſaid, diſtant about ten Leagues from* Cutſheen *aforeſaid, in the* Eaſt-Indies *aforeſaid, and within the Juriſdiction aforeſaid, againſt the Peace of our ſaid now Sovereign Lord the King, his Crown and Dignity*, &c.

Cl. of Arr. SET *Will. Kidd, Nicholas Churchill*, &c. to the Bar; (*and ſo of the reſt.*) *Will. Kidd*, hold up thy Hand; (*which he did, and ſo the reſt.*)

You the Priſoners at the Bar, thoſe Men that you ſhall hear called, and that perſonally appear, are to paſs between our Sovereign Lord the King and you, upon Tryal of your ſeveral Lives and Deaths: If therefore you, or any of you will Challenge any of them, your Time is to ſpeak to them as they come to the Book to be ſworn, and before they be ſworn.

And there being no Challenges, the Twelve that were ſworn on the Jury were as follow:

John Cooper,	*P. Walker,*
Jo. Hall,	*William Hunt,*
Jo. James,	*John Micklethwait,*
Peter Parker,	*Richard Chiſwell,*
Caleb Hook,	*Abraham Hickman,*
R. Rider,	*George Grove.*

Cl. of Arr. Cryer, Count theſe; *John Cowper.*

Cryer. One, *&c.* Twelve good Men and true, ſtand together, and hear your Evidence.

Then

Then the uſual Proclamation for Information was made; and the Priſoners being bid to hold up their Hands, the Clerk of Arraignments charged the Jury with them thus:

Cl. of Arr. You of the Jury, look upon the Priſoners, and hearken to their Cauſe. They ſtand Indicted by the Names of *William Kidd*, &c. (as before in the Indictment.) Upon this Indictment they have been Arraigned, and thereunto have ſeverally pleaded, not guilty; and for their Trial, put themſelves on God and their Country, which Country you are. Your Charge is, to enquire whether they be guilty of the Piracy and Robbery whereof they ſtand Indicted, in Manner and Form as they ſtand Indicted, or not guilty, *&c.*

Nic. Churchill. My Lord, I beg your Opinion, whether I may not plead the King's Pardon?

L. C. B. *Ward.* Let us ſee your Pretences: You ſhall have all legal Defences and Advantages allowed to you.

N. Churchill. I came in upon his Majeſty's Proclamation.

L. C. B. *Ward.* Have you the King's Proclamation? If you have, let us ſee it.

Churchill. We had notice of it at *Guiana*, and we delivered up our ſelves to Col. *Baſs*, Governour of *Eaſt-Jerſey*, and I have it under his Hand. I beg your Lordſhip would appoint me Council to plead my Caſe.

The Paper was ſhown, and read.

Mr *Crawley.* I know not when it was.

Churchill. I had notice of it at *Guiana:* I have been two Years in Cuſtody.

L. C. B. *Ward.* How long have you been a Priſoner?

Churchill. Almoſt two Years: Two Years next *July.*

L. C. B. *Ward. and the reſt of the Judges.* The Proclamation *(for what you ſay your ſelf)* does not reach your Caſe.

Howe, Churchill, Mullins. We came in, upon the Proclamation, all the ſame Day.

Mr *J. Powell.* How can you make it appear you ſurrendred?

Priſoners. Here is an Affidavit made of it by the Governor's Secretary; and there's the Gentleman himſelf, Col. *Baſs.*

Mr *J. Powell.* You muſt make it out that you have come in within the Conditions of that Proclamation, if you have any Benefit by it.

L. C. B. *Ward*, Let the Proclamation be read, *(which was done accordingly, and it here follows:)*

By the KING, A Proclamation.

William R.

Whereas We being informed, by the frequent Complaints of our good Subjects Trading to the Eaſt-Indies, of ſeveral wicked Piracies committed on thoſe Seas, as well upon our own Subjects, as thoſe of our Allies, have therefore thought fit (for the Security of the Trade of thoſe Countries, by an utter Extirpation of the Pirates in all Parts Eaſtward of the Cape of Good Hope, as well beyond Cape Comorin, as on this ſide of it, unleſs they ſhall forthwith ſurrender themſelves as is herein after directed) to ſend out a Squadron of Men of War, under the Command of Captain Thomas Warren. Now We, to the Intent that ſuch who have been guilty of any Acts of Piracy in thoſe Seas, may have Notice of our moſt gracious Intention, of extending our Royal Mercy to ſuch of them as ſhall ſurrender themſelves, and to cauſe the ſevereſt Puniſhment according to Law to be inflicted upon thoſe who ſhall continue obſtinate, have thought fit, by the Advice of our Privy Council, to Iſſue this Proclamation; hereby Requiring and Commanding all perſons who have been guilty of any Act of Piracy, or any ways Aiding or Aſſiſting therein, in any place Eaſtward of the Cape of Good Hope, to ſurrender themſelves within the ſeveral reſpective Times herein after limited, unto the ſaid Captain Thomas Warren, and the Commander in chief of the ſaid Squadron for the time being, and to Iſrael Hayes, Peter Dellanoye, and Chriſtopher Pollard, Eſquires, Commiſſioners appointed by us for the ſaid Expedition, or to any Three of them, or, in caſe of Death, to the major part of the Survivors of them. And We do hereby declare, That We have been Graciouſly pleaſed to Impower the ſaid Captain Thomas Warren, and the Commander in chief of the ſaid Squadron for the time being, Iſrael Hayes, Peter Dellanoye, and Chriſtopher Pollard, Eſquires, Commiſſioners aforeſaid, or any Three of them, or, in caſe of Death, to the major part of the Survivors of them, to give Aſſurance of our moſt gracious Pardon unto all ſuch Pirates in the Eaſt-Indies, (viz.) all Eaſtward of the Cape of Good Hope, who ſhall ſo ſurrender themſelves for Piracies or Robberies committed by them upon the Sea or Land; except nevertheleſs ſuch as they ſhall commit in any Place whatſoever after Notice of our Grace and Favour hereby declared; And alſo Excepting all ſuch Piracies and Robberies as ſhall be committed from the Cape of Good Hope Eaſtward, to the Longitude or Meridian of Socatora, after the laſt Day of April 1699. and in any Place from the Longitude or Meridian of Socatora Eaſtward, to the Longitude or Meridian of Cape Comorin, after the laſt Day of June, 1699. and in any Place whatſoever Eaſtward of Cape Co-

morin after the laſt Day of July, 1699. And alſo excepting Henry Every alias Bridgman, and William Kidd.

Given at our Court at *Kenſington*, the Eighth Day of *December*, 1698. In the Tenth Year of our Reign.

God ſave the King.

Clerk. There is no Day mentioned in this Paper when they ſurrendred themſelves.

Mr *Moxon.* My Lord, about the Year 1697, there was a ſpecial Commiſſion given to Four Perſons, and they were to proceed in their Voyage to the *Indies*, and they carried a great Number of *Proclamations*, that all the Pirates in ſuch and ſuch Places ſhould ſurrender themſelves. Now they came to St. *Helena* with them, and Captain *Warren* was ſent to St *Mary*'s, and he was to deliver ſome of theſe *Proclamations* there, and the Commiſſioner had then the Embaſſador to the *Great Mogul* on Board, and this Captain *Warren* theſe *Proclamations*. *Warren* comes and delivers the *Proclamations* out, and among the reſt the Priſoner at the Bar having notice of this, he goes to the Governor, and confeſſes he had been a Pirate, and deſired them to take notice that he ſurrendred himſelf; and we have the Governor here, to give an Account of this Matter.

L. C. B. *Ward.* The *Proclamation* ſays they muſt ſurrender themſelves to ſuch and ſuch Perſons by Name. See if it be not ſo. (*Then the* Proclamation *was read again.*) Here are ſeveral Qualifications mentioned; you muſt bring your ſelves under them, if you would have the Benefit of it.

Dr *Newton.* Let them ſhow that they ſurrendred themſelves to the Perſons they were to ſurrender to.

Mr *Moxon.* My Lord, we will prove we gave Notice within the Time, by this Paper.

Mr *Soll. Gen.* There is no Time mentioned in it. (*The Affidavit was read.*) Charles Hally, *Gent. Maketh Oath, That in the Year* 98, *there being Notice of his Majeſty's gracious Pardon to ſuch Pirates as ſhould ſurrender themſelves*, James Howe, Nicholas Churchill, *and* Darby Mullins, *in* May 1699, *did ſurrender themſelves to* Jeremiah Baſs, *and he did admit them to Bail.*

L. C. B. *Ward.* There are Four Commiſſioners named in the *Proclamation:* There is no Governor mentioned that is to receive them, only thoſe Four Commiſſioners.

Mr *Moxon.* But, my Lord, conſider the Nature of this *Proclamation*, and what was the Deſign of it, which was to invite Pirates to come in.

Mr *Comers.* We muſt keep you to the *Proclamation.* Here is not enough to put off the Tryal.

L. C. B. *Ward.* If you had brought your ſelves within the Caſe of the *Proclamation*, we ſhould be very glad. You that offer it, muſt conſider it is a Special *Proclamation*, with divers Limitations; and if you would have the Benefit of it, you muſt bring your ſelves under the Conditions of it. Now there are Four Commiſſioners named, that you ought to ſurrender to; but you have not ſurrendered to any one of theſe, but to Colonel *Baſs*, and there is no ſuch Man mentioned in this *Proclamation.*

Mr *Knapp.* My Lord, and Gentlemen of the Jury, The Indictment ſets forth, That the Priſoners at the Bar, on the 30th of *January*, in the Ninth Year of his Majeſty's Reign, ten Leagues diſtant from *Cutſheen*, did Piratically ſeize and rob a certain Ship called the *Quedagh Merchant*, and put the Men in fear of their Lives; and the ſaid Ship, with her Apparel, Tackle, and Goods, did then and there, upon the High Sea, take and carry away, againſt the Peace of our Sovereign Lord the King, his Crown and Dignity. To this Indictment they have Pleaded, Not guilty. If we prove it upon them, you muſt find them guilty.

Dr *Newton, Advocate of the Admiralty.* My Lord, and Gentlemen, The Priſoners at the Bar, Captain *Will. Kidd*, late Commander of the *Adventure Galley*, and nine other Mariners in the ſame Veſſel, ſtand Indicted for Feloniouſly and Piratically Aſſaulting and taking a Ship called the *Quedagh Merchant*, on the High Sea near *Cutſheen*, in the *Eaſt-Indies*, about the 30th of *January*, in the Ninth Year of his Majeſty's Reign: The Ship was conſiderable for its Force and Bulk, being about 400 Tun; and more conſiderable for its Lading, having on Board to the Value of many Thouſand Pounds.

This Cap. *Kidd*, who thus acted the Pirate himſelf, went from *England* in *April* 1696, with a Commiſſion dated the 26th of *January* preceeding, to take and ſeize Pirates in the *Indian* Seas, which were then very much and very dangerouſly infeſted by them, to the great Hazard, and Loſs, and Ruine of the Merchant.

The Ship carried 30 Guns, and there were on Board about 80 Men; but the Captain being come to *New-York* in *July* 96, pretending, as indeed it was deſigned he ſhould, and he had undertaken to make that Deſign good, that he was going to *Madagaſcar*, (which was the known and common Receptacle of the Pirates in thoſe Seas) to take Pirates, and free the Seas from thoſe Diſturbers of the Commerce of Mankind; ſo many came in to him, being invited by Articles publickly ſet up by him in that Place, that his Number quickly encreaſed to 155 Men; a Force ſufficient, if he had meant well, to have made him uſeful to the Publick; and to prove as miſchievous, if his Deſigns were otherwiſe: And what thoſe were will quickly appear.

After calling in at ſeveral Places for Proviſions, and among others at *Madagaſcar*, in *July* 97, he ſailed to *Babs-key*, a ſmall Iſland at the Entrance of the *Red-Sea*, and a convenient Station for the obſerving what Veſſels went from thence to the *Indies*; and now inſtead of taking Pirates, he becomes one himſelf, and the greateſt and the worſt of all. Here he ſtaid three Weeks, in expectation of the *Mocca* Fleet, to make his Benefit and his Fortune out of it: For whatever he had before pretended, this was his real Deſign, and now ſo poſſeſſed his Mind, that he could not refrain from declaring, and that often, to his Men, That now he ſhould make his Voyage and ballaſt his Ship with Gold and Silver. After long Expectation, the Fleet, on the 14th of *Auguſt*, to the Number of 14, came by: He fell in with the middle of them, fired ſeveral Guns at them; but finding they had an *Engliſh* and *Dutch* Convoy, that Deſign happily fail'd of the wiſh'd for Succeſs.

This Diſappointment however did not diſcourage him, but that he proceeded on for the Coaſt of *Malabar*, where he knew the Trade was conſiderable,

ſiderable, and hoped his Advantage would be proportionable in the diſturbing it; and there accordingly, for ſeveral Months, he committed many great Piracies and Robberies, taking the Ships and Goods of the *Indians* and others at Sea, *Moors* and *Chriſtians*, and torturing cruelly their Perſons, to diſcover if any thing had eſcaped his Hands; burning their Houſes, and killing after a barbarous manner the Natives on the Shore; equally cruel, dreaded and hated both on the Land and at Sea.

Theſe Criminal Attempts and Actions had rendered his Name (to the Diſgrace and the Prejudice of the *Engliſh* Nation) too well known, and deſervedly deteſted, in thoſe remote Parts of the World; and he was now looked upon as an Arch-Pirate, and the Common Enemy of Mankind; and accordingly two *Portugueſe* Men of War went out in purſuit of him, and one met with him and fought him for ſeveral Hours; but *Kidd*'s Fortune then reſerved him for another Place, and another manner of Tryal.

Amongſt the great number of Veſſels he took on that Coaſt, was the Ship he now ſtands Indicted for, the *Quedagh Merchant*, being then on a Trading Voyage from *Bengal* to *Suratt*, the Commander *Engliſh*, Captain *Wright*, the Owners *Armenian* Merchants, and others; he had taken *Moors* before, but *Moors* and *Chriſtians* are all alike to Pirates, they diſtinguiſh not Nations and Religions.

Thoſe on Board the Veſſel offered 30000 *Rupees* for her Ranſom; but the Ship was too conſiderable to be parted with, even for ſo great a Sum: So *Kidd* ſold Goods out of her, on the Neighbouring Coaſt, to the Value of Ten or Twelve Thouſand Pounds, out of which he took whatever he could pretend to for Ammunition and Proviſions, with Forty Shares for himſelf; and the Remainder was diſpoſed of amongſt the Crew, and particularly thoſe who are here Indicted with him, who accompanied him, who aſſiſted him throughout in all his Piracies, and who now too ſhare the Spoils and the Guilt with him.

With this Ship and another, and the Remainder of the Goods not ſold on the Coaſt, he ſailed once more for *Madagaſcar*, where he arrived in the beginning of *May* 98, and there again, what was left on Board, was divided according to the ſame Proportions, and amongſt the ſame Perſons as before, each Mariner having about three Bales to his Share.

Then the Jury brought in their Verdict againſt William Kidd *for Murther: And Dr* Newton *proceeded*;

It is not to be omitted, That at his Return to *Madagaſcar*, there came on board him ſome Perſons from the Ship *The Reſolution*, formerly the *Mocca Frigat*, (for the Piratical ſeizing of which Veſſel there have been formerly Tryals and Convictions in this Place) of which Captain *Culliford*, a notorious Pirate, now in Cuſtody, and againſt whom two Bills have been found for Piracy, by the Grand Jury, was the Commander: They at firſt ſeemed to be afraid of *Kidd*, but without any Ground, as his former Actions had demonſtrated, and the Sequel ſhewed. They who were hardened Pirates, and long inured to Villanies, could ſcarce think that any Man could ſo betray the Truſt and Confidence the Publick had placed in him, and ſaid, They heard he was come to take and hang them. But Captain *Kidd* aſſured them, That he had no ſuch Deſign, and that he had rather his Soul ſhould broil in Hell, than do them any Harm; bid them not be afraid, and ſwore he would be true to them. And here indeed he did not break his Word: This was his way of being True to his Truſt, and making good the Ends of his Commiſſion, in acting with the greateſt Treachery and the greateſt Falſeneſs that ever Man did. And to make all that has been repreſented of him true, Captain *Kidd* and Captain *Culliford* went on Board, Treated, and preſented each other; and inſtead of taking *Culliford*, as it was his Duty to have done, and his Force was ſufficient to have performed it, he gave him Money and Ammunition, two great Guns and Shot, and other Neceſſaries to fit him out to Sea, that he might be in a Condition the better to take and ſeize other Innocent Perſons.

His own Ship he now left, and went on Board the *Quedagh Merchant*; ſeveral of his Men then went from him, but not the Priſoners, they were all along Well-wiſhers and Aſſiſtants to him, fought for him, divided the Plunder with him, and are now come to be tryed with him.

This, Gentlemen, is the Crime he is Indicted for, Piracy; the growing Trouble, Diſturbance and Miſchief of the Trading World, and the peaceable part of Mankind, the Scandal and Reproach of the *European* Nations, and the Chriſtian Name, (I wiſh I could not ſay, that the *Kidd*'s and the *Avery*'s had not made it more particularly ſo of the *Engliſh*) amongſt *Mahometans* and *Pagans*, in the extreameſt Parts of the Earth; which turns not only to the Diſadvantage of the immediate Sufferers, but of all ſuch as traffick in thoſe Countries, whether Companies or ſingle Merchants, who are to ſuffer for the Misfortunes of others, with whom, it may be, they have no Dealings; and for the Villanies of ſuch, whom they and all Mankind equally and juſtly deteſt and abhor.

This is the Perſon that ſtands Indicted at that Bar, than whom no one in this Age has done more Miſchief, in this worſt kind of Miſchief; or has occaſioned greater Confuſion and Diſorder, attended with all the Circumſtances of Cruelty and Falſehood, and a Complication of all manner of Ill.

If therefore theſe Facts ſhall be proved upon him, you will then, Gentlemen, in finding him Guilty, do Juſtice to the injured World, the *Engliſh* Nation, (our Common Country) whoſe Intereſt and Welfare ſo much depend on the Encreaſe and Security of Trade; and, laſtly, to your ſelves, whom the Law has made Judges of the Fact.

Mr *Soll. Gen.* My Lord, and Gentlemen of the Jury, I am of Council for the King, againſt the Priſoners at the Bar, in this Caſe, with the Doctor that has opened the Matter from the begining. Theſe Priſoners at the Bar went out with Commiſſions for good Purpoſes, though they made uſe of them to very bad ones. Gentlemen of the Jury, I muſt tell you, The Charge upon which you are to enquire, is only upon a certain Ship called the *Quedagh Merchant*, and to that we ſhall apply our Evidence. What was taken in her, has been opened already: All we will do now, is to call our Witneſſes, and make out to your Satisfaction the Things charged upon them.

Mr *Coniers*. My Lord, we ſhall prove this Charge by the Perſons that were Evidence before, *Rober Bradinham*

Bradinham, and *Joſeph Palmer*. They went out with Captain *Kidd* in his Voyage, and he began it in *April* 1696. I believe it will be neceſſary that they give ſome Account before this Piracy was committed, which was not in Time till *February* 1697. They will give you an Account of ſome Plunders that happened before this, and then of the taking of this Ship, and the dividing it amongſt them.

Mr Juſtice *Powell*. When went they out?

Mr *Coniers*. They began their Voyage in *April* 1696, and took this Ship in *February* 1697. They did all along that Voyage commit ſeveral Plunders on ſeveral Ships they thought a Prey. Their Deſign was, not to take Pirates, but to take what they could get out of any Ships, Friends or Enemies: For in this Ship, the *Quedagh Merchant*, which was a *Mooriſh* Ship, there were ſeveral *Armenians*; and they offered them a great Sum of Money to redeem the Ship, but they refuſed it; and they diſpoſed of the Goods, and divided the Money: And for the Proof of that, we will call Mr *Bradinham*.

Mr J. *Powell*. I underſtand that he had a Commiſſion; therefore if any one has a Commiſſion, and he acts according to it, he is not a Pirate; but if he take a Commiſſion for a Colour, that he may be a Pirate, it will be bad indeed: And therefore if you can prove that he was a Pirate all along, this will be a great Evidence againſt him.

Mr *Coniers*. My Lord, We will prove that; ſo that the Commiſſion was but a Colour. Mr *Bradinham*, Pray give my Lord and the Jury an Account when you began your Voyage, and your Proceedings afterwards.

Bradinham. Sometime in the Year 1696; about the beginning of *May*, I and others, were with Capt. *Kidd*: And we ſailed from *Plymouth*, deſigning for *New-York*; and in the Way to *New-York* we met with a *French* Banker, and took her.

Mr *Coniers*. Tell the Court what Ship it was you went in, and with whom.

Bradinham. We went with Captain *Kidd*, in the *Adventure-Galley*.

Mr *Coniers*. What Number of Men had you when you went firſt out?

Bradinham. About Seventy or Eighty Men.

Mr *Coniers*. What Force of Guns had you?

Bradinham. We had thirty Guns.

Mr *Coniers*. In what Office was Captain *Kidd* in the Ship?

Bradinham. He was the Commander of her.

Mr *Coniers*. Now tell my Lord, and the Jury, what time you left *England*, and how you proceeded.

Bradinham. In *May* 1696, we left *Plymouth*, and went to *New-York*, and in the way met with a *French* Ship, and took her: And when we came to *New-York*, Captain *Kidd* put up Articles, That if any Men would enter themſelves on Board his Ship, they ſhould have their Shares of what ſhould be taken, and he himſelf was to have Forty Shares.

Mr *Coniers*. What Number of Men did he get after theſe Articles were publiſhed?

Bradinham. He carried from *New-York* an Hundred and fifty five Men.

Mr *Coniers*. Whither did he ſail then?

Bradinham. To the *Madera's*, from thence to *Bonavis*, from thence to St *Jago*, from thence to *Madagaſcar*, from thence to *Joanna*, from thence to *Mahala*, from *Mahala* to *Joanna* again, and from thence to the *Red-Sea*; and there we waited for the *Mocca* Fleet. They paſſed us one Night, and he purſued them, and went among them, and was deſigned to take what he could of them; but he found they were too ſtrong for him, and was fain to leave them.

Mr *Cowper*. How long did you lie in wait for that Fleet?

Bradinham. A Fortnight or Three Weeks.

Mr *Cowper*. Did he expreſs himſelf ſo, that he did lie in wait for that Fleet?

Bradinham. Yes; he ſaid that he did deſign to make a Voyage out of them.

Mr *Cowper*. Did he not lie in wait for any *French* Effects in that Fleet?

Bradinham. No, only for the *Mooriſh* Fleet.

Mr *Cowper*. What do you mean by the *Mooriſh* Fleet?

Bradinham. The Natives of *India*, the *Mahometans*.

Mr *Cowper*. Where did you lie in wait for that Fleet?

Bradinham. In the *Red-Sea*.

Mr *Cowper*. In the Mouth of it?

Bradinham. Yes.

Mr *Cowper*. Is it a fit Place for that Purpoſe?

Bradinham. Several Sail of Ships may lie there.

Mr *Cowper*. Did you expect them?

Bradinham. Yes; Capt. *Kidd* waited for them.

Mr *Coniers*. How long did you ſtay there?

Bradinham. About a Fortnight.

Mr *Coniers*. Did you do any thing in that time to get Intelligence?

Bradinham. Captain *Kidd* ſent his Boat three times to *Mocca*, to ſee if they could make any Diſcovery; and the two firſt times they could make none; but the third time they brought word the Ships were ready to ſail: And accordingly they came, and we ſailed after them, and fell in with them, and Captain *Kidd* fired at them.

Mr *Cowper*. You ſay, he ſent his Boat three times for Intelligence; Can you remember what Anſwer they brought?

Bradinham. The two firſt times they brought no Intelligence, but the third time they brought Word that fourteen or fifteen Ships were ready to ſail.

Mr *Cowper*. What Colours did they ſay they had?

Bradinham. I cannot tell that. When Captain *Kidd* had fetched them up, he found they were under Convoy, and ſo he left them: And then he was going to the Coaſt of *Malabar*, and by the Way met with Captain *Parker*.

Mr Juſtice *Powel*. Did they fire any Guns at the *Mocca* Fleet?

Bradinham. Yes; Captain *Kidd* fired divers Guns at them.

Mr *Coniers*. After ſuch time as you left the *Mocca* Fleet, What happened after that? Recollect your ſelf.

Bradinham. We took a Ship that Capt. *Parker* was Commander of, between *Carawar* and the *Red-Sea*.

Mr *Coniers*. What Ship was this that Captain *Parker* was Commander of?

Bradinham. A *Mooriſh* Ship, ſhe came from *Bombay*, and Captain *Parker* was the Maſter.

Mr *Coniers*. What did you take from this Ship?

Bradinham. Captain *Kidd* took out *Parker*, and a *Portugueſe* for a *Linguiſter*.

Mr *Coniers*. A *Linguiſter*; What do you mean by that?

Bradinham. An Interpreter. He took out of her a Bail of Coffee, a Bail of Pepper, about twenty

ty Pieces of *Arabian* Gold, and ordered ſome Men to be taken and hoiſted up by the Arms, and drub'd with a naked Cutlace.

Mr *Coniers.* Why did he do that?

Bradinham. That they might confeſs what Money they had.

Mr *Coniers.* Were thoſe Men *Frenchmen* that were thus uſed?

Bradinham. No; they were *Moors.*

Mr *Coniers.* Was there any Demand made of thoſe Men, Captain *Parker*, and the *Portugueſe?*

Bradinham. Yes; The *Engliſh* Factory ſent for this *Parker* and the *Portugueſe*, and he deny'd that he had any ſuch Perſons on Board, for he kept them in a Hole.

Mr *Coniers.* Do you know any thing more?

Bradinham. Then he went to Sea, and that Night he met with a *Portugueſe* Man of War; the next Morning he came up with her, and the *Portugueſe* firſt fired at Captain *Kidd*, and he at him again; they fought four or five Hours; Captain *Kidd* had ten Men wounded.

Mr *Coniers.* So that there was nothing more than Fighting.

Bradinham. No.

Mr *Coniers.* Go on; What did you do next?

Bradinham. We went to the Coaſt of *Malabar.*

Mr *Coniers.* What did you go thither for?

Bradinham. We went to one of the *Malabar* Iſlands for Wood and Water, and Captain *Kidd* went a-ſhore, and ſeveral of his Men, and plundered ſeveral Boats, and burnt ſeveral Houſes, and ordered one of the Natives to be ty'd to a Tree, and one of his Men to ſhoot him.

Mr *Coniers.* Pray go on: What was the Reaſon of his ſhooting this *Indian?*

Bradinham. One of his Men, that was his Cooper, had been a-ſhore, and ſome of the Natives had cut this Man's Throat, and that was the Reaſon he ordered his Men to ſerve this Man ſo.

Mr *Coniers.* Pray go on, and give an Account what happened afterwards.

Bradinham. Then we came back again to the *Malabar* Coaſt, and cruiſed; and in *October* he killed his Gunner, *William Moore.*

Mr *Coniers.* Tell what happened next after that.

Mr *Cowper.* Was this the *October* next after he left *England*, or the Year following.

Bradinham. It was in *October* 1697.

Mr *Coniers.* Well, Go on.

Bradinham. Some time in *November* he took a *Mooriſh* Ship belonging to *Suratt*, there were two *Dutchmen* belonging to her, the reſt were *Moors.* Captain *Kidd* chaſed this Ship under *French* Colours; and when the *Dutchman* ſaw that, he put out *French* Colours too. And Captain *Kidd* came up with them, and commanded them on Board; and he ordered a *Frenchman* to come upon Deck, and to pretend himſelf Captain. And ſo this Commander comes aboard, and comes to this Monſieur *Le Roy* that was to paſs for the Captain; and he ſhows him a Paper, and ſaid it was a *French* Paſs. And Captain *Kidd* ſaid, *By God, Have I catch'd you? You are free Prize to* England. We took two Horſes, ſome Quilts, *&c.* and the Ship he carried to *Madagaſcar.* In *December* he took a *Mooriſh* Ketch, ſhe was taken by the Boat, we had one Man wounded in taking of her.

Mr *Coniers.* When was this done?

Bradinham. In *December* 1697.

Mr *Coniers.* What did you plunder then?

Bradinham. Our People took the Veſſel a-ſhore, and Captain *Kidd* took out of her thirty Tubs of Sugar, a Bail of Coffee, *&c.* and then he ordered the Veſſel to be turned a-drift.

Mr *Coniers.* What followed in *January?*

Bradinham. January the 20th, Captain *Kidd* took a *Portugueſe* that came from *Bengal:* He took out of her two Cheſts of *Opium*, ſome *Eaſt-India* Goods, and Bags of Rice, *&c.*

Mr *Coniers.* How long did you keep this Ship?

Bradinham. He kept this *Portugueſe* Ship about ſeven Days: He took out of her ſome Butter, Wax, and *Eaſt-India* Goods: He kept her till he was chaſed by ſeven or eight Sail of *Dutch*, and then he left her.

Mr *Coniers.* My Lord, Now we are come to that on which the Indictment is founded. Mr *Bradinham*, give a particular Account of that.

Bradinham. Some time in *January*, Captain *Kidd* took the *Quedagh-Merchant:* He gave her chaſe under *French* Colours: He came up with her, and commanded the Maſter aboard: And there came an old *Frenchman* in the Boat; and after he had been aboard a while, he told Captain *Kidd* he was not the Captain, but the Gunner. And Captain *Kidd* ſent for the Captain on board his Ship.

Mr *Coniers.* Who was that?

Bradinham. Mr *Wright.*

Mr *Coniers.* What Countryman was he?

Bradinham. An *Engliſhman.* He was ſent for aboard, and he came; and Captain *Kidd* told him, he was his Priſoner. And he ordered his Men to go a-board, and take Poſſeſſion of the Ship, and diſpoſed of the Goods on that Coaſt to the Value of Seven or Eight Thouſand Pounds.

Mr *Coniers.* What Perſons were a-board her?

Bradinham. There was Captain *Wright*, and two *Dutchmen*, and a *Frenchman*, and ſome *Armenians*, and the reſt *Moors.*

Mr *Coniers.* Did theſe *Armenians* make any Offer of any Money for their Ranſom?

Bradinham. Captain *Kidd* told them, They ſhould be ranſomed, if they made an Offer that he liked of. So they offered him twenty thouſand *Rupees.* He told them, That was but a ſmall parcel of Money, and the Cargo was worth a great deal more.

Mr *Coniers.* Who did the Cargo belong to?

Bradinham. To thoſe *Armenians*, as I was informed by Captain *Wright.*

Mr *Coniers.* What did he do with them?

Bradinham. He diſpoſed of ſome of them on the Coaſt of *India.*

Mr *Coniers.* What did he do with the Proceed of the Goods he ſold?

Bradinham. He ſhared the Money.

Mr *Coniers.* Had theſe Men (the other Priſoners) any of the Shares?

Bradinham. Yes, all of them. You were a Half-ſhare Man, and you a Half-ſhare Man, *(pointing to two of them.)*

Mr *Coniers.* Mr *Bradinham*, You ſay Capt. *Wright* came a-board *Kidd*'s Ship.

Bradinham. Yes.

Mr *Coniers.* Did he diſcourſe with him?

Bradinham. I was not with him, for he kept his Cabin to himſelf.

Mr *Coniers.* But you are ſure he came a-board?

Bradinham. Yes.

Mr *Coniers.* And that he was an *Engliſhman?*

Bradinham. Yes.

Mr *Coniers.* How did Captain *Kidd* behave himſelf to the Ships or Boats there?

Bradinham. He boarded ſeveral Ships, and took out of them what was for his turn.

Mr *Coniers.* How did he uſe thoſe that he traded with?

Bradinham. Some of them came a-board ſeveral times, and he traded with them: But ſome of them came a-board when he was going away, and he plundered them, and ſent them a-ſhore without any Goods.

Mr *Coniers.* What Country Men were thoſe he ſerved thus?

Bradinham. Mahometans: They had dealt with him before conſiderably.

Mr *Coniers.* How much did he take from them.

Bradinham. About Five Hundred Pieces of Eight.

Mr *Coniers.* How do you know that?

Bradinham. I ſaw it told afterwards. We went to *Madagaſcar* afterwards, and by the Way met with a *Mooriſh* Ship, and took out of her ſeveral Casks of Butter, and other Things.

Mr *Cowper.* What were the Crew of this Ship?

Mr *J. Powell.* They are Indicted for the *Quedagh-Merchant*; Were all the Priſoners in that Action? You have given an Hiſtorical Account from the Beginning, that he was a meer Plunderer: But now you are come to the *Quedagh*, for which they are Indicted; Go not beyond it.

Mr *Coniers.* Look on the ſeveral Priſoners at the Bar, and tell whether any of the Priſoners were at the taking of the *Quedagh-Merchant.*

Cl. of Arr. Was *William Kidd* there, at the Time the Ship was taken?

Bradinham. Yes.

Cl. of Arr. Was *Nicholas Churchill* there?

Bradinham. Yes.

Cl. of Arr. Do you know *James Howe?* Was he there?

Bradinham. Yes.

Cl. of Arr. Had he a Share?

Bradinham. Yes.

Cl. of Arr. Had *Robert Lamley* a Share?

Bradinham. Yes. He was a Servant, and had but half a Share of the Money, and a whole Share of the Goods.

Cl. of Arr. William Jenkins, was he there, and had a Share?

Bradinham. Yes.

Cl. of Arr. Gabriel Loffe, did you know what he had?

Bradinham. He had half a Share of the Money, and a whole Share of the Goods.

Cl. of Arr. Hugh Parrot, what had he?

Bradinham. Half a Share.

Cl. of Arr. Had *Richard Barlicorn* a Share?

Bradinham. He had half a Share of Money, and a whole Share of Goods.

Cl. of Arr. Had *Abel Owens* any?

Bradinham. He had half a Share.

Abel Owens. Had I any of it?

Bradinham. You had it: You took it.

Cl. of Arr. What had *Darby Mullins?*

Bradinham. He had half a Share of the Money, and a whole Share of the Goods.

Mr *Coniers.* Now we have fully proved this as to the *Quedagh-Merchant.*

Dr *Newton.* When you came to *Madagaſcar*, what was done there?

Bradinham. There came a *Canooe* to us with ſome *Engliſh* Men in her, they were formerly acquainted with Captain *Kidd*, and they told him, They had heard, that he was come to take them, and hang them.

Dr *Newton.* Who were they?

Bradinham. They belonged to the *Moco* Frigate.

Mr *Coniers.* Give a particular Account of that Matter.

Bradinham. When we came to *Madagaſcar*, there came a *Canooe* off to us.

Mr *Coniers.* From whom?

Bradinham. From the *Moco* Frigate, Captain *Culliford* was the Commander. And there were ſome white Men in her, that had formerly been acquainted with Captain *Kidd*; they heard that he was come to take them, and hang them. He told them, it was no ſuch thing for he was as bad as they.

Mr *Coniers.* Were they thought to be Pirates?

Bradinham. They were ſo.

Mr *Coniers.* What was it that Captain *Kidd* ſaid?

Bradinham. He aſſured them it was no ſuch thing. And afterwards went aboard with them, and ſwore to be true to them; and he took a Cup of Bomboe, and ſwore to be true to them, and aſſiſt them; and he aſſiſted this Captain *Culliford* with Guns, and an Anchor, to fit him to Sea again.

L. C. B. *Ward.* How came you to know all this? Was you aboard then?

Bradinham. I was aboard then, and I heard the Words.

Dr *Newton.* Were any of the Goods divided at *Madagaſcar?*

Bradinham. Yes.

Mr *Coniers.* Now look on the Priſoners again, you ſay after he met with this Captain *Culliford*, you went and had a Diviſion made; pray give an Account of it.

Bradinham. When we came to *Madagaſcar*, Captain *Kidd* ordered the Goods to be carried a-ſhore, and ſhared. And he had forty Shares himſelf.

Cl. of Arr. Had *Nicholas Churchill* a Share?

Bradinham. Yes.

Cl. of Arr. Had *James Howe* a Share?

Bradinham. Yes.

Cl. of Arr. Had *Robert Lamley* a Share?

Bradinham. Yes.

Cl. of Arr. Had *William Jenkins* a Share?

Bradinham. Yes.

Cl. of Arr. Had *Gabriel Loffe* a Share?

Bradinham. Yes.

Cl. of Arr. Had *Hugh Parrot* a Share?

Bradinham. Yes.

Cl. of Arr. Had *Richard Barlicorn* a Share?

Bradinham. Yes.

Cl. of Arr. Had *Abel Owens* a Share?

Bradinham. Yes.

Cl. of Arr. Had *Darby Mullins* a Share?

Bradinham. Yes.

Cl. of Arr. So that you ſay, every one of the Priſoners at the Bar had a Share.

Bradinham. Yes.

Mr *Coniers.* What became afterwards of the *Adventure-Galley?*

Bradinham. She was ſo leaky, that ſhe had two Pumps going; and when they came to ſhore, they left her, becauſe ſhe was not fit to go to Sea again. And ſo Captain *Kidd* went aboard the *Scuddee Merchant*, and deſigned to make a Man of War of her.

Mr *Coniers.* What is that *Scuddee-Merchant?* Do you mean the *Quedagh-Merchant?*

Bradinham. Yes.

L. C. B. *Ward.* What became of that Ship afterwards?

Bradinham. I left him at *Madagaſcar*, after the Money and Goods were divided; and can give no Account afterwards.

Dr *Newton.* But you ſay, Captain *Kidd* went aboard the *Quedagh.*

Bradinham. Yes.

Mr *Coniers.* My Lord, we have done as to this Witneſs; if they will ask him any Thing they may.

Cl. of Arr. Will any of you ask him any Queſtions?

Kidd. He ſays, when we went out firſt from *England*, we went out of *Plymouth* in *May*, which we did not; for we went in *April*, therefore this is a Contradiction.

L. C. B. *Ward.* Mr *Kidd*, if you will ask him any Queſtions, you may. Do you deſire he ſhould be poſitive when you went from *Plymouth?*

Bradinham. It was about the firſt of *May*, my Lord.

L. C. B. *Ward.* What Year?

Bradinham. In the Year, 1696.

Cl. of Arr. Nicholas Churchill, will you ask him any Queſtions?

Churchill. I would have went a-ſhore at *Carawar*, but the Captain would not let me.

L. C. B. *Ward.* It is proved, that you was at the taking of the *Quedagh-Merchant*, and dividing the Goods.

Churchill. Yes, my Lord, but I could not help it, I was forced to do what the Captain ordered me.

Cl. of Arr. James Howe, will you ask him any Queſtions?

James Howe. Have not I obeyed my Captain in all his Commands?

L. C. B. *Ward.* There is no doubt made of that. If any of you will ask him any Queſtions, you may.

Kidd. Did you not ſee any *French* Paſſes aboard the *Queda* Merchant?

Bradinham, You told me you had *French* Paſſes, I never did ſee them.

Kidd. Did you never declare this to any body, that you ſaw theſe *French* Paſſes?

Brandinham. No, I did never ſee any; but I only ſaid, I heard you ſay you had them.

Churchill. Had I any ſhare?

Brandinham. Yes.

Churchill. How will you prove that?

Jenkins. My Lord, I ask him, Whether I was not a Servant?

L. C. B. *Ward.* Ask the Witneſs what Queſtions you will.

Bradinham. My Lord he was a Servant.

L. C. B. *Ward.* Who was he a Servant to?

Bradinham. To *George Bullen.*

Jenkins. My Lord, I beg you will examine my Indenture; for I have it in my Pocket, I had nothing aboard that Ship, but what my Maſter had.

Bradinham. But you had a ſhare of the Goods, I cannot tell whether your Maſter had it afterwards.

Cl. of Arr. Gabriel Loff. Have you any Queſtion to ask him?

Gab. Loff. I have nothing to ſay to him, but to ask him, Whether I did ever diſobey my Captain's Commands, or was any ways mutinous on board the Ship?

Bradinham. No, I cannot ſay you did.

Cl. of Arr. Hugh Parrot, do you ask him any Queſtions?

Parrot. No.

Cl. of Arr. Richard Barlicorn, do you ask him any Queſtions?

Barlicorn. I ask him, Whether I was not the Captain's Servant?

L. C. B. *Ward.* Yes, he ſays he was.

Cl. of Arr. Abel Owens, will you ask him any Queſtions?

Owens. I have nothing to ſay; but depend upon the King's Proclamation.

Cl. of Arr. Darby Molins, have you any Queſtions to ask him?

Molins. My Lord, he knows I had nothing but what Capt. *Kidd* was pleas'd to give me.

L. C. B. *Ward.* Was he a Servant to Capt. *Kidd* or no?

Bradinham. He had a half ſhare of Money, and a whole ſhare of Goods.

Mr. *J. Powel.* What was the reaſon ſome had whole ſhares, and ſome half ſhares?

Bradinham. Some were able Seamen, and ſome Landmen, or Servants. There were in all 160 ſhares, whereof Capt. *Kidd* had 40; and ſome of the Men had whole ſhares, and ſome only half ſhares.

Mr *Cowper.* You told us at firſt, That in your paſſage to *New-York*, you took a *French* Banker, and that he condemned her at *New-York.*

Bradinham. Yes.

Mr *Cowper.* Did he offer to carry any other Ships he took, to be condemned?

Bradinham. No Sir, never.

Mr *Coniers.* Call *Joſeph Palmer.* [who appeared.] Mr *Palmer*, Give my Lord, and the Jury an account, whether you were one of the Men that went with Capt. *Kidd* in the *Adventure* Gally.

Palmer. Yes, I was.

Mr *Coniers.* Then give an account when you left *England*; and of your proceedings in your Voyage.

Palmer. About the laſt of *April*, or the beginning of *May*, 1696, we went out of *Plymouth* to *New-York*; and by the Way took a *French* Banker. And in *July* we came to *New-York.* About the 6th of *February* we went to *Maderas.*

Mr *Coniers.* When you were at *New-York*, was there any publication of any Thing to invite Men to come in to Captain *Kidd?*

Palmer. Yes, there were Articles ſet up for Men to come aboard Captain *Kidd*'s Ship. He was to have Forty Shares for his Ship, and every Man was to have a Share. And they were to give him Six Pounds a Man for their Arms.

Mr *Coniers.* How many Men was his Complement?

Palmer. When he came from *New-York*, he had between 150 and 160 Men.

Mr *Coniers.* Give an Account what you did after this. Whither did you go then?

Palmer. We went from *New-York* to *Maderas*, and from thence to *Bonaviſt*, and there we took in Salt; and from thence we went to St. *Jago*, and there we bought Proviſions; and from thence we went to *Madagaſcar.* When we were not far from the *Cape of good hope*, he met with Capt. *Warren*, with three Sail of Men of War beſides himſelf; there was the *Tyger*, and the *King-fiſher*, and another Ship. And Capt. *Kidd* kept them company about three or four Days, and after that went to *Madagaſcar*, and ſometime in *February* arriv'd there; and there we watered and victualled. We came to *Malabar* about the firſt of *June.* Then we went to *Joanna*, and from thence to *Mahala*; and from thence to *Joanna* again. And then we met

with ſome *Indian* Merchants, ſo we watered the Ship there, and did them no harm. And from thence we went to *Mahala*, where Captain *Kidd* graved his Ship: We had a great ſickneſs in the Ship, and ſometimes we loſt four or five Men in a Day. And afterwards we went to *Joanna* again, and there came aboard ſeveral *French* Men, and ſeveral *Engliſh* Men that had loſt their Ship. Thoſe *French* Men lent Captain *Kidd* ſome Money to mend his Ship. And after this, we went to a Place called *Mabbee* in the *Red-Sea*, and took in Water, and *Guiny* Corn that he took from the Natives. And from thence we went to *Babs* Key.

Mr *Coniers*. What Time was it that you came to that *Babs* Key?

Palmer. In *July* 1697.

Mr *Coniers*. Now pray tell us what paſſed there.

Palmer. When Captain *Kidd* came to *Babs* Key, he ſtayed there about three Weeks.

Mr *Coniers*. Why did you ſtay there? Tell us the Reaſon of it.

Palmer. I heard him ſay, *Come Boys, I will make Money enough out of that Fleet.*

Mr *Coniers*. Out of what Fleet?

Palmer. The *Mocco* Fleet. When he came to the Key, he ordered ſome of his Men to look out as Spies. He ſent his Boat three Times to make Diſcovery, and he gave them Orders either to take a Priſoner, or to get an Account what Ships lay there. And the Boat went twice, and brought no News; but the third Time they brought Word, that there were Fourteen or Fifteen Ships lying there ready to Sail; ſome of them had *Engliſh* Colours, ſome *Dutch* Colours, and ſome *Mooriſh* Colours; and that there was a great Ship with Red Colours, with her Fore-top-ſail looſe, ready to Sail. And Captain *Kidd* ordered his Men to take care theſe Ships did not paſs by in the Night.

Mr *Coniers*. You ſay, he ordered his Men to watch this Fleet, How did he order them?

Palmer. He ordered them by a Liſt in their Turns, to look out for the coming of this Fleet. And ſo after four or five Days the Fleet came down in an Evening, about the 14th or 15th of *Auguſt*; the next Morning Captain *Kidd* went after them, and he fell into the Midſt of the Fleet, and there was a *Dutch* Convoy, and an *Engliſh* one among them. He went into the midſt of the Fleet, and fired a Gun after a *Mooriſh* Ship. And the two Men of War fired at us, but did no harm, for they did not reach us. So he left the Fleet, and from thence went to *Carawar*.

Mr *Coniers*. Tell what paſſed there.

Palmer. Then we met with a ſmall Veſſel belonging to *Aden*.

Mr *Coniers*. What Country did it belong to?

Palmer. Black People, only there was one *Thomas Parker*, and a *Portugueſe Don Antonio* on board.

Mr *Coniers*. Was he the Commander of the Ship?

Palmer. I cannot tell.

Mr *Coniers*. What did Captain *Kidd* do with this Ship?

Palmer. He took this *Parker* for a Pilot, and the *Portugueſe* for a Linguiſter.

Mr *Coniers*. What do you mean by that Word Linguiſter?

Palmer. An Interpreter to ſpeak *Spaniſh* and *Portugueſe*.

Mr *Coniers*. Did he take any Thing out of the Ship beſides the Men?

Palmer. He took a Bail of Pepper, and a Bail of Coffee, and let the Ship go. But after this we came to *Carawar*.

Mr *Coniers*. Before you let the Ship go, how were the Men uſed by him?

Palmer. He ordered ſome of the Men to be hoiſted up by their Arms, and drubb'd with a naked Cutlaſs. They were laid with their Hands backward.

Mr *Coniers*. When they were hoiſted up, give an Account how they were uſed, and for what Reaſon.

Palmer. They were beat with a naked Cutlaſs to make them diſcover what Money was aboard.

Mr *Coniers*. What was the next Thing?

Palmer. He took out this *Parker* for a Pilot, and *Antonio* the *Portugueſe* for a Linguiſter. I heard there was Money taken, but I did not ſee it.

Mr *Coniers*. What did he do with thoſe Men?

Palmer. He kept them as the other Men were kept.

Mr *Coniers*. Was there any Demand made of theſe Men?

Palmer. When we came to *Carawar*, the Factory demanded them, and he denied them.

Mr *Coniers*. What Factory is this?

Palmer. An *Engliſh* Factory. There was one *Harvey* and *Maſon* came to demand theſe Men.

Mr *Coniers*. And what ſaid Capt. *Kidd* to them?

Palmer. He deny'd that he had any ſuch Men, and he kept them in the Hold, I believe a Week. Several of his Men would have left him if they could.

Mr *Coniers*. What did he do after this?

Palmer. He put to Sea, and met with a *Portugueſe* Man of War, and fought her; he engaged her five or ſix Hours, and afterwards left her, and then he bought ſome Hogs of the Natives. After he went from this *Carawar*, he went to *Porco*, and took in ſome Hogs there. And then went to the Iſland of *Malabar*, and watered his Ship. And his Cooper went aſhore, and the Natives cut his Throat. And after this, Capt. *Kidd* ſent ſome Men aſhore, and ordered them, That if they ſhould meet any of the Natives, they ſhould kill 'em, and plunder 'em.

Mr *Coniers*. Go on, Sir.

Palmer. After That, they went to the Coaſt of *Malabar* again, and in *November* met with a Ship, and took her. One *Schipper Mitchel* was the Commander: She was a *Mooriſh* Ship.

Mr *Coniers*. What became of her?

Palmer. Capt. *Kidd* carried her to *Madagaſcar*.

Mr *Coniers*. What Goods were in her?

Palmer. There were two Horſes, and ten Bails of Cotton, that he ſold to the Natives.

Mr *Coniers*. Did he ſend for any aboard at this Time?

Palmer. There was a *Frenchman* that was to pretend himſelf the Captain. He took her under *French* Colours, and haled the Ship in *French*. And this *Monſieur le Roy* was to paſs for Captain, and he ſhewed his *French* Paſs, and ——

Mr *Coniers*. Give an Account of his perſonating the Captain. Who order'd him to do ſo?

Palmer. Capt. *Kidd* ordered him to do ſo; and they haled him in *French*, and he came aboard, and he had a *French* Paſs. And then Capt. *Kidd* told him, he was Captain.

Mr *Coniers*. And he took the Ship?

Palmer. Yes the Cotton, and Horſes, and ſold them afterwards.

Mr. *Co*[illegible]

Coniers. Whither went you next?

Palmer. We coaſted about the Coaſt of *Malabar.*

Mr *Coniers.* Did you meet with any Boats there?

Palmer. Yes, ſeveral.

Mr *Coniers.* What did you do with them?

Palmer. Capt. *Kidd* robb'd and plunder'd them, and turn'd them adrift again.

Mr *Coniers.* What was the next Thing you did?

Palmer. About the Firſt of *January* we met with a *Portugueſe* Ship.

Mr *Coniers.* Where?

Palmer. On the ſame Coaſt. We took her.

Mr *Coniers.* What did you do with that Ship?

Palmer. He kept her a Week, and took out two Cheſts of *Indian* Goods, and thirty Jars of Butter, and a Tun of Wax, and half a Tun of Iron, and an hundred Bags of Rice.

Mr *Coniers.* Did you take thoſe Goods you mention?

Palmer. Yes, and carried them aboard the *Adventure* Gally.

Mr *Coniers.* What was the next Ship you met with?

Palmer. The *Queda* Merchant.

L. C. B. *Ward.* Be very plain and particular in this, and how She was taken; for this is the Ship in the Indictment, and for taking of which the Priſoners are tryed.

Palmer. About the laſt of *January* ſhe was taken; I was not then aboard the Gally, for then I was aboard the *November*, and was ordered to get Water. After three or four Days I went aboard; but I was not aboard at the Time ſhe was taken. About three or four Days after, I ſaw her, and Capt. *Kidd* was aboard; and I believe there were taken out of her, Goods, to the Value of Ten or Twelve Thouſand Pounds; which were ſold, ſome before they were put aſhore, and ſome after.

Mr *Coniers.* To whom were they ſold?

Palmer. To the *Banians.* Capt. *Kidd* kept the Seamen to help to ſail the Ships.

L. C. B. *Ward.* What became of the Money the Goods were ſold for?

Palmer. It was ſhared.

L. C. B. *Ward.* What Share had the Captain?

Palmer. He had forty Shares.

Cl. of Arr. What Share had *William Kidd?*

Palmer. He had forty Shares.

Cl. of Arr. In Goods, or Money?

Palmer. In both Goods and Money.

Cl. of Arr. Look upon *Nich. Churchill*, What had he?

Palmer. He had near Two Hundred Pounds of each, which was a Man's Share.

Cl. of Arr. Look upon *James Howe*, Had he any Share?

Palmer. Yes, a whole Share.

Cl. of Arr. Had *Robert Lamley* any Share?

Palmer. He had half a Share of the Money, and a whole Share of the Goods.

Cl. of Arr. *Will. Jenkins*, Had he any Share?

Palmer. He had half a Share of the Money, and a whole Share of the Goods.

Cl. of Arr. Had *Gabriel Loff* any Share?

Palmer. He had half a Share of the Money, and a whole Share of the Goods.

Mr *Coniers.* Why had they no more?

Palmer. They were Land-men.

Cl. of Arr. *Hugh Parrot*, Had he any?

Palmer. He had a whole Share.

Cl. of Arr. Had *Richard Barlicorn* any Share?

Palmer. He had half a Share.

Cl. of Arr. Had *Abel Owens* any?

Palmer. He had a whole Share.

Cl. of Arr. Had *Darby Mullins* any Share?

Palmer. He had a whole Share.

Mr *Coniers.* What became of the reſt of the Goods?

Palmer. They were carried to *Madagaſcar.*

Mr *Coniers.* Who ordered the Goods to be hoiſted out, and ſhared? Who ordered that?

Palmer. At the Beginning I was not there.

Mr *Coniers.* Who ordered it?

Palmer. Captain *Kidd.* And moſt of the Goods were a-ſhore before I came back, and before I came back he had his Share, and moſt of the reſt.

Mr *Coniers.* How many of the Priſoners at the Bar, had their Shares of the Goods?

Palmer. All theſe Men.

Cl. of Arr. Whoſe Shares were divided to them before you went away?

Palmer. None; but only they were prepared in order to be divided.

L. C. B. *Ward.* Did you hear any of them ſay, They had any Shares?

Palmer. Yes, *Hugh Parrot*, and *Gabriel Loffe.*

Cl. of Arr. What ſay you to *Will. Kidd?* Did he own he had any Share?

Palmer. No.

Cl. of Arr. Did you hear *Nich. Churchill* ſay he had any?

Palmer. No, I did not; I cannot ſay, I heard them ſay ſo.

Cl. of Arr. Did you hear *Gabriel Loffe* and *Hugh Parrot* ſay, they had any Shares?

Palmer. Yes, I heard them ſay ſo.

Mr *Coniers.* Whither did you proceed next?

Palmer. We left Captain *Kidd* there, I went no further with him.

Mr *Coniers.* I ask you, whether you met with any Ships, beſides what you mentioned?

Palmer. When we came to *Madagaſcar*, in the latter end of *April*, or beginning of *May* 1696, there was a Ship called the *Reſolution*, which was formerly called the *Moco* Frigate; ſeveral of the Men came off to Captain *Kidd*, and told him, they heard he came to take, and hang them. He ſaid that it was no ſuch thing, and that he would do them all the Good he could. And Captain *Culliford* came aboard of Captain *Kidd*, and Captain *Kidd* went aboard of *Culliford.*

Mr *Coniers.* Who was that *Culliford?*

Palmer. The Captain of the Ship. And on the Quarter-deck they made ſome Bomboo, and drank together, and Captain *Kidd* ſaid, before I would do you any harm, I would have my Soul fry in Hell-fire; and wiſhed Damnation to himſelf ſeveral times, if he did. And he took the Cup, and wiſhed that might be his laſt, if he did not do them all the Good he could.

Mr *Powell.* Did you take theſe Men to be Pirates?

Palmer. They were reckoned ſo.

Dr *Newton.* Did Captain *Kidd* make *Culliford* any Preſents?

Palmer. Yes, he had four Guns of him.

Dr *Newton.* Of whom?

Palmer. Of Captain *Kidd*, he preſented him with them.

Mr *Powell.* Was there not a Preſent on the other Side?

Palmer. I believe there was, I have heard ſo; I heard *Culliford* ſay, I have preſented Captain *Kidd* to the Value of four or five Hundred Pounds.

Mr *Cowper.*

Mr *Cowper*. Were theſe Kindneſſes done to *Culliford* after *Culliford*'s Men ſaid, they heard that Captain *Kidd* was come to hang them?

Palmer. Yes.

Mr *Cowper*. What did Captain *Kidd* do after that?

Palmer. He went aboard the *Quedagh* Merchant.

Mr *Cowper*. What did he do with his own Ship?

Palmer. She was leaky, and he left her.

Mr *Cowper*. Did he carry, or attempt to carry, any of the Ships he took, in order to condemn them, beſides that *French* Banker?

Palmer. He never did, nor talked of any ſuch thing.

L. C. B. *Ward*. Mr *Kidd*, Will you ask this Witneſs any Queſtions?

Kidd. I ask him, Whether I had no *French* Paſſes?

Palmer. Indeed Captain *Kidd*, I cannot tell. I did hear him ſay, that he had *French* Paſſes, but I never ſaw them.

L. C. B. *Ward*. Thoſe Goods that were taken out of the *Quedagh* Merchant, whoſe Goods were they ſuppoſed to be?

Palmer. The *Armenian* Merchants. I have heard Captain *Kidd* ſay ſeveral times, he had *French* Paſſes.

Kidd. And did you hear no Body elſe ſay ſo?

Palmer. No.

Cl. of Arr. *Churchill*, Will you ask him any Queſtions?

Churchill. My Lord, I have no Queſtions to ask him.

Cl. of Arr. *James Howe*, Will you ask him any Queſtions?

J. Howe. No.

Cl. of Arr. *Robert Lamley*, Will you ask him any Queſtions?

Robert Lamley. No.

Cl. of Arr. *Will. Jenkins*, Will you ask him any Queſtions?

William Jenkins. Had I half a Share?

Palmer. You received half a Share of Money, and a whole Share of Goods.

Will. Jenkins. You know that I was a Servant, and had nothing in this Voyage but what my Maſter had.

Cl. of Arr. *Gabriel Loffe*, Will you ask him any Queſtions?

Gabriel Loffe. No.

Cl. of Arr. *Hugh Parrot*, Will you ask him any Queſtions?

Hugh Parrot. No.

Cl. of Arr. *Richard Barlicorn*, Will you ask him any Thing?

Richard Barlicorn. No.

Cl. of Arr. *Abel Owens*, Will you ask him any Thing?

Abel Owens. No.

Cl. of Arr. *Darby Mullins*, Will you ask him any Thing?

Darby Mullins. No.

Kidd. It is in vain to ask any Queſtions.

L. C. B. *Ward*. Then you may make your own Defence. Come Mr *Kidd*, what have you to ſay in your own Defence?

Kidd. I had a Commiſſion to take the *French*, and Pirates, and in order to that, I came up with two Ships, that had *French* Paſſes both of them. I called you all a Deck to conſult; and did not a great many of the Men go aboard? Did not you go? You know, Mr *Palmer*, I would have given theſe Ships to them again, but you would not; you all voted againſt it.

Palmer. This Man (*pointing to the* Armenian, *that was in Court*) offered you twenty thouſand Rupees for the Ship, and you refuſed it.

Kidd. Did not I ask, Where will you carry this Ship? And you ſaid, we will make a Prize of her, we will carry her to *Madagaſcar*.

Palmer. Says Captain *Kidd* to his Men, Theſe *Armenians* make ſuch a Noiſe for the Ship, that I muſt ſay, my Men will not part with her; but there was not a quarter part of the Men concerned in it. The *Armenians* came crying and wringing their Hands: Upon which, ſays Captain *Kidd*, I muſt ſay, my Men will not give them the Ship. And ſo ſome of the Men went on the Fore-caſtle, and pretended, they would not give them the Ship; but there was not a quarter part of the Men concerned in it.

L. C. B. *Ward*. Did thoſe Goods belong to *Frenchmen*, or *Armenians*?

Palmer. To *Armenians*.

L. C. B. *Ward*. What was that Pretence of a *French* Paſs that was on Board the *Quedagh* Merchant?

Palmer. I ſaw none.

Kidd. But you have heard of it.

Palmer. I have heard of it, but never ſaw it.

L. C. B. *Ward*. Mr *Kidd*, have you any more to ſay? You ſpeak of a Commiſſion that you had, you may have it read if you pleaſe.

Kidd. I deſire to have them both read.

L. C. B. *Ward*. Yes, they ſhall.

Then his Commiſſion for Repriſals upon the *French*, was Read.

WILLIAM the Third, *By the Grace of God, of* England, Scotland, France *and* Ireland, *King, Defender of the Faith*, &c. *Whereas We having taken into Our Conſideration, the Injuries, Spoils, and Acts of Hoſtility committed by the French King and his Subjects, unto, and upon the Ships, Goods, and Perſons of our Subjects extending to their grievous Dammages, and amounting to great Summs; and that notwithſtanding the many and frequent Demands made for redreſs and reparation, yet none could ever be obtain'd. We did therefore with the Advice of our Privy Council, think fit, and ordered, that general Reprizals be Granted againſt the Ships, Goods, and Subjects of the French King; ſo that as well Our Fleets and Ships, as alſo all other Ships and Veſſels that ſhall be Commiſſioned by Letters of Marque, or general Reprizals, or otherwiſe, ſhall and may lawfully ſeize, and take all Ships, Veſſels, and Goods belonging to the French King, or his Subjects, or Inhabitants within any of the Territories of the French King: And ſuch other Ships, Veſſels, and Goods, as are, or ſhall be liable to Confiſcation, and bring the ſame to Judgment in our High Court of Admiralty of* England, *or ſuch other Court of Admiralty as ſhall be lawfully Authorized in that behalf, according to the uſual courſe and Laws of Nations. And Whereas* William Kid *is thought fitly qualified, and hath Equipped, Furniſhed, and Victualled a Ship called,* The Adventure Gally, *of the burthen of about Two hundred eighty ſeven Tunns, whereof the ſaid* William Kid *is Commander. And whereas, he the ſaid* William Kid *hath given Security with Sureties by Bond to Us, in Our ſaid High Court of Admiralty according to the effect and form ſet down in certain Inſtructions made*

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the second Day of May, *One thousand six hundred ninety three, and in the Fifth Year of Our Reign, a Copy whereof is given to the said Capt.* William Kid. *Know ye therefore, That We by these Presents, grant Commission to, and do Licence and Authorize the said* William Kid *to set forth in warlike manner the said Ship call'd,* The Adventure Gally, *under his own Command, and therewith by force of Arms to Apprehend, Seize and take the Ships, Vessels, and Goods belonging to the French King and his Subjects, or Inhabitants within the Dominions of the said French King; and such other Ships, Vessels, and Goods, as are, or shall be liable to Confiscation, and to bring the same to such Port as shall be most convenient, in order to have them legally adjudged in Our High Court of Admiralty, or such other Court of Admiralty as shall be lawfully Authorized in that behalf; which being Condemned, it shall and may be lawful for the said* William Kid, *to sell and dispose of such Ships, Vessels, and Goods, so adjudged and condemned, in such sort and manner as by the course of Admiralty hath been accustomed (except in such Cases where it is otherwise directed by the said Instructions and the Act of Parliament thereunto annexed) Provided always, that the said* William Kid *keep an exact Journal of his proceedings, and therein particularly take notice of all Prizes which shall be taken by him, the nature of such Prizes, the times, and places of their being taken, and the values of them, as near as he can judge; as also of the station, motion, and strength of the Enemy, as well as he or his Mariners can discover by the best Intelligence he can get; and also whatsoever else, shall come unto him, or any of his Officers, or Mariners, or be discovered or declared unto him or them, or found out by examination, or conference with any Mariners or Passengers of, or in any of the Ships or Vessels taken, or by any other person, or persons, or by any other ways or means whatsoever touching or concerning the Designs of the Enemy, or any of their Fleets, Vessels, or Parties, and of their Stations, Ports, and Places, and of their intents therein; and of what Merchants Ships or Vessels of the Enemy's bound out, or home, or to any other place, as he, or his Officers, or Mariners shall hear of, and of what else material in those Cases may arrive to his, or their knowledge, of all which he shall from time to time, as he shall, or may have opportunity, transmit an account to our Commissioners for executing the Office of Lord High Admiral of* England, *or their Secretaries, and to keep a Correspondence with them by all opportunities that shall present. And further, Provided that nothing be done by the said* William Kid, *or any of his Officers, Mariners, or Company, contrary to the true meaning of Our aforesaid Instructions, but that the said Instructions shall be by them, and each and every of them, as far as they, or any of them are therein concern'd, in all particulars well and duly perform'd and observed. And We pray and desire all Kings, Princes, Potentates, Estates, and Republicks, being Our Friends and Allies, and all others to whom it shall appertain, to give the said* William Kid *all aid, assistance and succour in their Ports with his said Ship, Company and Prizes, without doing, or suffering to be done to him any wrong, trouble, or hindrance: We offering to do the like, when We shall be by them thereunto desired. And We will and require all Our own Officers whatsoever, to give him succour and assistance as occasion shall require. This Our Commission to continue in force till farther order to the contrary from Us, or Our Commissioners for executing the Office of Lord High Admiral of* England. *In Witness whereof We have caused the Great Seal of Our High Court of Admiralty of* England *to be hereunto affixed.* Given at *London* the Eleventh Day of *December*, in the Year of Our Lord One thousand six hundred ninety five, and in the Seventh Year of Our Reign.

Orlando Gee, Reg.

Mr. *Just. Powel.* Capt. *Kid*, Can you make it appear there was a *French* Pass aboard the *Queda* Merchant?

Will. Kid. My Lord, these Men say, They heard several say so.

Mr. *Coniers.* But all came from you.

L. C. B. Ward, If there was a *French* Pass in the Ship, you ought to have condemned her as Prize.

Then his other Commission was Read for cruising against the Pirates.

WILLIAM *Rex*,

WILLIAM III. *By the Grace of God, King of* England, Scotland, France *and* Ireland, *Defender of the Faith*, &c. *To our trusty and well-beloved Capt.* William Kid, *Commander of the Ship* Adventure *Gally, or to any other, the Commander of the same for the time being,* Greeting, *Whereas, We are inform'd, that Capt.* Thomas Too, John Ireland, *Capt.* Thomas Wake, *and Capt.* William Maze, *or* Mace, *and other Our Subjects, Natives, or Inhabitants of* New England, New York, *and elsewhere, in Our Plantations in* America, *have associated themselves with divers other wicked and ill-disposed Persons, and do against the Law of Nations, daily commit many and great Piracies, Robberies, and Depredations upon the Seas in the parts of* America, *and in other parts, to the great hindrance and discouragement of Trade and Navigation, and to the danger and hurt of Our loving Subjects, Our Allies, and all others Navigating the Seas upon their lawful Occasions:* Now Know Ye, *That We being desirous to prevent the aforesaid Mischiefs; and as far as in Us lyes, to bring the said Pirates, Freebooters, and Sea-Rovers to Justice, have thought fit, and do hereby Give, and Grant unto you the said Capt.* William Kid (*to whom Our Commissioners for Exercising the Office of Our Lord high Admiral of* England, *have Granted a Commission as a private Man of War bearing date the Eleventh day of* December, 1695.) *and unto the Commander of the said Ship for the time being, and unto the Officers, Mariners and others which shall be under your Command, full Power and Authority, to Apprehend, Seize, and take into your Custody, as well the said Capt.* Thomas Too, John Ireland, *Capt.* Thomas Wake, *and Capt.* William Maze, *or* Mace, *as all such Pirates, Freebooters, and Sea-Rovers, being either Our own Subjects, or of other Nations associated with them, which you shall meet with upon the Coasts or Seas of* America, *or in any other Seas, or Ports, with their Ships and Vessels, and also such Merchandizes, Money, Goods and Wares, as shall be found on board, or with them, in case they shall willingly yield themselves. But if they will not submit without fighting; then you are by force to compel them to yield: And we do also require you to bring, or cause to be brought such Pirates, Freebooters, and Sea-Rovers as you shall seize to a legal Tryal; to the end they may be proceeded against according to the Law in such Cases. And We do hereby charge, and command all Our Officers, Ministers, and other Our loving Subjects whatsoever, to be Aiding and Assisting to you in the Premises. And We do hereby enjoyn you to keep an exact Journal of your proceeding in the Execution of the Premises, and therein to set down the Names of such Pirates, and of their Officers and Company, and the Names of such*

Ships

Ships and Veſſels as you ſhall by virtue of theſe Preſents ſeize and take, and the quantities of Arms, Ammunition, Proviſion, and Loading of ſuch Ships, and the true value of the ſame, as near as you can judge. And We do hereby ſtrictly charge, and command you, as you will anſwer the ſame at your utmoſt peril, that you do not in any manner offend, or moleſt any of Our Friends or Allies, their Ships, or Subjects, by colour or pretence of theſe Preſents, or the Authority thereby Granted. In Witneſs whereof, *We have cauſed Our Great Seal of* England *to be affixed to theſe Preſents.* Given at Our Court at *Kenſington*, the 26th Day of *January*, 1695, in the Seventh Year of our Reign.

L. C. B. Ward. Now you have had the Commiſſions Read, What do you excuſe your ſelf by? What uſe do you make of them to juſtifie or defend your ſelf?

Will. Kidd. About this *Queda* Merchant.

L. C. B. Ward. What would you have her a *French* Ship?

Will. Kidd. Under a *French* Commiſſion. The Maſter was a Tavern-keeper at *Suratt*: Do not you know that, Mr. *Palmer?*

Joſ. Palmer. I was not on board when this Paſs came, I never ſaw it.

L. C. B. Ward. But then you ſhould have Condemned this Ship, if ſhe had been a *French* Ship, or had a *French* Paſs.

Will. Kidd. The Evidence ſays, it was by my order that the Goods were taken out; I was not at the ſharing of the Goods, I knew nothing of it.

L. C. B. Ward. Out of the Goods that were taken, ſome were ſold in the Country there, and the produce of them was ſo much money; it is proved, that that money was divided; and purſuant to the Articles ſet up, you were to have forty Shares, and the reſt of the Men whole, or half Shares as they deſerved. Now this money both theſe Men Swear, it was taken by you. And the firſt Swears, That the Goods not ſold then, that remained in the Ship were alſo divided, and that you had forty ſhares of them. And the other ſays, he did not ſee the Goods divided, but two of the Men acknowledged it.

Will. Kidd. My Lord, this *Frenchman* was aboard five or ſix Days before I underſtood there was any *Engliſhman* aboard. Well, ſaid I, What are you? An *Engliſhman*, I am Maſter. What have you to ſhew for it? Nothing (ſays he.) When they ſee a *French* Paſs, they will not let the Ship go.

Mr. *J. Powel.* You have produced Letters Patents that impowered you to take Pirates, why did you not take *Culliford?*

Will. Kidd. A great many of the Men were gone a-ſhore.

Mr. *J. Powel.* But you preſented him with great Guns, and ſwore you would not meddle with them.

L. C. B. Ward. When the Queſtion was put, Are you come to take us, and hang us? You anſwered, I will fry in Hell before I will do you any harm.

Will. Kidd. That is only what theſe Witneſſes ſay.

L. C. B. Ward. Did you not go aboard *Culliford?*

Will. Kidd. I was not aboard *Culliford.*

L. C. B. Ward. Theſe things preſs very hard upon you. We ought to let you know what is obſerved, that you may make your Defence as well as you can.

Will. Kidd. I deſire Mr. *Davis* may be called (he was called accordingly, and appeared) Mr. *Davis*, pray give an account whether you did not ſee a *French* Paſs?

L. C. B. Ward. You are his Witneſs, you muſt anſwer what he asks you.

Mr. *Davis.* I came a Paſſenger from *Madagaſcar*, and from thence to *Amboyna*, and there he ſent his Boat a-ſhore, and this Man was a-ſhore; and there was one ſaid, Capt. *Kidd*, was publiſhed a Pirate in *England*; and he gave thoſe Paſſes to him to Read. The Captain ſaid, they were *French.*

L. C. B. Ward. Who gave them?

Mr. *Davis.* Captain *Kidd* gave them.

L. C. B. Ward. Did you know any thing of taking the *Queda* Merchant?

Mr. *Davis.* No, no.

L. C. B. Ward. Then you cannot ſay, they have any relation to the *Queda* Merchant.

Mr. *Davis.* No, not I.

Will. Kidd. You heard Capt. *Elms* ſay, They were *French* Paſſes.

Mr. *Davis.* Yes, I heard Capt. *Elms* ſay, They were *French* Paſſes. Says he, if you will, I can turn them into *Latin.*

Mr. *B. Hatſel.* Have you any more to ſay, Capt. *Kidd?*

Will. Kidd. I have ſome Papers, but my Lord *Bellamont* keeps them from me, that I cannot bring them before the Court.

Cl. of Arr. Have you any more to ſay?

Will. Kidd. I have ſome to call, that will bear teſtimony to my Reputation.

L. C. B. Ward. Call whom you pleaſe, we will not abridge you.

Kidd. Call Mr. *Bradinham.* I deſire this of him, whether he never ſaw the *French* Paſſes, and whether he did not tell Coll. *Baſs* ſo.

R. Bradinham. I never ſaw a *French* Paſs, I only heard ſo.

Coll. *Baſs.* I have heard Mr. *Bradinham* ſay, he heard Capt. *Kidd* ſay he had *French* Paſſes on Board, but I never heard him ſay he ſaw them Paſſes.

Kidd. He juſt now denied that he ever ſaw the *French* Paſſes, or heard of them.

L. C. B. *Ward.* He ſays ſo now, that he never ſaw them, only he heard you ſay ſo. Coll. *Baſs*, have you heard him ſay the Paſſes related to the *Quedah Merchant?*

Coll. *Baſs.* He has often ſaid he heard *Kidd* ſay the *French* Paſſes were aboard.

Cl. of Arr. Have you any more Witneſſes to call?

Kidd. I deſire Mr. *Say* may be called, he is in the Priſon, I deſire he may be ſent for.

L. C. B. *Ward.* We will give you all the liberty you can expect, if you have any more, you were beſt call them all together. In the mean time what ſay you, *Churchill?*

N. Churchill. I deſire Coll. *Baſs* may be called, and that this Affidavit may be read.

L. C. B. *Ward.* Colonel *Baſs*, what have you to ſay for *N. Churchill?*

Coll. *Baſs.* My Lord, I only wait for his queſtion.

L. C. B. *Ward. Churchill*, what will you ask Coll. *Baſs?*

N. Churchill. Whether I did not Surrender my ſelf to him.

L. C. B. *Ward.* If you can make your Caſe come within the Proclamation, you muſt make it appear that you Surrendred according to the Directions of it.

N. Churchill. My Lord, we came in, in the Year 1699, and Surrendred our ſelves to Coll. *Baſs.*

L. C. B. *Ward.* If you can make it appear that you Surrendred your ſelves in purſuance of that, to the Perſons appointed to receive your Surrender, that

that will be ſomewhat to the Point; but Colonel *Baſs* had not Power by that Proclamation to receive your Surrender, and therefore you cannot have any Benefit by it, unleſs you can bring your Caſe within it. But you may call Col. *Baſs*, if you will.

Churchill. My Lord, we came in upon that Proclamation, and might have gone away any Day if we would; but we ſtay'd in the Country, and we never offered to go away till it was my Lord *Bellamont*'s Pleaſure to ſend for us.

L. C. B. *Ward.* You may call Col. *Baſs*, and hear what he ſays.

Churchill. Col. *Baſs*, will you be pleaſed to tell my Lord whether we did not ſurrender our ſelves to you in purſuance of the King's Proclamation.

Col. *Baſs.* My Lord, about the 29th of *May*, 1699, I had an Account of ſome Perſons, that were ſuppoſed Pirates, that were come to ſurrender themſelves; and on my Landing, theſe two Perſons came to me, and ſurrendered to me the 4th of *June*, 1699. And I told them I muſt refer their Caſe to his Majeſty at home.

L. C. B. *Ward.* Who were they that ſurrendred to you?

Coll. *Baſs. Nicholas Churchill*, and *James Howe.*

L. C. B. *Ward.* Where were you Governour?

Coll. *Baſs.* At the Province of *Weſt-Jerſey.*

Dr *Oxenden.* How came they here?

Coll. *Baſs.* I left them under Bail.

L. C. B. *Ward.* Did you ſend them over?

Col. *Baſs.* No, my Lord, I came to *England* before: I left them in Cuſtody. They were ſent over Priſoners by my Succeſſor.

L. C. B. *Ward.* What did they ſay to you when they ſurrendred themſelves to you?

Col. *Baſs.* They ſaid they had been in the *Indies*, and that they had committed ſeveral Piracies, and deſired they might have the Benefit of his Majeſty's Proclamation.

L. C. B. *Ward.* What Pirates did they mention to you?

Col. *Baſs.* They mentioned the *Moco Frigate*, and Capt. *Kidd.*

Dr *Oxenden.* Had you the Proclamation?

Col. *Baſs.* No, but I had ſeen one of them.

L. C. B. *Ward.* Did you take your ſelf allowed to receive their Surrender?

Col. *Baſs.* No, my Lord, I did not.

Cl. of Arr. *Nicholas Churchill*, have you quite done?

N. Churchill and *James Howe.* Yes, Sir, we came in upon his Majeſty's Proclamation.

Cl. of Arr. *Robert Lamley*, what have you to ſay?

Robert Lamley. My Lord, I was but a Servant.

L. C. B. *Ward.* Who was you a Servant to?

Robert Lamley. To Mr *Owens.*

L. C. B. *Ward.* How does that appear?

Robert Lamley. The Surgeon knows it.

Bradinham. My Lord, he was concerned with the Cook.

Robert Lamley. My Lord, here is my Indenture (*which was read.*)

Cl. of Arr. *William Jenkins*, what have you to ſay?

William Jenkins. I have nothing to ſay, but I was a Servant to Mr *Bullen*

L. C. B. *Ward.* Where is your Witneſs to prove it?

Jenkins. Both the King's Witneſſes know it.

Bradinham and *Palmer.* My Lord, he was his Servant.

Cl. of Arr. *Gabriel Loff*, what ſay you for your ſelf?

Loff. My Lord, about the Year 1696, I entered my ſelf on Board Captain *Kidd*, and went out with him, and I never diſobeyed his Command in any Thing.

L. C. B. *Ward.* Did he go out under the firſt Commiſſion?

Palmer. He came aboard at *New-York.*

L. C. B. *Ward.* Did you take him in before, or after the Articles were ſet up.

Palmer. After the Articles were ſet up.

L. C. B. *Ward.* Did Captain *Kidd* take any Notice of his Commiſſions in the Articles?

Palmer. Yes, my Lord, he did mention them. I have a Copy of the Articles.

Mr *Crawley.* Mr *Palmer*, are theſe Articles the Copy of the Articles ſet up by Captain *Kidd*, at *New-York?*

Palmer. Yes.

Mr J. *Gould.* Did you examine them?

Palmer. To the beſt of my Knowledge they were a true Copy.

Mr J. *Turton.* Did you compare them with the Original?

Palmer. No, my Lord.

Cl. of Arr. *Gabriel Loff*, Have you any more to ſay?

Loff. Yes, a great deal more to ask the Evidence.

Cl. of Arr. What will you ask them?

Loff. Whether I did not obey the Captain.

Mr J. *Tourton.* There is no ſcruple to be made of that.

Loff. I went out to ſerve his Majeſty under his Commiſſion.

L. C. B. *Ward.* But how came you to take part of the Money?

Loff. I had what they pleaſed to give me.

L. C. B. *Ward.* You muſt needs imagine, that when Captain *Kidd* did theſe extravagant Things, and divided the Money and Goods, that he did not act according to his Commiſſion. What could you think of it?

Cl. of Arr. *Hugh Parrot*, what have you to ſay for your ſelf?

Parrot. My Lord, in the Year 1695, in the Month of *October*, I ſailed out of *Plymouth* in a Merchant-man, bound for *Cork* in *Ireland*, there to take in Proviſions; thence to the Iſland of *Barbadoes*; and in ſight of the Iſland of *Barbadoes*, I was taken by a *French* Privateer, and carried to *Martinico*; and thence coming in a Tranſport-Ship, I was brought to *Barbadoes*, there I Ship'd my ſelf in a Veſſel bound to *Newfoundland*, and thence to *Maderas.* And then I went to *Madagaſcar*; and there I ſtay'd ſome ſhort time after, and came in Company with Captain *Kidd*; and then the Commander and I had a falling out, and ſo I went aſhore at that Iſland. And underſtanding that Captain *Kidd* had a Commiſſion from the King, I came aboard Captain *Kidd*'s Ship, and ever ſince have been with him.

L. C. B. *Ward.* Did you come to him after he had been at *New-York?*

Parrot. This was in the Year 1697.

L. C. B. *Ward.* You have acted with him, and ſhared with him. Could you imagine he was acting according to his Commiſſion, when he was doing theſe Things?

Parrot. I thought I was ſafe where the King's Commiſſion was.

L. C. B. *Ward.* The Commiſſion was to take Pirates, and not to turn Pirates.

Parrot. Mr *Palmer*, did you ever ſee me guilty of an ill Thing? Did I ever diſobey my Captain?

Palmer. You were always obedient to your Commander.

Farrot. Then I came to *Madagaſcar* with Captain *Kidd*, where I might have gone aboard a known Pirate, but I refuſed it, and kept cloſe to my Captain: And when I came to *New-England*, I might have gone away as others did; but I had my Liberty at *Boſton* for above a Week, and went up and down, and I ſurrendered my ſelf.

L. C. B. *Ward.* You did not ſurrender your ſelf, but only you had a liberty to go away, and did not.

Parrot. I thought there was no need of it. My Lord, I deſire you will ask the Witneſs whether I ever diſobeyed the Captain's Commands.

L. C. B. *Ward.* They ſay no otherwiſe, but that you went willingly.

Cl. of Arr. *Richard Barlicorn*, what have you to ſay?

Barlicorn. My Lord, I beg leave that I may produce ſome Evidence for my Reputation. Here is a Certificate from the Pariſh where I was born.

L. C. B. *Ward.* That will ſignify nothing, we cannot read Certificates, they muſt ſpeak *Viva Voce.*

Barlicorn. Call *Benjamin Bond*, *Daniel Phillips*, and *James Newton.*

L. C. B. *Ward.* What do you call theſe Witneſſes for?

Barlicorn. To give an Account of my Reputation, what they know of me.

Benj. Bond. I knew him when he was a Child, and he was very civil and honeſt; I lived near him till he was 13 or 14 Years old. And he came of honeſt Parents, and behaved himſelf very civily all that time.

L. C. B. *Ward.* Have you known any Thing of him ſince?

Bond. No, my Lord.

L. C. B. *Ward.* What have you to ſay further?

Barlicorn. My Lord, I was a Servant to Captain *Kidd*, and I have been with him ſix Years; and I have a Certificate from ſeveral of my Relations that will teſtify it.

Cl. of Arr. *R. Barlicorn*, have you any Thing more to ſay?

Barlicorn. I am a Servant to Captain *Kidd.*

L. C. B. *Ward.* How long have you been ſo? Where was it that you came firſt to be his Servant?

Barlicorn. At *Carolina.*

Cl. of Arr. *Abel Owens*, what ſay you for your ſelf?

Owens. My Lord, I deſire the Privilege of the Proclamation. I entred my ſelf into the King's Service. I have been in the King's Service, according to his Majeſty's Proclamation. I deſire it may be read. *(which was done.)*

L. C. B. *Ward.* You deſire the Benefit of this Proclamation, but you muſt bring your ſelf under the Qualifications it requires, if you would have any Benefit by it.

Mr *Crawley.* He has a Certificate of it.

L. C. B. *Ward.* Is it within the Proclamation?

Mr *Crawley.* The Certificate is dated the 15th of *March*, 1700, from Mr *Riches*, a Juſtice of the Peace in *Southwark.*

L. C. B. *Ward.* Mr *Riches*, I ſuppoſe, did believe he was within this Proclamation.

Mr J. *Gould.* The Pardon extends to all Perſons for Piracies committed before that Time, if they ſurrender themſelves to ſuch and ſuch, and enter themſelves on Board one of his Majeſty's Ships.

Mr *Coniers.* A Juſtice of the Peace is not within the Proclamation.

Cl. of Arr. Have you any more to ſay?

Owens. Only to deſire the Benefit of that Proclamation.

L. C. B. *Ward.* He ſurrendered himſelf to Juſtice *Riches*, and then entred himſelf aboard one of his Majeſty's Ships; and then there was Evidence againſt him, when on board, and he was ſeized. This may be fit to recommend him to the King's Mercy, but it is not a Defence againſt the Accuſation.

Cl. of Arr. *Darby Mullins*, what do you ſay for your ſelf?

Mullins. I came in upon the King's Act of Grace, I came aſhore with the reſt of the People.

L. C. B. *Ward.* What have you to ſhew, to intitle you to the Benefit of this Proclamation?

Mullins. I was ready to die of the Bloody Flux, and not able to go my ſelf, but I ſent my Name in to the Governour.

L. C. B. *Ward.* Where was you when you was ſo ſick?

Mullins. In *Weſt-Jerſey.* I came aſhore in *Cape May.* I was ſick like to die all the Way from *Madagaſcar*, expecting every Minute to die with the Bloody Flux.

Dr *Oxenden.* How came you to leave Captain *Kidd?*

Mullins. He uſed me very hardly, and therefore I left him.

L. C. B. *Ward.* You had a Dividend of the Money and Goods.

Mullins. He gave it me, and afterwards took it from me.

L. C. B. *Ward.* Was he your Maſter?

Mullins. I had no Maſter.

Dr *Oxenden.* How did you come to *Jerſey?*

Mullins. I came there with Captain *Shelly*, he is in Court.

Dr *Oxenden.* You were aboard Captain *Culliford.*

Mullins. I came home in hopes to get the King's Pardon.

L. C. B. *Ward.* That which you ſay is very odd, though you quitted Captain *Kidd*'s Ship, you went into *Culliford*'s.

L. C. B. *Ward.* Captain *Kidd*, you ſaid you had more to ſay juſt now; if you have, let us hear it.

Kidd. I deſire this Man may be heard two or three Words.

L. C. B. *Ward.* What is his Name?

Kidd. Mr *Say.*

Mr *Say.* I happened to be at the *Treaſury-Office* in *Broad-ſtreet* to receive ſome Money, and Mr *White* was there; and he asked me, will you go along with me, and ſee one *Elbury* that is in the *Marſhalſea* for Debt? ſays I, I am a Stranger to him, I do not care to go. Says he, bear me Company. So I went with him, and when I came there, I ſaw Captain *Kidd*'s Men. And this Mr *Elbury* was in

n Company with Captain *Kidd*'s Surgeon. Says I, I am a Brother of the Quill, I ſhould be glad to drink a Glaſs with you. We ſtayed there but a little while, and asked what that Man was; ſays he, he is Captain *Kidd*'s Surgeon. Upon this I ſaid, here is a mighty Noiſe about Capt. *Kidd*; ſays he, I believe he has done nothing but what he can anſwer, or that can do him any hurt. Says I, where have you been with him? He ſaid, at *Madagaſcar*.

L. C. B. *Ward.* Mr *Bradinham* was with them, there is no doubt of that. It is not to be queſtioned that he would not ſay any Thing Ill of them then. Captain *Kidd*, have you any Thing more to ſay?

Kidd. Call Captain *Humphrys*, (*who appeared.*)

L. C. B. *Ward.* What Queſtions would you ask him?

Kidd. What do you know of me?

Capt. *Humphrys.* I knew you, Sir, in the *Weſt-Indies* in the beginning of the late War, and I know you had the Applauſe of the General, as I can ſhew by the General's Letter. I know nothing further of you.

Kidd. Did you know any Thing that I was Guilty of any Piracies?

Humphrys. No, but you had a general Applauſe for what you had done from time to time.

L. C. B. *Ward.* How long was this ago?

Humphrys. Twelve Years ago.

L. C. B. *Ward.* That was before he was turned Pirate.

Kidd. Call Captain *Bond*, (*who appeared.*)

L. C. B. *Ward.* What do you call him for?

Kidd. Capt. *Bond*, pray will you give an Account what you know of me.

Capt. *Bond.* I know you was very uſeful at the beginning of the War in the *Weſt-Indies*.

Mr B. *Hatſell.* To be ſure they had a good Opinion of him in 1695, when they granted him the Commiſſion.

Kidd. There is nothing in the World can make it appear I was guilty of Piracy, I kept Company with Captain *Warren* for ſix Days.

Mr *Coniers.* I believe you kept Company more with Captain *Culliford*, than with Captain *Warren*.

Kidd. I never deſigned to do any ſuch Thing.

Mr *Coniers.* My Lord, we will ſay nothing at all, but leave it to your Lordſhip to direct the Jury.

Kidd. I have many Papers for my Defence, if I could have had them.

L. C. B. What Papers were they?

Kidd. My *French* Paſſes.

L. C. B. *Ward.* Where are they?

Kidd. My Lord *Bellamont* had them.

L. C. B. *Ward.* If you had had the *French* Paſſes, you ſhould have condemned Ships.

Kidd. I could not becauſe of the Mutiny in my Ship.

L. C. B. *Ward.* If you had any Thing of Diſability upon you, to make your Defence, you ſhould have objected it at the beginning of your Trial; what you mean by it now, I cannot tell. If you have any Thing more to ſay, you may ſay it, the Court is ready to hear you.

L. C. B. *Ward.* Gentlemen of the Jury, the Priſoners at the Bar, *W. Kidd*, *N. Churchill*, *J. Howe*, *R. Lamley*, *Will. Jenkins*, *Gabriel Loff*, *Hugh Parrot*, *Rich. Barlicorn*, *Abel Owens*, and *Darby Mullins*, in Number Ten; ſtand all here Indicted for the Crime of Piracy, charged to be committed by them. And the Inſtance of the Crime, is for Feloniouſly and Piratically Seizing and Taking the Ship called the *Quedagh* Merchant, with the Apparel and Tackling thereof, to the value of 400 *l.* and divers Goods mentioned in the Indictment, to the value of 4500 *l.* the Goods of ſeveral Perſons unknown, from the Mariners of the ſaid Ship, and this at High Sea, within the Juriſdiction of the Court of Admiralty, about ten Leagues from *Cutſheen* in the *Eaſt-Indies* the 30th of *January*, 1697, and in the 9th Year of his Majeſty's Reign. Now whether all, or any, and which of theſe Priſoners are guilty of this Crime of Piracy laid in this Indictment; or not guilty, it is your Part to determine according to the Evidence that has been given on both Sides. The Crime charged on them is Piracy, that is, Seizing and Taking this Ship and Goods in it Piratically and Feloniouſly; the Time and Place is laid alſo in the Indictment. To make good this Accuſation, the King's Council have produced their Evidence; and two Witneſſes have been examined in this Caſe, each of them were in the Ship which took the *Quedagh* Merchant, and very well acquainted with all the Proceedings, that is, *Robert Bradinham*, and *Joſeph Palmer*. The firſt has given you an Hiſtorical Account of the whole Proceedings of Captain *Kidd*, from his firſt going out of *England* in the *Adventure Galley*, to the Time of this Fact charged on them. They tell you, that about *May* 1696, the King intruſted this Captain *Kidd* with two Commiſſions, and they were both read to you. By one of them, under the Admiralty Seal, he was Authorized to ſet out as a Privateer the *Adventure Galley*, and therewith to Take and Seize the Ships and Goods belonging to the *French* King, or his Subjects, and ſuch other as were liable to Confiſcation. And by the other Commiſſion under the Broad Seal of *England*, Authority was given for the taking of ſome Pirates by Name, and all other Pirates in the ſeveral Places therein mentioned. But in no ſort to offend or moleſt any of the King's Friends or Allies, their Ships or Subjects by Colour thereof. And by both Commiſſions command was given to bring all ſuch Ships and Goods, as ſhould be taken to legal Trials and Condemnations. They tell us, that this Ship ſet out from *Plymouth* about *May*, 1696, and that in their Paſſage, they did take a *French* Ship, and they did condemn that Ship. Now Gentlemen, you muſt bear this in your Minds, that to make it Piracy, it muſt be the taking Piratically and Feloniouſly upon the High Sea, within the Juriſdiction of the Admiralty of *England*, the Goods of a Friend, that is ſuch as are in Amity with the King. Now you ſee what Way they went to work, and what Meaſures they took. Captain *Kidd* goes out, and goes to *New-York*; and when he was there, he has a Project in his Head of ſetting up Articles between himſelf and the People that were willing to be concerned with him: For now whether it ſeems more probable from what followed that Captain *Kidd* deſigned to manage himſelf according to the Meaſures given him, and the Powers of his Commiſſions, or another Way, you muſt conſider; for it is told you that between 150, and 160 Men came in under thoſe Articles, whereof the other Priſoners were part and concerned in them. And as to thoſe Articles, the Import of them was, that whatever ſhould be taken by theſe People in their Expeditions, ſhould be divided into 160 Parts, whereof Captain *Kidd* was

to have 40 Shares for his Part, and the reſt were to have according to the Merit of each Party, ſome whole Shares, and ſome half Shares.

Now after theſe Articles, you perceive what Progreſs they made, and what Courſe they took. They went from one place to another, and uſed a pretty deal of Severity where-ever they came. A deſign they had to go into the *Red-Sea*, and they had expectations of the *Moco* Fleet that lay at *Moco*, and they ſent their Spies three times to get Intelligence. The two firſt times they could make no Diſcovery; but the third time they made an effectual Diſcovery that the Fleet was ready to Sail; and in the mean time Capt. *Kidd* lay there in expectation of this Fleet; and as the firſt Witneſs tells you, Capt. *Kidd* ſaid he intended to make a Voyage out of this Fleet. Well, he had a Diſcovery of this Fleet, and they came accordingly, and they tell you, that he and his Men in the Ship did attack one of the Ships: But theſe Ships being guarded by two Men of War, he could make nothing of them, however he ſhewed what his intention and deſign was. Could he have proved that what he did was in purſuance of his Commiſſions, it had been ſomething: But what had he to do to make any attack on theſe Ships, the Owners and Freighters whereof, were in Amity with the King; this does not appear to be an action ſuitable to his Commiſſion. After he had done this, he came to Land, and there, and afterwards at Sea, purſued ſtrange Methods, as you have heard. The ſeeming juſtification he depends on, is his Commiſſions; now it muſt be obſerved how he acted with relation to them, and what irregularities he went by. He came to a place in the *Indies*, and ſent his Cooper aſhore, and that Cooper was killed by the Natives; and he uſes Barbarity, and ties an *Indian* to a Tree, and ſhoots him to Death. Now he went from place to place, and committed Hoſtilities upon ſeveral Ships, dealing very ſeverely with the People.

But this being ſomething foreign to the Indictment, and not the Facts for which the Priſoners at Bar are Indicted, we are confined to the *Quedagh Merchant*; but what he did before ſhews his Mind and Intentions not to act by his Commiſſions, which warrant no ſuch things. Gentlemen, you have an account that he met with this Ship the *Quedagh Merchant* at Sea, and took her; that this Ship belonged to People in Amity with the King of *England*; that he ſeized this Ship, and divers Goods were taken out of her, and ſold, and the Money divided purſuant to the heads contained in thoſe Articles ſet up at *New-York*. The Witneſſes that ſpeak to that, come home to every one of the Priſoners: They tell you that this Dividend was made, that Capt. *Kidd* had 40 Shares of the Money, and the reſt of the Priſoners had their proportions according to the Articles, ſome whole Shares, and ſome a half Share of that Money. After they had ſeized on the Ship, you hear of a certain ſort of project, that a *French* Man ſhould come and pretend himſelf the Maſter, and produce, or pretend to produce a *French* Paſs, under a colour that theſe Peoples Ship and Goods, who were *Moors*, ſhould be *French* Men's Ship and Goods, or Sailed under a *French* Paſs, and ſo juſtify what they did under the colour of his Commiſſion from the King. Now no Man knows the Mind and Intention of another, but as it may be diſcovered by his Actions. If he would have this to be underſtood to be his Intention, or that it was a reality, that he took this as a *French* Ship, or under a *French* Paſs, then he ought to have had the Ship and Goods inventoried, and Condemned, according to Law, that he might have had what proportion belonged to him, and that the King might have had what belonged to him, as his Commiſſions directed. But here was nothing of that done, but the Money and Goods that were taken were ſhared; and you have an account likewiſe how ſome of the Goods were ſold, and the Money diſpoſed of, and how the remaining Goods were diſpoſed of; and one Witneſs ſpeaks poſitively of the diſtribution of the Goods that remain'd unſold, that they were divided according to the ſame proportions as the Articles mentioned, and every one of the Priſoners had his Share. There belonged 40 Shares to Capt. *Kidd*, and Shares and half Shares to the reſt.

Now this is the great Caſe that is before you, on which the Indictment turns. The Ship and Goods, as you have heard, are ſaid by the Witneſſes, to be the Goods of the *Armenians*, and other People that were in Amity with the King; and Capt. *Kidd* would have them to be the Goods of *French* Men, or at leaſt that the Ship was Sailed under *French* Paſſes. Now if it were ſo, as Capt. *Kidd* ſays, it was a lawful Prize, and liable to Confiſcation, but if they were the Goods of Perſons in Amity with the King, and the Ship was not Navigated under *French* Paſſes, it is very plain it was a Piratical taking of them. Gentlemen, it is to be conſidered what Evidence Capt. *Kidd* hath given to prove that Ship and Goods to belong to the *French* King, or his Subjects, or that the Ship was Sailed under a *French* Paſs, or indeed that ever there was a *French* Paſs ſhewn or ſeen. He appeals indeed to the Witneſſes over and over again, Did you never ſee it? No, ſay they: Nor did not you, ſaith he, ſay you ſaw it? No, ſaith the Witneſs, I ſaid that Capt. *Kidd* ſaid he had a *French* Paſs, but I never ſaw it. Now after all, the taking of the *Quedagh Merchant* is brought down to Mr. *Kidd*, and the Priſoners with others, and the diſtribution of the Money produced by the Sale of the Goods among Mr. *Kidd*, and his Crew, whereof every one of theſe Priſoners were preſent at the ſame time, and had Proportions.

Now Gentlemen, this muſt be obſerved, if this was a Capture on the High Sea, and theſe were the Goods of Perſons in Amity with the King, and had no *French* Paſs, then it is a plain Piracy. And if you believe the Witneſſes, here is a taking of the Goods and Ship of Perſons in Amity, and converting them to their own Uſe. Such a taking at Land as this would be Felony, and being at Sea it will be Piracy: For this is a taking the Ship from the right Owners, and turning it to their own uſe. So that you have Evidence as to the Seizing of the Ship, and dividing the Money riſing from the Goods ſold, and ſharing the remainder according to the Articles.

Now, what does Capt. *Kidd* ſay to all this? He has told you he acted purſuant to his Commiſſion; but that cannot be, unleſs he gives you ſatisfaction that the Ship and Goods belonged to the *French* King, or his Subjects, or that the Ship had a *French* Paſs, otherwiſe neither of them will excuſe him from being a Pirate; for if he takes the Goods of Friends he is a Pirate, he had no Authority for that: There is no colour from either of his Commiſſions for him to take them. And as to the *French* Paſſes, there is nothing of that appears by any Proof, and for ought I can ſee, none

ſaw

ſaw them but himſelf, if there were ever any. It is proved that the People that were Owners of the Goods, made him very large Offers to redeem the Ship (Twenty Thouſand Rupees, as I remember) but he would not accept their Propoſal; but ſaid, That is a ſmall Summ, the Cargo is worth a great deal more, or to that effect: And further ſaid, he muſt anſwer theſe People, that his Men will not part with it. And a *French* Man was to be ſet up for a Mock buſineſs, as you have heard; and if the Witneſſes ſay true, they were ſaid by the Captain of the Ship to be, and were reputed to be, the Ship and Goods of Friends, and not of Enemies; and if they were ſo, and had no *French* Paſs, then is he, and thoſe that were concerned with him, guilty of Piratically taking this Ship, and of Piratically ſeizing the Goods in the Ship; and neither of his Commiſſions will juſtify ſuch an Action as this. If he had acted purſuant to his Commiſſion, he ought to have condemned the Ship and Goods, if they were a *French* Intereſt, or Sailed under a *French* Paſs; but by his not condemning them, he ſeems to ſhew his Aim, Mind and Intention, that he did not act in that Caſe by virtue of his Commiſſion, but quite contrary to it; for he takes the Ship, and ſhares the Money and Goods, and is taken in that very Ship by my Lord *Bellamont*, and he had continued in that Ship till that time, ſo that there is no colour or pretence appears, that he intended to bring this Ship to *England*, to be condemned, or to have condemned it in any of the *Engliſh* Plantations, having diſpoſed of the whole Cargo as aforeſaid. Here I muſt leave it to you, to conſider whether, according to the Evidence that appears, there is any Ground for him to ſay, he has acted by his Commiſſion in taking the *Quedagh Merchant* and Goods in her, or whether he has not acted contrary thereunto.

Now for himſelf he has called ſome Perſons here, to give an account of his Reputation, and of his Services done in the *Weſt Indies*; and one of them ſays, about 10 or 12 Years, he did good Service there. Why ſo he might, and might have, and 'tis very like he had ſuch Reputation, when the King truſted him with theſe Commiſſions, elſe I believe he had never had them; ſo that whatever he might be ſo many Years ago, that is not a matter to be inſiſted on now, but what he hath been ſince, and how he hath acted in this matter charged againſt him. So that, Gentlemen, as to Mr. *Kidd*, I muſt leave it to you, whether he is Guilty of Piracy or no, and if you believe him Guilty upon the Evidence, you will find him ſo, if not you will acquit him.

Now for the other Priſoners, it is proved they were all concerned in taking and ſharing the Ship and Goods in the Indictment; yet their Circumſtances differ pretty much among themſelves. There are three of them, that it has been made out to you, and owned by the King's Witneſſes that they were Servants. *Robert Lamley*, *William Jenkins*, *Richard Barlicorn*. All theſe are made out to be Servants, and you have had the Indentures of two of them produced, and the King's Witneſſes prove them ſo, and they were admitted to be Servants. Now, Gentlemen, there muſt go an Intention of the Mind, and a Freedom of the Will, to the committing a Felony or Piracy. A Pirate is not to be underſtood to be under conſtraint, but a free Agent; for in this Caſe, the bare Act will not make him Guilty, unleſs the Will make it ſo. Now a Servant, it is true, if he go voluntarily, and have his Proportion, he muſt be accounted a Pirate, for then he acts upon his own account, and not by Compulſion. And theſe perſons, according to the Evidence, received their Part, but whether they accounted to their Maſters for their ſhares afterwards, yea or no, as they pretend, but make no proof of it, I muſt leave that to you; and therefore there is a conſideration to be had of them. For if theſe Men did go under the Compulſion of their Maſters, to whom they were Servants, and not voluntarily, and upon their own Accounts, it may difference their Caſe from others, who went and acted willingly in this matter, and upon their own Accounts. So that as to thoſe that were Servants under the command of their Maſters that were preſent with them, I muſt leave it to you, whether you will diſtinguiſh between them and the others that were not Servants, but free Agents. It is true, a Servant is not bound to obey his Maſter, but in lawful things, which they ſay they thought this was, and that they knew not to the contrary, but that their Maſters acted according to the King's Commiſſion; and therefore their Caſe muſt be left to your conſideration, whether you think them upon the whole matter Guilty or no. If you believe them Guilty, you will find them ſo, otherwiſe you will Acquit them.

For the other Perſons, ſome of them pretend they came in on his Majeſty's Proclamation, and for that you muſt conſider the Evidence, and take it all together, and conſider whether you are ſatisfied by what they have ſaid or proved, that they have brought themſelves within the benefit of the King's Favour by that Proclamation. You have heard it read, and obſerved the Qualifications and Directions by it, and the Terms upon which the Pardon was promiſed, which are not made out to you, to be complied with by them; they may apply another way, for the King's Mercy; this Court muſt proceed according to the Rules of Law and Juſtice. But then all of them hold on this: We were, ſay they, under the Captain, and acted under him as their Commander; and, Gentlemen, ſo far as they acted under his lawful Commands, and by Virtue, and in Purſuance of his Commiſſions, it muſt be admitted they were Juſtifyable, and ought to be Juſtify'd. But how far forth that hath been, the Actions of the Captain and their own, will beſt make it appear. It is not conteſted, but that theſe Men knew, and were ſenſible of what was done and acted, and did take part in it, and had the benefit of what was taken, ſhared amongſt them: And if the taking of this Ship and Goods was Unlawful, then theſe Men can claim no Advantage by theſe Commiſſions, becauſe they had no Authority by them to do what they did, but acted quite contrary to them. What had they to do to enter into ſuch Articles, and to act as they did? You muſt conſider the Evidence given here, according to the Rules of the Law, and if you are ſatisfy'd that they have Knowingly and Wilfully been concerned or partaken with Capt. *Kidd*, in taking this Ship, and dividing the Goods, and that Piratically and Felonioufly, then they will be Guilty within this Indictment. It is worthy of conſideration what appears upon the Evidence, that they met with one reputed to be a Notorious Pirate, call'd *Culliford*; he was eſteemed an Arch-Pirate, and known to be ſo, yet this Capt. *Kidd*, that was Commiſſion'd to take Pirates, inſtead of taking him, grows to ſuch an Intimacy with him, that he ſaid he would have his Soul fry in Hell, before he would hurt him,

or to that effect, and ſo they made Preſents one to another; and Capt. *Kidd* left three of his Men with him. Whilſt Men purſue their Commiſſions, they muſt be Juſtify'd, but when they do things not Authorized, or never acted by them, it is as if there had been no Commiſſion at all. I have diſtinguiſhed the Evidence as well as my memory ſerves me, and muſt leave it to you to determine upon the whole matter, who are Guilty, and who not; and ſuch as you are ſatisfied to be Guilty, you will find ſo, and ſuch as you are not ſatisfy'd to be Guilty, you will acquit.

Then the Jury withdrew, and after half an hour's ſtay, brought in their Verdict.

Cl. of *Arr.* Gentlemen of the Jury, Anſwer to your Names, *John Cooper*, &c.

J. Cooper, Here, *&c.*

Cl. of *Arr.* Are you agreed of your Verdict?

Omnes. Yes.

Cl. of *Arr.* Who ſhall ſay for you?

Omnes. Foreman.

Cl. of *Arr. Will. Kidd*, hold up thy Hand. (which he did.) How ſay you, Is he Guilty of the Piracy whereof he ſtands Indicted, or not Guilty? And ſo of the reſt.

Foreman. Guilty.

Cl. of *Arr.* Is *Nich. Churchill* Guilty, or not Guilty?

Foreman. Guilty.

Cl. of *Arr.* Is *James Howe* Guilty, *&c?*

Foreman. Guilty.

Cl. of *Arr.* Is *Rob. Lamley* Guilty, *&c?*

Foreman. Not Guilty.

Cl. of *Arr.* Is *Will. Jenkins* Guilty, *&c?*

Foreman. Not Guilty.

Cl. of *Arr.* Is *Gabriel Loff* Guilty, *&c?*

Foreman. Guilty.

Cl. of *Arr.* Is *Hugh Parrot* Guilty, *&c?*

Foreman. Guilty.

Cl. of *Arr.* Is *R. Barlicorn* Guilty, *&c?*

Foreman. Not Guilty.

Cl. of *Arr.* Is *Abel Owens* Guilty, *&c?*

Foreman. Guilty.

Cl. of *Arr.* Is *Darby Mullins* Guilty, *&c?*

Foreman. Guilty.

Then Will. Kidd, *and the other Nine Perſons, were further Arraigned upon four Indictments, in manner following.*

Cl. of *Arr. Will. Kidd*, hold up thy Hand. (which he did.) And ſo the other Nine.

You ſtand Indicted by the Name of *Will. Kidd*, late of *London* Mariner, *&c.*

The Jurors for our Sovereign Lord the King, do upon their Oath, preſent that *William Kidd*, late of *London*, Marriner, *Nicholas Churchill*, late of *London*, Marriner, *James Howe*, late of *London*, Marriner, *Robert Lamley*, late of *London*, Marriner, *William Jenkins*, late of *London*, Marriner, *Gabriel Loffe*, late of *London*, Marriner, *Hugh Parrot*, late of *London*, Marriner, *Richard Barlicorn*, late of *London*, Marriner, *Abel Owens*, late of *London*, Marriner, and *Darby Mullins*, late of *London*, Marriner, the 20th Day of *September*, in the Ninth Year of the Reign of our Sovereign Lord *William* the Third, by the Grace of God, of *England*, *Scotland*, *France* and *Ireland*, King, Defender of the Faith, *&c.* By Force and Arms, *&c.* upon the High Sea, in a certain place, diſtant about Fifty Leagues from the Port of *Carrawar*, in the *Eaſt-Indies*, and within the Juriſdiction of the Admiralty of *England*, did Piratically, and Feloniouſly ſet upon, board, break and enter a certain Ship call'd a *Mooriſh* Ship, then being a Ship of certain perſons (to the Jurors aforeſaid unknown) and then and there Piratically and Feloniouſly did make an aſſault, in and upon certain Marriners (whoſe Names to the Jurors aforeſaid are unknown) in the ſame Ship in the Peace of God, and of our ſaid now Sovereign Lord the King, then and there being, Piratically and Feloniouſly did put the aforeſaid Marriners of the ſame Ship, in the Ship aforeſaid then being, in corporeal fear of their Lives, then and there in the Ship aforeſaid upon the high Sea, in the place aforeſaid, diſtant about Fifty Leagues from the Port of *Carrawar* aforeſaid, in the *Eaſt-Indies* aforeſaid, and within the Juriſdiction aforeſaid, Piratically and Feloniouſly did Steal, take and carry away One Hundred Pound weight of Coffee, of the value of Five Pounds of lawful Money of *England*, Sixty Pound weight of Pepper, of the value of Three Pounds of lawful Money of *England*, One Hundred weight of *Myrrh*, of the value of Five Pounds of lawful Money of *England*, and Twenty pieces of *Arabian* Gold, of the value of Eight Pounds of lawful Money of *England*, the Goods, Chattels and Moneys of certain perſons (to the Jurors aforeſaid unknown) then and there upon the high Sea aforeſaid, in the aforeſaid place, diſtant about Fifty Leagues from the Port of *Carrawar* aforeſaid, in the *Eaſt-Indies* aforeſaid, and within the Juriſdiction aforeſaid, being found in the aforeſaid Ship, in the Cuſtody and poſſeſſion of the ſaid Marriners in the ſame Ship, from the ſaid Marriners of the ſaid Ship, and from their cuſtody and poſſeſſion then and there upon the High Sea aforeſaid, in the place aforeſaid, diſtant about 50 Leagues from the Port of *Carrawar* aforeſaid, in the *Eaſt-Indies* aforeſaid, and within the Juriſdiction aforeſaid, againſt the Peace of our ſaid now Sovereign Lord the King, his Crown and Dignity, *&c.*

How ſay'ſt thou, *William Kidd*, art thou Guilty of this Piracy and Robbery, whereof thou ſtandeſt Indicted, or not Guilty?

Will. Kidd. Not Guilty.

Cl. of *Arr. Culprit*, how wilt thou be Tried?

Will. Kidd. By God and my Country.

Cl. of *Arr.* God ſend thee a good Deliverance. (And ſo the other Nine.)

Cl. of *Arr. Will. Kidd*, hold up thy Hand. (Which he did.) And ſo the other Nine.

You ſtand Indicted, by the Name of *Will. Kidd*, late of *London*, Marriner, (and ſo the reſt.)

The Jurors for our Sovereign Lord the King, do upon their Oath preſent, that *William Kidd*, late of *London*, Marriner, *Nicholas Churchill*, late of *London*, Marriner, *James Howe*, late of *London*, Marriner, *Robert Lamley*, late of *London*, Marriner, *William Jenkins*, late of *London*, Marriner, *Gabriel Loffe*, late of *London*, Marriner, *Hugh Parrot*, late of *London*, Marriner, *Richard Barlicorn*, late of *London*, Marriner, *Abel Owens*, late of *London*, Marriner, and *Darby Mullins*, late of *London*, Marriner, the 27th Day of *November*, in the 9th Year of the Reign of our Sovereign Lord *William* the Third, by the Grace of God, of *England*, *Scotland*, *France* and *Ireland*, King, Defender of the

the Faith, &c. by Force and Arms, &c. upon the High Sea, in a certain Place, distant about four Leagues from *Callicut*, in the *East-Indies*, and within the Jurisdiction of the Admiralty of *England*, did Piratically, and Feloniously set upon, board, break, and enter a certain Ship, call'd a *Moorish* Ship; then being a Ship of certain Persons (to the Jurors aforesaid unknown) and then and there Piratically and Feloniously, did make an assault in and upon certain Marriners (whose Names to the Jurors aforesaid are unknown) in the same Ship in the Peace of God, and of our said now Sovereign Lord the King, then and there being, Piratically and Feloniously did put the aforesaid Marriners of the same Ship, in the Ship aforesaid then being, in corporal fear of their Lives, then and there in the Ship aforesaid, upon the High Sea, in the Place aforesaid, distant about four Leagues from *Callicut*, aforesaid, in the *East-Indies* aforesaid, and within the Jurisdiction aforesaid, Piratically and Feloniously did Steal, take and carry away the said Ship, and the Apparel and Tackle of the same Ship, of the value of Five Hundred Pounds of lawful Money of *England*; Eleven Bales of Cotton, of the value of Sixty Pounds of lawful Money of *England*; Two Horses, each of them of the Price of Twenty Pounds of lawful Money of *England*, and Fifty *Indian* Quilts, of the Value of Five Pounds of lawful Money of *England*, the Goods and Chattels of certain Persons (to the Jurors aforesaid unknown) then and there upon the High Sea aforesaid, in the aforesaid Place, distant about four Leagues from *Callicut* aforesaid, in the *East-Indies* aforesaid, and within the Jurisdiction aforesaid, being found in the aforesaid Ship, in the Custody and Possession of the said Marriners, in the same Ship, from the said Marriners of the said Ship, and from their Custody and Possession, then and there upon the High Sea aforesaid, in the Place aforesaid, distant about four Leagues from *Callicut* aforesaid, in the *East-Indies* aforesaid, and within the Jurisdiction aforesaid, against the Peace of our said now Sovereign Lord the King, his Crown and Dignity, &c.

How say'st thou, *Will. Kidd*, art thou Guilty of this Piracy and Robbery whereof thou standest Indicted, or not Guilty?

Will. Kidd. Not Guilty.

Cl. of Arr. Culprit, How wilt thou be try'd?

Will. Kidd. By God and my Country.

Cl. of Arr. God send thee a good Deliverance. (And so of the other Nine.)

Cl. of Arr. Will. Kidd, Hold up thy Hand (which he did). And so the other Nine.

You stand Indicted by the Name of *Will. Kidd*, late of *London*, Marriner. (And so of the rest.)

" The Jurors for our Sovereign Lord the King, " do, upon their Oath, present, That *William* " *Kidd*, late of *London*, Marriner, *Nicholas Churchill*, late of *London*, Marriner, *James How*, " late of *London*, Marriner, *Robert Lamley*, late of " *London*, Marriner, *William Jenkins*, late of *London*, Marriner, *Gabriel Loff*, late of *London*, " Marriner, *Hugh Parrot*, late of *London*, Marriner, *Richard Barlycorne*, late of *London*, Marriner, *Abel Owens*, late of *London*, Marriner, and " *Darby Mullins*, late of *London*, Marriner; the " Twenty Eighth Day of *December*, in the Ninth " Year of the Reign of Our Sovereign Lord, *William* the Third, by the Grace of God, of *England*, *Scotland*, *France*, and *Ireland*, King, Defender of the Faith, &c. by Force and Arms, " &c. upon the High Sea, in a certain Place, distant about four Leagues from *Callicut*, in the " *East-Indies*, and within the Jurisdiction of the " Admiralty of *England*, did Piratically and Feloniously set upon, board, break, and enter a " certain Ketch, call'd a *Moorish* Ketch, then being a Ketch of certain Persons (to the Jurors " aforesaid unknown) and then and there, Piratically and Feloniously did make an Assault, in " and upon certain Marriners (whose Names to " the Jurors aforesaid are unknown) in the same " Ship, in the Peace of God, and of Our said " now Sovereign Lord the King, then and there " being, Piratically and Feloniously, did put the " aforesaid Marriners of the same Ketch, in the " Ketch aforesaid then being, in corporal Fear of " their Lives then and there in the Ketch aforesaid, upon the High Sea, in the Place aforesaid, " distant about four Leagues from *Callicut* aforesaid, in the *East-Indies* aforesaid, and within the " Jurisdiction aforesaid, Piratically and Feloniously did steal, take and carry away the said " Ketch, and the Apparel and Tackle of the same " Ketch, of the Value of fifty Pounds of lawful " Money of *England*, thirty Tubs of Sugar-Candy, " of the Value of fifteen Pounds of lawful Money " of *England*, six Bales of Sugar, of the Value of " six Pounds of lawful Money of *England*, and " ten Bales of Tobacco, of the Value of ten Pounds " of lawful Money of *England*, the Goods and " Chattels of certain Persons (to the Jurors aforesaid unknown) then and there upon the High " Sea aforesaid, in the aforesaid Place, distant " about four Leagues from *Callicut* aforesaid, in " the *East-Indies* aforesaid, and within the Jurisdiction aforesaid, being found in the aforesaid " Ketch, in the Custody and Possession of the said " Marriners in the same Ketch, from the said " Marriners of the said Ketch, and from their " Custody and Possession, then and there upon " the High Sea aforesaid, in the Place aforesaid, " distant about four Leagues from *Callicut* aforesaid, in the *East-Indies* aforesaid, and within the " Jurisdiction aforesaid, against the Peace of Our " said now Sovereign Lord the King, his Crown " and Dignity, &c.

How say'st thou, *Will. Kidd*, art thou Guilty of the Piracy and Robbery whereof thou standest Indicted, or not Guilty?

Will. Kidd. Not Guilty.

Cl. of Arr. How wilt thou be try'd?

Will. Kidd. By God and my Country.

Cl. of Arr. God send thee a good Deliverance. (And so of the other Nine.)

Cl. of Arr. Will. Kidd, Hold up thy Hand (which he did). And so the other Nine.

You stand Indicted by the Name of *Will. Kidd*, late of *London*, Marriner, &c. (And so of the rest.)

" The Jurors for our Sovereign Lord the King, " do, upon their Oath, present, That *William* " *Kidd*, late of *London*, Mariner, *Nicholas Churchill*, " late of *London*, Mariner; *James How*, late of " *London*, Mariner; *Robert Lamley*, late of *London*, Mariner; *William Jenkins*, late of *London*, " Mariner; *Gabriel Loff*, late of *London*, Mariner;

" *Hugh*

" *Hugh Parrot*, late of *London*, Mariner; *Richard* " *Barlycorne*, late of *London*, Mariner; *Abel Owens*, " late of *London*, Mariner; and *Darby Mullins*, " late of *London*, Mariner; the Twentieth Day of " *January*, in the Ninth Year of the Reign of Our " Sovereign Lord, *William* the Third, by the " Grace of God, of *England*, *Scotland*, *France*, and " *Ireland*, King, Defender of the Faith, *&c.* by " Force and Arms, *&c.* upon the High Sea, in " a certain Place, distant about twelve Leagues " from *Callicut*, in the *East-Indies*, and within the " Jurisdiction of the Admiralty of *England*, did " Piratically and Feloniously set upon, board, " break, and enter a certain Ship, call'd a *Portu-* " *gueze* Ship, then being a Ship of certain Persons " (to the Jurors aforesaid unknown) and then " and there Piratically and Feloniously did make " an Assault in and upon certain Mariners, Sub- " jects of the King of *Portugal* (whose Names to " the Jurors aforesaid are unknown) in the same " Ship, in the Peace of God, and of our said now " Sovereign Lord the King, then and there be- " ing, Piratically and Feloniously did put the " aforesaid Mariners of the same Ship, in the " Ship aforesaid then being, in corporal Fear of " their Lives, then and there in the Ship afore- " said, upon the High Sea, in the Place aforesaid, " distant about twelve Leagues from *Callicut* afore- " said, in the *East-Indies* aforesaid, and within the " Jurisdiction aforesaid, Piratically and Felони- " ously did steal, take, and carry away two Chests " of Opium, of the Value of Forty Pounds of " lawful Money of *England*, eighty Baggs of Rice " of the Value of Twelve Pounds of lawful Mo- " ney of *England*, one Tun of Bees-Wax, of the " Value of Ten Pounds of lawful Money of *En-* " *gland*, thirty Jarrs of Butter of the Value of " Ten Pounds of lawful Money of *England*, and " half a Tun of Iron of the Value of Four Pounds " of lawful Money of *England*, the Goods and " Chattels of certain Persons (to the Jurors afore- " said unknown) then and there upon the High " Sea aforesaid, in the aforesaid Place, distant " about twelve Leagues from *Callicut* aforesaid, " in the *East-Indies* aforesaid, and within the Ju- " risdiction aforesaid, being found in the afore- " said Ship, in the Custody and Possession of the " said Mariners in the same Ship, from the said " Mariners of the same Ship, and from their Cu- " stody and Possession, then and there upon the " High Sea aforesaid, in the Place aforesaid, di- " stant about twelve Leagues from *Callicut* afore- " said, in the *East-Indies* aforesaid, and within " the Jurisdiction aforesaid, against the Peace of " our said now Sovereign Lord the King, his " Crown and Dignity, *&c.*

How say'st thou, *William Kidd*, art thou guilty of the Piracy and Robbery whereof thou standest Indicted, or not guilty?

William Kidd. Not guilty.

Cl. of Arr. How wilt thou be try'd?

William Kidd. By God and my Country.

Cl. of Arr. God send thee a good Deliverance.

(And so of the other Nine.)

[*Then the Court adjourned till to Morrow Morning eight a Clock.*]

The further Proceedings against William Kidd, *and the other nine Prisoners, on the four Indictments*, May *the 9th*, 1701.

Cl. of Arr. CALL *William Kidd*, *Nicholas Churchill*, *James How*, *Robert Lamley*, *William Jenkins*, *Gabriel Loff*, *Hugh Parrot*, *R. Barlicorn*, *Abel Owens*, and *Darby Mullins* to the Bar. You the Prisoners at the Bar, *William Kidd*, &c. those Men that you shall hear called, and personally appear, are to pass between our Sovereign Lord the King and you, upon Tryal of your several Lives and Deaths; if therefore you, or any of you, will challenge them, or any of them, your Time is to speak unto them as they come to the Book to be Sworn, and before they be Sworn. Call *William Smith*, who appeared, and there being no Challenges, the Twelve that were Sworn, are as follows.

The JURY.

Will. Smith,	*Peter Gray*,
Benj. Hooper,	*Rob. Comfort*,
Jo. Hibbert,	*Tho. Hollis*,
Jo. Pettit,	*Will. Ford*,
Will. Hatch,	*Tho. Stephens*,
Jos. Chaplain,	*Jo. Dodson.*

Cl of Arr. Cryer, count these, *Will. Smith.*

Cryer. One, *&c.*

Cl. of Arr. Benj. Hooper.

Cryer. Two, *&c.* Twelve good Men and true, stand together, and hear your Evidence.

[*Then the usual Proclamation for Information was made, and the Prisoners being bid to hold up their Hands, the Clerk of Arraignments charged the Jury with them thus:*]

Cl. of Arr. " You of the Jury, look upon the " Prisoners, and hearken to their Cause. They " stand indicted by the Names of *William Kidd*, " &c. *(as before in the Indictment)* upon this Indict- " ment they have been arraigned, and thereunto " have severally pleaded, not guilty, and for their " Tryal put themselves on God and their Coun- " try, which Country you are. Your Charge is to " enquire, Whether they be guilty of the Piracy " and Robbery whereof they stand Indicted, or " not guilty, *&c.*

Nich. Churchill. May it please you, my Lord, I came in upon his Majesty's Proclamation, and if that do not do, I throw my self upon the Mercy of the Honourable Bench.

Mr Bar. *Hatsell.* If they will withdraw their Plea, and confess the Indictment, they may.

Nich. Churchill and *James How.* We refer our selves to the King's Proclamation.

Dr *Oxenden.* But do you confess the Matter of the Indictment? You may do that if you will, and then you need not be tryed.

Abel Owens. My Lord, I came in upon the King's Proclamation, and enter'd my self aboard one of the King's Ships.

Dr *Oxenden.* You must answer first, and come to your Defence afterward.

Abel Owens. I hope your Honours will grant it me as well as the rest, I entred my self into the King's Service.

Cl. of Arr.

Cl. of Arr. You of the Jury, look on the Priſoners, and hearken to their Cauſe. They ſtand Indicted by the Name of *William Kidd*, &c.

Mr J. *Turton.* You may try all the Indictments together, if they are the ſame Perſons concerned.

Cl. of Arr. They are the ſame that are concerned in the two firſt Indictments.

Mr J. *Turton.* Then proceed upon theſe two together.

Cl. of Arr. They ſtand a ſecond Time indicted by the Name of *William Kidd*, late of *London*, Mariner, (*and ſo of the reſt.*) Upon theſe two Indictments they have been Arraigned, and thereto have ſeverally pleaded, not guilty; and for their Tryals have put themſelves on God and their Country, which Country you are. Your Charge is to enquire, Whether they are guilty of the ſaid Piracies and Robberies whereof they ſtand Indicted, or not guilty, *&c.*

Mr *Knapp.* May it pleaſe your Lordſhip, and Gentlemen of the Jury, theſe are two ſeveral Indictments againſt *William Kidd*, &c. and they are both for Piracy. One ſets forth, That the Priſoners at the Bar, on the Twentieth of *September*, in the ninth Year of his Majeſty's Reign, fifteen Leagues from *Carawar*, did Piratically invade and take a Ship called the *Mooriſh Ketch*, and put the Mariners in Fear of their Lives. The other Indictment ſets forth, That on the 27th of *November*, in the ninth Year of his Majeſty's Reign, four Leagues from *Callicut*, the Priſoners at the Bar did ſeize and take another Mooriſh Ship, to both which Indictments they have pleaded, not guilty. If we prove the Fact, you muſt find them guilty. We will call our Witneſſes. The Witneſſes are the ſame. The whole Story you have heard before, and we will apply our ſelves now to theſe Facts mentioned in theſe two Indictments.

Mr J. *Turton.* You muſt open your Matter firſt, becauſe there is a new Jury.

Mr *Knapp.* Then, my Lord, and Gentlemen of the Jury, this Capt. *Kidd* went out of *England* in a Ship called the *Adventure-Galley*. He firſt went to *New York*, and there he ſet out Articles to procure Men, and promiſed them that would come in to him a Share in the Adventures they ſhould get. From thence he goes to *Babs-Key* and lies about three Weeks there, watching for the *Moco* Fleet: He ſent his Boat out three Times to ſee in what Condition the Ships were. He could get no Intelligence the two firſt Times, but the third Time he did; they brought him Word, there were fourteen or fifteen Ships ready to ſail, and that their Colours were *Engliſh* and *Dutch*, and *Mooriſh*. He lay in wait for theſe Ships, and watched them; and when they came down, he fell in with them, and fired at them; but he found they were under an *Engliſh* and *Dutch* Convoy, and ſo away he went and left them. And then he came to cruiſe on the Coaſt of *Malabar*, and there he met with his firſt Prize, and that is the Mooriſh Ship mentioned in the firſt Indictment: They ſeized and took this *Mooriſh* Ship, and entred her, and took ſeveral Goods out of her, and then let the Ship go away. We will call our Witneſſes as to this Ship firſt. Call *Robert Bradinham* and *Joſeph Palmer*, (*who appeared and were ſworn.*) Mr *Bradinham*, What have you to ſay as to this Matter?

Mr Bar. *Hatſell.* Tell it from the Beginning; from the Time that you went out of *England*, to the Time of taking this Ship, becauſe there is a new Jury.

Bradinham. About the Beginning of *May*, 1696, we went out of *England*, and went to *New-York*, in the *Adventure-Galley*, whereof Capt. *Kidd* was Commander.

Mr *Knapp.* Whither did you go?

Bradinham. To *New-York*: We took a Ship by the Way, and carried her to *New-York*, where we condemn'd her.

Mr *Knapp.* What Ship was that?

Bradinham. A *French* Banker. At *New-York* Capt. *Kidd* put up his Articles, that if any would come aboard his Ship they ſhould be welcome, no Purchaſe no Pay, mentioning that he had the King's Commiſſion. From thence we went to St. *Jauger*, then to *Maderas*, then to *Madagaſcar*, then to *Bonavis*, then to *Joanna*, and then to the *Red-Sea*, and then to *Babs-Key*: There he lay three Weeks looking for the *Moco* Fleet.

Mr *Knapp.* Where?

Bradinham. In *Babs-Key*.

Mr *Knapp.* You ſay he lay there about a Fortnight or three Weeks, how did he behave himſelf there?

Bradinham. He ſent out his Boat three Times; and the two firſt Times they could get no Intelligence.

Mr J. *Turton.* Tell whoſe that *Moco* Fleet was.

Bradinham. They belong'd to the Moors; they were Merchant-men belonging to the Moors.

Mr *Knapp.* What News did they bring the third Time?

Bradinham. The third Time they brought Word that there were fourteen or fifteen Ships in the Harbour ready to ſail.

Dr *Newton.* What did he ſay then?

Bradinham. That he would take as many of them as he could, and did not doubt but to make a Voyage out of them.

Mr J. *Turton.* What Account did the two firſt Boats bring?

Bradinham. No Account at all, my Lord.

Mr J. *Turton.* What Notice did they bring the third Time?

Bradinham. They brought Word, that there were about fourteen or fifteen Ships in the Harbour ready to ſail.

Mr J. *Turton.* Which Time was it that they brought that Word?

Bradinham. The third Time. Then the Fleet came down and Capt. *Kidd* followed them.

Mr *Knapp.* Were there any on Shoar to watch this Fleet?

Bradinham. There were ſome ſent to the high Land of the Iſland to ſee if the Fleet came; and when they ſaw it, they were to give a Sign with a Half-Pike and Flag, and then the Boat was to fetch them off. At laſt the Fleet came down, and Capt. *Kidd* went among them, and fired at them; but finding they were under a Convoy, and too ſtrong for him, he was forced to leave them.

Mr *Knapp.* Whither did you go then?

Bradinham. From thence we went to *Carawar*, and by the Way we met with a Mooriſh Ship, of which Capt. *Parker* was Commander.

Mr *Knapp.* My Lord, that is the Ship that they are Indicted for. Where was it that you met with that Ship?

Bradinham. About fifty Leagues from *Carawar*.

Mr *Knapp.* Pray, what did they do with that Ship?

Bradinham. We took Capt. *Parker*'s Ship, and took him aboard, and the *Portugueze* for a Linguiſter;

ſter: And he took out ſome of the Men, and bound their Hands behind them, and order'd them to be drub'd with a naked Cutlace. And he took out of her ſome Pepper, and Coffee, and *Arabian* Gold, and wearing Apparel, and ſeveral other Things.

Mr *Knapp*. What did he do with theſe Men, after he had plundered the Ship?

Bradinham. He let the Ship go, and kept *Parker* and the *Portugueze* aboard.

Dr *Newton*. How many Men were there aboard the Ship?

Bradinham. About Thirty.

Dr *Oxenden*. What Countryman was this *Parker?*

Bradinham. He was an *Engliſh-man*.

Dr *Oxenden*. How do you know That?

Bradinham. He told me ſo.

Mr *Knapp*. What Ship was it?

Bradinham. A Mooriſh Ship.

Mr *Knapp*. What Time was this done?

Bradinham. In *September*, 1697.

Mr *Knapp*. What did he do with the two Men he took out of this Ship?

Bradinham. He kept them aboard his Veſſel.

Mr *Knapp*. What Ship was Captain *Kidd* in then?

Bradinham. He was in the *Adventure-Gally*.

Mr *Knapp*. Tell us whether any other of theſe Priſoners at the Bar were in that Ship when this was done.

Bradinham. Every one of them;

Cl. of Arr. Was Captain *Kidd* himſelf there?

Bradinham. Yes.

Cl. of Arr. Was *Nicholas Churchill* there?

Bradinham. Yes.

Cl. of Arr. Was *James Howe* there?

Bradinham. Yes.

Cl. of Arr. Was *Robert Lamley* there?

Bradinham. Yes.

Cl. of Arr. Was *William Jenkins* there?

Bradinham. Yes.

Cl. of Arr. Was *Gabriel Loffe* there?

Bradinham. Yes.

Cl. of Arr. Was *Hugh Parrot* there?

Bradinham. Yes.

Cl. of Arr. Was *Richard Barlicorn* there?

Bradinham. Yes.

Cl. of Arr. Was *Abel Owens* there?

Bradinham. Yes.

Cl. of Arr. Was *Darby Mullins* there?

Bradinham. Yes.

Cl. of Arr. You ſay you are ſure they were all there?

Bradinham. Yes, I am ſure they were.

Mr J. *Turton*. What Goods did they take out of that Ship?

Bradinham. Several Bales of Pepper, Several Bales of Coffee, and ſome Myrrh, which is a Gum.

Mr *Soll. Gen*. What did they do with it?

Bradinham. Capt. *Kidd* made uſe of the Myrrh to make Pitch of.

Mr *Soll. Gen*. What was the Value of the Myrrh?

Bradinham. About fifteen Pounds.

Mr *Soll. Gen*. Where did they go after the Taking of this Ship?

Bradinham. To *Carawar*.

Mr *Soll. Gen*. What did they do there?

Bradinham. There the Captain wooded and watered his Ship.

Dr *Oxenden*. What is *Carawar?* Tell the Court.

Bradinham. There is an *Engliſh* Factory. They ſent ſome Men aboard, and demanded this *Parker*, and the *Portugueze*; and the Captain denyed them, and kept them in the Hold, and would not let them know he had them on board.

Dr *Oxenden*. Had they any notice of *Parker's* being on board Capt. *Kidd's* Ship.

Bradinham. I ſuppoſe they had Information from *Bombay* by the Marriners that went away, for Capt. *Parker's* Veſſel belonged to that Place.

Mr *Soll. Gen*. How far is that *Carawar* from *Bombay?*

Bradinham. About 40 Leagues.

Mr *Soll. Gen*. Where did you go after that?

Bradinham. They cruiſed on that Coaſt, and then went to one of the *Malabar* Iſlands.

Mr *Soll. Gen*. What was done there?

Bradinham. We wooded and watered our Ship.

Mr *Soll. Gen*. Did they take any Ships there?

Bradinham. Capt. *Kidd* went aſhore there, and burnt ſome Houſes, and plundered ſeveral Boats.

Mr *Soll. Gen*. Was there any Ship taken there?

Bradinham. Yes.

Mr *Soll. Gen*. What Ship?

Bradinham. Some time in *November*; about the 17th of *November*, they took a *Mooriſh* Ship, Skipper *Mitchel* was the Commander.

Mr B. *Hatſell*. You need go no further now.

Mr *Knapp*. We will call the other Evidence, if you pleaſe, Mr. Sollicitor.

Mr *Soll. Gen*. We will give our Evidence upon both Indictments together.

Mr *Knapp*. They ſtand charged with taking another Ship. You have heard how far we have carry'd it: Now they went and took another Ship about the 17th of *November*.

Bradinham. They took a *Mooriſh* Ship four Leagues from *Callicut*.

Mr *J. Turton*. Now go on.

Bradinham. Capt. *Kidd* took this *Mooriſh* Ship on the Coaſt of *Malabar*, Skipper *Mitchel* was the Commander; ſhe was a *Mooriſh* Ship. He took out of her two Horſes, ſome Bails of Cotton, ſome Quilts.

Mr B. *Hatſell*. What Country-man was this Skipper *Mitchel?*

Bradinham. A *Dutch-man*.

Mr B. *Hatſell*. What Ship was it?

Bradinham. A *Mooriſh* Ship, ſhe belong'd to *Suratt*.

Mr *Soll. Gen*. What Burden was ſhe?

Bradinham. About 150 Tun.

Mr *Soll. Gen*. What was found in her?

Bradinham. Two Horſes, about eleven or twelve Bales of Cotton.

Mr *J. Turton*. Was this on the Coaſt of *Callicut?*

Bradinham. It was on the Coaſt of *Malabar*.

Mr *Knapp*. How far from *Malabar?*

Bradinham. Seven or eight Leagues.

Mr *Soll. Gen*. What did they do after this with the Ship, and Goods, and People?

Bradinham. The People they ſet aſhore, and kept the Ship, and carry'd her to *Madagaſcar*.

Mr *Soll. Gen*. What was the Value of the Horſes taken out of her?

Bradinham. The Horſes were worth about 40 *l.*

Mr *Soll. Gen*. What the Cotton?

Bradinham. About an Hundred Pounds.

Mr B. *Hatſell*. How do you know this Skipper *Mitchel* was a *Dutchman*?

Bradinham. He told me ſo, he came afterwards aboard Capt. *Kidd*, and took Arms under him.

Mr *Soll. Gen*.

Mr. *Soll. Gen.* Were all these Persons aboard this Ship when she was taken?

Bradinham. Yes, my Lord.

Mr B. *Hatsell.* You say this Ship was about 150 Tun; What might she be worth?

Bradinham. About 500 *l.*

Mr B. *Hatsell.* To whom did she belong

Bradinham. To the *Moors.*

Mr B. *Hatsell.* What *Moors?*

Bradinham. The *Moors* that belonged to *Suratt*, as I was informed by the *Moors.*

Mr *Soll. Gen.* What did he do with this Ship afterwards?

Bradinham. She was carried to *Madagascar.*

Mr *Soll. Gen.* What did they do with the Ship?

Bradinham. They sunk her.

Mr *Soll. Gen.* Do you know why they sunk her?

Bradinham. She was sunk voluntarily.

Kidd. This Man contradicts himself in an hundred places.

Bradinham. The Ship was sunk purposely.

Dr *Newton.* What was done when you came to *Madagascar?*

Bradinham. When we came to *Madagascar*, there came off a Canooe with white Men aboard that belong'd to the *Moco* Frigat. Some of these Men belong'd formerly to Capt. *Kidd.* She was suppos'd to be a Pirate-Ship.

Mr *Soll. Gen.* What was the reason of sinking that Ship?

Bradinham. They sunk her in the Harbour, that she might be convenient for Vessels to Careen by. Some Men came off in this Canooe, and they told him, they heard he was come to take them, and hang them. He said it was no such thing.

Dr *Newton.* Who was the Captain of the *Moco* Frigat?

Bradinham. Captain *Culliford.*

Dr *Newton.* Was he a Pirate?

Bradinham. Yes, he was reputed so.

Mr. *Soll. Gen.* Well, go on.

Bradinham. Capt. *Kidd* swore he would be true to them, and that he would do them no harm.

Mr. *Soll. Gen.* Did you hear all this?

Bradinham. Yes, he swore to be true to them.

Mr. *Knapp.* Was there any thing said about Capt. *Kidd*'s taking her?

Bradinham. Nothing.

Dr *Newton.* What passed afterwards between Captain *Kidd* and *Culliford?*

Bradinham. They were very friendly together, and they made Presents to one another.

Dr. *Newton.* What Presents were there made?

Bradinham. Culliford gave to Capt. *Kidd* some Pieces of *China*-Silk, and *Kidd* bid *Culliford* take any thing he had.

Mr *Soll. Gen.* Did Capt. *Kidd* give *Culliford* any Guns?

Bradinham. He supply'd him with two Guns.

Dr *Newton.* Was there any Division of Goods or Money?

Bradinham. After we came to *Madagascar*, Captain *Kidd* ordered the Goods to be hoisted out, and shared, and Captain *Kidd* had forty Shares for himself.

Mr *Soll. Gen.* What became of the Goods of those Ships?

Bradinham. They were sold.

Mr *Soll. Gen.* What was done with the Product of the Goods?

Bradinham. Captain *Kidd* kept it, and when there was something worth sharing, he shared it, and he had forty Shares for himself.

Cl. of Arr. Had *N. Churchill* any Share?

Bradinham. He had a whole Share.

Cl. of Arr. Had *James Howe* any Share?

Bradinham. He had a whole Share.

Cl. of Arr. Had *R. Lamley* any Share?

Bradinham. He had half a Share.

Cl. of Arr. Had *W. Jenkins* any Share?

Bradinham. He had half a Share.

Jenkins. How can you attest these wicked Lies? I had nothing.

Mr B. *Hatsell.* Who shared it?

Bradinham. The Captain.

Kidd. He tells a thousand Lies.

Cl. of Arr. Look on *Hugh Parrot*, had he any Share?

Bradinham. No, half a Share of Money, and a whole Share of Goods.

Cl. of Arr. Had *R. Barlicorn* any Share?

Bradinham. He had half a Share.

Cl. of Arr. Had *Abel Owens* any Share?

Bradinham. He had a whole Share.

Cl. of Arr. Had *Darby Mullins* any Share?

Bradinham. He had half a Share.

Mr *Soll. Gen.* Now if any of you will ask him any Questions you may?

Kidd. Mr *Bradinham*, Pray what Share had you?

Bradinham. If my Lord ask me, I will answer him.

Kidd. Had you any Share?

Bradinham. Yes.

Kidd. Did not you come aboard my Ship, and rob the Surgeon's Chest?

Bradinham. No, I did not.

Kidd. Did not I come to you, when you went away, and met you on the Deck, and said, why do you take the Chest away?

Bradinham. No, I did not do it.

Kidd. You are a Rogue.

Mr J. *Turton.* It were the same thing for him to confess it, as to deny it, if he had done it.

Kidd. He did certainly do it.

Mr B. *Hatsell.* But he says he did not.

Mr J. *Turton.* Would any of you ask him any Questions?

Cl. of Arr. *Nich. Churchill*, will you ask him any Questions?

Churchill. I came in on the King's Proclamation, and depend wholly on it.

Kidd. Were there not any *French* Passes aboard that Ship?

Bradinham. I heard say there were, I did never see them.

Kidd. I did not divide the Things, but the Men did what they pleased, and you took your Share, and saw the *French* Passes.

Mr B. *Hatsell.* What Ship is that you mean, that taken in *September* or that in *November?*

Bradinham. The *Mooriſh* Ship, that *Parker* was Commander of.

Mr *B. Hatsell.* There were two mentioned.

Kidd. Just now he told you of two in *November*, now he says one in *November*, another in *September.*

Mr B. *Hatsell.* He says that in *September*, that *Parker* was Commander of.

Kidd. There was no such Thing in *November*; he knows no more of these Things than you do. This Fellow used to sleep 5 or 6 Months together in the Hold.

Mr J. *Turton.* I assure you he gives a very good Account of the Matter.

Mr B. *Hatſell.* Why did you give him a Share then?

Kidd. Becauſe he was Surgeon. As for the Goods they took it amongſt them, and did what they pleaſed, I was never near them. They laid wait for me to kill me. They took away what they pleaſed, and went to the Iſland; and I, with about 40 Men, was left in the Ship, and we might go whither we pleaſed.

Mr *Soll. Gen.* Mr *Kidd*, will you ask him any Queſtions?

Kidd. No, no, ſo long as he ſwears it, our Words or Oaths cannot be taken.

Cl. of Arr. Will you ask him any more Queſtions?

Kidd. No, no, it ſignifies nothing.

Cl. of Arr. *N. Churchill*, Will you ask him any Queſtions?

Churchill. I came in on his Majeſty's Proclamation, and rely upon that.

Cl. of Arr. *J. Howe*, Will you ask him any Queſtions?

Howe. I ſurrendred my ſelf upon the King's Proclamation, and plead guilty.

Cl. of Arr. *R. Lamley*, Will you ask this Witneſs any Queſtions?

Lamley. Do you ſay I had half a Share of Money?

Bradinham. Yes.

Lamley. No, I had none.

Cl. of Arr. It was your Share, and you muſt make it appear if you accounted for it to your Maſter.

Lamley. If your Lordſhip pleaſe, I was an Apprentice.

Mr B. *Hatſell.* To whom was you a Servant?

Lamley. I was an Apprentice to *A. Owens.*

Mr J. *Turton.* Was *Lamley* an Apprentice to *Owens?*

Bradinham. My Lord, he was a Servant to *Owens*, who was a-board then.

Mr J. *Turton.* He had half a Share, but perhaps he might account for it to his Maſter afterwards.

Cl. of Arr. *W. Jenkins*, Will you ask the Witneſs any Queſtions?

Jenkins. My Lord, I beg he may ſpeak the Truth, whether I was a Servant.

Bradinham. My Lord, he was a Servant to *George Bullen.*

Mr J. *Turton.* Was this *Bullen* aboard then?

Bradinham. Yes.

Mr J. *Turton.* When both Ships were taken?

Bradinham. Yes.

Cl. of Arr. Will you ask the Witneſs any Queſtions, *G. Loff.*

Loff. My Lord, when I came aboard, the Captain opened his Commiſſion there. Did I ever diſobey his Commands?

Bradinham. Not that I know of.

Loff. Did you ſee me receive any Share?

Bradinham. Yes, half a Share of Money, and a whole Share of Goods.

Loff. Where?

Bradinham. In the great Cabin.

Cl. of Arr. What Queſtions will you ask him *Hugh Parrot?*

Parrot. May it pleaſe your Lordſhip, I will give you an exact Account from the Time of my going out of *England.* In the Month of *October*, 1695.——

Cl. of Arr. You may make your Defence afterwards, in the mean time will you ask him any Queſtions now?

Parrot. I appeal to him, whether he ever ſaw me do any ſuch Cruelty as he mentions.

Mr J. *Turton.* You hear what he ſays, anſwer him.

Bradinham. I cannot ſay you were the very Man that did it. But thoſe Men were uſed ſo, they were hoiſted up, and drubb'd with a naked Cutlace.

Parrot. And then I ask him, whether I ever went any further than my Commander ordered me, or againſt the King's Commiſſion as I thought.

Bradinham. I cannot ſay you did any Thing contrary to your Commander's Orders.

Parrot. I ask him, whether, when I might have went aboard this Pirate, I did not ſtick cloſe to my Captain, and come home with him, and whether I had any Inclination to leave him.

Mr J. *Turton.* He knows not your Inclination. Where did you leave Captain *Kidd?* will you ask him that?

Parrot. I came home to *Boſton* with Captain *Kidd.* Doctor, did I go away with them that left Captain *Kidd?*

Bradinham. You went with Captain *Kidd* to *Madagaſcar.*

Parrot. I came home with Captain *Kidd*, and ſurrendred my ſelf to my Lord *Bellamont.*

Cl. of Arr. *Abel Owens*, will you ask the Witneſs any Queſtions?

Owens. I ask the Witneſs, whether I did not ſurrender my ſelf.

Bradinham. I cannot ſay any Thing to that.

Cl. of Arr. Will you ask him any more Queſtions?

Owens. No, I ſtand to his Majeſty's Proclamation, and the Mercy of the Honourable Bench.

Cl. of Arr. *Darby Mullins*, will you ask the King's Witneſs any Queſtions?

Mullins. No. May it pleaſe you, my Lord, I came in upon the King's gracious Proclamation, as the King's Evidence knows. Do you not know I came a-ſhore with you about the 28th of *May?*

Bradinham. I know he went a-ſhore.

Mullins. I went a-ſhore. I came home upon the King's Proclamation. We went a-ſhore at *Cape May.* I was very ſick of the Bloody-Flux, and not able to travel, and was like to die every Day.

Bradinham. My Lord, I know this Man was very ſick in the Paſſage.

Mullins. I was a Paſſenger aboard Captain *Shelley*'s Ship.

Mr J. *Turton.* How came he to come aboard Captain *Shelly?* Where did he leave Captain *Kidd?*

Bradinham. He left Captain *Kidd* at *Madagaſcar*, and took his Paſſage with Captain *Shelly* afterwards, after theſe Ships were taken.

Mr *Soll. Gen.* How came he to leave Captain *Kidd* at *Madagaſcar?*

Bradinham. He went aboard Captain *Culliford*'s Ship. There was about 60 or 70 Men went aboard *Culliford.*

Mr *Knapp.* Call *Joſeph Palmer.*

Dr *Oxenden.* He ſays he came in upon the King's Proclamation, to *Cape May*, do you know any Thing of that?

Bradinham. Yes.

Dr *Oxenden.* Where is that *Cape May?*

Bradinham. Off of *Maryland*; where Captain *Shelly*'s

Shelly's Ship was at Anchor; and Captain *Gravenport* came on Board Captain *Shelly*'s Ship, and ſaid he heard his Majeſty's Proclamation was out to receive Pirates that would come in; and the Men rejoiced that there was ſuch a Thing, and they went a-ſhore, and ſurrendered themſelves.

Dr *Oxenden*. Where?

Bradinham. At *Cape May*.

Dr *Oxenden*. Did he go to the Governour?

Bradinham. I did not ſee him go a-ſhore.

Cl. of Arr. *D. Mullins*, will you ask him any more Queſtions?

Mullins. You was aboard when I went a-ſhore.

Boadinham. I did not ſee you go a-ſhore.

Mr *Soll. Gen*. Was he ſick when he went a-ſhore?

Bradinham. He was ſick.

Mullins. I was ſick, and expected to die every Moment.

Cl. of Arr. All was done before that Time.

Mr *Soll. Gen*. Did he rejoice, when he heard the King's Proclamation was out?

Bradinham. I heard him ſay the King's Proclamation was out, and he rejoyced with others.

Mr *Soll. Gen*. Did he ſurrender himſelf to the Governour?

Bradinham. I cannot ſay that. He went a-ſhore.

Mr B. *Hatſell*. Now ſet up *Joſeph Palmer*.

Mr J. *Turton*. Gentlemen, I would not have you under any Miſtake; that ſurrendering himſelf comes not under your Conſideration, it was after all the Facts were done that the Priſoner is charged with.

Mr *Knapp*. Mr *Palmer*, give my Lord and the Jury an Account of what you know concerning Captain *Kidd*'s Voyage from *England* in the *Adventure*-Gally, when he went out of *England*, and his Proceedings afterwards.

Palmer. About the laſt of *April*, or beginning of *May*, he went from *Plymouth* to *New-York*; and in the way took a *French* Banker, and carried her to *New-York*, and condemned her there. And at *New-York* he ſet up Articles, to invite Men to come aboard his Ship; that if any would come aboard, they ſhould have a Share of ſuch Treaſure as he ſhould take: He was to have forty Shares himſelf, and every Man a half or whole Share. And about the firſt of *September* following, he went from *New-York* to *Maderas*, from thence to *Bonavis*, from thence to St. *Jauger*, then to *Madagaſcar*, then to *Malabar*, then to *Joanna*, then to *Mahala*, than to *Joanna* again, then to the *Red-Sea*.

Mr *Knapp*. Pray give an Account of what was done there.

Palmer. There he watered, and took *Guiny* Corn to Victual his Ship. And then to *Babs*-Key, near the *Red-Sea*.

Mr *Knapp*. Give an Account what he did there.

Palmer. He ſent out his Boat three times to diſcover the Fleet, and likewiſe ſome Spies on the High Land to look out on both Sides, to ſee that the Ships did not paſs by.

Mr *Soll. Gen*. What Ships?

Palmer. *Mooriſh* Ships from *Moco*.

Mr. *Soll. Gen*. Whoſe Ships were thoſe *Mooriſh* Ships?

Palmer. They were *Turks* and *Moors* together.

Mr. *Knapp*. What did he do then?

Palmer. He called the Men by Lot to look out, and he ſent his Boat out twice, and they returned without bringing any Tidings. And he ſent the Boat the third time, with Orders to take a Priſoner, or to ſee what Ships lay there. And the third time word was brought, that there were about 14 or 15 Ships lay in the Road ready to ſail, with *Dutch*, *Engliſh* and *Mooriſh* Colours. And when this News came, Captain *Kidd* ordered the Men to go on the other ſide upon the high Lands, to ſee that the Ships did not paſs by in the Night. And in four or five Days the Ships came down, about the 14th of *Auguſt*. The Fleet came down in the Evening, and Capt. *Kidd* went after them. And ſome of the Men ſaid, we will go among them to Night. No, ſays Capt. *Kidd*, we will go in the Morning, and then we will take our choice.

Kidd. Did you hear me ſay ſo?

Palmer. I heard you ſay ſo.

Kidd. I am ſure you never heard me ſay ſuch a word to ſuch a Logger-head as you.

Palmer. Theſe are the words I heard him ſay. And the next Morning he fell in with this Fleet, and went through them; and there was a *Dutch* and *Engliſh* Convoy; and they fired at one another.

Kidd. Hear me——

Mr *Knapp*. You ſhall ask him what Queſtions you will preſently.

Mr J. *Turton*. Who fired firſt?

Palmer. The *Dutch* and *Engliſh* fired firſt. When we lay between the *Engliſh* and *Dutch*, a *Mooriſh* Ship came by, and he fired ſeveral Shot after her. And the *Engliſh* Ship flung a Shot almoſt home, and then he made Sail, and went out of the Fleet. And from thence he went to *Carrawar*, and in the way met with a Ship, whereof *Parker* was Commander, and there was one *Antonio* a *Portugueze*.

Mr *Soll. Gen*. Where was this done?

Palmer. About 50 Leagues from *Carrawar*.

Mr *Soll. Gen*. What time of the Year was it?

Palmer. It was about *September*.

Mr B. *Hatſell*. The Witneſs is now come to ſpeak to the Ship, for which the Priſoners are Indicted.

Mr. *Soll. Gen*. Go on, What did they do with that Ship?

Palmer. He fought the Ship, and took her, and took out of her ſeveral Bails of Coffee, and he retained only one Bail, and ſent the reſt back again. And he took a Bail of Pepper, and ſome Myrrh, to uſe inſtead of Pitch.

Mr *Soll. Gen*. What quantity of Pepper was there?

Palmer. About 60 pound weight.

Mr *Soll. Gen*. What Myrrh?

Palmer. About 30 pound weight.

Mr *Soll. Gen*. What Value was it of?

Palmer. I cannot tell that.

Mr *Soll. Gen*. What *Arabian* Gold?

Palmer. I did not ſee it. I did not ſee any taken out then. But a pretty while afterwards, when Captain *Kidd* came to *Carrawar*, he gave every Meſs two Pieces of *Arabian* Gold?

Mr *Knapp*. How long was this after the Ship was taken?

Palmer. Ten or twelve Days.

Mr *Soll. Gen*. How was the Pepper diſpos'd of?

Palmer. It was divided among the Meſſes.

Mr *Soll. Gen*. Had theſe Priſoners their part.

Palmer. Yes.

Mr *Knapp*. How did they uſe the Men of this Ship?

Palmer. There were ſeveral hoiſted up, and drubb'd with a naked Cutlace.

Kidd.

Kidd. Where was this done?

Palmer. In your Ship.

Kidd. What Ship?

Palmer. The *Adventure-Galley.*

Kidd. Did not a parcel of Rogues go aboard their Ship, and do it?

Mr *Knapp.* For what purpoſe was this done?

Palmer. Becauſe they thought they had more Money in the Ship.

Knapp. What Country-man was *Parker?*

Palmer. An *Engliſh-man*, born in the North of *England.* He ſaid ſo.

Mr *J. Turton.* Who elſe was detained, beſides *Parker?*

Palmer. One *Antonio* a *Portugueze. Parker* was detained for a Pilot, and the other for a Linguiſter.

Mr *J. Turton.* What do you mean by a Linguiſter?

Palmer. To ſpeak *Mooriſh* and *Portugueze.*

Mr *Soll. Gen.* Where did they go then?

Palmer. From thence we went to *Carrawar*, and watered and wooded the Ship; and a great many of his Men left him there. And when he ſaw his Men leave him, he went to Sea, he would not truſt any more to go aſhore. And the next Evening he met a *Portugueze* Man of War, and fought her, but did not take her.

Mr *J. Turton.* Did you know any that left him?

Palmer. Peter Lehair, and *Churchill*, and others. They went to the *Engliſh* Factory, to know whether they would entertain them or no.

Mr *J. Turton.* Who went?

Palmer. Mr *Lehair*, *Nicholas Churchill*, and another, they went to know whether they ſhould be entertained. And they told them, they were loth to entertain them, for fear Captain *Kidd* ſhould know of it, and do them an Injury.

Kidd. My Lord, a parcel of theſe Men went aſhore to run away with this Ship.

Mr *J. Turton.* Were there any more of theſe Priſoners at the Bar, that would have gone off, beſides *Churchill?*

Palmer. No, but he would have gone off.

Mr *J. Turton.* How do you know that?

Palmer. He told me ſo.

Mr B. *Gold.* Had they an opportunity to go off?

Palmer. Some more were taken going off afterwards, and had got a Boat for that purpoſe; but they were taken, and Captain *Kidd* order'd them to be brought aboard, and whipt at the Gun.

Kidd. Certainly you have not the Impudence to ſay that?

Palmer. I ſay you order'd them to be whipt for attempting to go aſhore.

Mr. *Soll. Gen.* Whither did you go then?

Palmer. That Evening we went and met with a *Portugueze* Man of War.

Mr *Soll. Gen.* You may go on from that. Whither did you go then?

Palmer. To the *Malabar* Iſlands.

Mr *Soll. Gen.* What to do?

Palmer. To take in Water. His Cooper went aſhore, and the Natives cut his Throat. And Capt. *Kidd* ſent his Men aſhore, and order'd them to divide themſelves into Squadrons, and to burn all the Houſes they came near, except the Houſes that had white Flags upon them.

Mr *Soll. Gen.* Why not them?

Palmer. Becauſe they helped us to water the Ship.

Mr *Knapp.* And were there any Houſes burnt?

Palmer. Yes, a great many.

Mr *Knapp.* What did he do more?

Palmer. I heard what he did, I did not ſee it.

Mr B. *Hatſel.* What do you know of any other Ship?

Palmer. About the 27th of *November*, he took the Ship *Maden* near *Callicut.* We ſpy'd a Ship in the Night, and chaced her all Night, and the next Morning he took her.

Mr *J. Turton.* What Ship was that?

Palmer. Skipper *Mitchel* was Commander, it was a *Mooriſh* Ship, ſhe belong'd to *Suratt.* She was taken in *November*, and after that ſhe was called, *The November.*

Mr *Soll. Gen.* How was ſhe taken?

Palmer. Capt. *Kidd* chaced her under *French* Colours, and this Ship had *French* Colours, and when he haled her, it was in *French.* And this Skipper *Mitchell* anſwered in *French.*

Mr *Soll. Gen.* Had the *Mooriſh* Ship *French* Colours before Capt. *Kidd* put up *French* Colours, or after?

Palmer. After.

Mr. *Soll. Gen.* What Colours had ſhe, when ſhe was chaced at firſt?

Palmer. It was in the Night: In the Morning Capt. *Kidd* hoiſted up *French* Colours, and then the *Mooriſh* Ship likewiſe hoiſted up *French* Colours.

Mr. *Soll. Gen.* What followed?

Kidd. Speak true.

Palmer. I will. He fired three or four Shot at the Ship, and commanded them aboard. And *Mitchel* did ſo, and ſome of his Men with him. And he ordered Monſieur *Leroy* to be as Captain. And he came from below Deck, and received him as Captain.

Kid. Did you ſee that?

Palmer. I did not ſee that, but I know he was ordered to do ſo, and he received him as Captain, I was not in the Cabin at that time. Monſieur *Leroy* received him as Captain, and carried him aft. They haled this Ship in *French*, and bid him come aboard in *French*, and this *Frenchman* received him as Captain. And I heard them ſay, that he brought a *French* Paſs along with him.

Mr *Soll. Gen.* Who did you hear ſay ſo?

Palmer. I heard People on board ſay ſo.

Kidd. Palmer, Did you not ſee that Paſs?

Palmer. Indeed Captain I did not.

Mr *Soll. Gen.* What did you do with the Ship?

Palmer. There were two Horſes on board, and ten or twelve Bails of Cotton, and ſome Quilts, and Capt. *Kidd* ſold them at *Malabar.*

Mr *Soll. Gen.* What Goods were there?

Palmer. Two Horſes.

Mr *Soll. Gen.* What beſides?

Palmer. Ten or twelve Bails of Cotton, and ſome Quilts.

Mr *J. Turton.* What Countryman was Skipper *Mitchel* the Captain?

Palmer. A *Dutchman.*

Mr *Soll. Gen.* What was the Ship worth?

Palmer. I cannot tell the Value of her.

Mr *Soll. Gen.* What Burden was ſhe?

Palmer. About 150 Tun.

Mr *Soll. Gen.* What did they do with thoſe Horſes, and the Cotton?

Palmer. They Sold them to the *Banians.*

Mr *Soll. Gen.* What did they do with the Proceed of thoſe Goods?

Palmer. Capt. *Kidd* kept it, till they had a pretty deal of Money together, and then they Shared it.

Mr *Soll. Gen.*

Mr *Soll. Gen.* Had the Priſoners at the Bar any Shares of it?

Palmer. Yes.

Cl. of Arr. Had Captain *Kidd* himſelf any Share?

Palmer. Yes.

Cl. of Arr. Had *Nicholas Churchill* any Share?

Palmer. Yes, he had a whole Share.

Cl. of Arr. Had *James Howe* any Share?

Palmer. Yes, a whole Share.

Mr *J. Turton.* Where did they Share it?

Palmer. On the Coaſt of *Malabar.*

Cl. of Arr. Had *Robert Lamley* any?

Palmer. Yes, half a Share.

Cl. of Arr. Had *William Jenkins* any Share?

Palmer. He had half a Share.

Cl. of Arr. Had *Gabriel Loffe* any?

Palmer. He had a half Share.

Cl. of Arr. Had *Hugh Parrot* any?

Palmer. He had a whole Share.

H. Parrot. Did you ſee me have any Share? Can you ſpeak that to my Face now? Did you ſee any of us have any?

Palmer. When Capt. *Kidd* ſhared this Money, I did not actually ſee him pay their Shares; but he called every Man by the Liſt, and they came with their Hats in their Hands, and he gave them their Money, and they ſwept it up, and went away.

Mr *Soll. Gen.* Were theſe Men called by the Liſt?

Palmer. Yes.

Mr *Soll. Gen.* And did they miſs none?

Palmer. Not that I know of.

Cl. of Arr. What ſay you to *Richard Barlicorn?* had he any?

Palmer. He had half a Share; whether his Maſter had it or no afterwards, I know not.

Cl. of Arr. Had *Abel Owens* any Share?

Palmer. He had a whole Share.

Cl. of Arr. What had *Darby Mullins?*

Palmer. He had a half Share.

Mr *Knapp.* I think you were ſpeaking of *Arabian* Gold, that they had it in Meſſes, had theſe Priſoners their Share of that?

Palmer. Yes, there was no difference, they had all their Shares.

Mr *Knapp.* Now, if you will ask this Witneſs any Queſtion, you may.

Kidd. What ſignifies it to ask him any Queſtions? We have no Witneſſes, and what we ſay ſignifies nothing.

Cl. of Arr. Nicholas Churchill, Will you ask him any Queſtions?

Churchill. No, I have acknowledged all theſe Crimes, and Surrender'd my ſelf, and rely on the King's Mercy.

Cl. of Arr. James Howe, Will you ask him any Thing?

Howe. No.

Cl. of Arr. Robert Lamley, Will you ask him any Thing?

Lamley. Mr. *Palmer,* How can you tell I had a half Share?

Palmer. There was a half Share directed for you.

Lamley. I had not a Farthing.

Mr *J. Turton.* Was he an Apprentice?

Palmer. Yes, he was Servant to Mr *Owens.*

Jenkins. Can you ſay I had any Share?

Palmer. I know there was a half Share appointed for you, but I know not whether your Maſter had it.

Mr *J. Turton.* Was his Maſter Aboard then?

Palmer. Yes, his Maſter was Aboard then.

Cl. of Arr. Gabriel Loffe, Have you any Queſtions to ask him?

Loffe. Had I any Share?

Palmer. You had a half Share, I did not ſee you take it, but you were in the Liſt.

Cl. of Arr. Hugh Parrot, Have you any Queſtions to ask him?

Jury-Man. Did you ſee them come out with the Money in their Hats?

Palmer. Yes.

Mr *Soll. Gen.* Did *Gabriel Loffe* come out as contented as the reſt?

Palmer. No, becauſe he had but half a Share.

Loffe. Did you ſee me come out with any Money?

Palmer. I ſaw you come out with Money in your Hat, and I heard you ſay you had half a Share.

Loffe. As I live I had no Hat then.

Cl. of Arr. Have you any Queſtions to ask him, *Hugh Parrot?*

Parrot. Did you ſee me have any Share?

Palmer. I did not ſee you receive any Share, but you was called among the reſt.

Mr *J. Turton.* He ſays they were all called Man by Man to take their Shares.

Cl. of Arr. Richard Barlicorn, Have you any Thing to ask him?

Barlicorn. I deſire of him, Whether he ſaw me have any Goods, or take any Share?

Palmer. My Lord, when the Goods were ſhared at *Madagaſcar,* I was at *Bonavis*; I was not preſent, but I heard of it afterwards.

Barlicorn. I hope the Jury will take notice of this.

Mr B. *Hatſell.* Mr *Bradinham,* Did any of theſe Men complain that they had not their Share?

Bradinham. No, no, I heard nothing of that.

Mr *J. Turton.* Were theſe Shares ſuch as were agreed on in the Articles at *New-York?*

Palmer. Yes. Capt. *Kidd* ordered the Goods to be hoiſted out.

Kidd. Did I order the Goods to be hoiſted out?

Palmer. Yes, you did.

Kidd. It was the Mutinous Men that did it.

Parrot. How do you know that I had any Share? you did not ſee me in a Year after.

Palmer. I do not ſay I ſaw it given you.

Kidd. My Lord, there were 95 Men that deſerted my Ship, and took away what they pleaſed, we could not ſtand in Defence of any Thing.

Barlicorn. Was not I an Apprentice to Captain *Kidd,* and waited on him continually in the Ship?

Palmer. Yes you were.

Mr *Soll. Gen.* Had he a Share allotted him?

Palmer. Yes, but I am apt to think his Maſter had it.

Mr *J. Turton.* Who was his Maſter?

Palmer. Captain *Kidd.*

Cl. of Arr. *Abel Owens.* have you any Thing to ſay for your ſelf?

Owens. I refer my ſelf to the King's Proclamation.

Cl. of Arr. *Darby Mullins,* have you any Thing to ſay for your ſelf?

Mullins. I came to Cape *May,* where I heard of the King's Proclamation. Did not you and I come aſhore together?

Palmer.

Palmer. Yes we did, the ſame Day.

Darby Mullins. Did not we come aſhore on the King's Proclamation?

Palmer. We did hear of it.

Darby Mullins. Did not you hear that all the Men were glad at the News, when they heard of the Proclamation?

Dr *Oxenden.* What did the Men ſay then?

Joſeph Palmer. They all rejoiced to hear of ſuch a Thing.

Darby Mullins. From the Time I came from *Madagaſcar* I was ſick of the Bloody-Flux, I could not walk a Mile in a Day.

Joſeph Palmer. I know you was ſick.

Darby Mullins. I have no more to ſay: I ſtand to your Lordſhip's Mercy, and the King's gracious Proclamation.

Mr Juſtice *Turton.* If you have any Witneſſes to call for your ſelves, you may call them. Captain *Kidd*, what have you to ſay for your ſelf? You may make your Defence firſt for that Ship taken in *September*, then for that in *November*.

William Kidd. What is it the near for me to ſpeak? I have no Witneſſes for theſe Things.

Mr Baron *Hatſell.* Yeſterday you produced your Commiſſions; if you will, they may be read now.

William Kidd. It availed nothing then. Here is all theſe Men ſaw the *French* Paſs.

Joſeph Palmer. Indeed, Captain, I never ſaw it.

William Kidd. You left my Ship, with 95 Men more, and you went a roguing afterwards.

Mr *Soll. Gen.* Why did you go aboard that Pirate?

William Kidd. My Lord, I had a Deſign to take that Frigate, and then I deſigned to come for *England*. I would not go with ſuch a Roguiſh Crew as you were. Was not I threatned to be ſhot in the Cabin by ſuch Villains as you, if I would not go along with you? This was the Reaſon I could not come home. Did not you, with others, ſet fire to the Boat, to deſtroy my Ship?

Palmer. I know nothing of that; but I am ſure I ſaved your Life on the *Malabar* Iſland, when you burnt the Boat.

Kidd. My Lord, they took what they pleaſed out of this Ship, and I was forced to ſtay by my ſelf, and pick up here a Man, and there a Man, to carry her home.

Cl. of Arr. *N. Churchill*, what have you to ſay for your ſelf?

Churchill. My Lord, I plead guilty and rely on the King's Proclamation.

Cl. of Arr. *James Howe*, have you any Thing to ſay for your ſelf?

Howe. I plead guilty, my Lord.

Kidd. Here are ſome Gentlemen here, I deſire they may be heard as to my Reputation. Here is Coll. *Hewſon.*

Mr J. *Turton.* What do you ask Coll. *Hewſon?*

Kidd. I ask him what he knows as to my Reputation in the *Weſt-Indies?*

Coll. *Hewſon.* My Lord, he was a mighty Man there. He ſerved under my Command. He was ſent to me by the Order of Coll. *Codrington.*

Mr *Soll. Gen.* How long was this ago?

Coll. *Hewſon.* About Nine Years ago. He was with me in two Engagements againſt the *French*, and fought as well as any Man I ever ſaw, according to the Proportion of his Men. We had ſix *Frenchmen* to deal with, and we had only mine and his Ship.

Kidd. Do you think I was a Pirate?

Coll. *Hewſon.* I know his Men would have gone a Pirateering, and he refuſed it, and his Men ſeized upon his Ship. And when he went this Voyage, he conſulted me, and told me they had engaged him in ſuch an Expedition; and I told him he had enough already, and might be contented with what he had: And he ſaid it was his own Inclination; but my Lord *Bellamont* told him, if he did not go the Voyage, that there were Great Men, and they would ſtop his *Brigantine* in the River, if he did not go.

Mr J. *Turton.* Who told you ſo, did he?

Coll. *Hewſon.* Yes, my Lord.

Mr J. *Turton.* If he had kept to the honeſt Deſign of that Expedition, he had done very well. Did you apprehend that his Intention in that Undertaking was to be a Pirate?

Coll. *Hewſon.* No, my Lord. He told me his Buſineſs was to go a cruiſing, and ſurprize Pirates.

Mr *Soll. Gen.* Did he tell you he had no ſuch Deſign?

Coll. *Hewſon.* Yes, he ſaid he would be ſhot to Death before he would do any ſuch Thing. I know he was very ſerviceable in the *Weſt-Indies.*

Cl. of Arr. *Robert Lamley*, have you any Thing more to ſay?

Lamley. I can ſay nothing, for I have none of my Friends here.

William Kidd. Call *Thomas Cooper.* (*who appeared.*)

Mr J. *Turton.* What Queſtions do you ask him?

Kidd. Sir, pray tell my Lord what you knew of me in the *Indies.*

Thomas Cooper. I was aboard the *Lion*, and this Captain *Kidd* brought his Ship from a Place that belonged to the *Dutch*, and brought her into the King's Service at the Beginning of the War, about Ten Years ago. And he took Service under the Colonel; and we fought Monſieur *Du Caſs* a whole Day, and I thank God we got the better of it, and Captain *Kidd* behaved himſelf very well in the Face of his Enemies.

Juryman. How many Years ago was this?

Tho. Cooper. About Ten Years ago.

Cl. of Arr. *Robert Lamley*, have you any Thing more to ſay?

Lamley. I have no Friends here, I am a Prentice, my Lord.

Cl. of Arr. *William Jenkins*, have you any more to ſay?

William Jenkins. I was an Apprentice, my Lord.

Cl. of Arr. *Gabriel Loffe*, have you any Thing to ſay for your ſelf?

Gabriel Loffe. My Lord, I was a Servant under Captain *Kidd*, and always obeyed his Commands, and had no Share. I came home with Captain *Kidd* to *Boſton*, and went to my Lord *Bellamont*, and the Men came and told us he had diſcharged us, and I went about my Buſineſs. And ſome Days after we were committed to Priſon, and I was ſick, and my Lord let me be in the Keeper's Houſe, and I was truſted by him four or five Months with the Keys to look after the Priſoners. Mr *Davis* can teſtify this. If I had had a Mind to have done any ill Thing, I might have done it then. (*Then* Davis *appeared*) Pray, Mr *Davis*,

vis, declare what you know of me when I came to *Boston*, and how the Keeper intruſted me with the Priſoners.

Mr *Davis*. I remember when we came there to the *Road-Iſland*, Captain *Kidd* ſent him home. And when he came to *Boſton*, he was truſted with the Keys, and had Liberty to go where he pleaſed not out of the Yard.

Mr J. *Turton*. Was this after he was a Priſoner?

Mr *Davis*. Yes, my Lord.

Gabriel Loffe. I hope the Jury will take notice of this.

Kidd. Mr *Davis*, did you not hear of any *French* Paſſes that I had?

Mr *Davis*. I heard of them, and I ſaw them.

Mr *Soll. Gen.* How do you know they were *French* Paſſes?

Mr *Davis*. He told me they were *French* Paſſes, I did not know it, I could not read them.

Mr Juſtice *Turton*. They ſhewed you the Papers, did you know what Ship they belonged to?

Mr *Davis*. No, my Lord, not I.

William Kidd. I deſire Captain *Hunt* may be called, to know what my Lord *Bellamont* ſaid of me.

Mr Baron *Hatſell*. That will ſignify nothing.

Cl. of Arr. *Hugh Parrot*, have you any Thing to ſay for your ſelf?

Hugh Parrot. My Lord, I had no Share of the Goods.

William Kidd. My Lord, I deſire this Commiſſion may be read.

Mr Baron *Hatſell*. Is it under the Broad-Seal?

Mr *Crawley*. It is a Letter of Mart and Repriſal, my Lord.

(*Then the Commiſſion was read, dated the* 11*th of* December, 1695.)

William Kidd. Now, my Lord, in purſuance of this Commiſſion, I went and took theſe Ships, which had *French* Paſſes on Board, and my Lord *Bellamont* took them by force from me.

Mr J. *Turton*. You took one *French* Ship, and acted in a regular manner to condemn her; but did you do ſo with the reſt?

Will. Kidd. I could not carry theſe Ships home, by reaſon my Men left me.

Mr Juſtice *Turton*. Mr *Bradinham*, with what Number of Men did you go out of *England*?

Robert Bradinham. With about Seventy Men.

Mr Juſtice *Turton*. What Number had you when you went from *New-York*?

Robert Bradinham. About 155.

Mr Juſtice *Turton*. So that your Number was increaſed.

Robert Bradinham. Yes, my Lord.

Mr Juſtice *Turton*. Was there any other Ship condemned, beſides the *French* Banker.

Robert Bradinham. No, my Lord.

William Kidd. Theſe Men were ſome of them that left me, and took the Goods. What was left I carried with me.

Cl. of Arr. *Hugh Parrot*, have you any more to ſay?

Hugh Parrot. The Evidence cannot prove that I had any Share. I came with my Commander from *Madagaſcar*, and he paid me an hundred Pieces of Eight, and my Lord *Bellamont* ſeized all. And I had opportunity enough to have gone a pirateering with Captain *Culliford*, but I told them I would not. And I came to my Lord *Bellamont*, and ſurrendered my ſelf.

Cl. of Arr. *Robert Barlicorn*, have you any Thing to ſay in your own Defence?

Robert Barlicorn. I deſire Witneſs may be called, to know whether I was not a Servant aboard.

Mr Juſtice *Turton*. The King's Evidence ſay you were.

Cl. of Arr. *Abel Owens*, what have you to ſay?

Abel Owens. I own my ſelf guilty. I came in upon the King's Proclamation.

Cl. of Arr. *D. Mullins*, what have you to ſay?

Darby Mullins. I did what I did under the King's Commiſſion. I obeyed my Captain, and came home with him. I durſt not for my Life do othewiſe. Examine the Witneſſes, and they will not ſay otherwiſe. Mr *Bradinham* did I do any Thing againſt the Captain's Command?

Robert Bradinham. I cannot ſay but he did always obey the Captain's Commands.

Mr *Soll. Gen.* Did he not go aboard Captain *Culliford* afterwards?

Robert Bradinham. Yes, my Lord.

Darby Mullins. I went for want.

Cl. of Arr. Have any of you any more to ſay?

Hugh Parrot. My Lord, I did not go out of *England* with Captain *Kidd*, but I ſhipt my ſelf on Board a Merchant-man bound for *Newfoundland*, and I was taken by a *French* Privateer. And afterwards coming to *Madagaſcar*, Captain *Kidd* was there, and he took a Piſtol to ſhoot me, but I avoided it. But hearing afterwards that Captain *Kidd* had the King's Commiſſion, I went aboard him.

Mr Juſtice *Turton*. Had he any Commiſſion to take any Goods from the King's Subjects?

Mr Baron *Hatſell*. Captain *Kidd* ſays the Seamen forced him from the Ship, and you ſhared the Goods your ſelves.

Hugh Parrot. He does not ſay ſo of us. My Lord, with ſubmiſſion, be pleaſed to ask my Commander, whether I ever diſobeyed his Commands, or was forward to attempt any ill Thing, or did any Thing of that which is alledged againſt me.

William Kidd. Mr *Bradinham*, are not you promiſed your Life, to take away mine?

Mr Juſtice *Turton*. He is not bound to anſwer that Queſtion. He is very fit to be made an Evidence for the King, perhaps there can be no other in this Caſe, than ſuch who are in his Circumſtances.

Hugh Parrot. With Submiſſion, I ask the Evidence, whether I ever diſobeyed the Captain's Orders.

Mr Juſtice *Turton*. The Captain's Orders will excuſe you in honeſt Things, but not in unlawful Actions.

Hugh Parrot. As for the Ships that were taken, I had no Hand in it.

Mr *Knapp*. But you received your Share, and knew of the robbing of the Ships.

Mr Juſtice *Turton*. Gentlemen of the Jury, here is *William Kidd*, *Nicholas Churchill*, *James Howe*, *Robert Lamley*, *William Jenkins*, *Gabriel Loffe*, *Hugh Parrot*, *Richard Barlicorn*, *Abel Owens*, and *Darby Mullins*, the Priſoners at the Bar; who are all indicted for Piracy, or piratical and felonious taking a *Mooriſh* Ship on the High Seas, about fifty Leagues from *Carawar* in the *Eaſt-Indies*, and ſeizing the Goods that were in that Ship to a conſiderable Value. And they are alſo indicted

for the piratical and felonious taking another Ship, which was likewiſe a *Mooriſh* Ship, with the Tackle and Apparel thereof, to the Value of a Hundred and Five Pounds, four Leagues from *Calicut* in the *Eaſt-Indies*. Now to theſe Indictments they have pleaded, not guilty. And whether they are guilty or no, you are to determine, on the Evidence you have heard.

I need not tell you the Heinouſneſs of this Offence wherewith they are charged, and of what ill Conſequence it is to all Trading Nations. Pirates are called *Hoſtes humani generis*, the Enemies to all Mankind, but they are eſpecially ſo to thoſe that depend upon Trade. And theſe Things that they ſtand charged with, are the moſt miſchievous and prejudicial to Trade that can happen. But as it is not my Buſineſs to aggravate the Offence, ſo it is yours to conſider whether they or any of them are guilty or not.

Two Witneſſes have been produced for the King, and both of them were concerned in all the Tranſactions relating to the Priſoners. And by their Evidence it appears, that in the Year 1696, about the beginning of *May*, Captain *Kidd*, who was Captain of the *Adventure Galley*, was fitted out on a very good Deſign, for he was to take Pirates, and to ſeize the Ships and Effects of the King's Enemies: That was the End of this Expedition. He went out from *Plymouth* with about Seventy Men from *England*; they ſailed to *New-York*, and in their Paſſage they ſeized a *French* Veſſel; and that Veſſel was condemned in a due manner, and that was purſuant to their Commiſſion.

When they came to *New-York*, there were other Things in Contemplation; then he made a Proclamation, to give notice, that if any would come aboard him, he propoſed Terms for their Encouragement, that they ſhould be Sharers in all they could acquire; he himſelf would have Forty Shares, becauſe the Ship, Arms, Ammunition and Proviſions were his, and the reſt ſhould be divided proportionably to thoſe that ſhould be aboard him. And whereas they went out with Seventy Men, there their Number was encreaſed to 155, for with that Number he ſailed from *New-York*.

Gentlemen, The Witneſſes tell you whither they went afterwards; I will not mention all the particular Places, but only ſuch where any Thing remarkable was done. They ſay they came to a Place called *Babs*-Key; and there it ſeems they had an Intention to obſerve a Fleet called the *Moco* Fleet, there they ſtayed about three Weeks, and in that Time Captain *Kidd* ſent his Boat Three Times to *Moco*, where this Fleet was; the Two firſt Times they brought no certain Account; but the laſt Boat that was ſent, brought Intelligence that there were Fourteen or Fifteen Ships lay in the River or Harbour there, and were ready to Sail, and that they had *Dutch* Colours, *Engliſh* Colours, and *Mooriſh* Colours. And Captain *Kidd* ſaid then, he expected to make a conſiderable Advantage of them. And after this Advertiſement, he ſent ſome Men to the *High Lands* to obſerve the Motion of this Fleet, who after ſome Time gave Notice that the Fleet was coming, and then he went out with his Veſſel; and as they tell you, he went into this Fleet, and diſcharged ſome Guns at them. But they having a Convoy, he found he was not a Match for them, and that it would be in vain to attempt any Thing further on ſo great a Diſadvantage; and ſo that Deſign was fruſtrated. But it muſt be obſerved, that theſe Ships were all *Engliſh*, *Dutch*, and *Mooriſh*, and none of them *French*, which ſhews Captain *Kidd*'s Inclinations to take ſuch Ships for which he had no Authority by any Commiſſion.

But they tell you, after this, when he had met with this Diſappointment, then he ſailed towards the Coaſt of *Carawar*; And there they met with the firſt *Mooriſh* Ship that he is now charged with. And this Ship they ſeized, and took one *Parker*, who was the Captain; they ſeized him, and alſo a *Portugueſe*, whom they made uſe of as an Interpreter, and ſome of the Men, whom they treated in a barbarous manner. They tell you, that there happening to be an *Engliſh* Factory near that Place, they of that Factory underſtanding that this *Parker* and the *Portugueſe* were aboard the Ship, they ſent to demand them; and Captain *Kidd* denied them, and ſaid there were no ſuch Men on board, and yet he had hid them under the Deck. You are alſo told by the Witneſſes what they found and ſeized aboard this Ship, *viz.* Pepper, Coffee, Myrrh, and ſome Gold. They have told you, the Gold was ſhared amongſt them, and in Specie, as I remember, every Meſs had two Pieces, and the reſt of the Goods were divided amongſt them in Proportion, according to their Original Agreement, or they had their Shares of the Money for which they were ſold. This was the firſt Ship that he ſtands charged with the Piratical taking of; and this Ship was a *Mooriſh* Ship, and did belong to the Natives of that Place.

And then it appears they went to the Coaſt of *Malabar*, and there they took the other Ship that he is charged with by the other Indictment; the firſt was taken in *September*, and this in *November*. There was on Board that Ship two Horſes, and ſeveral Bails of Cotton, and ſome other Goods; and this alſo belonged to the *Moors*, and one Skipper *Mitchel*, a *Dutchman*, was Captain of her. When they had taken this Ship, they went to *Madagaſcar*; and there it is told you, they ſunk this Veſſel. And they having ſeveral other Goods that they had taken out of another Veſſel, the Goods were ſold, and divided between the Captain and the reſt of the Men, according to their ſeveral Proportions. And it is proved to you, that every one of theſe Priſoners had ſome Share of the Product of thoſe Goods. And now to ſhow what Captain *Kidd* was, and that he was a Favourer of thoſe he ought to have oppoſed, there was another Pirate there, one Captain *Culliford*, who had a Veſſel that he uſed to the ſame Purpoſe, called the *Great Mahomet*; and he having heard of *Kidd*'s Commiſſion, had a Jealouſie that Captain *Kidd* had a Deſign to take him and his Company: But he told them he had no ſuch Deſign, he was ſo far from that, that he aſſured them, nay Swore he would be true to them, and there were great Appearances of Friendſhip between Captain *Kidd* and Captain *Culliford*, they made mutual Viſits to each other. And Captain *Kidd* did accommodate *Culliford* with ſome Guns, and gave him liberty to take any Thing he had; and Captain *Culliford* likewiſe preſented him with *China* Silks. Now this alſo is given in Evidence, to ſhow that Captain *Kidd* had a Piratical Deſign in all this, and that he did aſſiſt thoſe that were engaged in the

the like Deſign with him, inſtead of endeavouring to ſuppreſs them.

Now, Gentlemen, the firſt Witneſs, *Robert Bradinham*, has declared all this to you; And likewiſe *Joſeph Palmer* has ſpoken to the ſame Purpoſe, though ſomething more than the other. And he tells you how they went aſhore on one of the *Malabar* Iſlands, and how they burnt ſome Houſes, and did other very barbarous Things. But that concerns not this Matter for which they are now Indicted. He tells you alſo, that when they took one of theſe Ships, whereof Captain *Parker* was Commander, they took two of the Men on board that Ship, and hoiſted them up, and uſed them ſeverely, which they did to cauſe them to diſcover what Things of Value they had on Board; but it ſeems they had nothing of any conſiderable Worth on Board. However this ſhows that Captain *Kidd* had a Deſign to act Piratically. The Witneſs gives you an Account of all the Tranſactions, in taking the two Ships, and diſpoſing of the Goods, and dividing of the Money. Indeed he ſays, when the Diſtribution was made, he was not in the Cabin, but tells you he heard the Liſt called over, and all the other Priſoners ſeverally went in, and brought out their Shares in their Hats, or otherwiſe, and did not hear any one complain that he had not his Share.

Gentlemen, There are three Perſons that were Servants, that is, *Robert Lamley*, he was Servant to *Owens* the Cook; *William Jenkins*, he was Servant to the Mate, and *Richard Barlicorn*, who was Servant to Captain *Kidd*. Now though theſe might have their Shares delivered them, yet it is to be preſumed that they were to be accountable to their Maſters; And they being Servants, I ſuppoſe you will think fit to diſtinguiſh them from the reſt.

Gentlemen, This is the Sum of the Evidence given for the King. And indeed this ſeems to be as ſtrong an Evidence againſt the Priſoners at the Bar as can be. They did endeavour to take the *Moco* Fleet, but they were too ſtrong for them; And they could have no ſuſpicion that they were *French*, for they had *Engliſh*, and *Dutch*, and *Mooriſh* Colours: So that Captain *Kidd* could have no pretence from his Commiſſion, to look after theſe Ships; There were no *French* among them, and yet there he lay three Weeks waiting for them. But they did actually take theſe two Ships mentioned in the Indictments, and diſpoſed of the Goods, and ſhared the Product among themſelves. Here is all the Evidence that can be given of Piracy.

Now Captain *Kidd*, when he comes to make his Defence, tells you, he had a Commiſſion, and it was produced; (and that is no more than what is common in time of War) whereby he is Authorized to take the Ships and Goods of any of the Subjects of the *French* King. But it is Penned with great caution, he is to take none but the Goods and Ships of the *French* King, or his Subjects, and he is to keep an exact Account of all that he takes, and to procure them to be condemned in the Admiralty. Now if he had purſued this Commiſſion, and gone no further, it had been well, he had done juſtly, and anſwered the end on which he was ſent out. And it does appear, that the firſt Veſſel that he took in his Paſſage to *New-York*, was thus condemned. But afterwards I do not find that he had any regard to his Commiſſion; but waited for that great *Moco* Fleet a conſiderable time, I think about three Weeks; and being diſappointed there, he afterwards did take theſe two Ships mentioned in the Indictment; and it does not appear that they were *French* Ships, neither were there any *French* Paſſes on board. One of the Witneſſes indeed ſays he heard of *French* Paſſes, but neither he or any other Perſon that hath been produced has ſeen one of them. Now I do not obſerve that his Commiſſion does any manner of way tend to excuſe the Captain in taking both, or either of theſe Ships. One of them was under an *Engliſh* Commander, which was *Parker*, the other under a *Dutchman*; there were no *Frenchmen* aboard, only *Leroy*, who was made a kind of a Mock-Captain by *Kidd* to ſerve a preſent Turn. But what Captain *Kidd* has ſaid from his Commiſſion, is ſo far from juſtifying him, that it ſeems rather an aggravation of his Crime. For he that will go out with the King's Commiſſion on a juſt and laudable Deſign to take the Ships and Effects of the *French* King in War, and alſo to deſtroy Pirates (which were the principal Ends of his being fitted out to Sea) and inſtead thereof will turn Pirate himſelf, make uſe of the Force with which he was entruſted for the promoting his Piratical Purpoſes, and for the Felonious taking the Ships and Goods of thoſe that were in Amity with the King of *England*, appears to be guilty of a manifeſt Breach and Violation of his Truſt; attended with very aggravating Circumſtances.

Now for thoſe three that were Servants, I muſt leave it to you, whether they did act otherwiſe than they might do. A Servant is to obey his Maſter, but it muſt be in Things lawful and honeſt; If they did any thing elſe, you who have heard the Evidence will conſider of their Guilt, and whether their Caſes differ from the reſt; but there is ſome probability that their Shares might be accounted for to their reſpective Maſters.

Now, as to the reſt, there are ſome of them that do pretend they did Surrender themſelves, one of them to Mr *Riches*, a Juſtice of Peace in *Surrey*, others to Colonel *Baſs*, that was a Commander in *Eaſt-Jerſy*; and it does appear that they did Surrender themſelves accordingly. But that does not come under your Conſideration, you are to conſider only whether they are Guilty of the Facts they ſtand charged with, or no. As to what effect their Surrendring themſelves may have with his Majeſty, muſt be left to the King's Royal Pleaſure; but we are to conſider the Evidence. Now they generally ſay, they did obey the Captain, and that they underſtood he had the King's Commiſſion; Truly, ſo far as he purſued the King's Commiſſion, they were to obey him; But when he acts contrary to the King's Commiſſion, in acts of Piracy upon the Ships, Goods and Effects of the King's Friends, and thoſe in Amity with the Crown of *England*, they ſhould have been ſo far from obeying and aſſiſting him, that they ſhould have obſtructed him, and ſeized him, that he might have been brought to Juſtice, and that would have been a greater Vindication of their Innocencies. But, as the Matter now appears, I do not ſee that any thing they have ſaid tends to their Defence, and therefore I muſt leave it to your Conſideration.

Indeed, there are ſome Witneſſes appear for Captain *Kidd*. Colonel *Hewſon* gives you this account of Captain *Kidd*, that he was under his Command in the beginning of the War, and that he Fought and behaved himſelf very well, and was ſerviceable in the *Weſt-Indies*; and he ſays, he diſcourſed him about his going out on the Expedition he was ſent, and that *Kidd* ſaid he had no Inclination to go. And Mr *Cooper* likewiſe tells you, that about ten or twelve Years ago he knew him, and that he Fought the *French*, and behaved himſelf very well at that time; and that ſeveral of his Men ran away with his Ship when he was at *Antegoa*.

Then there is *Gabriel Loffe*, he has produced a Witneſs for himſelf, one *Davis*. And *Davis* tells you, he was a Priſoner in *New-York* by order from my Lord *Bellamont*; and at firſt they were ſome Days there before they were taken into Cuſtody; and there was ſo little Apprehenſion of his being a dangerous Man, that he had ſome Favour allowed him, and had a great deal of Liberty. This is that he ſays. I find not that any of the reſt have produced any Evidence, only they ſay they were under the Commander, and were to obſerve him. But if that would excuſe them, then all Pirates would be excuſed. Now, as to Captain *Kidd*, it ſeems he has wofully tranſgreſſed the Buſineſs of his Commiſſion, and acted contrary to the End and Deſign of his being ſent out, in the Piratical taking the Ships and Goods mentioned in the Indictments, in which the other Priſoners at the Bar have joined with him; and they were ſo far from being the Ship and Goods of the *French* King, or his Subjects, or Pirates, that they were the Ships and Goods of Perſons of other Nations in Amity with the King of *England*. Now if you believe theſe Witneſſes, that Captain *Kidd* has taken theſe Ships in a Piratical manner, and that the other Perſons aſſiſted him in it, and had their Shares of the Money and Goods, which is an evidence of their conſenting to, and ſpontaneous acting, I believe you will think fit to find them Guilty, but I leave it to you. And as to theſe three Perſons that were Servants, I muſt leave their Caſe to your Conſideration, whether you will think fit to diſtinguiſh them from the reſt, or not.

Then an Officer was ſworn to keep the Jury.

And after about half an Hour the Jury return'd and brought in their Verdict.

Cl. of Arr. Gentlemen, Anſwer to your Names, *William Smith*,

William Smith. Here, *&c.*

Cl. of Arr. Gentlemen, Are you all agreed of your Verdict?

Omnes. Yes.

Cl. of Arr. Who ſhall ſay for you?

Omnes. Foreman.

Cl. of Arr. William Kidd, Hold up thy Hand; (which he did) Look upon the Priſoner. How ſay you? Is he Guilty of the Piracy and Robbery whereof he ſtands Indicted by the firſt Indictment, or not Guilty?

Foreman. Guilty.

Cl. of Arr. Is *Nicholas Churchill* Guilty, or not Guilty?

Foreman. Guilty.

Cl. of Arr. Is *James Howe* Guilty, or not Guilty?

Foreman, Guilty.

Cl. of Arr. Is *Robert Lamley* Guilty, or not Guilty?

Foreman. Not Guilty.

Cl. of Arr. Is *William Jenkins*, Guilty, or not Guilty?

Foreman. Not Guilty.

Cl. of Arr. Is *Gabriel Loffe* Guilty, or not Guilty?

Foreman. Guilty.

Cl. of Arr. Is *Hugh Parrot* Guilty, or not Guilty?

Foreman. Guilty.

Cl. of Arr. Is *Richard Barlicorn* Guilty, or not Guilty?

Foreman. Not Guilty.

Cl. of Arr. Is *Abel Owens* Guilty, or not Guilty?

Foreman. Guilty.

Cl. of Arr. Is *Darby Mullins* Guilty, or not Guilty?

Foreman. Guilty.

In like Manner Kidd, *and Six more, were found Guilty on the other Indictment, and the Three Servants Acquitted.*

The

The Tryal of *William Kidd*, and the other Nine Persons, upon Two more Indictments of Piracy:

One committed on a *Mooriſh* Ship Four Leagues from *Calicut*, the other on a *Portugueſe* Ship, Twelve Leagues from *Calicut*.

THE Priſoners being called to the Bar, and the Jury called; and Captain *Kidd* Challenging thoſe that had Tryed him for the Murther, the Twelve that were Sworn are as followeth, *viz.*

JURY.

Joſ. Watſon,	*Tho. Plaiſted*,
Joſ. Villers,	*Sam. Rown*,
Geo. Aſhby,	*Marm. Bludder*,
Ed. Fenwick,	*Jo. Scot*,
Gilbert Eaſt,	*Jo. Reynolds*,
Tho. Humfrevil.	*Rich. Drew.*

Cl. of Arr. Cryer, Count theſe: *Jo. Watſon.*

Cryer. One, *&c.* Twelve Good Men and True, ſtand together and hear your Evidence.

Mr J. Turton. With what will you proceed on now?

Cl. of Arr. With the two other Ships.

Then the uſual Proclamation for Information was made, and the Priſoners being bid to hold up their Hands, the Cl. of Arr. *charged the Jury with them thus.*

Cl. of Arr. You of the Jury, Look upon the Priſoners, and hearken to their Cauſe. They ſtand Indicted by the Names of *William Kidd*, late of *London*, Mariner, *&c.* (as before in the Indictment.) Upon this Indictment they have been Arraigned, and thereunto have ſeverally pleaded Not Guilty, and for their Tryal have put themſelves on God and their Country, which Country You are. Your Charge is, to enquire whether they be Guilty of the Piracy and Robbery whereof they ſtand Indicted, or not Guilty, *&c.*

Churchill. I plead Guilty, my Lord, I ſubmit my ſelf to the King's Proclamation.

Cl. of Arr. James Howe, Do you ſtand to your Plea?

Howe. Guilty, my Lord, I ſubmit to His Majeſty's Gracious Proclamation.

Cl. of Arr. Robert Lamley, What do you ſay?

Robert Lamley. Not Guilty.

Mr *J. Turton.* You may enter their retracting their Pleas in Court.

Cl. of Arr. William Jenkins, What ſay you? Do you ſtand to your Plea?

Jenkins. Not Guilty.

Cl. of Arr. Gabriel Loffe, What ſay you?

Loffe. Not Guilty.

Cl. of Arr. Hugh Parrot, What ſay you?

Parrot. Not Guilty.

Cl. of Arr. Richard Barlicorn, What ſay you?

Barlicorn. Not Guilty.

Cl. of Arr. Abel Owens, What ſay you?

Owens. Guilty. I came in upon the King's Proclamation.

Mr. *Knapp.* The Jury is not to be charged with them three then.

Cl. of Arr. Here is a ſecond Indictment againſt them, wherein they ſtand Indicted by the Name of *William Kidd*, late of *London*, Mariner, *&c.* (as in the former Charge.) What muſt I ſay now?

Mr *J. Turton.* Ask them three, Whether they ſtand to their Plea to this Indictment, or retract it?

Cl. of Arr. Nicholas Churchill, Do you confeſs this Indictment?

Churchill. Yes, my Lord.

Cl. of Arr. James Howe, What ſay you?

Howe. Guilty of that, and all the other.

Cl. of Arr. Abel Owens, What do you ſay?

Owens. Guilty of that, and all the other.

Cl. of Arr. Set them three by. Gentlemen of the Jury, Here is *William Kidd*, *Robert Lamley*, *William Jenkins*, *Gabriel Loffe*, *Hugh Parrot*, *Richard Barlicorn*, and *Darby Mullins*, have been Indicted upon two ſeveral Indictments that have been read; and for Trial have put themſelves on God and their Country, which Country you are.

Mr *Knapp.* My Lord, and Gentlemen of the Jury, Theſe are two ſeveral Indictments of Piracy, againſt *William Kidd*, and the ſix other Priſoners at the Bar. The firſt ſets forth, That theſe Priſoners, the 28th of *December*, in the Eighth Year of his Majeſty's Reign, about four Leagues from *Calicut*, did Piratically enter a certain Ship, called a *Mooriſh* Ship; and that they took her, with the Apparel and Tackle, and took out of her ſeveral Goods that have been read to you in this Indictment. To this Indictment they have pleaded, Not Guilty. If we prove them Guilty, you muſt find them ſo. The other Indictment ſets forth, That on the 9th of *January*, *&c.* that they took another Ship, a *Portugueſe* Ship; and to this alſo they have pleaded, Not Guilty. If we prove them Guilty, you muſt find accordingly. Call *Robert Bradinham*, and *Joſeph Palmer*, (who appeared, and were ſworn.)

Mr *Soll. Gen.* My Lord, and Gentlemen of the Jury, I am Council for the King againſt the Priſoners at the Bar. They ſtand Indicted for ſeveral Piracies committed on two Ships, and our Evidence againſt them will be to this Purpoſe: Captain *Kidd* had two Commiſſions, one was to take Pirates, the other was to take *French* Ships. *William Kidd*, in his Ship the *Adventure Galley*, went out of *England* in the Year 1696. He afterwards went to *New-York*, and there he increaſed the Number of his Men. And from thence went away with a Reſolution to commit the Piracies, ſome of which he has been Convicted of already. Then he went to *Babs-Key*, and laid in wait to intercept the *Mocco* Fleet; but was diſappointed of that, they being well guarded. He went afterwards to other Places, and took two Ships; which were not the Ships here mentioned. After that he ſeized a Ship, called a *Mooriſh* Ship, ten Leagues from *Calicut*, and there ſeizes one of the Ships for which he is now Indicted, a *Mooriſh* Ship, and takes out of her Sugar-Candy, and other Goods, to the Value of about five and twenty Pounds. In *January* following, he meets another Ship, and ſeizes her too, and takes out of her to the Value of ſixty Pounds. Theſe Goods he diſpoſes of, and divides the Proceed of it between himſelf and the Crew of the Ship. And this is the Piracy for which he is now Indicted. The Matter you are to inquire

inquire into, is, Whether they be Guilty of Piracy on these two Ships, or no. We will call our Witnesses, and, if we prove them Guilty, I doubt not but you will do right to your Country and them. Mr. *Bradinham*, These Gentlemen have not been upon the Jury before, therefore you must give an Account of the whole Matter from the beginning, from your going out of *Plymouth*.

Bradinham. In the Year 1696, the beginning of *May*, we went from *Plymouth* to *New-York*.

Mr *Soll. Gen.* What Ship did you go in?

Bradinham. The *Adventure Galley*. And by the way he took a *French* Ship, which he condemned when he came to *New-York*. At *New-York* he put up his Articles, to get Men aboard his Ship, and they were to have a Share of what was taken. About the sixth of *September* we sailed.

Mr *J. Gould.* What Number of Men had you when you went from *England?*

Bradinham. About seventy Men.

Mr *J. Gould.* How many had you when you went from *New-York?*

Bradinham. About an hundred and fifty. The sixth of *September* we sailed from *New-York*, and went to *Maderas*, then to *Bonavis*, then to St. *Jauger*, then to *Madagascar*, then to *Joanna*, then to *Mahala*, then to *Joanna* again, then to *Meta* in the *Red-Sea*, and then to *Babs*-Key.

Mr *Soll. Gen.* What did you do there?

Bradinham. He lay there about a Fortnight or three Weeks, to wait for the *Moco* Fleet, and sent out his Boat three times to make Discovery; the two first times they made no Discovery, but the third time they brought Information that they were ready to Sail.

Mr *B. Hatsell.* What was the *Moco* Fleet?

Bradinham. They were *Mooriſh* Ships.

Mr *B. Hatsell.* To what end did he wait for them?

Bradinham. He said he would make a Voyage out of them.

Mr *Soll. Gen.* What happened on that?

Bradinham. He ordered some Men to look out for them on the *High Lands*; and when they saw them coming they were to give Notice, and he was to fetch them off in the Boat. This Fleet came, and he fell in with them, and fired at them; but they being under Convoy, he was forced to quit them. And then going to *Carrawar*, he met with one *Parker*'s Ship; he took this *Parker*'s Ship, and took him for a Pilot, and the *Portuguese* for a Linguister.

Mr *Soll. Gen.* How did he use the Men there?

Bradinham. Two of them were brought on board the *Adventure-Galley*, and they were hoisted up, and drubb'd with a naked Cutlass.

Mr *Soll. Gen.* Why did he do that?

Bradinham. That they might make Discovery of their Riches?

Mr *Soll. Gen.* What did they take out of that Ship?

Bradinham. Some Coffee, Pepper, *&c.*

Mr *Soll. Gen.* What did he do with the two Men?

Bradinham. He carried them with him to *Carrawar*; and when he came there they were demanded by the *English* Factory there, and he denied them, and said he had no such Men aboard.

Mr *Soll. Gen.* Where had he put them?

Bradinham. He confined them aboard in the Hold.

Mr *Soll. Gen.* Where did he go then?

Bradinham. He put to Sea, and the next Day he met with a *Portuguese* Man of War, and fought her.

Kidd. He tells nothing but meer Lies.

Bradinham. Then he went to the *Malabar* Islands, and Watered and Wooded, and caused his Men to burn several Houses, and plunder several Boats, and afterwards burnt them.

Mr *J. Turton.* Did you see them burnt?

Bradinham. I was not ashore, but I saw the Smoke.

Kidd. It is a fine Trade, that you must take away so many of the King's Subjects Lives, and know nothing at all of the Matter.

Mr *Soll. Gen.* What did you do with that Ship?

Bradinham. He took her, and disposed of the Goods, and carried her to *Madagascar*.

Mr *Soll. Gen.* What did he do after that?

Bradinham. We went to the *Malabar* Islands some time in *December*, and he took a *Mooriſh* Ketch.

Kidd. How came you to keep this Account, when for five or six Months together you were under Deck?

Mr *Soll. Gen.* Go on, Mr *Bradinham*, and give an Account of your further Proceedings.

Kidd. I hope the King's Council will not put him in the way. It is hard that a couple of Rascals should take away the King's Subjects Lives. They are a couple of Rogues and Rascals.

Bradinham. This Ketch was taken by the Ship's Crew, about *December*, 1697. and one of the Boat's Crew was wounded at the taking of this Ketch.

Mr *Soll. Gen.* What was there in this Ship?

Bradinham. Some Tubs of Sugar-Candy, Tobacco, *&c.*

Mr *Soll. Gen.* What did he do with these Goods?

Bradinham. They were carried aboard, and shared into Messes, two Tubs and a half of Sugar-Candy to a Mess.

Mr *Soll. Gen.* Had the Prisoners at the Bar any Share?

Bradinham. Yes; and then he set the Ship on fire.

Cl. of Arr. Had Captain *Kidd* himself any Share

Bradinham. Yes.

Cl. of Arr. How much had he?

Bradinham. He had 40 Shares.

Mr *B. Hatsell.* You should tell this Jury how many Shares the whole was divided into.

Bradinham. It was divided into 160 Shares, and Captain *Kidd* was to have 40 Shares, let them be as many as they would, and the rest were to be divided among the Men.

Cl. of Arr. Had *Robert Lamley* any Share?

Bradinham. Yes.

Cl. of Arr. Had *William Jenkins* a Share?

Bradinham. Yes.

Cl. of Arr. Had *Gabriel Loffe* any Share?

Bradinham. Yes.

Cl. of Arr. Had *Hugh Parrot* any Share?

Bradinham. Yes.

Cl. of Arr. Had *Richard Barlicorn* any Share?

Bradinham. Yes.

Cl. of Arr. Had *Darby Mullins* any Share?

Bradinham. Yes.

Mr *Soll. Gen.* What was done afterwards?

Bradinham. After they had done these things they burnt the Ketch.

Knapp. What did they do then?

Bradinham. The *Moors* were driven ashore by the Ship's Crew.

Kidd.

Kidd. How did you know they were *Moors?*

Bradinham. By Information of the Ship's Crew.

Kidd. He was not within five Leagues of the Place.

Knapp. What did you meet with afterwards?

Bradinham. A *Portugueze* Ship. Some time in *January*, 169$\frac{7}{8}$, we met with a *Portugueze* Ship on the Coaſt of *Malabar*, and he took her; and he took out of her ſome Opium, ſome *Eaſt-India* Goods, ſome Powder, and ſixty or ſeventy Bags of Rice.

Mr *Soll. Gen.* My Lord, this is the other Ship for which they are Indicted. What was the Value of theſe Goods?

Bradinham. There were ſome *Eaſt-India* Goods, Opium, Powder and Rice.

Kidd. Did you ſee them brought aboard?

Bradinham. I am anſwering the Bench.

Mr *Soll. Gen.* Were there any other Goods?

Bradinham. Yes, there was Bees-wax, and thirty Jarrs of Butter.

Mr *Soll. Gen.* What was the Value of theſe Goods?

Bradinham. About four or five hundred Pounds.

Kidd. It is a fine Trade indeed, that he muſt be inſtructed what to ſay.

Bradinham. After he had plunder'd this Ship, he was purſued by ſome *Dutch* Ships; ſeveral Ships gave him chace, and he was forced to leave this Ship.

Mr *Soll. Gen.* What did they do with the Goods?

Bradinham. He ſold the Opium on the Coaſt, and the reſt he kept for Proviſion.

Mr *Soll. Gen.* What became of the Money?

Bradinham. Captain *Kidd* ſhared it.

Mr *Soll. Gen.* Who had their Shares? Give an account of that.

Bradinham. The Priſoners at the Bar.

Cl. of Arr. Had Captain *Kidd* any Shares?

Bradinham. Yes.

Cl. of Arr. Had *Robert Lamley* any Share?

Bradinham. He had halt a Share.

Cl. of Arr. Had *William Jenkins* any Share?

Bradinham. He had half a Share.

Cl. of Arr. Had *Gabriel Loffe* any Share?

Bradinham. He had half a Share.

Loffe. How do you know that? Did you ſee me bring it out?

Bradinham. I did not ſee you take it, but you brought it out, and acknowledged it.

Kidd. Before you ſwore, I paid them firſt, and now you ſay they paid me firſt.

Bradinham. They had all a Share as before.

Mr *Knapp.* Now proceed in your Voyage, What did you do after this?

Bradinham. After this we went a Cruizing on that Coaſt, and we met with the *Queda* Merchant, and took her: And afterwards, about fifty Leagues from the Cape, we met with a *Mooriſh* Veſſel; and Captain *Kidd* ſent his Men aboard that Veſſel, and they took out of her ten Jarrs of Butter, and a Main-ſail; and he took out two of the Men (that he carried to *Madagaſcar*) becauſe he wanted Men.

Mr *Knapp.* Can you tell of any thing elſe?

Bradinham. He took about a dozen *Malabar* Boats, and plundered them, and then let them go.

Mr *Knapp.* Go on.

Bradinham. Then we came to *Madagaſcar.*

Mr *Knapp.* What happened there?

Bradinham. There came a Canoe off, ſome of the Men in this Canoe belonged to the *Moco* Frigate; they came off to Captain *Kidd*, and they told him, they heard he was come to take them, and hang them.

Mr *Knapp.* What were thoſe Men?

Bradinham. They were ſuppoſed to be Pirates.

Mr *Knapp.* Who was the Commander of that Ship?

Bradinham. Captain *Culliford.*

Kidd. How came you to know this? He ſays any thing.

Mr *Knapp.* Go on with this Story, and give an Account what paſſed between them.

Bradinham. This Canoe came aboard Captain *Kidd*, and they told him, they heard he was come to take them, and hang them; but he aſſured them it was no ſuch thing: And he went aboard the Frigate, and ſwore to be true to them, and that he would aid them in any thing he had; and Captain *Culliford* came aboard him, and they made Preſents to one another.

Mr. *Knapp.* What Preſents did Captain *Kidd* make *Culliford?*

Bradinham. He gave him ſome ſhirting-ſtuff.

Kidd. What! Did I give him ſhirting-ſtuff?

Bradinham. Yes; and he gave him two great Guns.

Kidd. Did I go aboard him, you Raſcal?

Mr *Soll. Gen.* Mr *Kidd*, Ask him what Queſtions you will.

Mr *J. Turton.* Captain *Kidd*, Will you ask this Witneſs any Queſtions?

Kidd. My Lord, What ſignifies it? Were there not ninety of the Men that Mutinied? I ſaid, Let us take this Ship; and did they not all conſult, and ſaid, Where there is one that will fire againſt the Pirate, there are ten that will fire againſt you; and ſo they went, and took the Goods, and left me: I ask you whether this be not true?

Bradinham. My Lord, he never ſpoke any thing like it, that he would take *Culliford*, but he ſwore to be true to them.

Kidd. Did not I propoſe to my Men to take Captain *Culliford?* Did you never hear any body ſay ſo?

Bradinham. No.

Kidd. Did you not ſay yeſterday that I was come to take them?

Bradinham. I ſaid, they came and told you they heard ſo, and you aſſured them you intended no ſuch thing.

Kidd. You ſwore I gave him four Guns yeſterday, and now you ſay but two.

Mr *Soll. Gen.* It was *Palmer* that ſaid four.

Bradinham. I ſaid but two, and no more.

Cl. of Arr. Captain *Kidd*, Have you any thing more to ask him?

Kidd. It ſignifies nothing to ask him any thing.

Cl. of Arr. Robert Lamley, Will you ask this Witneſs any thing?

Lamley. I only ask him whether I was not an Apprentice?

Mr *J. Turton.* Anſwer that Queſtion.

Bradinham. My Lord, he was a Servant.

Mr *J. Turton.* To whom?

Bradinham. To Mr *Owens.*

Mr *J. Turton.* Was his Maſter aboard then?

Bradinham. Yes, my Lord.

Cl. of Arr. William Jenkins, Will you ask the Witneſs any thing?

Jenkins. I desire him to say whether I was a Servant, or not.

Bradinham. Yes, my Lord, he was Servant to the Mate.

Mr *J. Turton.* Was his Master aboard then?

Bradinham. He was aboard then.

Cl. of Arr. Gabriel Loffe, Will you ask him any Questions?

Loffe. No, Sir.

Cl. of Arr. Hugh Parrot, Will you ask him any Thing?

Parrot. No.

Cl. of Arr. R. Barlicorn, Will you ask this Witness any Thing?

Barlicorn. I have nothing to ask him, but to desire him to speak the Truth, whether I was not the Captain's Servant.

Bradinham. He was, my Lord.

Cl. of Arr. Darby Mullins, Will you ask him any Thing?

Mullins. I have nothing to say but what I said before. I submit my self to the King's gracious Proclamation.

Kidd. He has Perjured himself in many Things.

Mr *J. Turton.* In what? Give an instance.

Kidd. In a great many Instances: About the Guns, that is one thing; and then he says the Ship went from *Plymouth* the beginning of *May*, and before he said it was in *April*, that is another thing; and, my Lord, the Mariners came and took Anchors, and Cables, and what they would, and, he says, I gave them to them, and this is false; and now he says contrary to what he did before, for then he said we went out in *April*, and now the beginning of *May*.

Mr *J. Turton.* He did not confine himself to a Day, he said about the beginning of *May*.

Mr *Soll. Gen.* Call *Joseph Palmer*, (who appeared.) Mr *Palmer*, pray give my Lord, and the Jury, an account of Captain *Kidd* and his Crew, where they went, and what they did.

Palmer. We went from *Plymouth* to *New-York*, in the Year 1696, and in the way took a *French* Ship, and carried her to *New-York*, and sold her: And there he put up Articles to invite Men aboard his Ship, and what they took was to be divided into so many Shares, whereof Captain *Kidd* was to have forty, the rest to be divided among the Men; and in *September* following, we went from thence, and we had then about 160 Men: From thence we went to *Maderas*, from thence to *Bonavis*, then to St. *Jauger*, then to *Joanna*, then to *Mahala*, then to *Joanna* again, and then to *Meta* in the *Red-Sea*, where he watered and wooded his Ship, and then to *Babs-Key*, a small Island in the *Red-Sea*: And when he came there, he ordered his Men to look out on the *High Lands* for the *Moco* Fleet, and expected the Fleet to come that way; and he sent some Men in his Boat, with Orders either to take a Prisoner, or to bring word what Ships were there: He sent his Boat twice and they made no Discovery, but the third time they went they came within sight of the Ships, and brought word that there were 14 or 15 sail lying there, with *Dutch*, and *English*, and *Mooriſh* Colours, and a great Ship with red Colours ready to sail: And then Captain *Kidd* ordered his Men to look out on the other side the *High Lands*, for fear the Ships should pass him; and at last the Ships came down.

Kidd. There is no great occasion for this.

Palmer. There were *Moors* and *Turks* belonging to these Ships: And about the 15th of *August* the Fleet came down; and Captain *Kidd* fell in with them; his Quarter-master and some of his Men were saying, Let us go aboard them to Night; No, says he, we will take our choice of them in the Morning; and in the Morning he went among them, and fired at them, but took none of them; he found they were too strong for him, and went away. And after this going to *Carrawar*, he took a Ship called the *Mayden*; it was between *Carrawar* and this Place, they reckoned they were not far from the Island of St. *John*: He took this Ship, and took out of her some Pepper, a Bail of Coffee, and some more Bails of Coffee came on board, but he retained only one Bail and the Pepper, and said he would not cumber his Ship with such Stuff; and *Parker* and a *Portugueſe* he took out, one for a Pilot, the other for a Linguister: And two of the Men he ordered to be hoisted up, and whipt with a naked Cutlass.

Kidd. I ask this one Thing, Did the *Moco* Fleet fire first at me, or I at them?

Palmer. No, they fired first.

Kidd. And just now the other said I fired first; Is not he Perjured.

Mr *J. Turton.* Mr *Bradinham*, Did he fire first, or no?

Bradinham. He fired at them. I only said you fired at them, I did not say first or last.

Palmer. After this he went to *Carrawar*, to an *Engliſh* Factory, and Wooded and Watered his Ship; and one *Harvey* came and demanded these two Men; and Captain *Kidd* denied that he had any such Men on board, and kept them in the Hold.

Mr *Soll. Gen.* Is that an *Engliſh* Factory?

Palmer. Yes. Several of Captain *Kidd*'s Men left him there, and several more would have left him, if they could have conveniently gone ashore: And the same Evening he put to Sea, he met a *Portugueze* Ship, and fought her.

Kidd. Who fired there first?

Palmer. The *Portugueze* fired first.

Kidd. You do not tell that Story right.

Palmer. After he left this *Portugueze* Ship he went to the Island of *Malabar*, and robbed the Natives, and set their Houses on fire, and took one of the Natives, and bound him to a Tree, and shot him to Death.

Mr *Soll. Gen.* Did you see the Houses on fire?

Palmer. Yes: And afterwards we went to *Calicut*, and met with a *Mooriſh* Ship in *November*, *Schipper Mitchel* was Commander; and there were taken out of her two Horses, and Cotton, and Quilts; and this Ship he carried to *Madagascar*: Some time in *December* following we came to the Coast of *Malabar*.

Mr *Knapp.* Can you tell what Year it was?

Palmer. It was in *December*, 1697.

Mr *Knapp.* Where was this?

Palmer. About twelve Leagues from *Callicut*.

Mr *Knapp.* What sort of Ship was it?

Palmer. A *Mooriſh* Ketch.

Mr *Knapp.* What Burden was she?

Palmer. About fifty Tun.

Mr *Knapp.* What did you do there?

Palmer. Captain *Kidd* was lying at Anchor, and this Ketch came between him and the Shore, and he sent the Boat, and they brought the Ketch to the Ship, and took out of her thirty Bails of Sugar-Candy, Tobacco, Sugar and Myrrh.

Mr *Knapp.* What did they do with these Goods?

Palmer.

Palmer. When they had taken them out, they were ſhared between the Men in Meſſes, ſeven Men to a Meſs, for their own ſpending.

Mr *Knapp.* Had the Priſoners at the Bar any Share?

Palmer. All the Men had.

Mr *Knapp.* What Share had Captain *Kidd?*

Palmer. I cannot tell whether he had his 40 Shares of that, or no.

Mr *Knapp.* What did they do with the Ship?

Palmer. They burnt her.

Mr *Soll. Gen.* Pray now go on: What did they do next?

Palmer. Some time in *January* they met with a *Portugueze* Ship.

Mr *Soll. Gen.* Where?

Palmer. Off of *Anjingo*, an *Engliſh* Factory: It was a pretty way off Shore.

Mr *Soll. Gen.* What Ship was it?

Palmer. A *Portugueze* Ship.

Kidd. You ſaid it was juſt by *Callicut* yeſterday.

Mr *Soll. Gen.* Whereabouts was it?

Palmer. On the Coaſt of *Malabar*; it might be about ten or twelve Leagues from *Callicut.*

Mr *Soll. Gen.* What Goods were in the Ship when ſhe was taken?

Palmer. There were two Cheſts of *Indian* Goods, two Cheſts of Opium, ſome Rice, Butter, Wax, and Iron.

Mr *Soll. Gen.* What was the Value of thoſe Goods?

Palmer. Truly I cannot tell the Value of them.

Mr *Soll. Gen.* What did they do with thoſe Goods?

Palmer. The Wax and Iron he put aboard the *November*, and ſome aboard his own Ship.

Mr *Soll. Gen.* Did he ſell any of theſe Goods?

Palmer. No, but he ſold the Opium on the Coaſt.

Mr *Soll. Gen.* Did he keep the Ship?

Palmer. No, but ſeven or eight Days, and then he quitted her; there were ſome *Dutchmen* coming, and he ſunk that Ship: The Produce of the Ship was ſhared.

Mr *Soll. Gen.* Had the Priſoners at the Bar any Share?

Palmer. Yes.

Cl. of Arr. Had *William Kidd* any Share?

Palmer. Yes.

Cl. of Arr. Had *Robert Lamley* any Share?

Palmer. Yes.

Cl. of Arr. Had *William Jenkins* any Share?

Palmer. Yes.

Cl. of Arr. Had *Gabriel Loffe* any Share?

Palmer. Yes.

Cl. of Arr. Had *Hugh Parrot* any Share?

Palmer. Yes.

Cl. of Arr. Had *Richard Barlicorn* any Share?

Palmer. Yes.

Cl. of Arr. Had *Darby Mullins* any Share?

Palmer. Yes; theſe Goods were ſhared, and we bought Proviſion with them.

Kidd. You ſay this Ship was taken off of *Anjingo*, and that it was twelve Leagues from *Calicut*, and this *Anjingo* is fifty Leagues from *Calicut.*

Palmer. It is all upon one Coaſt.

Mr *Soll. Gen.* Give an Account of your coming to *Madagaſcar*, and what followed.

Palmer. They found a Ship called the *Reſolution*, Captain *Culliford* was Commander; and ſeveral of the Men came off to Captain *Kidd*, that were formerly acquainted with him; and they ſaid, We hear you are come to hang us; ſays he, It is no ſuch Thing: And afterwards they went aboard each other, and Captain *Kidd* made Proteſtations to be true to them. There were four Guns in the Ship, and he preſented theſe Guns to *Culliford.*

Kidd. Did I preſent him with my Guns? Becauſe I would not turn Pirate, you Rogues, you would make me one.

Mr Baron *Hatſell.* What did Captain *Kidd* ſay to *Culliford*, when they were drinking together?

Palmer. They made a Tub of Bomboo, as they call it (it is made of Water and Limes, and Sugar) and there they drank to one another; and ſays Captain *Kidd*, before I would do you any Damage, I had rather my Soul ſhould broil in Hell-fire.

Mr *Soll. Gen.* Was you there then?

Palmer. This was on the Quarter-deck of the *Moco* Frigate.

Mr *Soll. Gen.* What were thoſe Men in that Ship? What did you apprehend them to be?

Palmer. They were Pirates.

Mr *Soll. Gen.* Did Captain *Kidd* or his Men offer to take them?

Palmer. He did never propoſe any ſuch Thing.

Mr *Soll. Gen.* Now you may ask him what Queſtions you will.

Kidd. There went twenty of them aboard, and left me.

Palmer. Captain *Kidd* and *Culliford* were as great Friends as could be.

Mr *Soll. Gen.* Ask him what Queſtions you pleaſe.

Will. Kidd. It ſignifies nothing to ask any Queſtions, a couple of Rogues will ſwear any Thing.

Mr *Soll. Gen.* Will you ask him any Queſtions?

Kidd. No.

Cl. of Arr. *R. Lamley*, will you ask him any Queſtions?

Robert Lamley. No.

Cl. of Arr. *William Jenkins*, will you ask him any Queſtions?

William Jenkins. No; I have no more to ſay, but what I ſaid before.

Cl. of Arr. *Gabriel Loffe*, have you any Thing to ask him?

Gabriel Loffe. No.

Cl. of Arr. *Hugh Parrot*, will you ask the Witneſs any Queſtions?

Hugh Parrot. No.

Cl. of Arr. *Richard Barlicorn*, will you ask him any Thing?

Richard Barlicorn. No.

Cl. of Arr. *Darby Mullins*, will you ask him any Thing?

Darby Mullins. No; but only I ſay I came home upon his Majeſty's Proclamation; I came voluntarily, expecting to have the Benefit of it with the Evidence.

Mr J. *Turton.* That does not fall under the Jury's Conſideration.

Cl. of Arr. You, the Priſoners at the Bar, will you ſay any Thing for your ſelves upon theſe two Indictments?

Kidd. I will not trouble the Court any more, for it is a Folly.

Cl. of Arr. *Robert Lamley*, What have you to ſay for your ſelf?

Robert Lamley, Nothing, but that I was a Servant.

Cl. of Arr. *W. Jenkins*, what have you to ſay?

W. Jenkins. I was a Servant, my Lord.

Cl. of Arr. *Gabriel Loffe*, have you any Thing to ſay?

G. Loffe. My Lord, I ask him whether I ever acted any Thing in taking theſe Ships, but only under my Captain's Command.

Palmer. He acted as other Men did.

Cl. of Arr. *Hugh Parrot*, have you any Thing to ſay?

Hugh Parrot. I can ſay no more than I have ſaid.

Cl. of Arr. *Richard Barlicorn*, have you any Thing to ſay?

R. Barlicorn. My Lord, I am a Servant.

Cl. of Arr. *Darby Mullins*, what have you to ſay?

Darby Mullins. Did not Captain *Kidd* often ſay his Commiſſion would bear him out in what he did?

Palmer. Yes, I have heard him often ſay that.

Mr J. *Turton.* But how came you to go aboard *Culliford?*

Darby Mullins. For Want, my Lord.

Mr *J. Turton.* Gentlemen of the Jury, Here are ſeveral Perſons, *viz. William Kidd*, *Rob. Lamley*, *Will. Jenkins*, *Gab. Loffe*, *Hugh Parrot*, *Richard Barlicorn*, and *Darby Mullins*; They all ſtand Indicted for Piracy: Indeed there are three more Indicted with them, *viz. Nicholas Churchill*, *James Howe*, and *Abel Owens*; but they have confeſſed themſelves guilty, and you are now eaſed of any inquiry concerning them, and are only to conſider of the other Seven, who are indicted upon two ſeveral Indictments: One is, for the Piratical and Felonious taking away a *Mooriſh* Ketch, to the Value of fifty Pounds, and the Goods therein to the Value of one Hundred Pounds; this was in *December*, 1697. And the Other is, for Piratically ſeizing and taking away Goods to the Value of ſeventy Pounds from the *Portugal* Ship, twelve Leagues from *Calicut* in the *Eaſt-Indies*. Now to theſe two Indictments theſe Priſoners at the Bar have pleaded, Not guilty; and whether they are ſo or no, you are to determine, upon the Evidence given you. There have been two Witneſſes produced for the King, *Robert Bradinham*, and *Joſeph Palmer*, I will not trouble you with the Repetition of their diſtinct Evidence, becauſe they agree in all Things, and if I mention what one has ſaid, it is in effect what the other ſaid alſo.

Gentlemen, It appears that Captain *Kidd*, with ſeventy Perſons aboard his Ship called the *Adventure Galley*, went from *England* in the Year 1696, having a Commiſſion of Mart and Repriſal, to take the Veſſels, Ships and Goods of the *French* King, or any of his Subjects, he being then at War with the King of *England*; and another Commiſſion for ſeizing Pirates. He has not indeed produced theſe Commiſſions to you now, though he did on another Trial. But he went out on a very honeſt Deſign, and in purſuance of it he took a *French* Ship in his Paſſage to *New-York*, and brought her thither, and had her legally condemned. But while he was there, it appears that he had other Thoughts poſſeſſed him, and wicked Intentions to turn Pirate, and not to take them; and that he might be well Manned he makes Proclamation amongſt the Mariners there, that ſuch of them as would come aboard his Ship, and aſſiſt him in his Enterpriſes, ſhould have their Shares of what Prizes or Booties could be taken; and he propoſed that he would have forty Shares for himſelf, and the reſt ſhould be equally diſtributed amongſt the Mariners according to agreement, the whole being divided into 160 Shares as I remember; by this means his Number was increaſed from 70 to 150. They ſet ſail from *New-York*, and (after many other Places mentioned by the Witneſſes) they came to a Place called *Babs*-Key, which it ſeems is in the *Red-Sea*; and there they ſtayed a conſiderable Time, I think about three Weeks, and this was in expectation to meet with the *Moco* Fleet, which he intended to make a Prize; and during his Stay at *Babs*-Key he ſent his Boat three ſeveral times to get Intelligence of this Fleet; the two firſt Times there was no Account of any Thing, but the third Time there was notice brought that they were ready to ſail, and that they had *Engliſh*, *Dutch*, and *Mooriſh* Colours. And when he had this Intelligence, to prevent their eſcaping him, he ſends Men aſhore, to go on the *High-Lands* to obſerve when they did actually ſail; and when he had notice that they were under ſail, he likewiſe ſailed, and went through the Fleet, and made ſome Shots at ſome of the Ships; but it appearing that they had a Convoy, and that they were too ſtrong for him, he quitted the Prize there, of which he had ſo great Expectation. But afterwards he went on, and took his Courſe towards *Carawar*, and there he takes a *Mooriſh* Ship; and *Parker* an *Engliſhman* the Commander of her, and a *Portugueſe* alſo were taken out of her. From thence they went to *Malabar*, and there he ſent ſome Men aſhore, and there they burnt ſome Houſes; and after that took a *Mooriſh* Ship for which they have been tried. Afterwards, in *December* 1697, (now I come to the firſt Indictment) upon that very Coaſt, ſome Leagues from *Calicut*, they took a *Mooriſh* Ketch, and this Ketch and the Goods aboard it, which were ſome Quantities of Sugar-Candy, Sugar, and Tobacco: It ſeems theſe Goods were ſhared between them aboard the Ship; the Witneſs is not confident what Share the Captain then had, but what the Captain had not, was divided amongſt them. The Witneſſes ſay they burnt this Ketch, becauſe ſhe was not uſeful to them, and the Men that went on Board were put aſhore. Now this is the Matter of the firſt Indictment, the Piratically ſeizing and plundering this Ketch, and taking the Goods out of her, and dividing them amongſt the Priſoners; both the Witneſſes prove there was a Diſtribution of them.

They then come to the next Month, and that is *January*; and this is the Matter of the ſecond Indictment, for piratically taking ſeveral Goods, to the Value of ſeventy Pounds, from the Mariners of the Ship called the *Portugal* Ship: And theſe Witneſſes prove the taking of this Ship on the Coaſt of *Calicut*; and there were aboard this Ship ſeveral ſorts of Goods, Opium, Rice, Beeswax, Butter, and other ſorts of Goods, which they judge might be worth four or five hundred Pounds. Now after this, there were ſome *Dutch* Ships that gave chace to the Captain, and he was forced to leave the Ship; but he took ſome of the Goods into his own Ship, and the reſt were ſold, and the Money divided among the Men: The Captain called them one by one into his Cabbin, and ſo they had their ſeveral Shares according to the Propoſals at *New-York*. It is not poſſible for them to ſay they ſaw every Man's Share paid, but they ſay that they were all called by Name to receive their Shares, and they went into the

Cabbin

Cabbin for that Purpoſe, and they believe they had all their Shares according to Agreement, becauſe none complained that they had it not.

Gentlemen, There is but one Thing more that I will mention to you. When they came to *Madagaſcar*, there was one *Culliford* who was a Pirate; and he ſent ſome of his Crew aboard, to know whether Captain *Kidd* was not come with a Deſign to ſeize them, and hang them; and he declared he had no ſuch Deſign: And he and *Culliford* were extreamly kind to one another, and made Viſits and Preſents to each other: And Captain *Kidd* gave two Guns to *Culliford*, as one of the Witneſſes ſays; but the other Witneſs ſays there were four Guns that he gave to *Culliford*, who was engaged in the ſame Deſign of Piracy, and *Culliford* preſented other Things to *Kidd*.

But now, Gentlemen, the Buſineſs you are to inquire into is, the piratical taking of theſe Ships: And the Witneſſes have poſitively and directly proved not only the taking the Ships but the ſeizing the Goods, and ſelling them, and ſharing the Money. And if theſe Witneſſes ſay true, as nothing appears to the contrary, by the Priſoners croſs-examining them, or otherwiſe; they are not at all contradicted, or their Credibility made queſtionable: And they are ſuch as are moſt likely to know what was done, being with them in the whole Voyage, and engaged with them in theſe Enterpriſes. And if you can give entire Credit to the Witneſſes, you will probably find theſe Perſons guilty of the Piracy they are charged with; which I leave to your Conſideration.

Now indeed there are three of them that are Servants, and perhaps you may think their Caſe is different from the reſt; *Robert Lamley*, who was a Servant to *Owens* the Cook; *William Jenkins*, who was Servant to the Mate; and *R. Barlicorn*, who was Servant to Captain *Kidd*. And though the Witneſſes do prove that they had their ſeveral Shares of the Goods and Money; yet, notwithſtanding that, they being Servants, their Maſters might be entitled to their Shares. So that if you believe they were Servants, and commanded to ſerve and aſſiſt their Maſters in what they did, I muſt leave it to you whether you will think fit to diſtinguiſh their Caſe from the reſt. I do not find that the others ſay any Thing material in their own Defence, they have called no Witneſſes at all. The Captain lays the Blame on the Men, and the Men ſeem to lay the Blame on him. He went out on a good Deſign, to take Pirates, had he purſued it; but inſtead of that, it appears that he turned Pirate himſelf, and took the Ships and Goods of Friends inſtead of Enemies, which was a notorious Breach of Truſt, as well as a manifeſt Violation of Law. The Evidence ſeems ſtrong againſt them, which I leave to you to conſider of.

Then the Jury withdrew, and after a ſhort Space brought in their Verdict.

Cl. of Arr. Gentlemen, anſwer to your Names. *Jo. Watſon.*

Jo. Watſon. Here, *&c.*

Cl. of Arr. Are you all agreed of your Verdict?

Omnes. Yes.

Cl. of Arr. Who ſhall ſpeak for you?

Omnes. Foreman.

Cl. of Arr. *William Kidd*, hold up thy Hand, (*which he did.*) Look upon the Priſoner. How ſay you? Is *William Kidd* guilty of the Piracy and Robbery whereof he ſtands indicted in the firſt Indictment, or not guilty?

Foreman. Guilty,

Cl. of Arr. Is *Robert Lamley* guilty, or not guilty?

Foreman. Not guilty.

Cl. of Arr. Is *William Jenkins* guilty, or not guilty?

Foreman. Not guilty.

Cl. of Arr. Is *Gabriel Loffe* guilty, or not guilty?

Foreman. Guilty.

Cl. of Arr. Is *Hugh Parrot* guilty, or not guilty?

Foreman. Guilty.

Cl. of Arr. Is *Richard Barlicorn* guilty, or not guilty?

Foreman. Not guilty.

Cl. of Arr. Is *Darby Mullins* guilty, or not guilty?

Foreman. Guilty.

The ſame Verdict was given as to all the Priſoners upon the other Indictment.

Robert Culliford, *Nicholas Churchill*, *Darby Mullins*, and *John Eldrige*, were arraigned for taking the Ship called the *Great Mahomet*, and ſeizing the Goods to a conſiderable Value, to which they pleaded not guilty.

Robert Culliford, *Churchill*, *Howe*, and *Mullins*, were again indicted for another Ship taken piratically by them, to which they pleaded not guilty.

Robert Culliford and *Robert Hickman* were again arraigned for piratically ſeizing another Ship called the *Satisfaction*, to which they pleaded not guilty.

Robert Culliford and *Rob. Hickman* were again indicted for Piracy committed on a *Mooriſh* Ship, to which they pleaded not guilty.

Then the Court proceeding to the Trials of the Perſons forementioned, Rob. Culliford *retracted his Plea, and pleaded guilty, and argued his coming in upon his Majeſty's Proclamation; and his Caſe being particular, was argued by his Council, for the Benefit of his Majeſty's Pardon. And* Churchill, Howe, Mullins, *and* Hickman, *likewiſe pleading guilty*; John Eldrige *was tried by himſelf, and found guilty.*

After the Trials were over, Judgment againſt Culliford *was reſpited, and he ſet aſide; the other Priſoners were called to the Bar in order to receive their Sentence as follows:*

Cl. of Arr. *William Kidd*, Hold up thy Hand, (*which he did*) What canſt thou ſay for thy ſelf? Thou haſt been indicted for ſeveral Piracies and Robberies, and Murder, and hereupon haſt been convicted; What haſt thou to ſay for thy ſelf, why thou ſhouldeſt not die according to Law?

Will. Kidd. I have nothing to ſay, but that I have been ſworn againſt by perjured and wicked People.

Cl. of Arr. *Nich. Churchill*, hold up thy Hand, What haſt thou to ſay, *&c?*

N. Churchill. I came in upon his Majeſty's Proclamation.

Cl. of Arr. *James Howe*, What haſt thou to ſay, *&c?*

Cl. of Arr.

J. Howe. I came in upon the King's gracious Proclamation, and hope I ſhall receive the Benefit thereof.

Cl. of Arr. *Gabriel Loffe*, What haſt thou to ſay, *&c?*

Cl. of Arr. *Hugh Parrot*, What haſt thou to ſay, *&c?*

Hugh Parrot. I came and ſurrendred my ſelf to my Lord *Bellamont.*

Cl. of Arr. *Gabriel Owens*, what haſt thou to ſay?

Gabriel Owens. I came in upon his Majeſty's Proclamation, and deſire the Benefit of it.

Cl. of Arr. *Darby Mullins*, What haſt thou to ſay?

Darby Mullins. I came home upon the King's gracious Proclamation.

Cl. of Arr. *John Eldrige*, What haſt thou to ſay? *&c.*

J. Eldrige. I have but little to ſay, I am accuſed but for one Thing, and that is all, and I have been falſely accuſed; I caſt my ſelf on your Lordſhips and the Honourable Bench.

Cl. of Arr. *Robert Hickman*, What haſt thou to ſay? *&c.*

Robert Hickman. I came in according to the King's Proclamation, I came in within the Time limited.

Then Proclamation for Silence was made, while Sentence was pronouncing.

Dr *Oxenden.* You the Priſoners at the Bar, *Will. Kidd, N. Churchill, J. Howe, Gabriel Loffe, Hugh Parrot, Abel Owens, Darby Mullins, Robert Hickman,* and *J. Eldridge*; you have been ſeverally indicted for ſeveral Piracies and Robberies, and you *William Kidd* of Murder. You have been tryed by the Law of the Land, and convicted; and nothing now remains, but that Sentence be paſſed according to the Law. And the Sentence of the Law is this.

You ſhall be taken from the Place where you are, and be carried to the Place from whence you came, and from thence to the Place of Execution, and there be ſeverally hanged by your Necks untill you be dead. And the Lord have Mercy on your Souls.

William Kidd. My Lord, It is a very hard Sentence. For my Part, I am the innocenteſt Perſon of them all, only I have been ſworn againſt by Perjured Perſons.

The End of the Fourth VOLUME.

The ſeveral Proceedings and Reſolutions of the Houſe of Peers, in Relation to the LORDS *Impeached or Charged,* Anno 1701. *viz.* William *Earl of* Portland, John *Lord* Sommers, Edward *Earl of* Orford, *and* Charles *Lord* Halifax : *as alſo* John *Lord* Haverſham. *Publiſh'd by Authority.*

Die Martis 1° *Aprilis*, 1701.

Earl Portland *Impeached.*

A Meſſage was brought from the Houſe of Commons by Sir *John Leveſon Gower*, and others, who at the Bar of this Houſe, in the Name of the Houſe of Commons, and all the Commons of *England*, Impeached *William* Earl of *Portland* of High Crimes and Miſdemeanors; and acquainted this Houſe, That the Houſe of Commons will in due time Exhibit particular Articles againſt him, and make good the ſame.

A Committee appointed to inſpect the Journals of this Houſe, in relation to the Proceedings of this Houſe in Caſes of Impeachments for Miſdemeanors, and to report to the Houſe.

Die Martis 15° *Aprilis*, 1701.

Lord Sommers *Impeached.*

A Meſſage was brought from the Houſe of Commons by Mr. *Harcourt*, and others, who at the Bar of this Houſe, in the Name of the Houſe of Commons, and all the Commons of *England*, Impeached *John* Lord *Sommers* of High Crimes and Miſdemeanors; and acquainted this Houſe, That the Houſe of Commons will in due time Exhibit particular Articles againſt the ſaid Lord, and make good the ſame.

Earl Orford *Impeached.*

A Meſſage was brought from the Houſe of Commons by Colonel *Bierly*, and others, who at the Bar of this Houſe, in the Name of the Houſe of Commons, and all the Commons of *England*, Impeached *Edward* Earl of *Orford* of High Crimes and Miſdemeanors; and acquainted this Houſe, That the Houſe of Commons will in due time Exhibit particular Articles againſt the ſaid Lord, and make good the ſame.

Lord Halifax *Impeached.*

A Meſſage was brought from the Houſe of Commons by Mr. *Bruges*, and others, who at the Bar of this Houſe, in the Name of the Houſe of Commons, and all the Commons of *England*, Impeached *Charles* Lord *Halifax* of High Crimes and Miſdemeanors; and acquainted this Houſe, That the Houſe of Commons will in due time Exhibit particular Articles againſt the ſaid Lord, and make good the ſame.

Die Mercurij 16° *Aprilis*, 1701.

The Houſe being moved, That an Addreſs be made to his Majeſty, that he will be pleaſed to paſs no Cenſure or Puniſhment upon the Lords Impeached, during the Dependance of the Impeachment in this Houſe :

After Debate, the Queſtion was put, That a Committee ſhall be immediately appointed to draw up an Addreſs to his Majeſty, That his Majeſty will be pleaſed not to paſs any Cenſure or Puniſhment againſt the Four Noble Lords, who ſtand Impeached of High Crimes and Miſdemeanors, until the Impeachments depending againſt them in this Houſe ſhall be tried. It was reſolved in the Affirmative.

A Committee appointed immediately to draw up an Addreſs to his Majeſty, That his Majeſty will be pleaſed not to paſs any Cenſure or Puniſhment againſt the Four Noble Lords, who ſtand Impeached of High Crimes and Miſdemeanors, until the Impeachments depending againſt them in this Houſe ſhall be tried.

The Houſe was Adjourned during Pleaſure, and the Lords went to the Committee.

After ſome Time, the Houſe was reſumed, and the Lord Steward reported, That the Committee had drawn an Addreſs, as ordered, which was read and agreed to, as followeth, *viz.*

WE Your Majeſty's moſt Loyal and Dutiful Subjects, the Lords Spiritual and Temporal in Parliament aſſembled, beg Leave to repreſent to your Majeſty, That the Houſe of Commons have ſeverally Impeached, at the Bar of our Houſe, William *Earl of* Portland, John *Lord* Sommers, Edward *Earl of* Orford, *and* Charles *Lord* Halifax, *of High Crimes and Miſdemeanors. And they having acquainted us, That they will in due time Exhibit particular Articles againſt the ſaid Lords, and make good the ſame: We do moſt humbly beſeech your Majeſty, That your Majeſty will be pleaſed not to paſs any Cenſure upon them, until they are tried upon the ſaid Impeachments, and Judgment be given according to the Uſage of Parliament, and the Laws of the Land.*

Ordered, That the Lord Steward and Earl of *Romney* do attend his Majeſty with the Addreſs.

Die Lunæ 5° *Maij*, 1701.

A Committee appointed to draw a Meſſage to be ſent to the Houſe of Commons, to put them in mind of the Impeachments brought up by them againſt the Earl of *Portland*, the Earl of *Orford*, the Lord *Sommers*, and the Lord *Halifax*, and report to the Houſe.

Then the Houſe was adjourned during Pleaſure. After ſome time, the Houſe was reſumed, and the Lord Steward reported the Meſſage, which was read and agreed to, as followeth, *viz.*

A Meſſage was ſent to the Houſe of Commons by Sir *Robert Legard*, and Sir *Richard Hotford*, to acquaint them, That they having on the Firſt Day of *April* laſt ſent up to their Lordſhips an Impeachment againſt *William* Earl of *Portland*, of High Crimes and Miſdemeanors: And having alſo, on the Fifteenth Day of the ſame Month, ſeverally Impeached *John* Lord *Sommers*, *Edward* Earl of *Orford*, and *Charles* Lord *Halifax*, of High Crimes and Miſdemeanors; their Lordſhips think themſelves obliged to put them in mind, that as yet no particular Articles have been Exhibited againſt the ſaid Lords; which, after Impeachments have been ſo

long depending, is due in Juſtice to the Perſons concerned, and agreeable to the Methods of Parliament in ſuch Caſes.

Die Veneris 9° *Maij*, 1701.

A Meſſage was brought from the Houſe of Commons by Colonel *Bierly*, and others, with the Articles of Impeachment againſt *Edward* Earl of *Orford*; and to acquaint this Houſe, That the Matter of the Charge was contained in the Articles; and alſo, that he was commanded to pray and demand, That the Earl of *Orford* do give ſufficient Security to abide the Judgment of the Houſe of Lords.

A Committee appointed to conſider of the Manner of the Commons delivering Articles of Impeachment, and demanding Security to abide the Judgment of this Houſe, and report to the Houſe.

The Houſe was Adjourned during Pleaſure, for the Committee to meet preſently. After ſome Time, the Houſe was reſumed, and the Earl of *Stamford* reported, That the Committee had met, and inſpected the Journals: That they do not find any mention of the Commons reading the Articles at the Bar; and as for giving Security, they find none.

Then the Articles were read by the Clerk, as follows, *viz.*

ARTICLES Exhibited by the Knights, Citizens and Burgeſſes in Parliament aſſembled, in the Name of themſelves, and of all the Commons of England, *againſt* Edward *Earl of* Orford, *in Maintenance of their Impeachment againſt him for High Crimes and Miſdemeanors.*

I. THAT whereas for many Years paſt there hath been a long and expenſive War, both by Sea and Land, carried on by his Majeſty and his Allies againſt the *French* King, for the preſerving the Balance of *Europe*, and for preventing the Growth of the immoderate Power of the ſaid *French* King; towards the Proſecution of which War, great Sums of Money have been given and levied by Authority of Parliament, and many Debts have been contracted, which remain a very heavy Burden upon the People of *England*; the ſaid Earl being then of his Majeſty's moſt Honourable Privy-Council, but always preferring his private Intereſt to the Good of the Publick, and taking Advantage of the ready Acceſs he had to his Majeſty's Perſon, during the Continuance of the ſaid War, in Violation of his Duty and Truſt, hath procured from his Majeſty one or more Grant or Grants of ſeveral Manors, Meſſuages, Lands, Tenements and Hereditaments, within the Kingdoms of *England* or *Ireland*, or elſewhere within his Majeſty's Dominions, of a great Yearly Value; and alſo of exorbitant Sums of Money to be made to him, or others in Truſt for him, but to his Uſe, the Profits whereof he now enjoys; whereby the Standing Revenues of the Crown of *England*, which ought to be applied to the Service of the Publick, are greatly diminiſhed, and the People of *England* thereby burthened with Debts, and ſubjected to grievous Taxes.

II. That in Breach of the Truſt repoſed in him, whilſt he was Commander in Chief of the Navy Royal of *England*, in or near the *Streights* of *Gibraltar*, and within the Time aforeſaid, he the ſaid Earl did receive great Sums of the Publick Money, iſſued out to him for the Service of the Navy, which he hath converted to his own private Uſe, and unlawfully and unjuſtly procured a Privy-Seal, or Privy-Seals, to diſcharge him from accounting to the Publick for the ſame; and alſo hath received other great Sums of Money from his Majeſty's *Exchequer*, as Pay-Maſter or Receiver-General of the Navy,

The ANSWER of Edward *Earl of* Orford, *to the Articles Exhibited againſt him by the Knights, Citizens and Burgeſſes in Parliament aſſembled, in the Name of themſelves, and of all the Commons of* England, *in Maintenance of their Impeachment againſt the ſaid Earl, for High Crimes and Miſdemeanors, ſuppoſed to be committed by him. Deliver'd in* 14° May, 1701.

THE ſaid Earl, ſaving to himſelf all Advantages of Exception to the ſaid Articles, and of not being prejudiced by any Words or Want of Form in this his Anſwer, and ſaving to him all Privileges and Rights belonging to him as one of the Peers of this Realm, for Anſwer to the ſaid Articles, humbly ſaith,

I. To the Firſt Article, That he having for ſeveral Years rendred his Majeſty his utmoſt Service and Duty, as a Good and Loyal Subject ought to do; his Royal Majeſty was graciouſly pleaſed, upon ſeveral Occaſions, to take notice of the ſame, and out of his wonted Bounty, and of his free Will, was pleaſed to give the ſaid Earl Two Grants, one whereof was a Reverſionary Grant for Years, of ſome Houſes depending upon a then precedent Eſtate for about Nine and Twenty Years; which being a Reverſionary Intereſt at ſo great a Diſtance, although the ſaid Earl thankfully received the ſame from his Majeſty as his Grace and Bounty, yet the ſame was of no great Value; and the other of them was a Grant of the Remainder of a groſs Sum amounting to about Two Thouſand Pounds a Year for Five Years; which are the only Grants of any Manors, Meſſuages, Lands, Tenements, Hereditaments, or Sums of Money whatſoever, which he, or any in Truſt for him, hath had from his Majeſty; and which ſaid Two Grants his Majeſty was graciouſly pleaſed, after many Years Service, freely to beſtow upon him the ſaid Earl, without any Surprize, ſiniſter or indirect Means of the ſaid Earl in obtaining the ſame, and which Grants he humbly conceives were not unuſual in like Caſes, the accepting whereof he humbly hopes was not any Violation of his Duty, or of any Truſt in him the ſaid Earl repoſed.

II. To the Second Article the ſaid Earl anſwereth and denieth, That he at any time converted to his own private Uſe, any Publick Money iſſued to him for the Service of the Navy; or that he the ſaid Earl ever procured, or had any Privy Seal or Privy-Seals, to diſcharge him from accounting for the ſame; but ſaith, That he the ſaid Earl did make up, and upon Oath paſs his Accounts for the Moneys Impreſs'd to him for the Service, in this Article mentioned: Which Account was legally declared and paſſed, upon very ſtrict and great Examination, by the Lords Commiſſioners of the Treaſury; and he the

Navy, without giving a due and legal Account thereof, whereby he hath occaſion'd great Clamours and Diſcontents among the Seamen, and others belonging to his Majeſty's Navy, who are thereby reduc'd to great Miſeries and Neceſſities for want of their juſt Dues, to the great Diſcouragement and Diſcredit of the Publick Service.

the ſaid Earl hath his *Quietus eſt* in due Courſe of Law upon the ſame. But the Commiſſioners of the Victualing-Office making ſome unuſual Objections to part of the ſaid Account, concerning ſome Proviſions furniſhed to the Fleet by the ſaid Earl in the King of *Spain*'s Dominions, altho' the ſame were truly and really had and ſpent by the Seamen in the Fleet, and paid for by him the ſaid Earl; and which Objections in like Caſes had not been made or ſtood upon, nor could be reaſonably expected; his Majeſty was pleaſed to direct and order a Privy-Seal to diſpenſe with the Form in that Particular; but the ſaid Earl did make no Advantage to himſelf thereby, nor was his Majeſty or the Government in the leaſt defrauded therein; it appearing, upon a very ſtrict Examination, that leſs Rates were allowed for the ſaid Proviſions than had been allowed before in like Caſes; or, as the ſaid Earl is inform'd, hath been ſince allowed. And to the latter Part of the ſaid Article ſaith, That for the Moneys by him received as Treaſurer or Receiver-General of the Navy, he hath already delivered in his Accounts, and is ready to perfect the ſame, according to the ordinary Method, ſome of them lying ready with the Auditors to be declared, and the reſt of them being made up and deliver'd in to be examin'd, in order to be paſſed; and ſaith, after juſt Allowances had, he does not believe he ſhall appear to be indebted upon the ſaid Accounts: And alſo denies, that any Perſons are Sufferers for want of their Dues, in reſpect of the ſaid Accounts; or that the Publick Service is, or hath been any ways diſcouraged or diſcredited thereby, as in the ſaid Article is alledg'd.

III. That he the ſaid Earl, while he was in ſeveral Ports belonging to the King of *Spain*'s Dominions, did receive from the ſaid King of *Spain* and others, conſiderable Sums of Money, and great Quantities of Wine, Oil, and other Proviſions for the Fleet, to a very great Value; for all which he ought to have accounted. But the ſaid Earl did convert the ſame to his own Uſe, and did either embezzle thoſe Proviſions, or reckon them as bought with the Money allowed for furniſhing the Navy with freſh Proviſions; and that for the advancing his own private Intereſt, and ſecuring himſelf from rendring any Account to the Publick, he the ſaid Earl, during the ſaid War, procured, enjoyed, and poſſeſſed divers great Offices, which were inconſiſtent, and in their Nature improper to be executed by one and the ſame Perſon; and which ought to be, and by the Laws and Uſages of this Realm, were and are appointed and deſigned as Checks one upon the other; in Breach of the ſaid Laws, to the Diſhonour of his Majeſty, and Prejudice of his People.

III. To the Third Article the ſaid Earl anſwereth and denies, That he receiv'd any Moneys whatſoever from the King of *Spain*, or any other Perſon, as in the Article is alledged; and ſaith, that what Wine, Oil, or other Proviſions were received from the King of *Spain*, or any others, for the Fleet, were duly delivered and diſtributed amongſt the Officers and Seamen thereof; and denies he did convert the ſame to his own Uſe, or did imbezzle any of the Proviſions, or reckoned them, or any Part of them, as bought with the Moneys allowed for furniſhing the Navy with freſh Proviſions: And does alſo deny, That he the ſaid Earl did enjoy any Offices inconſiſtent in their Nature (as he is adviſed) one with the other, or which were or ought to be Checks one upon the other; or that he any ways ſecured, or pretended to ſecure himſelf from rendring any Account to the Publick, by any Office or Offices whatſoever; or that he is guilty of the Breach of any Laws to his Knowledge, by executing any Office or Offices, or ever executed the ſame to the Diſhonour of his Majeſty, or to the Prejudice of his People, as in the ſaid Article is alledged.

IV. That he the ſaid Earl, within the Time aforeſaid, hath clandeſtinely, contrary to the Law of Nations, ſold and diſpoſed of ſeveral Veſſels, with their Ladings and Cargo, taken under Pretence of Prize by his Majeſty's Ships of War, without Condemnation or judicial Proceedings, and converted the Money to his own Uſe; well knowing if they had been condemned, as by Law they ought to have been, one Tenth, (after Cuſtoms allowed) and one Third part of the Value thereof, the Cuſtoms and the ſaid Tenth being deducted, are by Act of Parliament appropriated to eſpecial Uſes. By which Proceedings the Publick has been greatly endamag'd and defrauded, and the Debts of the Nation increaſed.

IV. To the Fourth Article the ſaid Earl anſwereth and ſaith, he believes, That the Prizes taken in the late War, were appropriated as by the Act of Parliament in that behalf is provided; but denies that he did at any time ſell or diſpoſe of any Veſſel or Veſſels, or their Ladings or Cargo, taken as or under the Pretence of Prize, by any of his Majeſty's Ships of War, without Condemnation or judicial Proceedings, or converted the Moneys ariſing by Sale of any Veſſel or Veſſels, or their Lading or Cargo, taken as or under Pretence of Prize, by any of his Majeſty's Ships of War, to his own Uſe; but on the contrary, did from time to time, in his Station, give Orders, that the Prizes taken ſhould be carefully preſerved without Imbezzlement, and duly proceeded againſt, and the Produce anſwered as the Law directs: And therefore humbly inſiſteth, that the Publick hath been no ways endamag'd, or the Debts of the Nation increas'd by any Neglect or Default of the ſaid Earl.

V. And whereas Complaints were made to the Commiſſioners for executing the Office of Lord High Admiral of *England*, (where the ſaid Earl at that Time preſided) by the Company Trading to the *Eaſt-Indies*, of divers Piracies committed in the South-Eaſt Seas, to the Deſtruction of their Trade, deſiring they might have Letters of Marque granted to them, whereby to be empower'd (tho' at their own Charge) to ſuppreſs ſuch Pirates. But the ſaid

V. To the Fifth Article, the ſaid Earl ſaith, That the *Eaſt-India* Company about the beginning of *March*, One thouſand ſix hundred ninety and ſix, did apply to the Admiralty Board, of which the ſaid Earl was one, to impower their Ships and Officers to ſeize and take all Pirates, infeſting the Seas within the Limits of their Charter; and likewiſe to erect a Court of Admiralty in thoſe Parts, to try and condemn ſuch Pirates as they ſhould

Earl preferring his own Intereſt, diſcouraged and rejected their Requeſt and Propoſal; and in ſome ſhort Time after, jointly with others, did procure a Commiſſion for one *William Kidd*; as likewiſe a Grant under the Great Seal of *England*, to and for the Uſe of him the ſaid Earl and others, of the Ships and Goods of certain Perſons therein nam'd, and alſo of all Goods found on Board the ſaid Ships. And the ſaid Company having Intimation of a Commiſſion granted to the ſaid *Kidd*, being apprehenſive of the ill Conſequences of the ſame, did apply themſelves to the ſaid Board of Admiralty, deſiring to know what Powers and Inſtructions were given: But ſuch their reaſonable Requeſt was denied; and *Kidd*, who was known to be a Perſon of ill Fame and Reputation, ordered to purſue the intended Voyage; in which he did commit divers Piracies and Depredations on the High Seas, being thereto encouraged through the Hopes of being protected by the high Station and Intereſt of the ſaid Earl, in Violation of the Law of Nations, and the Interruption and Diſcouragement of the Trade of *England*.

VI. That the ſaid Earl, within the Time aforeſaid, when an horrid Conſpiracy was diſcovered againſt his Majeſty's ſacred Perſon, and the Kingdom was under an Apprehenſion of an immediate Invaſion from *France*; and divers Ships of War (particularly the Ship *Dutcheſs*) were Arm'd out, Equipp'd and Mann'd in Defence of the Realm, to oppoſe the intended Invaſion, did his utmoſt Endeavour to prejudice and weaken the Navy Royal of *England*; for that he the ſaid Earl, by Colour of his Office, (being then Firſt Commiſſioner for executing the Office of Lord High Admiral of *England*) without the Privity of the other Commiſſioners, contrary to his Oath and Duty, and preferring his Hopes of Gain to himſelf, to the Safety of the Publick, did order Captain *Steward*, Commander of the Ship *Dutcheſs*, to deliver over and put on Board the ſaid *Kidd*, mention'd in the foregoing Article, out of the ſaid Ship the *Dutcheſs*, a great Number of able Seamen, levied and provided at the Expence of the Publick, and then diſcharging their Duty in Defence of their Country, and againſt their own Conſent, to the Prejudice of the Publick Security, and to the endangering of the ſaid Ship the *Dutcheſs*, if it had been attack'd by the Enemy.

VII. That the ſaid Earl, during the ſaid War, and at a Time of the greateſt Exigency and Neceſſity, when Ships, Men, and Money were wanting to guard the Seas, and protect our Trade, did by Miſrepreſentations, and contrary to his bounden Duty, and the Truſt repoſed in him, procure a Grant or Order for his Majeſty's Ship the *Dolphin*, then fitted out, mann'd and equipp'd for the Service of the Publick, to be employ'd in a private Voyage and Undertaking, for the Advantage of himſelf and others concerned with him. In Purſuance whereof, and for their private Gain, the Ship was, at the Publick Expence, continued in Foreign Parts for ſeveral Months, to the Deſtruction and Loſs of his Majeſty's Subjects on Board the ſame, to the weakning the Navy, by rendring the ſaid Ship unſervice-

take. Upon which Application, the Board of Admiralty did take Advice, and were inform'd they had no Authority to grant the ſame; and denies he the ſaid Earl ever diſcouraged or rejected the Companies Requeſt therein, unleſs it were by telling them, that the Admiralty by Law could not grant the ſame. And denies that the Company was ever denied Letters of Marque in common Form, to the Knowledge of the ſaid Earl. And ſaith, as to the Matter of *Kidd* in this Article mention'd, he was gone upon his Expedition about Twelve Months before that Time. And as to his Commiſſion, and the Grant in the ſaid Article mention'd, the ſaid Earl humbly conceives, and is adviſed, the ſame were not contrary to Law; but ſure he is, the ſaid Expedition was intended for the Publick Good and Service; and ſaith, the ſaid *Kidd* had no Powers or Inſtructions from the Board of Admiralty, other than the ordinary and common Letters of Marque, the Contents whereof are common, and well known to Merchants. And the ſaid Earl doth deny that he knew the ſaid *Kidd* to be of ill Fame and Reputation; but in caſe the ſaid *Kidd* hath committed any Piracies, he the ſaid *Kidd* is anſwerable, and ought to anſwer for the ſame, he never being ordered by the ſaid Earl ſo to do; nor had he ever any the leaſt Encouragement given him by the ſaid Earl, or any other, to his Knowledge, to expect or hope for any Protection therein, or in any illegal Action done or committed by him.

VI. To the Sixth Article the ſaid Earl ſaith, he believes it to be true, that there was a horrid and barbarous Plot and Conſpiracy againſt his Majeſty's ſacred Perſon; and that there was an Apprehenſion of an immediate Invaſion; but the ſaid Earl hopes, no Neglect of Duty in his Station can be imputed to him to prevent the ſame. And as for the Ship *Dutcheſs*, which was, amongſt many others, arm'd and equipp'd in Defence of the Realm, the ſaid Earl ſaith, that the Men in the ſaid Article mention'd to be taken from on Board her, were but ſome of the very Perſons that were juſt before taken from on Board Captain *Kidd*, and returned by their own Conſent on Board Captain *Kidd* again, not being above twenty in Number; and ſaith, all Fears of the Invaſion were then over and at an end: And denies that the ſame was intended to weaken, or did weaken the ſaid Ship, or the Navy Royal; or that the ſaid Seamen ſo returning on Board the ſaid *Kidd*, were levied or provided at the Expence of the Publick, or did return or were put on Board the ſaid *Kidd*, againſt their own Conſent, or to the Prejudice of the Publick Security; or that the Ship *Dutcheſs* was thereby endanger'd, if ſhe had been attack'd, as in the ſaid Article is alledg'd.

VII. To the Seventh Article the ſaid Earl anſwereth and denies, That he did by Miſrepreſentation, or otherwiſe, obtain or procure a Grant or Order for his Majeſty's Ship *Dolphin*, to be employ'd in a private Voyage or Undertaking; but what was done therein, was done after the Peace concluded, and by his Majeſty's Command, at the Inſtance and Requeſt of other Perſons, and not of the ſaid Earl, but contrary to his Opinion. Nor was the ſaid Earl any way concerned in Intereſt therein, till after his Majeſty's Orders were given about the ſaid Ship; and then, and not before, ſome of the Perſons concerned in the ſaid Adventure, deſired the ſaid Earl to take ſome Shares therein, (the Number whereof he doth not remember) which the ſaid Earl accordingly did; but humbly inſiſts that his Actings therein were not

contrary

ſervicеable, and the increaſing the Debts of the Publick.

VIII. That the ſaid Earl, during the Time of his Commanding the Navy Royal of *England*, did, through Neglect, and in Contempt of Orders, unneceſſarily hazard and expoſe to imminent Danger the ſaid Navy; and that during the Time aforeſaid, having had many Opportunities of taking or deſtroying the Ships belonging to the *French* King, the ſaid Earl, contrary to Advice, in Diſobedience to Orders, and in Neglect of his Duty, did ſuffer and permit the ſaid Ships to return ſafe into their own Harbours.

IX. That the ſaid Earl, well knowing our Sovereign Lord the King to have been engaged in ſeveral Alliances with the Emperor of *Germany*, and other Princes and States, particularly in a Treaty concluded with his Imperial Majeſty, in the Year of our Lord One Thouſand Six Hundred Eighty Nine, the End and Intention of all which Leagues and Treaties were to prevent the Growth of the Power of the *French* King, and to ſecure *England*, and the ancient Allies of *England*, againſt the ſame, did notwithſtanding in concert with other Falſe and Evil Councellors, adviſe our ſaid Sovereign Lord the King, in the Year One Thouſand Six Hundred Ninety Eight, to enter into one Treaty for dividing the Monarchy and Dominions of *Spain*; in purſuance whereof, in the Year One Thouſand Six Hundred Ninety Nine, one other Treaty was entred into to the like Purpoſe; by which Treaties great Injuſtice was done to the Emperor, an ancient Ally of our ſaid Sovereign Lord the King, and a large Part of the ſaid *Spaniſh* Dominions were to be added to the Crown of *France*; both which Treaties were prejudicial to the Intereſt of the Proteſtant Religion all over *Europe*, Ruinous to the Trade of *England*, and Diſhonourable to our Sovereign Lord the King, and the People of theſe Kingdoms.

All which Crimes and Miſdemeanors, were committed and done by him the ſaid Earl, againſt our Sovereign Lord the King, his Crown and Dignity, the Peace and Intereſt of this Kingdom, and in Breach of the ſeveral Truſts repoſed in him the ſaid Earl.

X. And he the ſaid Earl of *Orford* was one of the Lords Juſtices, during his Majeſties Abſence beyond the Seas, the Firſt Commiſſioner for Executing the Office of Lord High Admiral of *England*, Commander in Chief of his Majeſties Navy-Royal, one of his Majeſties Privy-Council, and Treaſurer of his Majeſty's Navy, or in ſome or one of the ſaid Stations, during the time that all and every the Crimes before ſet forth were done and committed.

That the ſaid Commons by Proteſtation, ſaving to themſelves the Liberty of Exhibiting, at any time hereafter, any other Accuſation or Impeachment againſt the ſaid Earl, and alſo of Replying to his Anſwers or to any of them, and of offering Proofs to all the ſaid Premiſſes or any of them, or any other Impeachment or Accuſation that ſhall be Exhibited by them, as the Caſe ſhall according to the Courſe of Parliament Require; do Pray and Demand, That the ſaid Earl may be put to Anſwer for all and every of the Premiſſes, and that ſuch Proceedings, Examinations, Tryals and Judgments, may be upon every of them had and uſed, as is agreeable to Law and Juſtice.

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contrary to his Duty, or the Truſt in him repoſed, or the Debts of the Nation thereby increas'd.

VIII. To the Eighth the ſaid Earl anſwereth and denies, That at any Time while he commanded the Navy Royal, he did through Neglect or Contempt of Orders, unneceſſarily hazard or expoſe to Danger the ſaid Navy; and alſo denies, that upon any Opportunity of taking or deſtroying the Ships of the *French* King, he did, contrary to Advice, or in Diſobedience to Orders, neglect to do the ſame: And alſo denies that he did ſuffer or permit any of the *French* King's Ships to return into their own Harbours, when he had Opportunity to prevent the ſame; and humbly inſiſts he is not guilty of any Neglect or Omiſſion of his Duty herein, nor did expect in this Particular, to be charged therewith, conſidering his faithful Services rendred againſt the *French* Fleet.

IX. To the Ninth Article the ſaid Earl ſaith, He believes it to be true, that his Majeſty hath been engaged in ſeveral Alliances with ſeveral Princes, and particularly with the Emperor, in the Year One Thouſand Six Hundred Eighty Nine; and that the End of thoſe Alliances was to prevent the Growth and Power of *France*, and to ſecure this Kingdom and its Allies: But the ſaid Earl does deny, that he did adviſe his Majeſty to enter into the Treaty of Partition, charged upon the ſaid Earl in this Article, and ſo far as the ſaid Earl was any ways acquainted therewith, he objected to, and gave his Opinion againſt the ſame.

X. To the Tenth Article the ſaid Earl anſwereth and ſaith, That true it is, his Majeſty was pleaſed to Employ and Intruſt him in the ſeveral Offices and Stations in this Article mentioned, for ſeveral Years, as his Majeſties Occaſions required, although not for all the Time in the ſaid Article mentioned; and hopes and humbly inſiſteth upon it, that he the ſaid Earl did from time to time, according to his Duty, and the Truſts in him repoſed, diſcharge the ſaid Offices and Employments with Loyalty, Faithfulneſs and Zeal to his Majeſty, and his People.

And having thus laid his Caſe before your Lordſhips, he the ſaid Earl does humbly inſiſt and Anſwer to the ſaid Impeachment, and all and every the Articles aforeſaid, exhibited againſt him, that he is not guilty of all or any of them, or of all or any the Matters or Things by the ſaid Articles charged, in Manner and Form as the ſame are therein, and thereby alledged againſt him; and that the Matters by him before ſet forth to be done and tranſacted, or any of them, were not done or committed by him the ſaid Earl, againſt our Sovereign Lord the King, his Crown and Dignity, or the Peace or Intereſt of this Kingdom, or in Breach of the Truſt repoſed in him the ſaid Earl, and humbly ſubmits himſelf herein to your Lordſhip's Judgment.

ORFORD.

After

After Reading in the Houſe the Articles of Impeachment brought up againſt *Edward* Earl of *Orford*, for High Crimes and Miſdemeanors, his Lordſhip humbly deſired to have a Copy of the ſaid Articles, and that he would put in his Anſwer to them in as ſhort a Time as the Houſe ſhould think fit; it is thereupon Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That *Edward* Earl of *Orford* may have a Copy of the ſaid Articles.

A Meſſage was ſent to the Houſe of Commons by Sir *Richard Holford*, and Mr. *Pitt*, to acquaint them, that upon Search of the Journals of this Houſe, they do not find any Precedent of Security given to abide the Judgment of this Houſe by any Peer, upon an Impeachment of High Crimes and Miſdemeanors.

Die Mercurij 14° *Maij*, 1701.

This Day *Edward* Earl of *Orford* delivered his Anſwer to the Articles of Impeachment of the Houſe of Commons againſt him, which was read by the Clerk.

The Committee appointed to conſider of the manner in delivering Articles of Impeachments by the Commons being Revived, the Houſe was adjourned during Pleaſure; and the Lords went to the Committee. After ſome Time the Houſe was reſumed, and the Earl of *Stamford* reported, that they had inſpected the Journals, and find the firſt Step, after Anſwers to Impeachments are delivered, is, to ſend a Copy thereof to the Houſe of Commons. Whereupon it is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, that the Anſwer of *Edward* Earl of *Orford*, delivered this Day to the Articles of Impeachment depending againſt him, be Copied, in order to be ſent to the Houſe of Commons to Morrow Morning, by two Maſters of *Chancery*.

The Earl of *Orford* having this Day delivered in his Anſwer to the Articles of Impeachment againſt him, deſired that Mr. *Dodd*, and Mr. *Pooley* might be aſſigned Councel for him upon his Tryal: It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, that Mr. *Dodd* and Mr. *Pooley* ſhall, and they are hereby aſſigned Councel for the Earl of *Orford*, as deſired.

Die Jovis 15° *Maij*, 1701.

A Meſſage was ſent to the Houſe of Commons, by Sir *Richard Holford* and Mr. *Pitt*, to carry down a Copy of the Earl of *Orford*'s Anſwer to the Articles of Impeachment againſt him.

A Meſſage was ſent to the Houſe of Commons by Sir *Richard Holford* and Mr. *Pitt*, to acquaint them, That they having on the Firſt Day of *April* laſt, ſent up to their Lordſhips an Impeachment againſt *William* Earl of *Portland*, for High Crimes and Miſdemeanors: And having alſo on the Fifteenth Day of the ſame Month ſeverally Impeached *John* Lord *Sommers*, and *Charles* Lord *Halifax*, of High Crimes and Miſdemeanors; their Lordſhips think themſelves obliged to put them in Mind, that as yet no particular Articles have been exhibited againſt the ſaid Lords; which after Impeachments have been ſo long depending, is due in Juſtice to the Perſons concerned, and agreeable to the Methods of Parliament in ſuch Caſes.

The Meſſengers ſent to the Houſe of Commons return Anſwer, *viz.* That the Articles againſt *William* Earl of *Portland*, *John* Lord *Sommers*, and *Charles* Lord *Halifax*, are preparing, and in a ſhort time their Houſe will ſend them up to the Houſe of Lords.

Die Lunæ 19° *Maij*, 1701.

A Meſſage was brought from the Houſe of Commons by Mr. *Harcourt*, and others, with the Articles of Impeachment againſt *John* Lord *Sommers*; and to acquaint this Houſe, that the Matter of the Charge was contained in the Articles; and alſo that he was commanded to Pray and Demand, that the Lord *Sommers* do give ſufficient Security to abide the Judgment of the Houſe of Lords.

The Articles were read by the Clerk, as follows, *viz.*

ARTICLES Exhibited by the Knights, Citizens, and Burgeſſes, in Parliament Aſſembled, in the Name of themſelves, and of all the Commons of England, *againſt* John *Lord* Sommers, *Baron of* Eveſham, *in Maintenance of their Impeachment againſt him for High Crimes and Miſdemeanors.*

I. THAT a Treaty and Alliance between *Leopold* the Emperor of *Germany*, and the *States-General* of the *United Provinces*, was made and concluded in the Year of our Lord One Thouſand Six Hundred Eighty Nine, upon their conſideration of the greatneſs of the Common Danger, which then threatned all *Chriſtendom* from the exceſſive Power of *France*, and the unconſtant Faith of the *French* in the Obſervance of Treaties; whereby it was agreed, that there ſhould be, and remain for ever, a Conſtant, Perpetual, and Inviolable Friendſhip, and good Correſpondence between his Imperial Majeſty and the *States-General*, that each of them ſhould be obliged to promote the others Intereſt, and as much as in them lay, prevent all Damages and Inconveniencies to each other.

That during the continuance of the War, there ſhould be not only a Defenſive but alſo an Offenſive Alliance between the ſaid Parties, by Virtue whereof they ſhould both of them Act in an Hoſtile manner, with all their Forces by Sea and Land, againſt the *French*

The ANSWER of John *Lord* Sommers, *Baron of* Eveſham, *to the Articles Exhibited by the Knights, Citizens and Burgeſſes in Parliament Aſſembled, in the Name of themſelves, and of all the Commons of* England, *in Maintenance of their Impeachment againſt him for High Crimes and Miſdemeanors, ſuppoſed to be by him committed. Delivered in* 24° May, 1701.

THE ſaid Lord *Sommers*, ſaving to himſelf all Advantages of Exception to the ſaid Articles, and of not being prejudiced by any Words or want of Form in this his Anſwer, and alſo ſaving to himſelf all Rights and Privileges belonging to him as one of the Peers of this Realm; for Anſwer to the ſaid Articles humbly ſaith;

I. To the Firſt Article, That he believes the now Emperor of *Germany*, and the *States-General* of the *United-Provinces*, being in the Year One Thouſand Six Hundred Eighty and Nine, engaged in a War with *France*, a Treaty and Alliance was concluded between them, and a Separate Article then made, to the Effect in this Article mentioned; and that his Sacred Majeſty did afterwards Enter into, Ratify and Approve the ſame; to which Treaty, Separate Article, and Ratification, (for Certainty thereof) he referreth himſelf; and further ſaith, That in the Year One Thouſand Six Hundred Ninety and Eight, his Majeſty before he left *England*, was pleaſed

French King, and ſuch of his Allies as ſhould refuſe to ſeparate themſelves from him. That after the War ſhould be ended, and a Peace concluded, there ſhould remain, between his Imperial Majeſty, his Heirs and Succeſſors, and the *States-General*, a perpetual Defenſive Alliance againſt the Crown of *France*, and its Adherents.

That if the Crown of *France* ſhould again Attack either of the ſaid Confederate Parties, at what time ſoever the ſame ſhould be done, they ſhould faithfully aſſiſt each other.

That his Imperial Majeſty, and the *States-General* ſhould at all times, by all means, with all their Forces, Protect and Defend all the Rights of each other againſt the Crown of *France*, and its Adherents.

And other Proviſions were thereby made for their mutual Security, as well during the Continuance of the War, as after the Concluſion of a Peace.

That certain ſeparate Articles were alſo at or about that time made, whereby the *States General* maturely conſidering that *France* had openly declared in ſeveral Courts, that (notwithſtanding the moſt ſolemn Renunciation) they continued their Pretenſions by Force of Arms to aſſert for the *Dauphin* the Succeſſion of the *Spaniſh* Monarchy, in caſe the King of *Spain* ſhould die without Iſſue; and alſo conſidering what a Blow their State would receive, and what a Prejudice might happen thereby to the publick Affairs, and Quiet, did promiſe, That in caſe his ſaid Catholick Majeſty ſhould die without lawful Iſſue, they would with all their Forces aſſiſt his ſaid Imperial Majeſty, or his Heirs, in taking the Succeſſion of the *Spaniſh* Monarchy, lawfully belonging to that Houſe, together with its Kingdoms, Provinces, Dominions and Rights, and in their obtaining and ſecuring the quiet Poſſeſſion thereof, againſt the *French*, and their Adherents, who ſhould directly or indirectly oppoſe that Succeſſion, and with Force repel the Force that ſhould be brought againſt them.

That at the Inſtance of the *States General*, in Purſuance of the ſaid Treaty and ſeparate Articles, our moſt Gracious Lord and Sovereign his moſt Excellent Majeſty King *William* IIId. was invited to enter into an Alliance of the aforeſaid Treaty, and into the Agreement of the ſaid ſeparate Articles; and thereupon for reſtoring and preſerving the publick Peace and Quiet, did afterwards in the ſaid Year of our Lord One thouſand ſix hundred and eighty nine, enter into, and under the Great Seal of *England* accept, approve and ratify, and in the moſt ſolemn Manner, engage and promiſe religiouſly and inviolably to obſerve the ſame, without violating the ſaid Treaty or ſeparate Articles in any Article, or ſuffering the ſame to the utmoſt of his Power to be violated.

That in the Year of our Lord 1698. a Treaty was projected and contrived in *France*, to be ſet on Foot between his Majeſty, the *French* King, and the *States General*, for a Partition of the *Spaniſh* Monarchy, whereby many large Territories thereunto belonging were to be allotted and delivered up to *France*.

That the Tenor and Deſign of the ſaid laſt mentioned Treaty, whilſt the ſame was in Negotiation, was communicated to the ſaid *John* Lord *Sommers*, then one of the Lords Juſtices of *England*, Lord Chancellor of *England*, and one of his Majeſty's moſt Honourable Privy Council.

That the ſaid Lord *Sommers*, well knowing the moſt apparent evil Conſequences, as well as the Injuſtice of the ſaid Partition, did not, according to the Truſt

pleaſed to tell him, that ſome Intimation had been given to the Earl of *Portland*, when in *France*, that the *French* King inclined to come to an Agreement with his Majeſty, concerning the Succeſſion to the Crown of *Spain*. And afterwards in *Auguſt*, One Thouſand Six Hundred Ninety and Eight, (his Majeſty being then in *Holland*, and the ſaid Lord *Sommers* at *Tunbridge* Wells, by his Majeſty's Permiſſion, for Recovery of his Health) Mr. Secretary *Vernon* communicated to him a Letter he had then received, written by the Earl of *Portland*, by his Majeſty's Order, wherein it was mentioned, that Count *Tallard* (who was then Ambaſſador from the *French* King to his Majeſty) had declared an Accommodation might be found out in relation to the Succeſſion of *Spain*, in Caſe of that King's Death; and that his Majeſty had ſounded *France* upon what Terms an Agreement might be made, and the Conditions were near of this Nature, (*viz.*) That the Electoral Prince of *Bavaria* ſhould have the Kingdom of *Spain*, the *Indies*, the *Low Countries*, and all that depends upon the *Spaniſh* Dominions (except the Kingdoms of *Naples* and *Sicily*, *Sardinia*, the Province of *Guypuſcoa* on this ſide of the *Pyrenean*s, *Fontarabia* and *St. Sebaſtian*, *Final*, and the Places in *Tuſcany*, of which *Spain* then ſtood poſſeſſed;) in Conſideration of which, *France* was abſolutely to renounce the Right it pretended to the Succeſſion of *Spain*, and *Milan* was to be given to the Arch-Duke, Second Son to the Emperor: And that his Majeſty commanded the ſaid Mr. Secretary to ſpeak to him the ſaid Lord *Sommers* touching that Matter; and that his Lordſhip ſhould diſcourſe it with thoſe he thought he might truſt with that Secret, which to keep with the utmoſt Care was by the ſaid Letters mentioned to be of the higheſt Importance; and at the ſame Time, the ſaid Lord *Sommers* received a Letter from his Majeſty, ſigned by himſelf, intimating that Count *Tallard* had made ſome Propoſitions touching an Agreement with his Majeſty concerning the Succeſſion of the Kingdom of *Spain*, the which the ſaid Earl of *Portland* would write to Mr. Secretary *Vernon*, to the End his Majeſty might have ſome Opinions upon that Affair, which required the greateſt Secreſy, and in which no Time was to be loſt, if that Negotiation were to be carried on; and for that End his Majeſty thereby commanded the ſaid Lord *Sommers* to ſend full Powers to him under the Great Seal of *England*, with Blanks for the Names of Commiſſioners to treat with Count *Tallard*; which his Majeſty by his ſaid Letter was pleaſed to ſay, he believed might be done ſecretly: That none but the ſaid Lord *Sommers* and Mr. Secretary *Vernon*, and thoſe to whom the ſaid Lord *Sommers* and Mr. Secretary ſhould communicate it, might have knowledge thereof; and that the Clerks who were to write the full Powers might not know what they were, or to the like Effect; and the ſaid Lord *Sommers* did immediately return the Earl of *Portland*'s ſaid Letter to Mr. Secretary *Vernon*, and deſired him to communicate the Contents thereof to the Earl of *Orford* and the now Lord *Halifax* (Two of the then Lords Juſtices, who as he was aſſured were then in Town) and alſo to ſuch others as they and Mr. Secretary *Vernon* ſhould think fit; who in regard of the King's Command to have that Affair kept a Secret, thought fit to impart it to the Duke of *Shrewsbury* only (as the ſaid Mr. Secretary afterwards acquainted the ſaid Lord *Sommers*;) and ſome Time afterwards the ſaid Lord *Halifax* came down to the ſaid Wells, and Mr. Secretary *Vernon* coming thither alſo about the ſame Time, they and the ſaid Lord *Sommers* had Diſcourſe together concerning the ſaid Propoſal; and the

and Duty of his ſaid ſeveral Offices, diſſuade or endeavour to obſtruct its taking Effect; but on the contrary, having neither Regard to his Majeſty's Honour engaged by the ſaid Treaty with the Emperor and *States General*, as aforeſaid; to the Trade and known Intereſt of this Kingdom, or the Peace of *Europe*; did adviſe his Majeſty to enter into the ſaid Treaty, and did ſo far encourage and promote the ſame, that the ſaid Treaty was concluded and ratified under the Great Seal of *England*, then in the Cuſtody of the ſaid Lord *Sommers*; and thereby the Kingdoms of *Naples* and *Sicily*, the Places depending on the Monarchy of *Spain*, ſituate on the Coaſt of *Tuſcany*, or the adjacent Iſlands, comprehended under the Name of *Santo Stephano*, *Porto Hercole*, *Orbitello*, *Telamone*, *Porto Longone*, *Piombino*, the Town and Marquiſate of *Final*, the Province of *Guypuſcoa*, particularly the Towns of *Fontarabia*, and *St. Sebaſtian*, ſituate in that Province, and eſpecially the Port of the Paſſage which is therein compriſed, with ſeveral other Parts and Things, of or belonging to the ſaid Kingdom of *Spain*, were allotted to the *Dauphin* for his Share; and the Crown of *Spain*, and the other Kingdoms, Iſlands, States, Countries and Places depending thereon, (except ſuch Part, as aforeſaid which was thereby allotted to the *Dauphin* for his Share, and the Dutchy of *Milan* herein after mentioned) was given and aſſigned to the Electoral Prince, eldeſt Son to the Elector of *Bavaria*, for his Share, to enjoy the ſame to him, his Heirs and Succeſſors for ever, never to be moleſted therein on any Pretence of Right or Claim on the Part of the *French* King, or the *Dauphin*, or his Iſſue, Heirs or Succeſſors, nor of the Part of the Emperor, the King of the *Romans*, the Arch-Duke *Charles* his Second Son, and other Children, or his Heirs or Succeſſors; and the Dutchy of *Milan* was thereby agreed to be given to the ſaid Arch-Duke for his Share, and in Extinction of all Pretenſions and Rights which the ſaid Emperor, the King of the *Romans*, the ſaid Arch-Duke *Charles*, all his other Children, Succeſſors, and Heirs, might have to the ſaid Succeſſion of *Spain*. By which Treaty it was alſo further agreed, That if any Prince whatſoever ſhould oppoſe the taking Poſſeſſion of the Shares thereby agreed on, as aforeſaid, his Majeſty, the *French* King, and the *States General*, ſhould aſſiſt one another againſt ſuch Oppoſition, and hinder the ſame with all their Power.

That by a ſecret Article of the ſaid Treaty, in like Manner ratified under the Great Seal of *England*, 'twas provided, That if the King of *Spain* ſhould die without Iſſue, and the Electoral Prince, of *Bavaria* ſhould afterwards die without Iſſue, his Electoral Highneſs of *Bavaria* his Father ſhould ſucceed him in all the Kingdoms, Iſlands, States, Countries, and Places aſſigned to the Electoral Prince, as aforeſaid, and enjoy the ſame to him and his Children, Succeſſors, and Heirs, then born, or to be born; ſo as neither the Emperor, his Children, nor any other Perſon, ſhould or might, under any Pretext, form the leaſt Pretenſion to that Succeſſion; his Majeſty, the *French* King, and *States General*, thereby engaging themſelves to employ all their Power by Land and by Sea, for maintaining the Order eſtabliſhed by the ſaid ſecret Article, relating to the Succeſſion of the Monarchy of *Spain*.

That the ſaid Treaty was ratified under the Great Seal of *England*, (then in the Cuſtody of the ſaid Lord *Sommers*) as an Agreement between his Majeſty, the *French* King, and *States General*, notwithſtanding the ſaid Lord *Sommers* well knew that the ſame had been concluded between his Majeſty's Commiſſioners and ſaid Lord *Sommers* by Letter dated the Twenty eighth of *Auguſt*, One thouſand ſix hundred ninety and eight, did (as his own Thoughts, and as what he apprehended to be the Reſult of their Conſideration) humbly repreſent to his Majeſty, Firſt, That the entertaining of ſuch a Propoſal, as was mentioned by Count *Tallard*, ſeemed to be attended with very many ill Conſequences, if the *French* did not act a ſincere Part; but that they were ſoon at Eaſe, as to any Apprehenſion of that Sort, being fully aſſured his Majeſty would not act but with the utmoſt Niceneſs in an Affair, wherein his Glory, and the Safety of *Europe* was ſo highly concerned. That the ſecond Thing they conſidered, was the very ill Proſpect of what was like to happen upon the Death of the King of *Spain*, in caſe nothing was done previouſly towards the providing againſt that Accident, which ſeems probably to be very near; the King of *France* then having ſo great a Force in ſuch a Readineſs, that he was in a Condition to take Poſſeſſion of *Spain* before any other Prince could be ready to make a Stand; That his Majeſty was the beſt Judge whether that was the Caſe, who was ſo perfectly informed of the Circumſtances of all Parts abroad. But ſo far as related to *England*, it would be the want of Duty not to give his Majeſty this clear Account, That there was a Deadneſs and want of Spirit in the Nation univerſally, ſo as not at all to be diſpoſed to the Thoughts of entring into a new War; and that they ſeemed to be tired out with Taxes to a Degree beyond what was diſcerned, until it appeared upon the Occaſion of the then late Elections: That that was the Truth of the Fact; upon which his Majeſty would determine what Reſolutions were proper to be taken. The remaining Conſideration was, what would be the Condition of *Europe*, if the Propoſal took Place; but of that they thought themſelves little capable of judging; but it ſeemed that if *Sicily* was in the *French* Hands, they would be entirely Maſters of the *Levant* Trade; That if they were poſſeſſed of *Final*, and thoſe other Sea-Ports on that ſide (whereby *Milan* would be entirely ſhut out from Relief by Sea, or any Commerce) that Dutchy would be of little Signification in the Hands of any Prince; and that if the King of *France* had Poſſeſſion of that Part of *Guypuſcoa* which is mentioned in the Propoſal, beſides the Ports he would have in the Ocean, it did ſeem he would have as eaſy a way of invading *Spain* on that ſide, as he then had on the ſide of *Catalonia*. But it was not to be hoped that *France* ſhould quit its Pretenſions to ſo great a Succeſſion, without conſiderable Advantages; and they were aſſured his Majeſty would reduce the Terms as low as could be done, and make them (as far as was poſſible in the then preſent Circumſtances of Things) ſuch as might be ſome Foundation for the future Quiet of *Chriſtendom*, which all his Majeſty's Subjects could not but be convinced was his true Aim. And if it could be brought to paſs, that *England* might be ſome way a Gainer by that Tranſaction whether it was by the Elector of *Bavaria* (who was the Gainer by his Majeſty's Interpoſition in that Treaty) his coming to an Agreement to let the *Engliſh* into ſome Trade to the *Spaniſh* Plantations, or in any other Manner, it would wonderfully endear his Majeſty to his *Engliſh* Subjects; That it did not appear, in Caſe the Negotiation ſhould proceed, what was to be done on his Majeſty's Part, in order to make it take place; whether any more was required than that the *Engliſh* and *Dutch* ſhould ſit ſtill, and *France* it ſelf was to ſee it executed; and if that were ſo, what Security ought to be expected, that if by their being Neuters, the *French* ſhould be ſucceſsful,

they

and the *French* Ambaſſador, or the Commiſſioner of the *French* King only; and that the Purport thereof had never been communicated to the *States General* at the Time of the Ratification thereof under the Great Seal of *England*, notwithſtanding the Negotiation thereof in *Holland*.

they would confine themſelves to the Terms of the Treaty, and not attempt to make further Advantages of their Succeſs. And the ſaid Lord *Sommers* ſaith, That after the Writing of his ſaid Letter, he had no Account whatſoever, nor heard any thing of the ſaid Treaty, or knew or heard whether the ſame was proceeded upon or not, until towards the latter End of *September* following; when he was acquainted by Mr. Secretary *Vernon*, that he had receiv'd an Account, that a Treaty relating to the Succeſſion of the Crown of *Spain* had been adjuſted, concluded and ſigned by the Commiſſioners named by his Majeſty for that Purpoſe, and the Ambaſſador and Plenipotentiary of the *French* King. And the ſaid Lord *Sommers* doth deny, that the ſaid Treaty of Partition, or any Propoſition for ſuch Treaty, or the Tranſaction thereof, was communicated to him the ſaid Lord *Sommers*, nor was he acquainted with the ſame, or the Deſign thereof, or any other Matter relating thereto, at any other Time, or in any other Manner, before he was told of the Concluding and Signing thereof, as aforeſaid, than as is herein before-mentioned to be done by his Majeſty, as aforeſaid, and by his and the ſaid Earl of *Portland*'s Letter, herein before-mentioned. And the ſaid Lord *Sommers* doth deny he did, at any Time whatſoever, adviſe his Majeſty to enter into the ſaid Treaty, or any way encourage or promote the ſame; but having made the Objections before-mentioned in his ſaid Letter to his Majeſty, againſt the Propoſitions ſo communicated to him, as aforeſaid, and clearly laid open ſuch Thoughts and Obſervations as occurred to him upon the ſaid Matter; he did thereby (as he conceived) fully and faithfully diſcharge his Truſt, and the Duty incumbent on him. And the ſaid Lord *Sommers* further ſaith, That afterwards Mr. Secretary *Vernon* did acquaint him, that he had received, by his Majeſty's Command, a Copy of the Treaty relating to the Succeſſion of the Crown of *Spain*, and of Two Secret Articles relating to the Matter of that Treaty; and that he had likewiſe his Majeſty's Command to prepare the Inſtruments for the Ratification of the ſame, and to leave Blanks therein for the Names of the Commiſſioners of the *States General*. And accordingly the ſaid Mr. Secretary did prepare the ſaid ſeveral Inſtruments, and did bring the ſame, ſo prepared, to the ſaid Lord *Sommers*, to paſs the ſame under the Great Seal; which was done accordingly, the ſaid Lord *Sommers* having a good and lawful Warrant ſo to do; and the ſaid Ratification was tranſmitted to his Majeſty, to have the ſame perfected in his Preſence: Which Treaty and Secret Articles were to ſuch or the like Effect, as in this Article is ſet forth; but for more Certainty, he refers himſelf to the ſaid Treaty and Articles. And the ſaid Lord *Sommers* not being privy in any other manner, than as aforeſaid, to the ſaid Treaty, or the Tranſaction thereof, doth not know when or in what manner the ſame was communicated to the *States-General*.

II. That for the more effectual carrying on the ſaid Treaty, one or more Commiſſion or Commiſſions was or were prepared, amended, enlarged or altered by the ſaid Lord *Sommers*, without any lawful Warrant for his ſo doing; whereunto the ſaid Lord *Sommers*, contrary to the Duty of his ſaid ſeveral Offices, and in Violation of the great Truſt repoſed in him, in or about the Month of *September*, 1698. without communicating the ſame to the reſt of the then Lords Juſtices of *England*, or adviſing in Council with his Majeſty's Privy-Council thereupon, did preſume to affix the Great Seal of *England*.

That no certain Perſons of known Honour, Fidelity and Experience were therein nominated Commiſſioners, at the Time of the affixing the Great Seal of *England* thereto, but a Blank or empty Space was left in the ſaid Commiſſion or Commiſſions at the Time of the Sealing thereof, wherein the Commiſſioners Names were to be afterwards inſerted beyond the Seas; notwithſtanding which, an Unlimited Power was thereby granted to the Commiſſioners, whoſe Names were therein afterwards to be inſerted, as aforeſaid, or to either of them, without any Written Inſtructions whatſoever to reſtrain, guide, or direct them in the Exerciſe thereof; in his Majeſty's Name, to confer and treat with the Commiſſioner or Deputy, or Commiſſioners or Deputies of the *French* King, and alſo with the Commiſſioners or Deputies of the *States General*, for preſerving the publick Peace, and touching the Succeſſion to the Crown of *Spain*; and his Majeſty did thereby engage himſelf to Approve, Ratify, and Confirm whatſoever ſhould be thereupon concluded by them, or either of them.

III. That the ſaid Lord *Sommers*, contrary to the Duty of his ſaid Office of Lord Chancellor, did affix the Great Seal of *England* to the ſaid Commiſſion or Commiſſions, not having firſt received any

II, and III. To the Second and Third Articles the ſaid Lord *Sommers* ſaith, That he having received his Majeſty's expreſs Commands, by his Letter mentioned in his Anſwer to the Firſt Article, to ſend to his Majeſty full Powers, under the Great Seal of *England*, for negotiating the ſaid Treaty, with Blanks for his Majeſty's Commiſſioners Names, which he humbly conceives, and is adviſed, was a ſufficient Warrant for him to paſs a Commiſſion under the Great Seal for that Purpoſe; and the ſame being prepared in uſual Form of Commiſſions of full Powers, with Blanks for Commiſſioners Names, according to his Majeſty's Directions, he did affix the Great Seal to the ſame; and the ſaid Commiſſion was ſent to his Majeſty then in *Holland*, to be perfected in his Preſence, by inſerting the Names of ſuch Perſons as his Majeſty ſhould think fit to commiſſionate therein (as he conceives might legally be done); which Commiſſioners were to receive their Inſtructions from his Majeſty, for the Execution of their ſaid Power, together with the ſaid Commiſſion, in uſual manner: But what Inſtructions, or whether any Inſtructions in Writing were given to the Commiſſioners, in relation to the Executing the ſaid Power (the ſame no ways concerning the ſaid Lord *Sommers*) he knows not. And the ſaid Lord *Sommers* ſaith, he did deſire his Majeſty, that a particular Warrant for the ſaid Commiſſion (which had been before ſent by Mr. Secretary *Vernon* to his Majeſty (as he informed the ſaid Lord *Sommers*) for his Signing) might be Signed and returned: Not that he doubted his Majeſty's ſaid Letter to be a ſufficient Warrant, but for that ſuch Warrant might be more proper to be produced, if Occaſion ſhould require, than his Majeſty's ſaid Letter; which, by Reaſon of other Matters therein contained, ought not to be produced without his Majeſty's Permiſſion, and which is now made uſe of by his Majeſty's gracious Leave. And the ſaid Lord *Sommers*

lawful Warrant for that purpoſe. In hopes of concealing which evil and moſt dangerous Practice, the ſaid Lord *Sommers*, after he had Sealed the ſaid Commiſſion or Commiſſions, uſed his Endeavours to procure a Warrant to be tranſmitted to him for affixing the Great Seal to the ſaid Commiſſion or Commiſſions, and that it might not be known but that he had it in due time.

IV. That the ſaid Lord *Sommers*, contrary to the Duty of his ſaid ſeveral Offices, affixed the Great Seal of *England* to the Ratification of the ſaid Treaty, made in the Year of our Lord 1698. not having firſt communicated the ſame to the reſt of the then Lords Juſtices of *England*, or adviſed in Council with his Majeſty's Privy-Council thereupon; and at the Time of his affixing the Great Seal thereto, one entire Blank Sheet, and many other Blanks were left in the ſaid Ratification, with an Intent to be afterwards filled up by other Perſons beyond the Seas, as ſhould be thought fit.

V. That in the Year of our Lord 1699, another Treaty was entred into, in purſuance of the ſaid Treaty made in the Year 1698, and concluded by and between his Majeſty, the *French* King, and the *States-General*, and alſo ratified under the Great Seal of *England*, then in the Cuſtody of the ſaid Lord *Sommers*; whereby the Kingdom of *Spain* (in caſe his Catholick Majeſty ſhould die without Iſſue) was agreed to be divided, and many large Territories thereof were allotted to the *Dauphin* for his Share: Which Treaties were evidently deſtructive of the Trade of this Realm, diſhonourable to his Majeſty, highly injurious to the Intereſt of the Proteſtant Religion, and manifeſtly tended to diſturb the General Peace of *Europe*, by altering the Balance of Power therein, and ſtrengthning *France* againſt the Good Friends and Ancient Allies of our Sovereign Lord the King.

VI. That whereas by the Laws and Uſages of this Realm, all Commiſſions under the Great Seal of *England*, for the making any Treaties or Alliances with any Foreign Princes, States or Potentates, and all Ratifications under the Great Seal of all ſuch Treaties or Alliances, ought to be Enrolled and entred of Record in the Court of *Chancery*, with or by the Prothonotary of the ſaid Court, for a perpetual Memorial thereof; and that the Merchants and other Subjects of *England*, having Commerce or Correſpondence in Foreign Parts, may not, through Ignorance of the ſame, incur the Pains and Penalties by the Law due to thoſe who ſhall any ways Infringe, Break, or Act contrary to ſuch Treaties; He the ſaid Lord *Sommers*, not minding the Duty of his Office, did not in any manner Enrol, or Enter of Record, or cauſe to be Enrolled or Entred of Record, any of the ſaid Commiſſions or Ratifications in the foregoing Articles mentioned, as by the Duty of his Place he ſhould and ought to have done; but ſo to do did totally neglect and omit, in Breach of his Duty, and in Violation of the Laws of this Realm.

VII. That the ſaid Lord *Sommers*, when the Cuſtody of the Great Seal of *England* was committed to him, did ſwear well and truly to ſerve our Sovereign Lord the King, and his People, Poor and Rich, after the Laws and Uſages of this Realm, and truly to counſel the King, and his Counſel to keep, and not to know, nor ſuffer the Hurt or Diſinheriting of the King, or that the Rights of the Crown ſhould be decreaſed, as far forth as he might Let it, and if he could not Let it, that he

further ſaith, That his Majeſty having by his own, and the Earl of *Portland*'s Letter before-mentioned, directed, That his Majeſty's ſaid Commands ſhould be kept ſecret; he did not communicate the making of the ſaid Commiſſion, otherwiſe than to the Perſons mentioned in his Anſwer to the ſaid Firſt Article.

IV. To the Fourth Article he ſaith, That Mr. Secretary *Vernon* having prepared, by his Majeſty's Command, the Inſtruments for Ratification of the ſaid Treaty, with Blanks therein, as is before ſet forth; he did affix the Great Seal to the ſaid Ratification with ſuch Blanks (which he conceives, and is adviſed, he might lawfully do); and having alſo his Majeſty's Command that the ſaid Treaty ſhould be kept ſecret, he did not communicate the ſame to the reſt of the then Lords Juſtices, or his Majeſty's Privy-Council; which beſides he conceived was unneceſſary to be done, in regard his Majeſty had then by his Commiſſioners, perfected the ſaid Treaty, ſo that the ſame could not be altered.

V. To the Fifth Article the ſaid Lord *Sommers* ſaith, He believes that in the Year One Thouſand Six Hundred Ninety and Nine, another Treaty was entred into and concluded between his Majeſty, the *States-General*, and the *French* King, to ſuch or ſuch like Effect, as in this Article is mentioned; to which Treaty, for more Certainty thereof, he referreth himſelf: And denieth that he had any Knowledge of ſuch Treaty, or any Tranſaction in order thereunto; ſave only that a Draught of the ſaid Treaty was read over in the Preſence of divers of the Lords of his Majeſty's Privy-Council (whereof the ſaid Lord *Sommers* was one) to which Draught the ſaid Lord *Sommers*, as well as others then preſent, did make ſeveral Objections; but they were informed by his Majeſty's Plenipotentiaries for tranſacting the ſaid Treaty, who were then alſo preſent, That the ſaid Treaty was ſo far perfected, that nothing could then be altered therein; and his Majeſty afterwards, by his Warrant, requiring the Ratifying of the ſaid Treaty under the Great Seal, he did affix the Great Seal to ſuch Ratification, being (as he conceives) obliged ſo to do.

VI. To the Sixth Article he ſaith, He conceives it was not incumbent upon him, as Lord Chancellor, to ſee the Commiſſions or Ratifications, in this Article mentioned, Enrolled; the ſame being prepared and brought to the Great Seal by the Secretaries of State ready Ingroſſed; and when Sealed, taken away by them, and the Original Treaties remaining in their Cuſtody: But the Care of Enrolling the ſame, if neceſſary, doth (as he conceives) belong to the Prothonotary of the Court of *Chancery*.

VII. To the Seventh Article he ſaith, That when the Great Seal was committed to his Cuſtody, he took the Oath of Office to the Effect in that Article ſet forth; and during the time he had the Cuſtody thereof, he did carefully, diligently and honeſtly endeavour to keep the ſaid Oath, and hopes and believes he hath duly obſerved the ſame; and doth acknowledge, that during the time he was Lord-Keeper and Lord-Chancellor, he did paſs ſeveral Grants to divers Perſons, of ſeveral Lands, Tene-

he would make it clearly and expreſly to be known unto the King, with his true Advice and Counſel; and that he ſhould do and purchaſe the King's Profit in all he reaſonably might, or to that Effect; and the ſaid Lord *Sommers* afterwards took the ſaid Oath as Lord Chancellor of *England*.

That the ſaid Lord *Sommers*, being Lord Keeper of the Great Seal, or Lord Chancellor of *England*, and one of his Majeſty's moſt Honourable Privy-Council, whilſt this Nation was engaged in a tedious and moſt expenſive War againſt the *French* King, for preſerving the Balance and Liberties of *Europe*, and almoſt exhauſted with Supplies and Taxes for carrying on the ſame, and under ſuch heavy Debts, as without the utmoſt Frugality, or laying inſupportable Taxes on the Commons of *England*, were impoſſible to be ſatisfied; contrary to his ſaid Oath, did paſs many great, unreaſonable, and exorbitant Grants under the Great Seal of *England*, of divers Manors, Lordſhips, Lands, Tenements, Hereditaments, Revenues, and Intereſts belonging to the Crown of *England*, amounting to a moſt prodigious and exceſſive Value; and did Adviſe, Promote, and Procure, divers great, unreaſonable, and exorbitant Grants to be made of ſeveral of the late Forfeited Eſtates in *Ireland*, in contempt of the Advice of his Majeſties moſt Dutiful and Loyal Subjects the Commons of *England* in Parliament aſſembled, and without any regard to his Majeſties moſt gracious Aſſurance thereupon to both his Houſes of Parliament; and engaged to procure, and accordingly did procure divers Acts, prepared for confirming the ſaid Grants in Parliament in *Ireland*, to be approved in Council in *England*, and afterwards remitted the ſame, under the Great Seal of *England*, to be paſſed into Laws in *Ireland*.

VIII. That the ſaid Lord *Sommers*, during the time of his being Lord-Keeper of the Great Seal, and Lord-Chancellor of *England*, did not only receive and enjoy the Fees, Profits, and Perquiſites, of, or belonging to the Great Seal, eſtabliſhed by Law, as a ſufficient and ample Recompence and Reward for the faithful Diſcharge of that high Station; but alſo as a further Encouragement, through his Majeſty's moſt abundant Grace and Bounty, received an Annual Penſion or Allowance from the Crown of Four Thouſand Pounds, and many other Profits and Advantages; notwithſtanding which, the ſaid Lord *Sommers*, not being contented therewith, contrary to his ſaid Oath, begged and procured, for his own Benefit, many great, unreaſonable and exorbitant Grants of ſeveral Manors, Lands, Tenements, Rents, Hereditaments, and Revenues belonging to the Crown of *England*.

That in, or about the Month of *April*, 1697, the ſaid Lord *Sommers*, being then Lord Chancellor of *England*, and one of his Majeſty's moſt Honourable Privy-Council, contrary to his ſaid Oath, did procure and paſs a Grant under the Great Seal of *England*, without any real Conſideration whatſoever, to *Joſeph Jekyll*, Eſq; and his Heirs for ever, of the Manor or Manors of *Rygate* and *Howleigh*, with all and ſingular their Rights, Members, and Appurtenances, ſituate, and being in the Pariſh of *Rygate*, or elſewhere, within the County of *Surry*; and of all Quit-Rents, Rents of Aſſize, Free-Rents, Conventionary-Rents, Copyhold and Cuſtomary-Rents, and all other Rents whatſoever, to the ſaid Manor or Manors belonging, or appertaining, with the Site of the ruined Caſtle, and of all other Demeſne Lands of the ſaid Manor or Manors, with the Rents reſerved on any Leaſes then in being, of any Tenements, and Hereditaments, belonging to his Majeſty, in Right of his Crown of *England*; but ſaith, that before any of them came to the Great Seal, the ſame were regularly paſſed through the proper Offices, and brought with ſufficient Warrants for the Great Seal; and believes more conſiderable Grants have paſſed in the like Number of Years, in moſt of his Predeceſſors Times; and Conceives and is Adviſed, That being required by his Majeſty, by Warrant, to paſs the ſame, he ought ſo to do; and denies that he did ever Adviſe, Promote or Procure any Grant to be made to any Perſon whatſoever, of any Forfeited Eſtate in *Ireland*, or did procure any Act or Bill prepared for confirming any ſuch Grant in the Parliament in *Ireland*, to be approved in the Privy-Council in *England*; and ſaith, That what Bills of this Nature were remitted under the Great Seal of *England*, to be paſſed into Laws in *Ireland*, the ſame were firſt Approved and Paſſed in the Privy-Council in *England*, according to the uſual Form in ſuch Caſes; and being ſo Approved, were, by Order of Council, ſent to the ſaid Lord *Sommers*, who was by the ſaid Order required to Affix the Great Seal thereto.

VIII. To the Eighth Article he ſaith, He did, during the time he had the Cuſtody of the Great Seal, receive the Profits and Perquiſites thereto belonging, which before his time were become very inconſiderable; and did alſo receive an Annual Penſion or Allowance from His Majeſty, of Four Thouſand Pounds, being the like Penſion that had been allowed to ſeveral of his Predeceſſors; but denies that he did ever beg, or uſe any means to procure any Grant whatſoever from His Majeſty, for his own Benefit: But ſaith, That what his Majeſty was pleaſed to give him proceeded from his Majeſties own Motion, and of his meer Bounty; and (as his Majeſty was pleaſed to declare upon that Occaſion) as an Evidence of his Gracious Acceptation of the ſaid Lord *Sommers*'s Zealous Endeavours for his Service; and the ſame was done without any previous Solicitation by him the ſaid Lord *Sommers*, or any other to his Knowledge or Belief. And that in the Year One Thouſand Six Hundred, Ninety-Seven, his Majeſty of his own Motion did grant, for the Benefit of the ſaid Lord *Sommers*, the Manor or Manors of *Rygate* and *Howley*, as in the ſaid Article is mentioned; but the ſame was, and is far ſhort of the Value thereby ſuggeſted: And the ſaid Lord *Sommers* further ſaith, He never pretended to purchaſe in his own Name, or in the Name or Names of any other Perſon or Perſons in Truſt for him, any of the Fee-farm Rents, or other Rents veſted in Truſtees for Sale. But his Majeſty taking Notice, that ſeveral of the ſaid Fee-farm Rents and other Rents, ſo veſted in Truſtees, were unſold, and the ſaid Truſtees being, by the Acts of Parliament veſting in them the ſaid Rents, declared to hold the ſame for the Benefit of his Majeſty, his Heirs and Succeſſors, his Majeſty did in the Year

any Parts thereof, and of all other Lands, Meadows, Feedings, Paſtures, Meſſuages, Houſes, Edifices, Buildings, Barns, Stables, Dove-Houſes, Tolls of Markets or Fairs, with the Market-houſe there; and alſo of all Warrens, Chaſes, Parks, Commons, Woods, Underwoods, Wood-lands, Waſte-grounds, Courts-Leet, Courts-Baron, and other Court-Services, Franchiſes, Heriots, Fines, Iſſues, Amerciaments, and all other Profits and Perquiſites of the ſaid Courts, Rights, Royalties, Juriſdictions, and of divers other Matters, Hereditaments, and Appurtenances to the ſaid Manor or Manors, or either of them, or to the Royalties thereof belonging, or in any wiſe appertaining, which Premiſſes were Parcel of the Demeſnes and Revenues of the Crown, and of the Value of Twelve Thouſand Pounds and upwards.

That under Pretence of purchaſing divers Fee-Farm Rents, and other Rents, veſted in Truſtees for Sale thereof, in purſuance of ſeveral Acts of Parliament, made in the Reign of his late Majeſty King *Charles* the Second, the ſaid Lord *Sommers*, in the Year of our Lord 1697, procured a Warrant from his Majeſty, under his Sign Manual, to the Commiſſioners of the Treaſury then in Being, to contract or give Warrant to the Truſtees for Sale of Fee-Farm Rents, to contract with *Humphry Hetherington*, Eſq; or ſuch as he ſhould nominate, for as many Fee-Farm, and other Rents, then remaining unſold (except ſuch Rents as were ſet apart for Payment of Penſions in the Penſion-Deed) as ſhould amount unto Eight Hundred Pounds *per Annum*, at the Rate of Sixteen Years Purchaſe; and that upon ſuch Contract, the ſaid Commiſſioners of the Treaſury ſhould give Warrant for conveying the ſaid Rents to the ſaid *Humphry Hetherington*, or ſuch as he ſhould appoint, and his Heirs.

That under the like Pretence, and at or about the ſame time, the ſaid Lord *Sommers* procured another Warrant from his Majeſty, under his Sign Manual, to the ſaid Commiſſioners of the Treaſury, to Contract, or give Warrant to the ſaid Truſtees, to Contract with *Richard Adney*, Eſq; or ſuch as he ſhould Nominate, for as many Fee-Farm, and other Rents, then remaining unſold (except as aforeſaid) as ſhould amount to Seven Hundred Pounds *per Annum*, at the Rate of Sixteen Years Purchaſe; and that upon the ſaid Contract the ſaid Commiſſioners ſhould give Warrant for conveying the ſaid Rents unto the ſaid *Richard Adney*, or ſuch as he ſhould Nominate, and his Heirs.

That under the like Pretence, and at or about the ſame Time, the ſaid Lord *Sommers* procured another Warrant from his Majeſty, under his Sign Manual to the ſaid Commiſſioners of the Treaſury, to contract, or give Warrant to the ſaid Truſtees to contract with *Samuel Newton*, Eſq; or ſuch as he ſhould nominate, for as many Fee-Farm, and other Rents, then remaining unſold, (except as aforeſaid) as ſhould amount to Six hundred Pounds *per Annum*, at the Rate of Sixteen Years Purchaſe; and that upon ſuch Contract, the ſaid Commiſſioners ſhould give Warrant for conveying the ſaid Rents unto the ſaid *Samuel Newton*, or ſuch as he ſhould nominate, and his Heirs.

That in purſuance of Warrants of the ſaid Commiſſioners of the Treaſury thereupon, certain Contracts were made, or pretended to be made, with the ſaid *Humphry Hetherington*, *Richard Adney*, and *Samuel Newton*, for the real Sale of divers Fee-Farm Rents, and other Rents, of the ſeveral and reſpective yearly Values aforeſaid; by vertue whereof the ſaid *Humphry Hetherington*, *Richard Adney*, and *Samuel Newton*, became obliged to pay into the Receipt of his Majeſty's *Exchequer* at *Weſtminſter*, for the Purchaſe of the ſeveral and reſpective Rents to them reſpectively to be conveyed as aforeſaid, the Sums herein after mention'd; (that is to ſay) the ſaid *Humphry Hetherington* Twelve thouſand eight hundred Pounds, the ſaid *Richard Adney* Eleven thouſand two hundred Pounds, and the ſaid *Samuel Newton* Nine thouſand ſix hundred Pounds.

That in purſuance of ſuch Contracts, or pretended Contracts, thro' the Power of the ſaid Lord *Sommers*, and by his Means and Procurement, divers Fee-Farm Rents, and other Rents, were by certain Indentures Tripartite of Bargain and Sale, bearing Date on or about the Sixth Day of *January*, 1697. in Conſideration of Three thouſand two hundred Pounds, therein mention'd to have been paid by the ſaid *Humphry Hetherington* unto his Majeſty, at the Receipt of his *Exchequer* at *Weſtminſter*, or by other Aſſurance in the Law, granted and conveyed by the ſaid Truſtees, by the Appointment of the ſaid *Humphry Hetherington*, to *Leonard Hancock* of *Cheſhunt*, in the County of *Hertford*, Eſq; and *John Warner*, of the Pariſh of St. *Clements Danes* in the County of *Middleſex*, Goldſmith, and their Heirs.

And by other Indentures of Bargain and Sale, of the ſame Date, or other Aſſurance in the Law, divers other Fee-Farm Rents, and other Rents therein mention'd, in Conſideration of Nine thouſand ſix hundred Pounds, therein mention'd to have been paid by the ſaid *Humphry Hetherington* to his Majeſty, at the Receipt of his *Exchequer* at *Weſtminſter*, (being the Reſidue of the ſaid Sum of Twelve thouſand eight

That in purſuance of ſuch Contracts, or pretended Contracts, thro' the Power of the ſaid Lord *Sommers*, and by his Means and Procurement, divers Fee-Farm Rents, and other Rents, were by certain Indentures Tripartite of Bargain and Sale, bearing Date on or about the Sixth Day of *January*, 1697. in Conſideration of Three thouſand two hundred Pounds, therein mention'd to have been paid by the ſaid *Humphry Hetherington* unto his Majeſty, at the Receipt of his *Exchequer* at *Weſtminſter*, or by other Aſſurance in the Law, granted and conveyed by the ſaid Truſtees, by the Appointment of the ſaid *Humphry Hetherington*, to *Leonard Hancock* of *Cheſhunt*, in the County of *Hertford*, Eſq; and *John Warner*, of the Pariſh of St. *Clements Danes* in the County of *Middleſex*, Goldſmith, and their Heirs.

And by other Indentures of Bargain and Sale, of the ſame Date, or other Aſſurance in the Law, divers other Fee-Farm Rents, and other Rents therein mention'd, in Conſideration of Nine thouſand ſix hundred Pounds, therein mention'd to have been paid by the ſaid *Humphry Hetherington* to his Majeſty, at the Receipt of his *Exchequer* at *Weſtminſter*, (being the Reſidue of the ſaid Sum of Twelve thouſand eight

That under Pretence of purchaſing divers Fee-Farm Rents, and other Rents, veſted in Truſtees for Sale thereof, in purſuance of ſeveral Acts of Parliament, made in the Reign of his late Majeſty King *Charles* the Second, the ſaid Lord *Sommers*, in the Year of our Lord 1697, procured a Warrant from his Majeſty, under his Sign Manual, to the Commiſſioners of the Treaſury then in Being, to contract or give Warrant to the Truſtees for Sale of Fee-Farm Rents, to contract with *Humphry Hetherington*, Eſq; or ſuch as he ſhould nominate, for as many Fee-Farm, and other Rents, then remaining unſold (except ſuch Rents as were ſet apart for Payment of Penſions in the Penſion-Deed) as ſhould amount unto Eight Hundred Pounds *per Annum*, at the Rate of Sixteen Years Purchaſe; and that upon ſuch Contract, the ſaid Commiſſioners of the Treaſury ſhould give Warrant for conveying the ſaid Rents to the ſaid *Humphry Hetherington*, or ſuch as he ſhould appoint, and his Heirs.

One Thouſand Six Hundred Ninety Seven, of his own Motion, without any Soliciation, Procurement or Means uſed by the ſaid Lord *Sommers*, acquaint the then Lords Commiſſioners of the Treaſury, or ſome or one of them, that it was his Majeſties Pleaſure that Two Thouſand one Hundred Pounds *per Annum* of thoſe Rents ſhould be granted to or for the Benefit of the ſaid Lord *Sommers*, and his Heirs; and that all proper Methods ſhould be uſed for veſting the ſame for his Benefit, as of his Majeſties Free Gift: And the ſaid Acts of Parliament having directed, that the ſaid Truſtees, on Sales, ſhould convey the ſaid Rents, purſuant to Contracts to be Signed by the Lord Treaſurer, or Lords Commiſſioners of the Treaſury for the time being, or any Two of them, for the Satisfaction of the ſaid Truſtees only, and according to the Method that had been uſed from the time of making the ſaid Acts, in paſſing Grants of any of the ſaid Rents, even ſuch as were meerly of the Bounty of his Majeſties Predeceſſors, and of his Majeſty; ſuch Warrants were made by his Majeſty to the Lords Commiſſioners of the Treaſury, to Contract or Give Warrants to the Truſtees to Contract for the ſaid Rents; and ſuch Contracts were, purſuant thereunto made, and ſuch Grants of the ſaid Rents were paſſed, as in the ſaid Article is mentioned; and the Money mentioned in ſuch Contracts was for the perfecting of his Majeſties ſaid intended Free Gift, diſcharged by Tallies ſtruck for that Purpoſe: And the ſaid Lord *Sommers* ſaith, the ſaid Contracts were not intended or deſigned to make the Grantees of the ſaid Rents appear to be Purchaſers; but the ſaid Lord *Sommers* always acknowledged he received the ſaid Grants of his Majeſties Bounty; and he humbly conceives it was lawful for him ſo to accept the ſame.

eight hundred Pounds) were by the ſaid Truſtees granted and conveyed to the ſaid *Humphry Hetherington*, and his Heirs; which Fee-Farm, and other Rents, ſo conveyed unto or by the Appointment of the ſaid *Humphry Hetheirngton*, amount to the full Yearly Value of Eight hundred Pounds.

And by other Indentures of Bargain and Sale of the ſame Date, or other Aſſurance in the Law, and in Conſideration of Two thouſand four hundred Pounds, therein mention'd to have been paid by the ſaid *Richard Adney* unto his Majeſty, at the Receipt of his *Exchequer* at *Weſtminſter*, other Fee-Farm Rents, and other Rents were by the Appointment of the ſaid *Richard Adney*, granted and conveyed by the ſaid Truſtees to the ſaid *Leonard Hancock*, and *John Warner*, and their Heirs.

And by other Indentures of Bargain and Sale of the ſame Date, or other Aſſurance in the Law, in Conſideration of Eight thouſand eight hundred Pounds, in the ſame Indentures mention'd to have been paid by the ſaid *Richard Adney* to his Majeſty, at the Receipt of his *Exchequer* at *Weſtminſter*, (being the Reſidue of the ſaid Sum of Eleven thouſand two hundred Pounds) divers other Fee-Farm Rents, and other Rents therein mention'd, were granted and conveyed by the ſaid Truſtees, to the ſaid *Richard Adney* and his Heirs; which Fee-Farm, and other Rents ſo conveyed to, or by the Appointment of the ſaid *Richard Adney*, amount to the full Yearly Value of Seven hundred Pounds *per Annum*.

And by other Indentures of Bargain and Sale, bearing Date on or about the 25th Day of *April*, 1698. or other Aſſurance in the Law, in Conſideration of Two thouſand four hundred Pounds, therein mention'd to have been paid by the ſaid *Samuel Newton* to his Majeſty at the Receipt of his *Exchequer* at *Weſtminſter*, other Fee-Farm Rents, and other Rents therein mention'd, were by the Appointment of the ſaid *Samuel Newton*, granted and conveyed by the ſaid Truſtees to the ſaid *Leonard Hancock*, and *John Warner*, and their Heirs.

And by other Indentures of Bargain and Sale of the ſame Date, or other Aſſurance in Law, in Conſideration of Seven thouſand two hundred Pounds, therein mention'd to have been paid by the ſaid *Samuel Newton* to his Majeſty at the Receipt of his *Exchequer* at *Weſtminſter*, (being the Reſidue of the ſaid Sum of Nine thouſand ſix hundred Pounds) divers other Fee-Farm Rents, and other Rents therein mention'd, were granted and conveyed by the ſaid Truſtees to the ſaid *Samuel Newton*, and his Heirs; which ſaid ſeveral Rents ſo conveyed unto, or by the Appointment of the ſaid *Samuel Newton*, amount to the Yearly Value of Six hundred Pounds.

That the ſaid ſeveral Manors and Rents aforeſaid, were granted to the ſaid *Joſeph Jekyl*, *Humphry Hetherington*, *Richard Adney*, and *Samuel Newton*, and their Heirs reſpectively, as aforeſaid, in Truſt for the ſaid Lord *Sommers*, and his Heirs.

IX. That the ſaid Lord *Somers*, in order to procure a Grant of the ſaid Fee-Farm Rents for his own Benefit, whilſt he was Lord Chancellor of *England*, and one of his Majeſty's moſt Honourable Privy-Council, whilſt his Majeſty was engaged in the ſaid War, and the Nation under ſuch heavy Debts, as aforeſaid, did enter into ſeveral Treaties, and had many Communications with divers Perſons entruſted with the Care and Management of the ſaid Fee-Farm Rents; and particularly with *Reginald Marriott* of the Pariſh of St. *Clement Danes*, in the County of *Middleſex*, Auditor of the Rates, or acting as Auditor, and with *John Digby* of the Pariſh of St. *Brides*, *London*, Clerk of the Truſtees for Sale of the ſaid Fee-Farm Rents, and other evil-diſpos'd Perſons; and for encouraging the ſaid *Marriott*, *Digby*, and others, to diſcover to him ſuch particular Fee-Farm, and other Rents, as then remained undiſpos'd of, to the Intent the ſaid Lord *Sommers* might beg the ſame, he the ſaid Lord *Sommers* contracted and agreed with the ſaid *Marriott*, to give the ſaid *Marriott* for himſelf and his Accomplices, as a Reward for the ſaid Diſcovery, one full Fourth Part of all ſuch Rents ſo diſcover'd, whereof the ſaid Lord *Sommers* ſhould procure a Grant from the Crown: And accordingly the ſaid ſeveral Grants from the ſaid Truſtees to the ſaid *Hancock* and *Warner*, being together of the Yearly Value of Five hundred Pounds *per Annum*, and upwards, were ſo made by the Direction of the ſaid Lord *Sommers*, in Truſt for the ſaid *Marriott*, *Digby*, or others.

X. That notwithſtanding the ſaid pretended Contracts and Payments, there was not any Sum of Money whatſoever really and *bona fide* paid, as the Conſideration of the Conveyances of the ſaid Rents from the ſaid Truſtees; but ſuch Contracts and Payments of the ſaid ſeveral Conſiderations (amounting in the whole to Thirty three thouſand and ſix hundred Pounds) were colourably and fraudulently contrived and made by Direction of

IX. and X. To the Ninth and Tenth Articles the ſaid Lord *Sommers* ſaith, That after his Majeſty had given ſuch Directions to the Lords of the Treaſury for granting Fee-Farm Rents, and other Rents, to the Yearly Value aforeſaid, for the Benefit of the ſaid Lord *Sommers*, and his Heirs; and after Warrants were ſigned by the Lords of the Treaſury to the ſaid Truſtees, for making Contracts for conveying Rents of the ſaid Yearly Value, for the Benefit of the ſaid Lord *Sommers*, it did appear, that the ſaid intended Contracts and Grants could not be perfected; for that neither the Lords of the Treaſury, nor the ſaid Truſtees, were ſufficiently informed what Fee-Farm Rents, or other Rents, remain'd undiſpos'd of; ſo that the whole Benefit of his Majeſty's intended Bounty would have been loſt, without Information could be gained of ſuch particular Rents. And the ſaid Lord *Sommers* being inform'd, that *Reginald Marriott* and *John Digby*, in this Article named, were the moſt likely, if not the only Perſons capable to give Information therein, Application was made to them for that Purpoſe; and the ſaid *Marriott* and *Digby* being ſo applied to, after the ſaid Warrants of his Majeſty and the ſaid Lords of the Treaſury were executed, as aforeſaid, did refuſe to give any Account of ſuch Rents, unleſs they might have, as a Reward for their ſo doing, Rents amounting to near a Fourth Part of ſuch Rents whereof they ſhould give ſuch Account, conveyed in Truſt for them in ſuch manner as in the ſaid Article is mention'd; which the ſaid Lord *Sommers* did (as he conceives he lawfully might, it being only to his own Loſs and Prejudice) comply with; not in order to any ſuch End as is ſuggeſted in the ſaid Article; but that he might perfect the Grant before deſigned and appointed to be made to him by his Majeſty, of his own Free Will, and not at the ſaid Lord *Sommers*'s Solicitation; the Diſcovery of any of the ſaid Rents not being made by the ſaid *Marriott* and *Digby*, or any other Perſon, till after the ſaid Warrants of his Majeſty and

of the ſaid Lord *Sommers*, contrary to his ſaid Oath, in Deceit of his Majeſty, and Eluſion of the ſaid Acts of Parliament.

and the Lords of the Treaſury, as aforeſaid. And accordingly the ſeveral Grants in this Aritcle mentioned, were made to *Hancock* and *Warner*, in Truſt for the ſaid *Marriott* and *Digby* (as was affirmed to the ſaid Lord *Sommers*); and the ſaid Lord *Sommers* ſaith, There was not any Sum of Money paid as the Conſideration of the Grants of the ſaid Rents; but the Contracts were made, and the Payment of the ſeveral Conſiderations thereof were diſcharg'd, in the Manner and for the Reaſons herein before ſet forth, and were not colourably or fraudulently contriv'd, in Deceit of his Majeſty, or Eluſion of the ſaid Acts of Parliament.

XI. That many Quit-Rents, and Copy-hold Rents, ſtanding in Charge as Parcel of, or belonging to ſeveral Manors, or reputed Manors, Rents reſerved upon Leaſes or Eſtates, the Reverſion whereof was in his ſaid Majeſty King *Charles* the Second, at the making the ſaid Acts, Rents conveyed before in Leaſe, or granted to other Perſons, Rents appropriated by, or in purſuance of Act or Acts of Parliament, for Payment of Penſions, Stipends, Salaries, Annuities, Alms and Allowances for the maintenance of Grammar-Schools or Scholars; or for, or towards the Reparation of Churches, Chapels, Highways, Cauſeys, Bridges, Schools, Almſhouſes, Caſtles, or other Uſes, and many Quit-Rents of Manors, and other Rents by Act of Parliament united and annexed to the Caſtle of *Windſor*, with intent to ſupport and maintain the Yearly Reparations and Charges of the ſaid Caſtle, and Diſcharge and Pay the Fees and Wages of the Officers, Servants, and Attendants in the ſame Caſtle, and the Foreſts, Chaſes and Parks to the ſame belonging, and for many Years applied, according to the intention of the ſaid Act; and alſo many Quit-Rents of or belonging to divers ancient Manors, heretofore and yet Parcel of the Demeſnes or Poſſeſſions of the Crown, as if the ſame had been entire Fee-Farm Rents iſſuing out of thoſe Manors; were by the aforeſaid ſeveral Indentures of Bargain and Sale, through the Direction and Power of the ſaid Lord *Sommers*, conveyed by the ſaid Truſtees for Sale of Fee-Farm Rents, to the ſaid *Humphry Hetherington*, *Richard Adney*, and *Samuel Newton*, and to the ſaid *Hancock* and *Warner*, and their Heirs, or unto ſome of them, contrary to the true intent and meaning of the ſaid Acts of Parliament, to the great Vexation and Oppreſſion of many of his Majeſty's good Subjects, and creating many new and unreaſonable Charges on other Revenues of the Crown.

XI. To the Eleventh Article the ſaid Lord *Sommers* ſaith, He believeth, that ſeveral of the Rents mentioned to be granted in Truſt for him, as aforeſaid, had been before granted to other Perſons by the ſaid Truſtees, and that others of them were not in the Power of the ſaid Truſtees to Grant, which was and is very much to his Prejudice; and believes the ſame were inſerted by miſtaken Informations given touching the ſame, and not out of any Deſign; and the like Miſtakes have frequently happened in other Grants of other of the ſaid Rents; and denies that to his Knowledge or Belief, any of the ſaid Rents ſo granted for his Benefit, were ever united or annexed to the Caſtle of *Windſor*, for any Purpoſe whatſoever, or that any Oppreſſion or Vexation hath happen'd to any of his Majeſty's Subjects, by reaſon of the granting of any of the ſaid Rents, and, as he believes, little or no new Charge to the Crown.

XII. That by the Direction of the ſaid Lord *Sommers*, the ſaid *Humphrey Hetherington*, *Richard Adney*, *Samuel Newton*, *Leonard Hancock*, and *John Warner*, ſurrendred ſeveral of the ſaid Rents to them granted as aforeſaid, amounting to the yearly Value of Three hundred forty ſeven Pounds eleven Shillings and five Pence Farthing, on Suggeſtion that the ſame were either conveyed before in Leaſe ſet apart for Payment of Penſions, old Supers bad or illeviable, or part thereof bad or illeviable, or wrong conveyed; and the ſaid Lord *Sommers*, in the Year of our Lord 1699, being then Lord Chancellor of *England*, and one of his Majeſty's moſt Honourable Privy Council, in Breach of his Duty, and contrary to the Laws and Statutes of this Realm, procured other Rents of the yearly value of Three hundred ninety one Pounds three Pence half-penny, to be allowed by way of Repriſe, and to be conveyed to the ſaid *Richard Adney*, and his Heirs, in Truſt for the ſaid Lord *Sommers* and his Heirs, as if the ſaid yearly Rents of Three hundred forty ſeven Pounds eleven Shillings and five Pence Farthing, ſo ſurrendred, had been really and *bona fide* purchaſed, in purſuance of the ſaid Acts for Sale of Fee-Farm Rents.

XII. To the Twelfth Article the ſaid Lord *Sommers* ſaith, That his Majeſty having deſigned of his Bounty to him the ſaid Lord *Sommers* and his Heirs, Fee-Farm and other Rents, to the annual Value in the ſaid Grants mentioned; and the ſaid Truſtees having covenanted, as was uſual for them to do, that they had not made any former or other Grant, or Conveyance of the ſaid Rents, or any of them; and Three hundred forty ſeven Pounds eleven Shillings and Three Pence Farthing *per Annum*, of the ſaid Rents ſo granted, as aforeſaid, having appeared to be granted before, or not to be grantable by the ſaid Truſtees, or not leviable on Surrender of ſuch Rents, the ſaid Truſtees by Warrant of the Lords Commiſſioners of his Majeſty's Treaſury (who were thereunto ſufficiently authorized) in Lieu and Satisfaction of the ſaid Rents and Arrears thereof, and in diſcharge of the Covenants of the ſaid Truſtees, did, the Twenty firſt Day of *October*, One thouſand ſix hundred ninety and nine, grant divers other Rents, amounting to the yearly value of Three hundred ninety one Pounds and three Pence half-penny, to *Richard Adney* and his Heirs, as in the ſaid Article is mentioned; which were not ſo granted as if the ſaid yearly Rents of Three hundred forty ſeven Pounds eleven Shillings and three Pence Farthing, had been *bona fide* purchaſed; but was in Lieu and Repriſe for the ſame as granted of his Majeſty's Bounty, for the Benefit of the ſaid Lord *Sommers*, and his Heirs

XIII. That

XIII. That in the Year of our Lord 1695. the ſaid Lord *Sommers*, being then Lord Keeper of the Great Seal of *England*, and alſo one of his Majeſty's moſt Honourable Privy Council, together with *Edward* Earl of *Orford*, then firſt Commiſſioner for executing the Office of Lord High Admiral of *England*, and Commander in chief of his Majeſty's Navy Royal, and one of his Majeſty's moſt Honourable Privy Council, *Richard* Earl of *Bellamont* in the Kingdom of *Ireland*, Governor of *New-York*, *New-England*, and others then in High Stations, and in great Power and Authority, procured a Commiſſion to be granted unto one *William Kidd*, a Perſon of evil Fame and Reputation, and ſince that Time convicted of Piracy, to apprehend and take into his Cuſtody divers Perſons therein named, and all ſuch Pirates as the ſaid *Kidd* ſhould meet with upon the Coaſts or Seas of *America*, or in any other Seas or Parts, with their Ships and Veſſels, and alſo ſuch Merchandizes, Goods, and Wares as ſhould be found on board or with them. And afterwards the ſaid Lord *Sommers*, in the Year of our Lord 1697, with the Aſſiſtance of the ſaid Earl of *Orford*, and other Perſons aforeſaid, procured a Grant from his Majeſty, and the ſaid Lord *Sommers* paſſed the ſame under the Great Seal of *England*; whereby all and whatſoever Ships, Veſſels, Goods, Merchandizes, Treaſure, and other Things whatſoever, which ſince the Thirtieth Day of *April*, One thouſand ſix hundred ninety ſix, had been taken or ſeized upon or with, or did belong to, or which ſhould be taken or ſeized upon or with, or did, or ſhould belong to *Thomas Too*, *John Ireland*, *Thomas Wake*, and *William Maze*, (in the ſaid Letters Patents mentioned to have been complained of, and informed againſt for committing many Robberies, Piracies, and Depredations upon the Seas in the Parts of *America*, and other Places, but never convicted or attainted for the ſame) or which ſince the ſaid Thirtieth Day of *April* One thouſand ſix hundred ninety ſix, had been taken or ſeized upon, or which did, or ſhould belong to any of the Adherents of the ſaid *Thomas Too*, *John Ireland*, *Thomas Wake*, and *William Maze*, or any other Pirates, Free-Booters, and Sea-Rovers, by the ſaid *William Kidd*, or other Commander of the *Adventure-Galley*, or which by, or by means of the ſaid Ship or Galley, ſhould be taken or forced on ſhore in any of his Majeſty's Plantations of *America*, were granted unto the ſaid *Richard* Earl of *Bellamont*, and unto *Edmund Harriſon* Merchant, *Samuel Newton* Gent. *William Rowland* Gent. *George Watſon* Gent. and *Thomas Reynolds* of St. *Martins*, their Executors, Adminiſtrators, and Aſſigns, to their own ſole Uſe and Benefit, and as their own proper Goods and Chattels, without any Account thereof, or therefore to be made; in which Grant the Name of the ſaid *Samuel Newton* was uſed in Truſt, and for the only Benefit and Advantage of the ſaid Lord *Sommers*; which ſaid Grant under the Great Seal of *England* manifeſtly tended to the Obſtruction and Diſcouragement of Trade and Navigation, the great Loſs and Prejudice of Merchants, and others being his Majeſty's Subjects, or Subjects of the Friends and Allies of his Majeſty, and the Diſhonour of the King and Kingdom; and the ſaid Lord *Sommers* was, by procuring and paſſing the ſaid Grant, Guilty of a notorious Breach of his Duty.

as aforeſaid; which he conceives might be, and was lawfully done.

XIII. To the Thirteenth Article the ſaid Lord *Sommers* doth admit, That in the Year One thouſand ſix hundred ninety five, he being then Lord Keeper of the Great Seal of *England*, his Majeſty being informed, as the Truth was, That *Thomas Too*, *John Ireland*, *Thomas Wake*, and *William Maze*, and ſeveral other of his Majeſty's Subjects in his Plantations of *America*, had aſſociated themſelves, and did frequently commit great Piracies, Robberies, and Depredations on the Seas in the Parts of *America*, and other Parts, to the Hindrance and Diſcouragement of Trade and Navigation, for preventing the ſaid Miſchiefs, did grant a Commiſſion, as in this Article is mentioned, unto *William Kidd*, in this Article named (who was then Commander of the Ship called, *The Adventure-Galley*, and was not then, to the Knowledge or Belief of the ſaid Lord *Sommers*, eſteemed a Perſon of ill Fame or Reputation) to apprehend, ſeize and take into his Cuſtody, the ſaid *Thomas Too*, *John Ireland*, *Thomas Wake*, and *William Maze*, and all ſuch other Pirates as he ſhould meet with in the Seas of *America*, or any other Seas, with their Ships and Veſſels, and ſuch Merchandizes, Moneys and Wares as ſhould be found on Board or with them, and to cauſe ſuch Pirates to be brought to a legal Tryal; the granting of which Commiſſion was then apprehended to be neceſſary for the Preſervation of Trade and Navigation: And the ſaid Lord *Sommers* doth alſo admit, That a Grant dated the Seven and twentieth Day of *May*, One thouſand ſix hundred ninety ſeven, did paſs under the Great Seal of *England*, as in this Article is mentioned, whereby reciting the ſaid Commiſſion ſo granted to the ſaid *William Kidd*, and that the ſaid *Adventure-Galley*, was with his Majeſty's Knowledge, and Royal Encouragement bought and fitted out to Sea for the Execution of the ſaid Commiſſion, at the Charge of the Earl of *Bellamont*, *Edmund Harriſon*, *Samuel Newton*, *William Rowley*, *George Watſon*, and *Thomas Reynolds*, in this Article named; his Majeſty, for encouraging and rewarding the ſaid Undertaking, did grant unto the ſaid Earl of *Bellamont*, *Edmund Harriſon*, *William Rowley*, *George Watſon*, *Thomas Reynolds* and *Samuel Newton* (who was named by, and in Truſt for the ſaid Lord *Sommers*) their Executors and Adminiſtrators, all and whatſoever Ships, Veſſels, Goods, Merchandizes, Treaſure, and other Things whatſoever, which ſince the Thirtieth Day of *April*, One thouſand ſix hundred ninety ſix, had been taken or ſeized upon or with, or did belong to, or ſhould happen to be taken or ſeized upon or with, or which did, or ſhould belong to the ſaid *Thomas Too*, *John Ireland*, *Thomas Wake* and *William Maze*, or their Adherents, or any other Pirates, by the ſaid *William Kidd*, or other Commanders of the ſaid *Adventure Galley*, or which by or by Means of the ſaid Ship or Galley, ſhould be taken, or forced on ſhoar on any of his Majeſty's Plantations in *America*, ſo far as the ſaid Premiſſes, or any of them, did, ſhould or might belong to his Majeſty, or could or might be granted or grantable by him, or was or were in his Power to diſpoſe of; which Grant was not intended to be without an Account: For the ſaid Lord *Sommers* ſaith, That by Indenture, bearing date the Two and twentieth Day of *May*, one thouſand ſix hundred ninety ſeven, made (after the Warrant for the ſaid Grant was ſigned, and before it was paſſed) between his Majeſty, of the One Part, and the ſaid Earl of *Bellamont*, *Edmund Harriſon*, *William Rowley*, *George Watſon*, *Thomas Reynolds*, and *Samuel Newton* of the other Part; They the ſaid Earl of *Bellamont*, *Edmund Harriſon*, *William Rowley*, *George Watſon*, *Thomas Reynolds*, and *Samuel*

Newton, did Covenant, Promiſe and Agree with his Majeſty, his Heirs and Succeſſors, well and truly to account for, and deliver upon Oath, to the Uſe of his Majeſty, his Heirs and Succeſſors, or the Commiſſioners of his or their Treaſury, or his or their High-Treaſurer, a clear Tenth Part (the whole in Ten equal Parts to be divided) of all and every ſuch Ships, Veſſels, Goods, Merchandizes, and other Things whatſoever, which in and by the ſaid Grant ſhould be given, or which ſhould from Time to Time be taken, or ſeized, or ſecured by them, or any of them, their, or any of their Executors or Adminiſtrators, Officers, Agents, Servants, or Aſſigns, by Virtue or Colour thereof: To which Grant and Indenture the ſaid Lord *Sommers*, for more Certainty, referreth himſelf; and further ſaith, He conceives, and is adviſed, that the ſaid Grant did not any way tend to the Obſtruction or Diſcouragement of Trade or Navigation, or to the Loſs or Prejudice of Merchants, or others his Majeſty's Subjects, or the Subjects of his Friends or Allies, nor to the Diſhonour of his Majeſty or the Kingdom, nor was the Paſſing of the ſame any Breach of the Duty of the ſaid Lord *Sommers*; but the ſaid Grant was formed as a Recommence to the ſaid Grantees, who, at their own Charge, had provided and fitted out the ſaid Ship, to enable the ſaid *William Kidd* to execute the Powers in the ſaid Commiſſion mention'd; whereby the Publick might have received great Benefit, had the ſaid *William Kidd* faithfully diſcharged the Truſt in him repoſed by his Majeſty, and the ſaid Grantees: Which he failing to do, the Owners of the ſaid Ship have loſt their Expences, and have not received any Benefit of his Majeſty's ſaid Grant.

XIV. That the ſaid *John* Lord *Sommers*, to the great Oppreſſion of the Subject, and contrary to *Magna Charta*, and divers good Statutes of this Realm, and in manifeſt Breach and Violation of his Oath, as Lord High-Chancellor of *England*, hath, in ſeveral Cauſes depending before him, by many extraordinary Methods, and unwarrantable Practices for ſeveral Years, delayed Proceedings in the ſaid Cauſes; and by Colour of his Office, hath made divers Arbitrary and Illegal Orders, in Subverſion of the Laws and Statutes of this Realm; and hath, of his own Authority, reverſed Judgments given in the Court of *Exchequer*, and without calling before him the Barons of the *Exchequer* to hear their Informations, and the Cauſes of their Judgments, as the Statute in thoſe Caſes expreſsly directs; aſſuming thereby to himſelf an Arbitrary and Illegal Power; and hath declared and affirmed in publick Places of Judicature, that particular Subjects might have Rights and Intereſts without any Remedy for Recovery of the ſame, unleſs by Petition to the Perſon of the King only, or to that Effect: Which Poſition was highly dangerous to the legal Conſtitution of this Kingdom, and abſolutely deſtructive to the Property of the Subject.

And the ſaid Knights, Citizens, and Burgeſſes, by Proteſtation, ſaving to themſelves the Liberty of exhibiting at any Time hereafter, any further Articles or other Accuſation or Impeachment againſt the ſaid Lord *Sommers*; as alſo of replying to his Anſwers which he ſhall make unto the ſaid Articles, or any of them; and of offering Proofs to all, and every the aforeſaid Articles, and to all and every other Articles, Impeachment or Accuſation which ſhall be exhibited by them, as the Cauſe ſhall, according to the Courſe of Parliament require; do pray, That the ſaid *John* Lord *Sommers* may be put to anſwer the ſaid Crimes and Miſdemeanors; and that ſuch Proceedings, Examinations, Tryals, and Judgments, may be thereupon had and given, as is agreeable to Law and Juſtice.

XIV. To the Fourteenth Article the ſaid Lord *Sommers* ſaith, He did not delay any Proceedings in any Cauſe or Cauſes depending before him, as Chancellor of *England*, longer or otherwiſe than as the Circumſtances and Juſtice of each Cauſe required; but did, to the very manifeſt impairing of his Health, conſtantly apply himſelf to the Diſpatch of the Cauſes depending before him; and denies that he did ever make, by Colour of his Office, any Arbitrary or Illegal Order, to the Subverſion of any Law or Statute of this Realm, or did ever aſſume to himſelf any Arbitrary or Illegal Power, or ever reverſe any Judgment given in the Court of *Exchequer*, otherwiſe than as is warranted and allowed by the Law, and in the Preſence of the Barons of the Court of *Exchequer*, who were always preſent in the Court of *Exchequer* Chamber, when their Judgments were examined, as the Statute in ſuch Caſes directs; nor did ever deliver in any Court of Judicature, or other Place whatſoever, any Poſition whatſoever, dangerous to the Legal Conſtitution of the Kingdom, or deſtructive to the Property of the Subject, as is charged by the ſaid Articles.

And as to all other Matters and Things in the ſaid Articles contained, and not herein before particularly anſwered unto, The ſaid Lord *Sommers* ſaith, He is not guilty of them, or any of them, in Manner and Form as the ſame are charged upon him in and by the ſaid Articles; and humbly ſubmitteth himſelf to your Lordſhips Judgment.

SOMMERS.

After reading this Day the Articles of Impeachment brought up from the Houſe of Commons againſt *John* Lord *Sommers*, and hearing his Lordſhip thereupon, who deſired a Copy of the ſaid Articles, and ſaid he would put in his Anſwer ſo ſoon as poſſibly he could; It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Lord *Sommers* may have a Copy of the ſaid Articles againſt him.

Die Martis 20° *Maij*, 1701.

The Earl of *Orford* deſiring that a Day may be appointed for his Tryal, the Houſe thereupon ordered, That the Committee appointed to conſider of the Manner in delivering Articles of Impeachments by the Commons, be revived, to inſpect the Books, and meet immediately.

Then the Houſe was adjourn'd during Pleaſure, and the Lords went to the Committee.

After ſome Time, the Houſe was reſumed, and the Earl of *Stamford* reported the Precedents following, *viz.*

' 21. *Decemb.* 1680. That Mr. *Seymour* was Im-
' peached, and Articles delivered.
' 23. *Decemb.* 1680. He delivered in his An-
' ſwer.

' 3. *Jan.*

' 3. *Jan.* That he petition'd for a Tryal; where-
' upon the ſame Day a Meſſage was ſent to the
' Commons, That the Houſe finding no Iſſue joined
' by Replication from the Commons, thought fit
' to give them Notice thereof.
' Then Council were aſſigned him.
' 8. *Jan. Saturday* the 15th was appointed for
' his Tryal.
' 27. *Apr.* 1695. The Duke of *Leeds* was Impeached.
' 29. *Apr.* The Articles were brought up.
' 30. *Apr.* The Duke of *Leeds* put in his Anſwer,
' and a Copy thereof was ſent to the Commons.
' 1. *May.* The Lords ſent to the Commons to
' know when they ſhould be ready to make good
' the ſame.
' 3. *May.* The Commons deſired a Conference
' on the Lords Meſſage; and at the Conference ac-
' quainted the Lords, That Mr. *Robart*, a material
' Witneſs was withdrawn. The Lords moved the
' King, that a Proclamation might be iſſued for his
' Apprehenſion. The ſame Day the Parliament
' was Prorogued.

A Meſſage was ſent to the Houſe of Commons by Sir *Robert Legard* and Mr. *Gery*, to acquaint them, " That the Houſe having been deſired by the " Earl of *Orford*, That a Day may be appointed " for his ſpeedy Tryal, their Lordſhips finding no " Iſſue joined by Replication of the Houſe of Com- " mons, think fit to give them Notice thereof.

A Meſſage was alſo ſent to the Houſe of Commons by Sir *Robert Legard* and Mr. *Gery*, to acquaint them, " That they having on the Firſt Day " of *April* laſt, ſent up to their Lordſhips an Im- " peachment againſt *William* Earl of *Portland*, for " High Crimes and Miſdemeanors; and having alſo, " on the Fifteenth Day of the ſame Month, Im- " peached *Charles* Lord *Halifax* for High Crimes " and Miſdemeanors; and there being as yet no " particular Articles exhibited againſt the ſaid " Lords, their Lordſhips think themſelves obliged " to put them in mind thereof; which, after Im- " peachments have ſo long depended, is a Hardſhip " to the Perſons concerned, and not agreeable to " the uſual Methods and Proceedings of Parliament " in ſuch Caſes.

A Meſſage was brought from the Houſe of Commons by Mr. *Bromley* and others (the 31ſt of *May*) to acquaint this Houſe, " That in Anſwer to the " Meſſage of the One and Twentieth Inſtant, the " Commons have prepared a Replication to the Earl " of *Orford*'s Anſwer to the Articles of Impeach- " ment of High Crimes and Miſdemeanors exhibi- " ted againſt him; and at preſent defer bringing it " up to your Lordſhips, becauſe in the Tryals of " the ſeveral Impeachments now depending, the " Commons think it moſt proper, from the Nature " of the Evidence that will be given at the ſaid " Tryals, to begin with the Tryal of the Impeach- " ment of *John* Lord *Sommers* of High Crimes " and Miſdemeanors. And as to your Lordſhips " other Meſſage, the Commons take it to be with- " out Precedent, and Unparliamentary; they, as " Proſecutors, having a Liberty to exhibit their Ar- " ticles of Impeachment in due time; of which " they who are to prepare them are the proper " Judges: And therefore, for your Lordſhips to " aſſert, That having not yet exhibited particular " Articles againſt *William* Earl of *Portland*, and " *Charles* Lord *Halifax*, is a Hardſhip to them, and " not agreeable to the uſual Methods and Proceed- " ing in Parliament in ſuch Caſes, does, as they " conceive, tend to the Breach of that good Cor- " reſpondence betwixt the Two Houſes, which " ought mutually to be preſerved.

Die Mercurij 21° *Maij*, 1701.

The Meſſengers ſent Yeſterday to the Houſe of Commons return Anſwer, That the Commons will ſend an Anſwer to the ſaid Meſſages relating to the ſaid Impeachments by Meſſengers of their own.

Die Sabbati 24° *Maij*, 1701.

The Lord *Sommers* delivered his Anſwer to the Articles of Impeachment of the Houſe of Commons againſt him, which was read by the Clerk. *See Page* 518.

It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That a Copy of the Anſwer of *John* Lord *Sommers* (delivered this Day to the Articles of Impeachment depending againſt him) be ſent to the Houſe of Commons; and accordingly a Meſſage was ſent to the Houſe of Commons, by Sir *Robert Legard* and Sir *John Hoskins*, to carry down a Copy of the Lord *Sommers*'s Anſwer to the Articles of Impeachment againſt him.

Die Veneris 30° *Maij*, 1701.

It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That *Monday* the Ninth Day of *June* next, ſhall be, and is hereby appointed for the Tryal of *Edward* Earl of *Orford* in *Weſtminſter-Hall*, upon the Articles brought up againſt him by the Houſe of Commons, whereby he ſtands charged with ſeveral High Crimes and Miſdemeanors.

A Meſſage was ſent to the Houſe of Commons by Sir *Robert Legard* and Sir *John Hoskins*, to let them know, " That this Houſe hath appointed " *Monday* the Ninth Day of *June* next, for the " Tryal of *Edward* Earl of *Orford* in *Weſtminſter-* " Hall, upon the Articles ſent up againſt him, and " that the Commons may reply if they think fit.

A Meſſage was ſent to the Houſe of Commons by Sir *Robert Legard* and Sir *John Hoskins*, to acquaint them, " That they having on the Firſt Day " of *April* laſt, ſent up to their Lordſhips an Im- " peachment againſt *William* Earl of *Portland*, for " High Crimes and Miſdemeanors; and having al-

A Meſſage was brought from the Houſe of Commons by Mr. *Harcourt*, and others (*the* 5th *of* June) to acquaint this Houſe, " That the Commons, on " Conſideration of your Lordſhips Meſſage to them " of the One and Thirtieth of *May*, concerning " the Earl of *Orford*, think it their Undoubted " Right, when ſeveral Perſons ſtand Impeached be- " fore your Lordſhips, to bring to Tryal ſuch of " them, in the firſt place, as the Commons appre- " hend, from the Nature of the Evidence, ought " firſt to be proceeded againſt; to the intent all " ſuch Offenders may, in due time, be brought to " Juſtice: And that no Day ought to be appointed

" ſo, on the Fifteenth Day of the ſame Month, " Impeached *Charles* Lord *Halifax* for High Crimes " and Miſdemeanors; and there being as yet no " particular Articles exhibited againſt the ſaid Lords, " their Lordſhips think themſelves obliged to put " them in mind thereof; which after Impeachments " have ſo long depended, is a Hardſhip to the Per- " ſons concerned, and not agreeable to the uſual " Methods and Proceedings of Parliament in ſuch " Caſes.

" by your Lordſhips for the Tryal of any Impeach- " ment by the Commons, without ſome previous " Signification to your Lordſhips from the Com- " mons, of their being ready to proceed thereon.

" The Commons could not receive this Meſſage " from your Lordſhips, without the greateſt Sur- " prize; your Lordſhips Proceedings in this Caſe " being neither warranted by Precedents, nor (as " the Commons conceive) conſiſtent with the Me- " thods of Juſtice, or with Reaſon: Wherefore the " Commons cannot agree to the Day appointed by " your Lordſhips for the Tryal of the Earl of *Orford*.

" As to your Lordſhips Meſſage, at the ſame time, relating to the Earl of *Portland*, and *Charles* Lord " *Halifax*, the Commons take the ſame to be without Precedent, and Unparliamentary; and conceive " your Lordſhips frequent Repetition thereof, in ſo ſhort a Time, after the Commons had tranſmitted to " your Lordſhips their Articles againſt Two of the Impeached Lords, and were daily preparing their Ar- " ticles againſt the others, manifeſtly tends to the Delay of Juſtice, in obſtructing the Tryals of the Im- " peached Lords, by introducing Diſputes, in Breach of that good Correſpondence between the Two " Houſes, which ought inviolably to be preſerved.

It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Lord Great Chamberlain do attend his Majeſty, humbly to acquaint his Majeſty, That this Houſe hath appointed *Monday* the Ninth Day of *June* next, for the Tryal of *Edward* Earl of *Orford*, in *Weſtminſter-Hall*, and humbly to move his Majeſty, that he will be pleaſed to give Order for a Place to be prepared in *Weſtminſter-Hall* againſt the ſaid Time, for this Houſe to proceed upon the ſaid Tryal.

Die Sabbati 31° *Maij*, 1701.

A Meſſage was brought from the Houſe of Commons by Mr. *Bromley*, and others. *See Page* 529.

The Meſſengers ſent Yeſterday to the Houſe of Commons return Anſwer, That the Commons will ſend an Anſwer by Meſſengers of their own.

Die Lunæ 2° *Junij*, 1701.

Ordered, That the Committee appointed to conſider of the Manner in delivering Articles of Impeachments by the Commons, be revived, to meet on *Monday* next, to draw an Anſwer to be ſent to the Houſe of Commons to their Meſſage received the 31ſt Inſtant.

The Houſe was adjourned during Pleaſure. After ſome Time, the Houſe was reſumed, and the Earl of *Stamford* reported from the Lords Committees, appointed to conſider of the Manner in delivering Articles of Impeachments by the Commons, the Precedents following, (*viz.*)

' 7. *Feb.* 25 *H.* 8. The Biſhop of *London* Impeached by the Commons, for impriſoning *Tho. Phillips* on Suſpicion of Hereſy.

' 9. *Feb.* The Articles were read.

' 20. *March*, 1620. The Commons, at a Conference, accuſed the Lord Chancellor *St. Alban*, and the Biſhop of *Landaffe*, of Bribery and Corruption.

' 16. *April*, 1624. The Commons, at a Conference, accuſe the Earl of *Middleſex*, Lord-Treaſurer, of Bribery.

' 19. *May*, 1624. The Commons accuſe the Biſhop of *Norwich* of ſeveral Matters by them then particularly mentioned at a Conference.

' 29. *Decemb.* 1640. The Commons accuſe Sir *George Radcliffe* of High-Treaſon.

' 31. *Decemb.* They deliver the Articles at a Conference.

' 22. *Decemb.* 1640. The Lord-Keeper *Finch* was Impeached.

' 29. *Jan.* 1640. Report of what he was accuſed of at a Conference.

' 18. *Decemb.* 1641 *Daniel Oneal* Impeached.

' 30. *Auguſt*, 1641. The Earl of *Bridgwater* Impeached, and Articles read, but not entred.

' 6. *Decemb.* 1660. *William Drake* Impeached, and Articles brought up.

' 24. *April*, 1668. Sir *William Pen* was Impeached, and the Articles delivered at a Conference the ſame Day.

' 29. *Decemb.* 1666. The Commons, at a Conference, Impeach the Lord Viſcount *Mordaunt*.

' 3. *Jan.* The Conference was reported, and the Articles read.

' 23. *Decemb.* 1678. *Poſt Meridiem*, The Earl of *Danby* was Impeached, and Articles brought up againſt him at the ſame Time.

' 5. *Decemb.* 1678. The Earl of *Powis*, Lord *A. Wardour*, Lord *Bellaſyſe*, Lord *Petre*, and Lord Viſcount *Stafford*, were Impeached.

' 30. *Dec.* The Parliament was prorogued to the 4th of *February*, and was diſſolved the 24th of *January*.

' 6. *March.* A New Parliament met.

' 7. *April*, 1679. Articles were brought up againſt them.

' 21. *Decemb.* 1680. Mr. *Edward Seymour* was Impeached, and Articles brought up at the ſame Time.

' 7. *Jan.* 1680. Sir *William Scroggs* was Impeached, and Articles brought up at the ſame Time.

' 7. *Jan.* 1680. The Earl of *Tyrone* was Impeached, but no Articles brought up.

' 10. *Jan.* The Parliament was prorogued to the 20th. Diſſolved the 18th.

' 26. *March*, 1681. Mr. *Fitzharris* was Impeached: No Articles brought up.

' 28. *March.* The Parliament was diſſolved.

' 26. *June*, 1689. *Blaire*, *Vaughan*, *Nole*, *Elliot*, and *Grey*, were Impeached, and Articles brought up.

' 26. *Octob.* The Earl of *Salisbury* and Earl of *Peterborow* were Impeached: Special Matter aſſigned the ſame Day.

' 27. *April*, 1695. The Duke of *Leeds* was Impeached.

' 29. *April.* Articles were brought up.

' 10. *May*, 1698. *Goudet* and others were Impeached.

' 17. *May.* Articles brought up.

' 28. *May*, 1698. *John Auriol* and *John Dumaiſtre* were Impeached.

' 8. *June.* Articles were brought up againſt them.

The Lord Great Chamberlain acquainted the Houſe, That he had attended his Majeſty with their Addreſs for a Place to be prepared in *Weſtminſter-Hall* for the Tryal of the Earl of *Orford*; and his Majeſty was pleaſed to ſay, *He would give Order for the Place to be prepared, as deſired.*

Ordered, That the Committee appointed on *Saturday* laſt, do meet preſently, to draw an Anſwer to be ſent to the Houſe of Commons, to their Meſſage received the One and Thirtieth of *May* laſt:

Then the Houſe was Adjourned during Pleaſure.

After ſome time, the Houſe was reſumed, and the Earl of *Stamford* reported the Anſwer drawn by the Committee, to be ſent to the Houſe of Commons, to their Meſſage received the One and Thirtieth of *May* laſt, which was Read as follows, *viz.*

" The Lords do think fit, upon Occaſion of the " Meſſage of the Commons of the 31ſt of *May*, " to acquaint that Houſe, That having been deſired " by the Lord *Sommers*, that a Day may be ap- " pointed for his ſpeedy Tryal, and their Lordſhips " finding no Iſſue joined by Replication of the " Houſe of Commons, judge it proper to give " them notice thereof, that the Commons may Re- " ply, if they think fit; and at the ſame Time their " Lordſhips let the Commons know, that they will " proceed to the Tryal of any of the Impeached " Lords, whom the Commons ſhall be firſt ready " to begin with, ſo as there may be no occaſion " taken from thence for any unreaſonable Delay in " the Proſecution of any of them: And further to " acquaint them, that having ſearched their own " Journals, they do not find, that after a general " Impeachment, there has ever been ſo long a Delay " of bringing up the particular Articles of Im- " peachment, ſitting the Parliament: And therefore " the Lords do think they had Reaſon to aſſert, " that it was a Hardſhip to the Two Lords con- " cerned, (eſpecially after this Houſe had put the " Houſe of Commons in mind of exhibiting ſuch " Articles) and not agreeable to the uſual Proceed- " ings in Parliament. And as the Lords do not " controvert what Right the Commons may have of impeaching in general Terms, if they pleaſe; ſo " the Lords, in whom the Judicature does entirely reſide, think themſelves obliged to aſſert, That the " Right of limiting a convenient Time for bringing the particular Charge before them, for the avoiding " of Delay in Juſtice, is lodged in them.

" The Lords hope the Commons, on their Part, will be as careful not to do any Thing that may tend " to the Interruption of the good Correſpondence between the Two Houſes, as the Lords ſhall ever be " on their Part: And the beſt way to preſerve that, is, for neither of the Two Houſes to exceed thoſe Li- " mits which the Law and Cuſtom of Parliament have already eſtabliſhed.

Mr. *Harcourt* at a Conference (the Sixth of *June*) delivered himſelf in the following manner:

" The Commons have deſired this Conference " upon your Lordſhip's Meſſage of the Fourth of " *June*, in order to preſerve a good Correſpondence " with your Lordſhips; which will always be the " Endeavour of the Commons, and is at this Time " particularly neceſſary, in order to bring the im- " peached Lords to a ſpeedy Tryal. And becauſe " the Meſſages which your Lordſhips have thought " fit to ſend to the Commons, and the Anſwers " thereunto, ſeem not to tend towards expediting " the Tryals, which the Commons ſo much deſire, " but may rather furniſh Matter of diſpute between " the two Houſes; the Commons therefore chuſe " to follow the Methods formerly uſed with good " Succeſs upon the like Occaſions: And for the " more ſpeedy and eaſy adjuſting and preventing " any Differences which have already happened, or " may ariſe, previous to, or upon theſe Tryals " the Commons do propoſe to your Lordſhips, That " a Committee of both Houſes be Nominated, to " conſider of the moſt proper Ways and Methods " of Proceeding on Impeachment, according to the " Uſage of Parliament.

The Houſe went into Conſideration of this Report, and after Debate, it was ordered, That the further Conſideration thereof, and Debate thereupon, be adjourned till to-Morrow Twelve a Clock.

Die Martis 3° *Junii*, 1701.

The Houſe Reſumed the Adjourned Debate Yeſterday, in Relation to the Report of the Anſwer drawn by the Committee to be ſent to the Houſe of Commons, to their Meſſage received the One and Thirtieth of *May* laſt.

The Report was read by Paragraphs, and agreed to, and ſent to the Houſe of Commons by Sir *Richard Holford* and Mr. *Pitt*.

Die Jovis, 5° *Junii*, 1701.

A Meſſage was brought from the Houſe of Commons by Mr. *Harcourt*, and others. *See Pag.* 529.

Upon receiving a Meſſage from the Houſe of Commons, in Anſwer to a Meſſage ſent to them by this Houſe the One and Thirtieth of *May* laſt, it is Ordered, That the Lords Committees appointed to conſider of the Manner of Proceedings on Impeachments, do meet to-Morrow at Nine of the Clock in the Forenoon, to conſider the ſaid Meſſage, inſpect the Journals, and report to the Houſe what they ſhall think proper in this Caſe.

Die Veneris, 6° *Junii*, 1701.

A Meſſage was brought from the Houſe of Commons by Mr. St. *John*, and others, to deſire a Conference with this Houſe, upon the Subject Matter of the Meſſage of this Houſe, of the Fourth Inſtant.

It being propoſed to return Anſwer, That this Houſe will ſend an Anſwer by Meſſengers of their own, and Debate thereupon:

The Houſe agreed to a preſent Conference.

Then the Commons being called in, were told, That the Lords agree to a Conference as deſired, and appoint it preſently in the *Painted Chamber*.

Lords were named Managers of the Conference.

The Commons being come to the Conference, the Houſe was adjourned during Pleaſure, and the Lords went to the Conference; which being ended, the Houſe was reſumed, and the Lord Steward reported, That the Lords had attended the Conference, and that Mr. *Harcourt* managed the Conference and ſaid, *As above*.

Ordered, That the Lords Committees appointed to conſider of the Manner of Proceedings on Impeachments, do meet to-Morrow upon the Report of this Conference, and Inſpect the Journals, and Report to the Houſe.

Die Sabbati, 7° *Junii*, 1701.

The Earl of *Stamford* reported from the Lords Committees appointed to conſider of the Manner of Proceedings on Impeachments, That they have Inſpected the Journals, and Ordered him to report the Precedents following, *viz.*

'16. *April*, 1624. Report is made of the Commons Complaint, and Charge at a Conference against the Earl of *Middlesex*, Lord Treasurer.

'24. *April*, 1624. Ordered, That the Lord Treasurer shall appear on *Thursday* next at Nine a Clock, to answer his Charge at the Bar, and that if he hath any Witnesses to be Examined, they may in the mean time be Sworn and Examined.

'27. *April*. The Lord Treasurer Petitioned, that his Witnesses might not be examined, till he hath answered; but the House did not think fit to alter the Day.

'28. *April*. The Lord Treasurer desires the Interrogatories to his Witnesses may be respited till he hath answered; and that he may have Copies of the Depositions taken on both Sides.

'His Lordship was answered, That his Desire is so unfit, as the Lords think him ill advised to make such a Request; and according to the former Order, expect his Appearance to-Morrow, and to hear such Answer as he shall make.

'29. *April*. The Lord Treasurer Petitions, that in regard of his being indisposed, he may have a further Day for presenting his Answer. The House, in respect of his Indisposition is pleased to respite his Appearance this Day, but enjoyn that *Saturday* next he brings in his Answer, according to former Orders; and the Lords do peremptorily Assign *Friday* the Seventh of *May* for his Appearance in Person, and for the Final Hearing and Determining of the Cause.

'7. *May*. The Lord Treasurer was accordingly brought to the Bar, and the Tryal proceeded.

'30. *Aug.* 1641. The Earl of *Bridgwater* was Impeached by the Commons.

'6. *Sept.* 1641. *Ordered*, To answer the Second *Tuesday* in *November*.

'27. *Octob.* 1641. *Ordered*, To be heard on the Ninth of *December*.

'2. *Novemb.* 1641. *Ordered*, That the Earl of *Bridgwater* may answer on the Ninth of *November*.

'31. *March*, 1642. At a Conference desired by the Commons, they delivered Articles of Impeachment against *George Benyon*. *Benyon* was Ordered to Answer in Four Days, and to have Liberty, with his Keeper, to go any where, and had Council assigned.

'4. *April*, 1642. *Benyon* put in his Answer; and then it was Ordered, That this Cause against *George Benyon* upon the Impeachment of the House of Commons, shall be proceeded in on *Wednesday* next at this Bar.

'5. *April*, 1642. A Message was sent to the House of Commons, to acquaint them, that the Lords have appointed to proceed in the Cause against *Benyon* to-Morrow.

'The House of Commons return Answer, That they will send a Committee of their House to manage their Evidence against *Benyon*, to-Morrow.

'6. *April*, 1642. The Committee of the House of Commons being come to manage the Evidence against him, had the Articles read, *&c.* and the Tryal proceeded.

'5. *July*, 1642. Sir *Richard Gurney*, Lord-Mayor, was Impeached at a Conference, and brought to the Bar, and heard the Articles Read, had Council allowed him, and was ordered to answer on *Friday* next.

'8. *July*, He delivered in his Answer which was Read, and the Cause was Ordered to be heard on *Monday* next, and the Commons were acquainted therewith by Message.

'11 *July*, The Commons at a Conference deliver in a further Impeachment against him, and the Articles were read to him at the Bar, and he desired Council, which was allowed, and he had Time given him to answer till to-Morrow Seven-night.

'19. *July*, Sir *Richard Gurney* put in his Answer; and the same Day it was Ordered, That this House will proceed against him on *Friday* next, on both the Impeachments, and the House of Commons are then to produce all their Proofs to prove the said Impeachments: And a Message was sent to the Commons to acquaint them with the said Order.

'22. *July*, The Committee of Commons being come to manage the Evidence, the Tryal was proceeded in.

'17. *July*, 1645. The Earl of *Stamford* desiring Time to put in his Answer to the Impeachment of the House of Commons against him, it was Ordered, he put in his Answer on *Monday* next.

'21. *July*, The Earl of *Stamford* delivered in his Answer, which was Read, and Ordered to be Heard at the Bar on *Friday* next, and the Commons were acquainted therewith by Message.

'25. *July*, A Message from the Commons to desire another Day for hearing of the Cause of the Earl of *Stamford*'s Impeachment, because they cannot be ready this Day.

'*Eodem Die*, A Message to the Commons, that they have appointed *Monday* next; and in regard it concerns his Lordship so much, their Lordships have appointed so short a Day.

'26. *July*, 1645. A Message from the Commons, to desire a further Day, in regard their Witnesses cannot be ready.

'28. *July*, 1645. *Ordered*, That the Earl of *Stamford*'s Business shall be heard the first *Tuesday* after *Michaelmas*.

'30. *Septemb.* The Cause of the Earl of *Stamford*, upon the Impeachment of the House of Commons was heard, a Committee of the Commons managing the Evidence against him.

'21. *Decemb.* 1680. *Edward Seymour*, Esq; was Impeached of High Crimes, *&c.* the Articles were brought up against him, he had the Articles read to him, and ordered to answer.

'23. *Decemb.* He delivered in his Answer.

'3. *January*, Mr. *Seymour* Petitions for a speedy Tryal; whereupon a Message was sent to the House of Commons, that the House finding no Issue joined by Replication from the House of Commons, thought fit to give them Notice thereof.

'8. *January*, *Ordered*, That *Saturday* the Fifteenth is appointed for the Tryal of Mr. *Seymour*.

Upon Consideration of the Precedents abovementioned, it is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Lords Committees appointed to consider of the manner of Proceedings on Impeachments, do meet on *Monday* next at Ten a Clock in the Forenoon, to draw an Answer to be sent to the House of Commons, to their Message received the Fifth Instant.

Die Lunæ, 9° *Junij*, 1701.

The Earl of *Stamford* reported from the Lords Committees (appointed to consider of the Manner of

of Proceedings on Impeachments) what was drawn by them, to be ſent to the Commons in Anſwer to their Meſſage of the Fifth Inſtant, which was read, amended and agreed to, as follows, *viz.*

A Meſſage was ſent to the Houſe of Commons by Sir *Richard Holford* and Mr. *Gery*, to acquaint them, "That in Anſwer to the Meſſage of the Houſe "of Commons of the Fourth Inſtant, the Lords ſay "by their Meſſage ſent on the Third, wherein they "declare themſelves ready to proceed to the Tryal "of any of the Impeached Lords, whom the Com- "mons ſhould be firſt ready to begin with, They "have given a full Proof of their Willingneſs to "comply with the Commons in any Thing which "may appear reaſonable, in order to the ſpeedy de- "termining of the Impeachments now depending; "and therefore, (as the Lords conceive) the Com- "mons had no Occaſion to begin any Diſpute on "that Head; ſo their Lordſhips are careful to de- "cline entring into a Controverſy, which ſeems to "them to be of no uſe at preſent.

"The Lords think themſelves obliged to aſſert "their undoubted Right to appoint a Day for the "Tryal of any Impeachment depending before them, "if they ſee good Cauſe for it, without any previ- "ous Signification from the Commons of their be- "ing ready to proceed; which Right is warranted "by many Precedents, as well as conſonant to Ju- "ſtice and Reaſon; and their Lordſhips, according "to the Example of their Anceſtors, will always "uſe that Right, with a Regard to the equal and "impartial Adminiſtration of Juſtice, and with a "due Care to prevent unreaſonable Delays.

"This being the Caſe, the Lords cannot but won- "der, that the Commons, without any Foundation "for it, ſhould make uſe of Expreſſions, which as "their Lordſhips conceive have never been uſed be- "fore by one Houſe of Parliament to another, and "which, if the like were returned, muſt neceſſarily "deſtroy all good Correſpondence between the Two "Houſes.

"The laſt Part of the Commons Meſſage being "in effect a Repetition only of their former of the "One and thirtieth of *May*, to which the Lords "have already returned a full Anſwer, their Lord- "ſhips think it not requiſite to ſay more, than that they cannot apprehend with what Colour their calling "upon the Houſe of Commons to ſend up Articles againſt Two Lords, whom the Commons have ſo "long ſince impeached in general Terms, can be ſaid to tend to the Delay of Juſtice; and therefore, as "the Lords think the Commons ought to have forborn that Reflection, ſo their Lordſhips, in ſaying "no more upon the Occaſion of this Meſſage of the Commons, think they have given a convincing Proof "of their Moderation, and of their ſincere Deſire of preſerving a good Correſpondence between the "Two Houſes, which is ſo neceſſary for the Publick Security, as well as doing Right upon the "Impeachments.

A Meſſage was brought from the Houſe of Commons by Mr. *Harcourt*, and others, (on the Tenth of *June*) to acquaint this Houſe, "That the Commons, "in hopes of avoiding all Interruptions and Delays in "proceeding againſt the Impeached Lords, and the "many Inconveniencies which might ariſe thereby, "having propoſed to your Lordſhips at a Conference, "that a Committee of both Houſes might be nomi- "nated to conſider of the moſt proper Ways and "Methods of Proceedings on Impeachments, Think "they might have juſtly expected your Lordſhips "Compliance with their ſaid Propoſition inſtead of "your Lordſhips Anſwer to their Meſſage of the Fourth "Inſtant; which they yeſterday received: In which "Anſwer of your Lordſhips, though many Matters "of great Exception are contained, a ſuitable Reply "whereunto would inevitably deſtroy all good Corre- "ſpondence between the Two Houſes, yet the Com- "mons, from an earneſt Deſire inviolably to preſerve "the ſame, as well as give the moſt convincing Proof "of their Moderation, and to ſhew their Readineſs to "bring the Impeached Lords to ſpeedy Juſtice, at pre- "ſent inſiſt only on their Propoſition, for a Committee "of both Houſes to ſettle and adjuſt the neceſſary Pre- "liminaries to the Tryals; particularly, Whether the "Impeached Lords ſhall appear on their Tryals at "your Lordſhips Bar, as Criminals? Whether being "under Accuſations of the ſame Crimes, they are to ſit "as Judges on each others Tryals for thoſe Crimes, or "can Vote in their own Caſes, as we find from your "Lordſhips Journals, ſince their being Impeached, they "have been admitted to do? Which Matters, and ſome "others, being neceſſary to be adjuſted, the Commons "cannot but inſiſt on a Committee of both Houſes, to "be appointed for that Purpoſe; their departing from "which would be giving up the Rights of the Com- "mons of *England*, known by unqueſtionable Prece- "dents, and the Uſages of Parliaments, and making "all Impeachments, the greateſt Bulwark of the Laws "and Liberties of *England*, impracticable for the future.

The Earl of *Stamford* alſo reported from the Lords Committees appointed to conſider of the Manner of Proceedings on Impeachments, what Precedents they have found in purſuance of the Order of the Seventh Inſtant, which are as follow, *viz.*

'21. *May*, 1614. A Meſſage from the Com- 'mons to deſire a Conference upon the Point of 'Impoſitions.

'24. *May*, The Queſtion being propoſed, Whe- 'ther this Houſe ſhall meet with the Lower Houſe, 'and give them hearing, touching the Point of Im- 'poſitions: The greater Number of the Lords an- 'ſwered, *Not Content*.

'26. *May*, A Meſſage to the Commons, That 'the Lords are, and always will be ready and wil- 'ling to hold a loving and mutual Correſpondence 'with them; but their Lordſhips having entred into 'a grave and ſerious Conſideration, as well of the 'Matter it ſelf, as of divers incident and neceſſary 'Circumſtances, do not think it convenient to enter 'into any Conference of this Cauſe, concerning the 'Point of Impoſitions at this Time.

'1. *February*, 1666. A Meſſage from the Com- 'mons to deſire a Conference, touching the Manner 'of Proceedings upon the Impeachment againſt the 'Lord Viſcount *Mordant*.

'The Lords anſwer, That they will ſend Anſwer 'by Meſſengers of their own.

'Then a Committee was appointed to conſider, 'whether ever the Commons deſired any Conferences 'concerning the Manner of Proceedings upon Judi- 'cature before their Lordſhips.

'4. *February*, 1666. After Report of the Conference 'ſo had, the Lords reſolved to let the Commons 'know at a Conference, That they are reſolved, 'That their former Anſwer given them, the Eight 'and twentieth of *January*, and confirmed the One 'and thirtieth of the ſame Month, ſhall ſtand.

'31. *January*, Which Answer was, That they 'judge it a Right inherent in every Court, to order 'and direct such Circumstances, and Matters of 'Form, that can have no Influence to the Prejudice 'of Justice, in such way as they shall judge fit, where 'the same are not settled otherwise by any pos-'sitive Rule.

'4. *February*, *Post Meridiem*, A Conference was 'accordingly had, at the Desire of the Lords.

'5. *February*, A Message from the Commons to 'desire a free Conference upon the Subject matter 'of the last Conference.

'The Answer returned was, That the Lords have 'already stated the Manner of Proceedings in the 'Impeachment of the Lord *Mordant*, and have decla-'red it in their last Conference, and in that Conference 'gave the House of Commons notice, That they 'were ready to proceed this Morning in that Busi-'ness.

'They adhere to their former Resolution, and are 'ready to proceed in the Tryal.

'6. *February*, A Message from the Commons to 'desire a Conference upon the last mentioned An-'swer.

'7. *February*, The Lords gave the Conference 'desired; whereat the Commons acquainted their 'Lordships, that Conferences, and Free Conferences, 'when desired, are essential to the Proceedings of 'Parliament, the only Means to preserve the good 'Correspondence between the Two Houses, and the 'Denial thereof destructive to the Proceedings of 'Parliament, and unprecedented.

'*Eodem die*. A free Conference was had at the 'Desire of the Lords, concerning the Subject Mat-'ter of the last Conference; whereat the Managers 'were to let the Commons know, That their Lord-'ships desire not this Conference in reference to the 'free Conference lately desired by them, but in re-'lation to the Assertion of the Commons in their 'last Conference, which their Lordships can no 'way allow; and therefore commanded the 'Lords that are to manage this Free Conference, as 'to justify the Proceedings of their Lordships, so 'to make it appear to the Commons, that what 'they have done is neither destructive to the Pro-'ceedings of Parliament, nor unprecedented.

'27. *May*, 1674. The Lords did not agree to a 'Conference desired by the Commons on the One 'and twentieth, because it was desired upon the 'Answer sent by the Lords of the Seventeenth Instant, 'wherein the whole Matter concerns the Judicature 'of the Lords, on which they can admit no De-'bate, nor grant any Conference. But the Lords 'agree to a Conference desired concerning the Pri-'vileges of the Commons; always provided nothing 'be offered thereat, that may concern their Lordships 'Judicature.

'6. *May*, 1679. A Message to the Commons to 'acquaint them, That the Lords have appointed to try 'the Five Lords on the Thirteenth Instant.

'8. *May*, *Post Meridiem*, A Message from the 'Commons to desire a Conference, concerning the 'Matter of their Lordships Message concerning the 'Tryal of the Lords in the *Tower*; and a Confe-'rence was had thereupon.

'At the Conference, the Commons proposed to 'have a Committee of both Houses nominated to 'consider the proper ways of Proceedings upon 'Impeachments; and upon the Question, it was 'carried, Not to agree with the Commons in this 'Proposal.

'9 *May*, A Message to the Commons for a free 'Conference; upon the Subject Matter of the last 'Conference, which was had; and at the Conference 'the Lords told the Commons, That they did not 'agree to the nominating a Committee of both 'Houses, because they do not think it conformable 'to the Rules and Orders of Proceedings of this 'Court, which is, and ever must be, tender in 'Matters relating to Judicature.

'10 *May*, A Message from the Commons for a 'Conference, *&c.* which was had; and the Com-'mons told the Lords, That Things standing thus, 'they cannot proceed to the Tryals of the Lords, 'before the Method of Proceedings be adjusted be-'tween the Two Houses.

'11 *May*, A Message to the Commons for a Con-'ference, *&c.* which was had; and the Lords asked 'the Commons, what were the Methods of Pro-'ceedings they would confer about: The Commons 'answer, They had no Directions from their House 'concerning the same.

'A Message from the Commons for a Free Con-'ference, which was had; and upon the Report of 'it, the Lords appointed a Committee to meet with 'a Committee of the House of Commons, to con-'sider of Propositions and Circumstances, in refe-'rence to the Tryals of the Five Lords in the *Tower*; 'and a Message sent to the Commons to let them 'know it.

'12 *May*, A Report from the Committee of both 'Houses, That (*inter alia*) the Commons propose 'a longer Day for the Tryal of the Lords; where-'upon the Lords order'd their Tryals to be put off 'till further Order.

'16 *May*, The Lords appointed a Day for the 'Tryal of the Five Lords.

'19 *May*. The Commons tell the Lords, That 'when the Methods of Proceedings are adjusted, 'their House will be ready to proceed upon the Try-'al of the Earl of *Danby*, against whom they al-'ready demanded Judgment, and afterwards to the 'Tryal of the Five Lords; and proposed several 'Difficulties, in respect of the Bishops being pre-'sent at the Tryal of the Earl of *Danby*. They 'say further, That the Lords seem to lay the Stop 'at the Commons Door, by naming a Day; which 'they conceive ought not to have been appointed 'before the Methods be considered; that the Lords 'may as well make the Judges Part of their Court, 'as the Bishops, in this Point. The Commons will 'give no disturbance to the ancient Judicature, and 'they conceive they have a Right to know before 'what Court they shall appear.

'20 *May*. Upon Debate of the Report from the 'Committee of both Houses, the Lords appoint a 'Day, for the Tryal of the Five Lords.

'22 *May*. The Lords sent a Message to the House 'of Commons to acquaint them, That the Lords have 'appointed a Day for the Tryal of the Five Lords.

Then it being moved to have a Conference with the Commons, to let them know, That the Lords do not agree to a Committee of both Houses in relation to the Tryals of the Impeached Lords: And Debate thereupon: The Question was put, Whether a Committee of this House shall be appointed to meet with a Committee of the House of Commons, in relation to the Proceedings upon the Impeachments.

It was resolved in the Negative.

It is ordered by the Lords Spiritual and Temporal in Parliament assembled, that the Lords Committees appointed

appointed to conſider of the Manner of Proceedings on Impeachments, do meet To-Morrow at Ten of the Clock in the Forenoon, and draw Reaſons to be given at a Conference with the Houſe of Commons, Why their Lordſhips cannot agree, that a Committee of both Houſes be nominated to conſider of the Methods of Proceedings on Impeachments.

It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, that *Friday* the Thirteenth Day of this Inſtant *June*, is hereby appointed for the Tryal of *John* Lord *Sommers* in *Weſtminſter-Hall*, upon the Articles brought up againſt him by the Houſe of Commons, whereby he ſtands charged with ſeveral High Crimes and Miſdemeanors.

A Meſſage was ſent to the Houſe of Commons by Sir *Richard Holford* and Mr. *Gery*, to let the Commons know, "That the Lords have appointed *Friday* next for the Tryal of *John* Lord *Sommers* upon the Impeachment againſt him.

A Meſſage was brought from the Houſe of Commons by Mr. *Harcourt* and others, (the 11th of *June*) to acquaint this Houſe, "That the Commons on *Monday* laſt received a Meſſage from your Lordſhips, that your Lordſhips had appointed the Tryal of *John* Lord *Sommers* upon *Friday* next, upon their Impeachment againſt him. In which, they obſerve, your Lordſhips have not nominated any Place for his Tryal, tho' your Lordſhips thought fit to make that Matter, on the laſt Impeachment for Miſdemeanors, the Subject of a long Debate.

"And they cannot but take Notice, That your Lordſhips have taken as long a Time to give your Anſwer to the Commons Deſire of a Committee of both Houſes, deliver'd at a Conference on *Friday* laſt, as you are pleaſed to allow the Commons to have of the Day appointed by your Lordſhips for the ſaid Tryal.

"Your Lordſhips appointing ſo ſhort a Day, eſpecially whilſt the Propoſition made to your Lordſhips for a Committee of both Houſes was undetermin'd, the Commons take to be ſuch a Hardſhip to them, and ſuch an Indulgence to the Perſon accus'd, as is not to be parallel'd in any Parliamentary Proceeding.

"The Commons muſt likewiſe acquaint your Lordſhips, that their Experience of the Interruption of a former Tryal on an Impeachment for Miſdemeanor, for want of ſettling the Preliminaries between the Two Houſes, obliges them to inſiſt on a Committee of both Houſes, for preventing the like Interruption.

"And they conceive, 'twould be very prepoſterous for them to enter upon the Tryals of any of thoſe Lords, till your Lordſhips diſcover ſome Inclination to make the Proceeding thereupon practicable; and therefore they think they have Reaſon to inſiſt upon another Day to be appointed for the Tryal of the Lord *Sommers*. And the Commons doubt not but to ſatisfy your Lordſhips at a Free Conference, of the Neceſſity of having a Committee of both Houſes, before they can proceed upon the ſaid Tryal.

Die Martis 10 *Junij*, 1701.

The Earl of *Stamford* reported from the Lords Committees (appointed to conſider of the manner of Proceedings on Impeachments) the Reaſons drawn by them, to be given to the Houſe of Commons, at a Conference upon the Subject-Matter of the laſt Conference. Which Report was read, and agreed to, as follows, *viz.*

"The Lords have deſired this Conference, upon occaſion of the laſt Conference, in order to preſerve a good Correſpondence with the Houſe of Commons, which they ſhall always endeavour.

"As to the late Meſſages between the Two Houſes, their Lordſhips are well aſſured, that on their part, nothing has paſſed, but what was agreeable to the Methods of Parliament, and proper to preſerve that good Underſtanding between both Houſes, which is neceſſary for the carrying on of the Publick Buſineſs.

"As to the Propoſal of the Commons, That a Committee of both Houſes ſhould be appointed, to conſider of the Ways and Methods of Proceeding on Impeachments, their Lordſhips cannot agree to it:

I. "Becauſe they do not find that ever ſuch a Committee was appointed, on occaſion of Impeachments for Miſdemeanors; and their Lordſhips think themſelves obliged to be extremely cautious in admitting any thing new, in Matters relating to Judicature.

II. "That altho' a Committee of this Nature was agreed to, upon the Impeachments of the Earl of *Danby*, and the Five Popiſh Lords, for High-Treaſon, yet it was upon occaſion of ſeveral conſiderable Queſtions and Difficulties which did then ariſe; and their Lordſhips do not find, that the Succeſs in that Inſtance was ſuch as ſhould encourage the purſuing the ſame Methods again, tho' in the like Caſe; the Lords obſerving, that after much Time ſpent at that Committee, the Diſputes were ſo far from being there adjuſted, that they occaſioned the abrupt Concluſion of a Seſſion of Parliament.

III. "Their Lordſhips are of Opinion, That the Methods of Proceedings on Impeachments for Miſdemeanors, are ſo well ſettled by the Uſage of Parliament, that they do not foreſee any Difficulties likely to happen, at leaſt none have been yet ſtated to them; and all the Preliminaries in the Caſe of *Stephen Goudet*, and others, (which was the laſt Inſtance of Impeachments for Miſdemeanors) were eaſily ſettled and agreed to, without any ſuch Committee.

IV. "The Lords cannot but obſerve, that this Propoſal of the Commons comes ſo very late, that their Lordſhips can expect no other Fruit of ſuch a Committee, but the preventing of the Tryals during this Seſſion.

"The Lords aſſure the Commons, that in caſe any Difficulties ſhall ariſe in the Progreſs of theſe Tryals, (which their Lordſhips do not foreſee) they will be ready to comply with the Commons in removing them, as far as Juſtice and the Uſage of Parliament will admit.

A Meſſage was ſent to the Houſe of Commons by Sir *Richard Holford* and Mr. *Gery*, to deſire a preſent Conference in the *Painted Chamber*, upon the Subject-Matter of the laſt Conference.

A Meſ-

A Meſſage was brought from the Houſe of Commons by Mr. *Harcourt*, and others. See *Page* 533.

Ordered, That the Meſſage received this Day from the Houſe of Commons, ſhall be conſider'd To-morrow at Twelve a-Clock.

The Meſſengers ſent to the Houſe of Commons, return Anſwer, that the Commons will give a Conference as deſired.

Then the Commons being come to the Conference, the Managers Names of the laſt Conference were read, and the Houſe adjourn'd during Pleaſure, and the Lords went to the Conference; which being ended, the Houſe was reſumed, and the Lord Steward reported, that the Lords had been at the Conference, and delivered their Reaſons as ordered.

Die Mercurij 11° *Junij*.

The Meſſage received Yeſterday from the Houſe of Commons was read; and after Debate of the ſeveral Particulars contained in it, this Queſtion was propoſed,

That no Lord of Parliament, Impeached of High Crimes and Miſdemeanors, and coming to his Trial, ſhall, upon his Tryal, be without the Bar.

Then the previous Queſtion was put, Whether this Queſtion ſhall be now put?

It was reſolved in the Affirmative.

Then the main Queſtion was put,

That no Lord of Parliament, Impeached of High Crimes and Miſdemeanors, and coming to his Tryal, ſhall, upon his Tryal, be without the Bar?

It was reſolved in the Affirmative, *Nemine Contradicente.*

Reſolved, By the Lords Spiritual and Temporal in Parliament aſſembled, *Nemine Contradicente*, That no Lord of Parliament, Impeached of High Crimes and Miſdemeanors, and coming to his Tryal, ſhall, upon his Tryal, be without the Bar.

Then after further Debate, this Queſtion was propos'd,

That no Lord of Parliament, Impeached of High Crimes and Miſdemeanors, can be precluded from Voting, on any Occaſion, except in his own Tryal.

Then the previous Queſtion was put, Whether this Queſtion ſhall be now put?

It was reſolved in the Affirmative.

Then the main Queſtion was put,

That no Lord of Parliament, Impeached of High Crimes and Miſdemeanors, can be precluded from Voting, on any Occaſion, except in his own Tryal?

It was reſolved in the Affirmative.

Reſolved by the Lords Spiritual and Temporal in Parliament aſſembled, That no Lord of Parliament, Impeached of High Crimes and Miſdemeanors, can be precluded from Voting, on any Occaſion, except in his own Tryal.

It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Committee appointed to conſider of the Method of Proceedings on Impeachments, do meet To-morrow at Ten of the Clock in the Forenoon, and do draw an Anſwer to the Meſſage received yeſterday from the Houſe of Commons upon the Reſolutions of the Houſe this Day; and that the Committee do aſſert in their Anſwer, That by the Journals of this Houſe, it doth not appear the Lords Impeached have voted, as is inſerted in the Commons Meſſage.

A Meſſage was brought from the Houſe of Commons by Mr. *Harcourt*, and others. *See Page* 535.

It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Debate which hath aroſe upon the Commons Meſſage received this Day, ſhall be adjourned to To-morrow Eleven a-Clock, and no other Buſineſs to intervene, and all the Lords ſummoned to attend.

Die Jovis 12° *Junij*, 1701.

The Earl of *Stamford* reported from the Lords Committees appointed to conſider of the Manner of Proceedings on Impeachments, what was drawn by them in Anſwer to a Meſſage from the Houſe of Commons of the 10th Inſtant; which was read and agreed unto, as follows:

A Meſſage was ſent to the Houſe of Commons by Dr. *Newton* and Mr. *Gery*, to acquaint them, "That in Anſwer to the Meſſage from the Houſe "of Commons of the Tenth Inſtant, the Lords "ſay, That altho' they take it to be Unparliamen-"tary in many Particulars, yet to ſhew their real "Deſire of avoiding Diſputes, and removing all "Pretence of delaying the Tryals of the Impeached "Lords, they will only take notice of that Part of "their Meſſage, wherein the Commons propoſe "ſome Things as Difficulties, in reſpect of the "Tryals; which Matters relating wholly to their "Judicature, and to their Rights and Privileges as "Peers, they think fit to acquaint the Commons "with the following Reſolutions of the Houſe of "Lords.

"I. *That no Lord of Parliament, Impeached of "High Crimes and Miſdemeanors, and coming to his "Tryal, ſhall, upon his Tryal, be without the Bar.*

"II. *That no Lord of Parliament, Impeached of "High Crimes and Miſdemeanors, can be precluded "from Voting on any Occaſion, except in his own "Tryal.*

"Their Lordſhips further take notice of a Mi-"ſtake in Point of Fact alledged in the Meſſage of the "Commons; it no way appearing upon their Jour-"nals, that the Lords Impeached have voted in "their Caſe.

"The

A Meſſage was brought from the Houſe of Commons by Mr. *St. John*, and others (the 13th of *June*) to acquaint this Houſe, "That the Houſe of Com-"mons find greater Reaſons to inſiſt upon their Pro-"poſal of a Committee of both Houſes, from the "Two Meſſages received Yeſterday from your Lord-"ſhips; for their Ambiguity and Uncertainty do "ſhew the Methods of former Parliaments to be "the moſt proper Way for Diſpatch of Buſineſs.

"The Commons have been obliged to employ "that Time in conſidering and anſwering your "Lordſhips Meſſages, which otherwiſe would "have been ſpent in preparing for the Lord *Som-"mers*'s Tryal; ſo that the Delay muſt be charged "where the Occaſion ariſeth. And the Commons "having deſired a Committee of both Houſes, to "adjuſt the Preliminaries of the Tryals, cannot but "think it ſtrange your Lordſhips ſhould come to "Reſolutions upon Two of thoſe Points, while the "Propoſal of the Houſe of Commons is under De-"bate at Conferences between the Two Houſes; "the Commons having other Difficulties to pro-"poſe, which concern them as Proſecutors, and all "future Impeachments.

"And though the Commons leave the Subject "of your Lordſhips Reſolutions, with other Things, "to be debated at a Committee of both Houſes; "yet they cannot but obſerve, that your Lordſhips "Second Reſolution is no direct Anſwer to the

"Com-

" The Lords being well aſſured, that all the Steps " that have been taken by them, in relation to theſe " Impeachments, are warranted by the Practice of " their Anceſtors, and the Uſage of Parliament, " have Reaſon to expect the Tryals ſhould proceed " without Delay.

" Commons Propoſal, which was, Whether Peers " Impeached of the ſame Crimes, ſhall vote for " each other upon their Tryal for the ſame Crimes: " And the Commons cannot believe that any ſuch " Rule can be laid down in plain Words, where " there is a due Regard to Juſtice.

" And as to what your Lordſhips obſerve, That " there is a Miſtake, in Point of Fact, alledged by the Commons, this Houſe may take notice of the " Caution uſed by your Lordſhips, in wording that Part of your Meſſage; for they know your Lordſhips " are too well acquainted with the Truth of the Fact, to affirm that the Impeached Lords did not vote " in their own Caſes: And tho' the appearing or not appearing upon your Lordſhips Journal does not " make it more or leſs agreeable to the Rules of Juſtice, yet the Commons cannot but add this further " Obſervation from your Lordſhips Journal, That the Impeached Lords Preſence is not only recorded " when thoſe Votes paſſed, but they alſo find ſome of them appointed of Committees for preparing and " drawing up the Meſſages and Anſwers to the Houſe of Commons: Which they do not think has been " the beſt Expedient for preſerving a good Correſpondence between the Two Houſes, or adjuſting what " will be neceſſary upon theſe Tryals: And therefore the Commons cannot think it agreeable to the Rules " of Parliament, for them to appear at a Tryal, till all neceſſary Preliminaries are firſt ſettled with your " Lordſhips.

A Meſſage was brought from the Houſe of Commons by Mr. *Granvill* and others, to deſire a Free Conference with this Houſe, upon the Subject-Matter of the laſt Conference.

The Commons were called in, and told, That the Lords will return an Anſwer by Meſſengers of their own.

It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That *John* Lord *Sommers* ſhall be tried in *Weſtminſter-Hall* upon the Articles of Impeachment againſt him, on *Tueſday* the Seventeenth Day of this Inſtant *June*, at Ten of the Clock in the Forenoon.

Ordered, That the Committee appointed to conſider of the Manner of Proceeding upon Impeachments, do meet preſently, and draw an Anſwer to the Meſſage received Yeſterday from the Houſe of Commons.

The Earl of *Stamford* reported from the Lords Committees, appointed to conſider of the Manner of Proceedings on Impeachments, what is drawn by them to be ſent to the Houſe of Commons, in Anſwer to their Meſſage of the Eleventh Inſtant; which was read and agreed to, as follows:

A Meſſage was ſent to the Houſe of Commons by by Dr. *Newton* and Mr. *Gery*, to acquaint them,

" That in Anſwer to the Meſſage of the Houſe of " Commons Yeſterday, the Lords ſay, That they " cannot give a greater Evidence of their ſincere " and hearty Deſires of avoiding all Differences " with the Houſe of Commons, and of proceeding " on the Tryals of the Impeachments, than by not " taking Notice of the ſeveral juſt Exceptions to " which that Meſſage is liable, both as to the Matter and Expreſſions.

" The Lords have nothing further from their " Thoughts, than the going about to do any thing " which might have the leaſt Appearance of Hardſhip, in relation to the Commons.

" But the Anſwer of the Lord *Sommers* to the " Articles exhibited againſt him, having been ſent " down to the Commons on the Four and Twentieth " of *May* laſt; and they having by their Meſſage of " the One and Thirtieth of *May*, ſignify'd to their " Lordſhips their Intention of beginning with the " Tryal of his Impeachment in the firſt place:

" The Lords conſidering how far the Seſſion is " advanc'd, thought it reaſonable to appoint the " Thirteenth Inſtant for the ſaid Tryal; their Lordſhips finding ſeveral Precedents of appointing " Tryals on Impeachments within a ſhorter Time.

" The Lords alſo think it incumbent upon them " to endeavour to diſpatch the Tryals of all the Impeach'd Lords before the Riſing of the Parliament. This is what Juſtice requires, and cannot be look'd upon as a Matter of Indulgence. " Nevertheleſs, that the Commons may ſee how " deſirous their Lordſhips are to comply with them " in any thing which may be conſiſtent with Juſtice, " they have appointed the Tryal of Impeachment " againſt *John* Lord *Sommers*, on *Tueſday* the Seventeenth Day of this Inſtant *June*, at Ten of " the Clock in the Forenoon, in the Houſe of " Lords, which will be then ſitting in *Weſtminſter-Hall*.

A Meſſage was ſent to the Houſe of Commons by Dr. *Newton* and Mr. *Gery*, to acquaint them, That the Lords agree to a Free Conference, as deſired, and appoint the ſame to be To-morrow at One a-Clock in the *Painted Chamber*.

Die Veneris 13° *Junij*, 1701.

A Meſſage was brought from the Houſe of Commons by Mr. *St. John* and others. *See Page* 536.

The Meſſengers were called in, and told, That the Lords will ſend an Anſwer to the Commons Meſſage, by Meſſengers of their own.

The Commons being come to the Free Conference, the Managers Names were read; then the Houſe was adjourn'd during Pleaſure; and the Lords went to the Free Conference: Which being ended, the Houſe was reſumed, and the Lord Steward reported, That the Lords had attended the Free Conference, as commanded; and that Mr. *Harcourt* opened the Free Conference, and argued againſt the Reaſons given by this Houſe why they could not agree to a Committee of both Houſes; and that the Lord *Haverſham*, in Anſwer to ſome Part of the Arguments of Mr. *Harcourt* and Sir *Bartholomew Shower*, uſed ſome Expreſſions, at which the Commons taking Exceptions, abruptly broke up the Conference.

After Debate thereupon, a Meſſage was ſent to the Houſe of Commons by Dr. *Newton* and Mr. *Gery*, to acquaint them, That the Lords having been informed by their Managers, that ſome Interruption happened at the Free Conference, which their Lordſhips are concern'd at, becauſe they wiſh that nothing ſhould interrupt the Publick Affairs, do deſire the Commons would come again preſently to the ſaid Free Conference, which they do not doubt will prove the beſt Expedient to prevent the Inconvenience of a Miſunderſtanding upon what has paſs'd.

The Meſſengers ſent to the Houſe of Commons, return Anſwer, That they have deliver'd their Meſſage to the Commons, as ordered; and that the Commons ſay, they will return an Anſwer by Meſſengers of their own.

A Meſſage was brought from the Houſe of Commons by Sir *Chriſtopher Muſgrave* and others, to acquaint this Houſe, *That the Commons deſiring to keep up a good Correſpondence with your Lordſhips, do think it neceſſary to acquaint your Lordſhips with what has happen'd at the Free Conference.*

" One Thing there is, tho' I can't ſpeak to it, " becauſe I am bound up by the Orders of the " Houſe; yet it muſt have ſome Anſwer: That is, " as to the Lords voting in their own Caſe; it re- " quires an Anſwer, tho' I can't go into the Debate " of it. The Commons themſelves have made " this Precedent; for in theſe Impeachments they " have allowed Men guilty of the ſame Crimes to " Vote in their own Houſe; and therefore we have " not made any Diſtinction in our Houſe, that " ſome ſhould Vote, and ſome not. The Lords " have ſo high an Opinion of the Juſtice of the " Houſe of Commons, that they hope Juſtice ſhall " never be made uſe of as a Mask for any Deſign. " And therefore give me Leave to ſay, (tho' I am " not to argue it) 'tis a plain Demonſtration, that " the Commons think theſe Lords innocent: And I " think the Propoſition is undeniable; for there are " ſeveral Lords in the ſame Crimes, in the ſame " Facts, there is no Diſtinction; and the Commons " leave ſome of theſe Men at the Head of Affairs, " near the King's Perſon, to do any Miſchief, if their " Perſons were inclined to it; and Impeach others, " when they are both alike guilty, and concerned " in the ſame Facts. This was a Thing I was in " hopes I ſhou'd never have heard aſſerted, when " the Beginning of it was from the Houſe of Commons.

Theſe were the Words ſpoken by John *Lord* Haverſham; *and the Commons have ordered me to communicate this Reſolution to your Lordſhips:*

Reſolved, *That* John *Lord* Haverſham *be charged before the Lords, for the Words ſpoken by the ſaid Lord this Day at the Free Conference; and that the Lords be deſired to proceed in Juſtice againſt the ſaid Lord* Haverſham, *and to inflict ſuch Puniſhment upon the ſaid Lord, as ſo high an Offence againſt the Houſe of Commons doth deſerve.*

Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Lords, who were at the Free Conference, do meet preſently at a Committee, and draw up what was offered at the Free Conference, and report to the Houſe Tomorrow at Eleven a-Clock.

Die Sabbati 14° *Junij*, 1701.

A Meſſage was brought from the Houſe of Commons by Mr. *Bruges* and others, with the Articles of Impeachment againſt *Charles* Lord *Halifax*; and to acquaint this Houſe, That the Matter of the Charge was contained in the Articles; and alſo that he was commanded to pray and demand, That *Charles* Lord *Halifax* do give ſufficient Security to abide the Judgment of the Houſe of Lords.

The Articles were read by the Clerk as follows, *viz.*

ARTICLES Exhibited by the Knights, Citizens, and Burgeſſes in Parliament aſſembled, in Maintenance of their Impeachment againſt Charles *Lord* Halifax, *of High Crimes and Miſdemeanors.*

WHereas ſeveral Perſons, contrary to their Duty and Allegiance to his Majeſty, and his late Royal Conſort, of ever Bleſſed Memory, traiterouſly adhering to their Majeſties Enemies, did levy and maintain within their Majeſties Realm of *Ireland*, a deſperate and bloody War and Rebellion againſt their Majeſties; and were, by his Majeſty's Conduct and Courage, at the great Expence of his *Engliſh* Subjects, reduced to their due Obedience to the Crown of *England*.

And whereas upon the Fourth Day of *April*, in the Year of our Lord One Thouſand Six Hundred and Ninety, 'twas reſolved by the Commons of *England* in Parliament aſſembled, That a Bill ſhou'd be brought in to Attaint all Perſons guilty of Rebellion in *Ireland*, or elſewhere, againſt their Majeſties King *William* and Queen *Mary*, and to Enact and declare their Eſtates to be Forfeited, and to be Sold for the reducing of that Kingdom.

And whereas his Majeſty, in his gracious Speech to both Houſes of Parliament, did, upon the Fifth Day of *January*, One Thouſand Six Hundred and Ninety, aſſure them, That he would not make any Grant of the Forfeited Lands in *Ireland*, till there ſhould be another Opportunity of ſettling that Matter in Parliament, in ſuch manner as ſhould be thought moſt expedient.

And whereas the Commons of *England* in Parliament aſſembled, by their humble Addreſs to his Majeſty upon the Fourth Day of *March*, One Thouſand

The ANSWER of Charles *Lord* Halifax, *to the Articles exhibited againſt him by the Knights, Citizens, and Burgeſſes in Parliament aſſembled, in Maintenance of their Impeachment againſt the ſaid Lord* Halifax, *for High Crimes and Miſdemeanors, ſuppoſed to be committed by him.*

THE ſaid Lord *Halifax*, ſaving to himſelf all Advantages of Exceptions to the ſaid Articles, and of not being prejudiced by any Words, or want of Form; and ſaving to himſelf all Privileges and Rights belonging to him, as one of the Peers of this Realm; for Anſwer to the ſaid Articles, humbly ſaith,

I. To the Firſt Article he ſaith, True it is, that ſeveral Perſons did levy and maintain a deſperate and bloody War and Rebellion in *Ireland* againſt their Majeſties, and were by his Majeſty's Courage and Conduct, at the great Expence of his *Engliſh* Subjects, ſuppreſs'd and reduc'd to their Obedience, as in this Article is alledged. And he further anſwereth and ſaith, He believes it to be true, That on the Fourth of *April*, 1690. ſuch Vote or Reſolve was made by the then Houſe of Commons for that Purpoſe; and ſuch Aſſurance was given by his Majeſty, and ſuch Addreſſes were made by the Houſe of Commons in the Year 1690, and 1692, That no Grant ſhould be made of the Forfeited Lands in *Ireland*, till there ſhould be another Opportunity of ſettling that Matter in Parliament, in ſuch manner as ſhould be thought moſt expedient; and ſuch Anſwers were given thereunto, as in this Article is and are ſet forth, as by the ſaid ſeveral Votes, Reſolves, Speeches, Addreſſes, and Anſwers, to which the ſaid Lord craves Leave, for more Certainty, to refer himſelf, may appear.

That

Thouſand Six Hundred Ninety Two, did humbly beſeech his Majeſty, That (according to the Aſſurance his Majeſty had been pleaſed to give them) no Grant might be made of the Forfeited Eſtates in *Ireland*, till there ſhould be an Opportunity of ſettling that Matter in Parliament, in ſuch manner as ſhould be thought moſt expedient: To which his Majeſty was pleaſed to give a moſt gracious Anſwer. Whereby, and by many other Endeavours of the Commons in the following Seſſions of Parliament, it appears, That what has ſince been declared by Act of Parliament, was the continued Senſe of the Commons of *England*, That it was highly reaſonable that the Forfeited Eſtates of Rebels and Traitors in *Ireland*, ſhould be applied in Eaſe of his Majeſty's Faithful Subjects of the Kingdom of *England*.

And whereas 'twas the apparent Duty of every Officer or Miniſter of State, to have had ſo much Regard to the Reſolutions and Addreſs of the Houſe of Commons, to the Publick Good, and his Majeſty's Honour, as to have diſſuaded and prevented (as much as in them lay) the procuring or paſſing any Grant or Grants of the ſaid Forfeited Eſtates in *Ireland*; yet *Charles* (now) Lord *Halifax*, then the Honourable *Charles Montague*, Eſq; being a Member of the Honourable Houſe of Commons, one of the Lords of the Treaſury, Chancellor of the *Exchequer*, and one of his Majeſty's moſt Honourable Privy-Council, hath, ſince the aforeſaid Fourth Day of *March*, One Thouſand Six Hundred Ninety Two, preſumed to adviſe, paſs, or direct the paſſing, a Grant to *Thomas Railton*, Eſq; in Truſt for himſelf, of ſeveral Debts, Intereſts, Sum and Sums of Money, amounting in the whole to the Sum of Thirteen Thouſand Pounds, or thereabout, due, owing, and which ought to have accrued to his Majeſty, by reaſon of the Attainders, Outlawries, or other Forfeitures of the reſpective Perſons, for whom the ſame were entred on Record; whereby he hath much contributed to the contracting great Debts upon the Nation, the laying heavy Taxes upon the People, hath highly reflected on his Majeſty's Honour, and failed in the Performance of his Truſt and Duty.

II. Whereas by an Act of Parliament made in the Eleventh and Twelfth Years of his Majeſty's Reign, Entituled, *An Act for granting an Aid to his Majeſty by Sale of the Forfeited and other Eſtates and Intereſts in* Ireland, *and by a Land-Tax in* England, *for the ſeveral Purpoſes therein mentioned*; 'tis, amongſt other Things, Enacted, That all and every Perſon or Perſons whatſoever, who had by Virtue of any Grant or Diſpoſition from his Majeſty, or from his Majeſty and the late Queen, received for his or their own Uſe or Benefit, any Debt or Debts, or Sum or Sums whatſoever, due from any Debt or Debts of any Forfeiting Perſon mentioned or deſcribed in the ſaid Act, or from any Perſon or Perſons ſubject or liable to the Payment of any Sum or Sums of Money whatſoever, to any of the ſaid Forfeiting Perſons, ſhould be, and they are thereby declared to be reſpectively liable, and are required to repay every ſuch Debt or Debts, Sum or Sums of Money whatſoever, ſo by him, her or them reſpectively received, into the Receipt of his Majeſty's *Exchequer* in *Ireland*, on or before the Four and Twen-

That in the Years 1693, 1694, 1695, the Parliament of *England* did meet; and no Act was paſſed touching the Forfeited Eſtates, tho' by other Ways great Sums were raiſed for the carrying on and defraying the Charges of the War in thoſe Years; and his Majeſty did after, as Rewards to ſeveral Perſons who had ſerved him in *Ireland* and elſewhere, grant to them ſome of the Forfeited Eſtates in *Ireland*, and the Grantees did enjoy the ſame.

And the ſaid Lord *Halifax* further ſaith, That his Majeſty did never grant to him, or any in Truſt for him, or to his Uſe, any of the ſaid Forfeited Lands; but of his Grace and Favour, and as a Reward for his Faithful Services (which his Majeſty was pleaſed to accept) did, by Letters Patents under the Great Seal of *England*, bearing Date on or about the Eleventh Day of *May*, 1697, grant to *Thomas Railton*, Eſq; in Truſt for the ſaid Lord *Halifax*, (who was then one of the Commiſſioners of the Treaſury, Chancellor of the *Exchequer*, and one of the Members of the Houſe of Commons, as in this Article is ſet forth) ſeveral Debts, Intereſts, Sum or Sums of Money, amounting in the whole to the Sum of 11546 Pounds, Seventeen Shillings and Eight Pence, or thereabouts: Which Grant he conceives, and is adviſed, his Majeſty might then lawfully make; and was lawful for him to accept, without Breach of his Duty, or the Truſt repoſed in him: and denies that he did ask for, or procure the ſaid Grant; but confeſſeth, he accepted the ſame as a Mark of his Majeſty's Grace and Favour: And ſaith, The ſaid Grant hath ſince been taken away by Act of Parliament; and ſaith, That the ſaid Grant made to *Thomas Railton*, is the ſame which is mentioned or intended by the ſaid Article of Impeachment; and although the Debts therein mentioned to be granted, amount to 11546 Pounds, Seventeen Shillings and Eight Pence, and no more; yet the ſaid Grant it ſelf, at the Time of making thereof, or at any Time afterwards, would not be valued at near the ſaid Sums, becauſe a great Part of the ſaid Debts were not recoverable; and he hath not made clear thereof, as yet, above 400 *l.* And humbly hopes the ſaid Grant hath very little, if at all, contributed to the contracting any Debts upon the Nation, or laying heavy Taxes upon the People, or any ways reflected upon his Majeſty's Honour, or that he hath failed in the Performance of his Truſt or Duty, as in the Article is ſuggeſted.

II. To the Second Article the ſaid Lord *Halifax* ſaith, That he believes it to be true, that ſuch Act was made, and ſuch Clauſe therein, as in this Article is mentioned; and alſo in the ſaid Act there is a further Clauſe, That the Grantees from the King of any of the Forfeited Eſtates thereby reſumed, ſhould not be accountable for the Rents, Iſſues, and Profits of the ſame, by them received before the Second Day of *November*, 1699. but might retain the ſame to their own Uſes.

And the ſaid Lord *Halifax* doth acknowledge, That after the making the ſaid Grant before-mentioned to the ſaid *Thomas Railton*, the Agents of the ſaid Lord *Halifax* did receive ſome Moneys, not exceeding One Thouſand Pounds (as he is informed) out of the Rents and Profits of the Forfeited Eſtate of the Earl of *Clancarty*; of which no more than the aboveſaid Sum did come clear to him the ſaid Lord *Halifax*, and no more, to his Knowledge or Belief, hath been received or recovered upon the aforeſaid Grant. That the ſaid Lord *Halifax* gave Direction, after the ſaid Act paſſed, to his Agents

Twentieth Day of *Auguſt*, One Thouſand Seven Hundred.

And whereas the ſaid *Charles* Lord *Halifax* had, before the making of the aforeſaid Act, procured for *Thomas Railton*, Eſq; in Truſt for himſelf, a Grant of ſeveral Debts by Judgments, and otherwiſe, to ſeveral of the ſaid Forfeiting Perſons, amounting to the Sum of Thirteen Thouſand Pounds, or thereabouts, forfeited to his Majeſty by the Attainder, Outlawries, or other Forfeitures of the reſpective Perſons to whom ſuch Debts were originally due; and by Virtue of the ſaid Grant, the ſaid Lord *Halifax* actually received to his own Uſe the Sum of One Thouſand Pounds, Part of the before-mentioned Sum of Thirteen Thouſand Pounds; which ſaid Sum of One Thouſand Pounds he the ſaid *Charles* Lord *Halifax* ought to have repaid before the ſaid Four and Twentieth Day of *Auguſt*, One Thouſand Seven Hundred, into the Receipt of his Majeſty's *Exchequer* in *Ireland*, as by the ſaid Act he was required to have done; yet the ſaid *Charles* Lord *Halifax* did not repay the ſaid Sum of One Thouſand Pounds, as by the ſaid Act he was required to do; but has hitherto, in Contempt of the Act, refuſed or neglected to repay the ſame: Which Neglect or Refuſal of him the ſaid *Charles* Lord *Halifax*, to repay the ſaid Sum of One Thouſand Pounds, is a manifeſt Wrong to his Majeſty and the Publick, and a Miſapplication of that Sum to other Uſes and Purpoſes than by the Act 'tis appropriated and ought to have been applied.

III. That the ſaid *Charles* Lord *Halifax*, being a Member of the Honourable Houſe of Commons, one of the Commiſſioners for Executing the Office of Lord-Treaſurer of *England*, Chancellor of the *Exchequer*, and one of his Majeſty's moſt Honourable Privy-Council; not contented with the many Employments and Places of Honour beſtowed upon him by his Majeſty, nor with the large and exceſſive Gains by him made, by the Incomes and Profits ariſing from ſuch Offices and Preferments, did (in Oppoſition to what he well knew to be the true Intereſt of *England*, and contrary to his Oath as a Privy-Councellor, and his Duty as a Publick Miniſter, at a Time when the Nation was engaged in a tedious and expenſive War againſt *France*, for preſerving the Balance and Liberties of *Europe*, and under ſuch heavy Debts as, without laying unſupportable Taxes on the People, were impoſſible to be ſatisfied) Adviſe, Procure and Aſſent, not only to the paſſing of divers Grants to others in *England* and *Ireland*, but did obtain and accept of ſeveral beneficial ones to or in Truſt for himſelf: Which ſaid Practices of him the ſaid Lord *Halifax*, were a moſt notorious Abuſe of his Majeſty's Goodneſs, a great Breach of his Truſt, and a very high Vexation and Oppreſſion of his Majeſty's other Subjects.

IV. Whereas by the Common Law, and by many Statutes and Ordinances of this Realm, it appears to have been the great Care of our Anceſtors, that the Kings Foreſts ſhould be preſerved, and in particular the Timber therein growing, for the building and repairing the Navy Royal, which has ever been accounted (as it undoubtedly is) the great Security

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in *Ireland* to do, in relation to the Money received, as ſhould be adviſed by Council there; by whom his Agents were adviſed (as they informed the ſaid Lord, and which he believes to be true) that the ſaid Moneys being received out of the mean Profits which were remitted by that Act, were not within the firſt mentioned Clauſe in the ſaid Act: And therefore the ſaid Lord does believe and admit the ſame were not paid into the Receipt of his Majeſty's *Exchequer* in *Ireland*, nor ought to have been paid into the *Exchequer*, as he humbly inſiſts and is adviſed: And he doth deny, that the Non-payment of the ſaid Money into the ſaid Receipt, is any Wrong to his Majeſty or the Publick, or any Miſapplication; and in Caſe the ſaid Money ought to have been paid into the ſaid Receipt, there are proper Methods and Remedies in the ſaid Act preſcribed, to compel the Payment of the ſame.

III. To the Third Article he ſaith, He was a Member of the Houſe of Commons, one of the Commiſſioners of his Majeſty's Treaſury, Chancellor of the *Exchequer*, and Privy-Councellor, as in the Article is ſet forth; and ſerved his Majeſty faithfully, as he hopes and believes, in thoſe Stations, and was contented with the Employments and Places of Honour beſtowed upon him, and with the Incomes and Gains by him made, by the juſt and lawful Fees and Profits of the ſame; and his Majeſty graciouſly accepted of ſuch his Services; and as a Mark of his Royal Favour to him, did make, for his Benefit, the Grant in the Anſwer to the precedent Article, and the Grant in the Anſwer to the ſubſequent Article mentioned; which were all the profitable Grants he, or any in Truſt for him, ever had from his Majeſty. And the ſaid Lord *Halifax* ſays, He conceives, and is adviſed, that his accepting ſuch Grants were not any Abuſe of his Majeſty's Goodneſs, nor Breach of the Truſt repoſed in him, nor were any of his Majeſty's Subjects thereby oppreſſed; And denies that he ever did, in Oppoſition to what he knew to be the true Intereſt of *England*, or contrary to his Oath or Duty, at any Time Adviſe, Procure, or Aſſent to the paſſing of any Grant or Grants to himſelf, or to any Perſon in Truſt for him, or to any other Perſon or Perſons whatſoever: But ſaith, He, as one of the Commiſſioners of the Treaſury, in Conjunction with the other Commiſſioners, did Sign ſeveral Warrants and Dockets for ſuch Grants as his Majeſty was pleaſed to direct to be paſſed by them, and which he humbly conceives, and is adviſed, he was, by the Duty of his Place, obliged to do.

IV. To the Fourth Article, He ſaith he believes it to be true, that our Anceſtors did take great Care to preſerve the King's Foreſts, and the Timber therein growing, for the Building and Repairing the Navy-Royal, which the ſaid Lord doth own hath ever been accounted (and as he believes very rightly) the great Security of the Realm: And ſaith, True it

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of this Realm. And whereas *Charles* Lord *Halifax* was, in the Year of our Lord One Thousand Six Hundred Ninety Seven, one of the Commissioners of the Treasury, Chancellor of the *Exchequer*, and of his Majesty's Privy-Council, and obliged as well by repeated Oaths, as by the Duty he owed to his Majesty and his Countrey, to have advised, consulted and promoted such Matters and Things as should, or at least were most likely to redound to his Majesty's Honour, and the Nations Safety: Yet the said *Charles* Lord *Halifax*, not regarding the Laws and Ordinances of this Realm, nor his said Duty to his Majesty and the Publick, but pursuing his private Interest, did, by Letters of Privy-Seal, bearing Date on or about the Sixth Day of *May*, which was in the Year of our Lord One Thousand Six Hundred Ninety Seven, (the Kingdom being then engaged in an expensive War, and the Debts of the Nation requiring the best and most frugal Management) procure from his Majesty a Grant to *Henry Segar*, Gent. in Trust for himself, of the Sum of Fourteen Thousand Pounds, of so much Scrub'd Beech, Birch, Holly, Hazle, Thorns and Orle, as should by Sale raise the said Sum of Fourteen Thousand Pounds, to be Fallen in his Majesty's Forest of *Dean*, in the County of *Gloucester*, within the Space of Seven Years Time, from the Five and Twentieth Day of *December*, One Thousand Six Hundred Ninety Seven: Under Colour of which Grant, Beech of a much greater Value, great Number of Sapling Oaks, which might and would have been serviceable to the Realm, and also many Tuns of well-grown Timber, fit for the present Use of the Navy, have been Cut and Fallen, and sold and disposed of for the Benefit of the said Lord *Halifax*.

V. Whereas there is not any Thing that so much conduceth to his Majesties, and the Nation's Honour and Safety, as the due Ordering and Managing of the King's Treasure and the Publick Revenues; for the Receiving and Issuing forth of which, the Wisdom and Policy of this Nation has provided and appointed several and distinct Officers with beneficial Salaries, in order that they may be a Check to each other, and that no Loss may accrue to his Majesty or the Publick, by the Corruption, Unskilfulness or Negligence of any particular Officer: Yet he the said *Charles* Lord *Halifax*, being one of the Lords of the Treasury, when by the Death of the Honourable Sir *Robert Howard*, the Office of the Auditor of the Receipts, and Writer of the Tallies, became Vacant; not regarding the ancient Constitution and approved Methods in ordering his Majesty's Treasury and the Publick Revenues, did Grant or procure to be Granted to *Christopher Montague*, Esq; the Brother of him the said *Charles* Lord *Halifax*; and then one of the Commissioners of the Excise, the said Place and Office of Auditor of the Receipts and Writer of the Talleys; which said Grant was so made and procured by the said Lord *Halifax*, in Trust as to the Profits thereof for himself; so that from and after the passing of the said Grant, he the said Lord *Halifax* was in effect at the same time one of the Commissioners of the Treasury, Chancellor of the *Exchequer*, and Auditor of the Receipts, and Writer of the Talleys, and enjoyed the Profits of the said several Offices; which by the Constitution of the Treasury are manifestly inconsistent, and never were or ought to be trusted in the same Person: The making and procuring of which said Grant by him the said *Charles* Lord *Halifax*, as aforesaid, was a manifest Violation of the Established Course and Constitution of the *Exchequer*, a Breach of

is, he was in the Year 1697, one of the Commissioners of the Treasury, Chancellor of the Exchequer, and one of his Majesties Privy-Council, and did from time to time Advise and Promote such Matters and Things, as were most likely to redound to his Majesty's Honour, and the Nations Safety; and denies that he at any time preferred his Private Interest to that of the Publick. But doth confess and admit, that his Majesty by his Letters of Privy-Seal, Dated the Sixth of *May*, 1697, did out of his Grace and Favour designed to the said Lord *Halifax*, Grant unto *Henry Segar* in the Article mentioned, and which was in Trust for the said Lord, the Sum of 2000*l. per Annum*, to be raised by the Fall of Scrub'd Beech, Birch, Holly, Hazle, Thorns and Orle, in the Forest of *Dean* in the County of *Gloucester*, for the Space of Seven Years, from the 25th of *December* 1697, as by the said Letters of Privy-Seal, to which the said Lord for more certainty referreth himself, may appear; which Grant was not, nor could be prejudicial to any Timber growing in the said Forest; and believes no Sapling Oaks, or Timber, or Trees likely to be Timber, were cut down by colour of the said Grant; and if any Abuse were in cutting the Wood, he conceives he is not answerable for the same; such Cutting not having been by his Direction, nor he any ways concerning himself therein; the Setting out and Cutting whereof did belong to his Majesty's Surveyor-General, and other his Majesty's Officers, who (as the said Lord hath been informed and believes) faithfully discharged their Trust in the Execution thereof, and took particular Care to preserve the Timber there.

V. To the Fifth Article, the said Lord *Halifax* answereth and saith, He believes it to be true, that the due ordering and Management of the King's Treasure and Publick Revenues, conduceth very much to the Honour and Safety of his Majesty and the Nation, and that there are several distinct Officers with Salaries, for the better receiving and issuing forth of the same, and that are Checks upon each other, to prevent any Loss to his Majesty, or the Publick; and the said Lord saith, True it is, he was one of the Commissioners of the Treasury when by the Death of Sir *Robert Howard*, his Office of Writer of the Talleys and Counter-Talleys, commonly called Auditor of the Receipt of *Exchequer*, became vacant; and thereupon the then Commissioners of the Treasury did grant the said Office to *Christopher Montague*, then one of the Commissioners of Excise, and Brother to the said Lord; which the said Lord does own and admit was done at his Desire and Request; but humbly insisteth, the same was not Granted contrary to the ancient Constitution, or approved Methods in ordering his Majesty's Treasury or Publick Revenue; And saith, he the said Lord, did procure the said Office to be granted to his Brother, intending in a short time after, by his Majesty's Permission, when his Majesty's Affairs would permit thereof, to leave his the said Lord's Employments and Places in the Treasury, and to obtain a Surrender from his said Brother of the said Office, and procure a Grant thereof to himself; which he hopes and humbly insists was lawful for him to do. And saith, his said Brother duly executed the said Office, till after the said Lord had left or laid down, by his Majesty's Leave, his Places in the Treasury; and then, and not before, his said Brother surrendred the said Office; and the said Lord obtained a Grant of the same, as he conceives

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of his Truſt, of Evil Example, and tending very much to the Great Loſs and Prejudice of his Majeſty and the Publick, by opening a way to all manner of Corrupt Practices in the future Management of the Revenues.

VI. Whereas a Treaty and Alliance between *Leopold* the Emperor of *Germany*, and the *States-General* of the *United Provinces*, was made and concluded in the Year of our Lord One Thouſand Six Hundred Eighty Nine, upon the Conſideration of the Greatneſs of the Common Danger, which then threatned all *Chriſtendom* from the exceſſive Power of *France*, and the unconſtant Faith of the *French* in the Obſervance of Treaties; whereby it was agreed, that there ſhould be and remain for ever a Conſtant, Perpetual and Inviolable Friendſhip and good Correſpondence between his Imperial Majeſty and the *States-General*, that each of them ſhould be obliged to promote the others Intereſt, and, as much as in them lay, prevent all Damages and Inconveniencies to each other.

And whereas certain Separate Articles were alſo at or about that time made and annexed to the aforeſaid Treaty; whereby the *States-General*, maturely conſidering, that *France* had openly declared in ſeveral Courts (that notwithſtanding the moſt ſolemn Renunciation) they continued their Pretenſion by Force of Arms, to aſſert for the *Dauphin* the Succeſſion of the *Spaniſh* Monarchy, in caſe the King of *Spain* ſhould die without Iſſue; and alſo conſidering what a Blow their State would receive, and what Prejudice might happen thereby to the Publick Affairs and Quiet, did promiſe, that in caſe his ſaid Catholick Majeſty ſhould die without Iſſue, they would, with all their Force, aſſiſt his ſaid Imperial Majeſty, or his Heirs, in taking the Succeſſion of the *Spaniſh* Monarchy, lawfully belonging to that Houſe, together with its Kingdoms, Dominions and Rights, and in their obtaining and ſecuring the quiet Poſſeſſion thereof, againſt the *French* and their Adherents, who ſhould directly or indirectly oppoſe that Succeſſion, and with Force repel the Force which ſhould be brought againſt them.

That at the Inſtance of the *States-General*, in purſuance of the ſaid Treaty and Separate Articles, our moſt Gracious Lord and Sovereign, his moſt Excellent Majeſty King *William* the Third, was invited to enter into the Alliance of the aforeſaid Treaty, and into the Agreement of the ſaid Separate Articles; and thereupon for reſtoring and preſerving the Publick Peace and Quiet, did afterwards in the ſaid Year of our Lord One Thouſand Six Hundred Eighty Nine, enter into, and under the Great Seal of *England*, Accept, Approve and Ratify, and in the moſt ſolemn manner, Engage and Promiſe, Religiouſly and Inviolably to obſerve the ſame, without Violating the ſaid Treaty or Separate Articles in any Article, or ſuffering the ſame, to the utmoſt of his Power to be Violated.

That in the Year of our Lord, One thouſand ſix hundred ninety eight, a Treaty was projected and contrived in *France*, to be ſet on foot between his Majeſty, the *French* King, and the *States-General*, for a Partition of the *Spaniſh* Monarchy, whereby many large Territories thereunto belonging, in caſe of the Deceaſe of the King of *Spain*, without Iſſue, were to be allotted and delivered up to *France*.

The Tenor and Deſign of which laſt mentioned Treaty, whilſt the ſame was in Negotiation, was communicated to the ſaid *Charles* Lord *Halifax*, then one of the Commiſſioners for executing the Office of Lord High Treaſurer, Chancellor of the Exchequer, and one of his Majeſty's moſt Honourable Privy Council:

That was lawful for him to do. In all which Proceedings nothing was done by him the ſaid Lord, as he is adviſed, in violation of the Eſtabliſhed Courſe and Conſtitution of the *Exchequer*, or to the Loſs or Prejudice of his Majeſty or the Publick; and ſaith, he does not know or believe, that the ſaid ſeveral Offices, as they were executed, were in their Nature inconſiſtent with one another; and is very ſure his Majeſty or the Publick were no Ways prejudiced by the Execution of the ſame.

VI. To the Sixth Article the ſaid Lord *Halifax* ſaith, That he believes, that in the Year 1689, ſuch Treaty and Alliance, and Separate Article, were made between the Emperor of *Germany* and the *States-General* of the *United-Provinces*, (into which his Majeſty and the late Queen entred) and ſuch Ratifications thereof were made, as in this Article is mentioned; and alſo ſaith, he hath heard and believes, that in the Year of our Lord 1698, a Treaty was made to ſuch Effect as in this Article is mentioned; and ſaith, he never ſaw the ſaid Treaty, or heard the ſame read, or does as yet know the Articles or Agreement it contains; and denies that he ever adviſed his Majeſty to enter into or make the ſaid Treaty, or was ever conſulted upon any Clauſe or Article thereof, or ever encouraged or promoted the ſame. And the ſaid Lord ſaith, That as he remembers, Mr. Secretary *Vernon* did at one time ſend for him, and diſcourſe with him and others, upon an Intimation that was given by a Letter from the Earl of *Portland*, as he remembers, that the *French* King was diſpoſed to commence a Negotiation upon ſome general Terms that were then mentioned, to prevent a War, in caſe of the King of *Spain*'s Death, who was then reported to be very ill; and afterwards the ſaid Matter was diſcourſed between the Secretary, the then Lord Chancellor, and the ſaid Lord *Halifax* at *Tunbridge-Wells*, when and where the ſaid Lord *Halifax* made ſeveral Objections to the ſame; and denies that he gave any Opinion to encourage or promote the ſaid Treaty, or ever afterwards was informed of any one Particular relating to it, or was ever Conſulted or Adviſed upon any Clauſe or Article of it, or was ever after told or informed that the ſaid Negotiation or Treaty did go on or proceed; and ſaith, That not being adviſed with, or any ways knowing of the ſaid Treaty or Negotiation (except as aforeſaid) he could not diſſuade or obſtruct its taking Effect; and ſaith, As he cannot tell what the Effects of the Treaty might have been, if the ſaid Treaty had been obſerved, ſo he conceives and inſiſteth, that he is not, nor ought to be anſwerable for the ſame.

And having thus laid his Caſe before your Lordſhips, he humbly ſaith and inſiſteth upon it, That he is not Guilty of all or any the Matters by the ſaid Articles charged, or in them ſpecified, in Manner and Form, as the ſame are therein and thereby charged againſt him.

HALIFAX.

That the ſaid *Charles* Lord *Halifax*, well knowing the moſt apparent evil Conſequences, as well as the Injuſtice of the ſaid Partition, did not, according to the Truſt and Duty of his ſaid ſeveral Offices, diſſuade, or endeavour to obſtruct its taking Effect; but on the contrary, having neither Regard to his Majeſty's Honour, engaged by the above-mentioned Treaty with the Emperor, and the *States-General*, to the Trade and known Intereſt of theſe Kingdoms, or the Peace of *Europe*, did adviſe his Majeſty to enter into the ſaid Treaty, and did ſo far encourage and promote the ſame, that the ſaid Treaty was concluded and ratified under the Great Seal of *England*; which ſaid Treaty was evidently deſtructive of the Trade of this Realm, a Breach of the former Treaty made with the Emperor, in One thouſand ſix hundred eighty nine, diſhonourable to his Majeſty, highly injurious to the Intereſt of the *Proteſtant* Religion, and manifeſtly tended to diſturb the general Peace of *Europe*, by altering the Balance of Power therein, and ſtrengthning *France* againſt the good Friends and ancient Allies of our Sovereign Lord the King.

And the ſaid Knights, Citizens and Burgeſſes, by Proteſtation, ſaving to themſelves the Liberty of exhibiting at any Time hereafter, any further Articles or other Accuſation or Impeachment againſt the ſaid Lord *Halifax*; and alſo of replying to his Anſwers which he ſhall make unto the ſaid Articles, or any of them, and of offering Proofs to all, and every the aforeſaid Articles, and to all and every other Articles, Impeachment or Accuſation, which ſhall be exhibited by them, as the Caſe ſhall, according to the Courſe of Parliament, require, do pray, That the ſaid *Charles* Lord *Halifax* may be put to anſwer the ſaid Crimes and Miſdemeanors, and that ſuch Proceedings, Examinations, Tryals, and Judgments, may be thereupon had and given, as is agreeable to Law and Juſtice.

After reading this Day the Articles of Impeachment brought up from the Houſe of Commons againſt *Charles* Lord *Halifax*, and hearing his Lordſhip thereupon, who deſired a Copy of the ſaid Articles, and ſaid he would put in his Anſwer ſo ſoon as poſſibly he could: It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Lord *Halifax* may have a Copy of the Articles againſt him.

Ordered, That the Lords Committes (appointed to draw what was offered at the Free Conference) do inſpect the Journals, as to what hath happened upon any Occaſion, in relation to what paſt at a free Conference yeſterday, and what hath been done thereupon, and Report to the Houſe.

A Meſſage was ſent to the Houſe of Commons by Sir *John Hoskins* and Dr. *Newton*, to acquaint them, " That upon the Occaſion of their laſt Meſ-
" ſage yeſterday, in order to continue a good Cor-
" reſpondence between the Two Houſes, their Lord-
" ſhips did immediately appoint a Committee to
" ſtate the Matters of the Free Conference, and alſo
" to inſpect Precedents of what has happened of the
" like Nature: And that the publick Buſineſs may
" receive no Interruption, the Time deſired by their
" Lordſhips for renewing the Free Conference being
" elapſed, their Lordſhips deſire a preſent free Con-
" ference in the *Painted-Chamber*, upon the Subject-
" Matter of the laſt Free Conference.

A Meſſage was brought from the Houſe of Commons by the Lord *Cheney*, and others, (*Eodem Die*) to acquaint this Houſe, *viz.* " That the Commons
" are extremely deſirous to preſerve a good Corre-
" ſpondence between the Two Houſes, and to expe-
" dite the Tryals of the Impeached Lords; but con-
" ceive it is not conſiſtent with the Honour of the
" Houſe of Commons to renew the Free Conference,
" until they have received Reparation by your Lord-
" ſhips doing Juſtice upon *John* Lord *Haverſham*,
" for the Indignity he yeſterday offered to the Houſe
" of Commons.

The Lord Steward reported from the Committee appointed to draw up what was offered at the Free Conference, *viz.*

That Mr. *Harcourt* opened the Conference, and argued firſt againſt the Reaſons given by this Houſe why they could not agree to a Committee of both Houſes; but afterwards entred into a Debate againſt the Two Reſolutions of this Houſe relating to Impeachments depending, *viz.*

Reſolved by the Lords Spiritual and Temporal in Parliament aſſembled, *Nemine Contradicente*, *That no Lord of Parliament Impeached of High Crimes and Miſdemeanors, and coming to his Tryal, ſhall, upon his Tryal, be without the Bar.*

Reſolved by the Lords Spiritual and Temporal in Parliament aſſembled, *That no Lord of Parliament Impeached of High Crimes and Miſdemeanors, can be precluded from voting on any Occaſion, except in his own Tryal.*

And in his Arguments he uſed this Expreſſion, *That he wiſhed their Lordſhips had ſent their Reaſons as well as their Reſolutions.*

Sir *Bartholomew Shower* ſpoke next, in Purſuance of the Argument begun by Mr. *Harcourt*, againſt the aboveſaid Reſolutions; and in giving Reaſons againſt the latter of the ſaid Reſolutions, amongſt other things did affirm, *That ſuch a Proceeding would be abhorrent from Juſtice.*

In Anſwer to thoſe Gentlemen, the Lord *Haverſham* uſed ſome Arguments and Expreſſions which the Managers for the Houſe of Commons took Exceptions at; but what thoſe were the Committee cannot ſo charge their Memories as to give the Houſe a particular Account of them; and the Lord *Haverſham* being deſired by the Committee to recollect what he had ſaid, did inform their Lordſhips, That obſerving in the Free Conference ſeveral Things ſaid by Mr. *Harcourt* and Sir *Bartholomew Shower*, that reflected on the Honour and Juſtice of this Houſe, as he apprehended, and that he took to be Foreign to the Subject-Matter of the Free Conference, he thought it his Duty to take notice thereof; but in what Expreſſions, he hoped their Lordſhips would excuſe him from giving a particular Account; but denies that he ſaid ſeveral things contained in the Paper ſent up by the Houſe of Commons; but ſays, that he deſired to be heard out, and that the Words he had ſpoken might be writ down; but the Managers for the Commons broke up abruptly.

The Lord *Haverſham* this Day moved, that he may have a Copy of the Commons Charge againſt him, and

and Time to anſwer: It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Lord *Haverſham* ſhall have a Copy of the Charge againſt him, and do Anſwer thereunto; and that he ſhall have Council allowed him, in order to anſwer the Charge againſt him.

The Meſſengers ſent to the Houſe of Commons, return Anſwer, That the Commons will ſend an Anſwer by Meſſengers of their own.

A Meſſage was brought from the Houſe of Commons by the Lord *Cheney*, and others, to acquaint this Houſe ----- *See Page* 543.

The Houſe being moved, to inſiſt not to have a Committee of both Houſes, touching the Tryal of the Impeached Lords: And Debate thereupon:

The Queſtion was put, Whether this Houſe ſhall inſiſt upon their Reſolution, of not allowing a Committee of both Houſes?

It was reſolved in the Affirmative.

A Meſſage was ſent to the Houſe of Commons by Sir *Robert Legard* and Dr. *Newton*, to acquaint them, " That the Lord *Sommers* having informed " this Houſe, That Sir *Stephen Fox*, *John Smith*, Eſq; " *William Lowndes*, Eſq; *Stephen Harvey*, Eſq; and " *William Gulſton*, Eſq; Members of their Houſe, may " be material Witneſſes for him at his Tryal on " *Tueſday* next in *Weſtminſter-Hall*, this Houſe de- " ſires, That they may have Leave to attend, and " give their Teſtimonies at the ſaid Tryal; and that " a Letter which his Majeſty was pleaſed to write " to him in One thouſand ſix hundred ninety eight, " being now in their Houſe, will be neceſſary for his " Defence at his Tryal; this Houſe deſires that the " ſaid Letter may be produced at the ſaid Tryal.

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That an humble Addreſs be made to his Majeſty from this Houſe, That he will be pleaſed to give Order that the Original Treaties of Partition, of One Thouſand Six Hundred Ninety Eight, and One Thouſand Six Hundred Ninety Nine, and the Earl of *Portland*'s, and Mr. Secretary *Vernon*'s Letters relating thereunto, or Authentick Copies of them, may be laid before this Houſe on *Monday* next, at Eleven of the Clock; and that the Lords with White-Staves attend his Majeſty with this Addreſs.

Die Lunæ 16° *Junij*, 1701.

The Meſſengers ſent on *Saturday* laſt to the Houſe of Commons, to deſire ſome of their Members may give Evidence for the Lord *Sommers* at his Tryal in *Weſtminſter-Hall*, return Anſwer that they will ſend an Anſwer by Meſſengers of their own.

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Lords with White Staves do humbly attend his Majeſty from this Houſe, to deſire, that the Lord *Haverſham* may have Liberty to Inſpect the Treaſury-Books, in relation to ſeveral Commiſſions from time to time renewed, and Grants of the Forfeited Eſtates in *Ireland*, which are neceſſary for him towards his Defence.

The Earl Marſhal reported from the Lords Committees appointed to conſider of the Methods and Preliminaries, in order to the Tryals of the Lords Impeached, *viz.*

That the Serjeant at Arms be continued in the Houſe, to make Proclamations, which are to be made in the King's Name.

That the whole Body of the Houſe of Peers ſhall meet in the Houſe.

That being ſo met they ſhall go to Prayers as a Houſe, and after Prayers they ſhall adjourn into *Weſtminſter-Hall*.

That from this Houſe the Lords ſhall go in this manner:

Firſt the Clerks, then the Maſters of the Chancery, then the Judges, the Gentleman Uſher of the Black Rod, then the Lords two and two, the youngeſt Barons to go firſt, and ſo in Order according to their Precedency, *Garter* King at Arms calling them in their due Places by a Liſt, and when they come into *Weſtminſter-Hall*, the Lords are to place themſelves according to their Precedency in the Houſe there, till all the Peers are placed.

That the Serjeant at Arms do go before the Lord-Keeper.

That in *Weſtminſter-Hall* (the Houſe ſitting there) the other Ceremonies to be obſerved by Officers neceſſary to manage the ſaid Tryal, be left to be performed according to the uſual Methods of ſuch Tryals.

That the Lord-Keeper aſk Leave of the Houſe for the Judges to be covered.

That Proclamation be made for keeping Silence.

That at the Tryal of the Impeached Lord, the Lower Barons Bench ſhall be removed, and a Stool ſet near the Bar where the ſaid Lord is to ſit Uncovered, as a Peer, but not in the Capacity of a Judge; and that he ſhall be admitted Council for his Defence.

That the Lord Great Chamberlain be ordered to take care that the Places behind the Lords be kept for Peereſſes and their Daughters; and that his Majeſty's Surveyor be required to view the Court and Scaffold in *Weſtminſter-Hall*, and ſee that they be ſtrong and firm.

A Meſſage was ſent to the Houſe of Commons by Sir *John Franklyn* and Sir *Richard Holford*, to acquaint them, " That the Lords taking into their Care " the Ordering of the Tryal of *John* Lord *Sommers* " on *Tueſday* the Seventeenth of *June* Inſtant, at " Ten of the Clock in the Forenoon, in *Weſtminſter-* " *Hall*, have prepared ſome Notes and Rules to be " obſerved at the ſaid Tryal, which the Lords have " thought fit to communicate to them, as fol- " lows, *viz.*

That the whole Impeachment is to be read, and then the Anſwer; which being done, the Lord Keeper is to tell the Commons, That now they may go on with their Evidence.

Then the Lord Keeper is to declare, That now the Court is proceeding to hear the Evidence, and deſire the Peers to give Attention.

If any of the Peers, or the Members of the Houſe of Commons that manage the Evidence, or the Lord Impeached, do deſire to have any Queſtion asked, they muſt deſire the Lord Keeper to ask the ſame.

If any Doubt doth ariſe at the Tryal, no Debate is to be in the Court, but the Queſtion ſuſpended to be debated in this Houſe.

The Members of the Houſe of Commons to be there before the Peers come.

None to be covered at the Tryal but the Peers.

That ſuch Peers at the Tryal of the impeached Lord, who at the Inſtance of the ſaid Lord or of the Commons, ſhall be admitted Witneſſes, are to be ſworn at the Clerks Table, and the Lord Keeper to adminiſter the Oath, and to deliver their Evidence in their own Places.

Thoſe Witneſſes that are Commoners are to be ſworn at the Bar by the Clerk, and are to deliver their Evidence there.

The Oath to be: The Evidence which you ſhall give upon the Impeachment of

ſhall

ſhall be the Truth, the whole Truth, and nothing but the Truth; ſo help you God and the Contents of this Book.

The Impeached Lords may croſs examine Witneſſes, viva voce.

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Lords with White Staves do humbly move his Majeſty, from this Houſe, that he will be pleaſed to give Order, that ſuch Guards do attend at the Tryal of the Lord *Sommers* To-morrow in *Weſtminſter-Hall*, as has been uſual in ſuch Caſes.

Sir *Chriſtopher Wren* being come, he was called in---ſays, The Court is made like this Houſe, and a Place for the Commons: He was told, he muſt take away the loweſt Form, and a Stool muſt be ſet within the Bar, for the Lord to be Tryed.

Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That all the Lords be ſummoned to attend this Houſe, in their Robes, To-morrow at Nine of the Clock, otherwiſe to incur the utmoſt Diſpleaſure of this Houſe.

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Lord Great Chamberlain be deſired to take Care, and give Order, That the Place for the Houſe of Commons in *Weſtminſter-Hall* be kept clear for the Commons only, and alſo that a Place be made for the Managers of the Commons.

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That Mr. Serjeant *Prat*, ſhall be, and he is hereby aſſigned Council for the Lord *Sommers* at his Tryal upon the Articles of Impeachment againſt him.

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That Sir *John Talbot*, Sir *Edmund Harriſon*, *Robert Yard*, *John Ellis*, *John Tucker*, *Leonard Hancock*, Eſqs; *John Tench*, and *William Popple* Jun. Gent. do, and they are hereby required to attend this Houſe To-morrow at Ten of the Clock in the Forenoon, as Witneſſes on the behalf of *John* Lord *Sommers*.

The Meſſengers ſent to the Houſe of Commons, return Anſwer, That they have delivered their Meſſage.

A Meſſage was ſent to the Houſe of Commons by Sir *John Francklyn* and Sir *Richard Holford*, to acquaint them, *That the Lords in Order to keep a good Correſpondence between the Two Houſes, and to put the Charge againſt* John *Lord* Haverſham *in a Courſe of Juſtice, have Ordered (at his Lordſhip's Motion) his Lordſhip a Copy of the Charge againſt him, and that he do put in his Anſwer thereunto, in order to bring that Matter to a ſpeedy Judgment.*

The Lord *Halifax* delivered in his Anſwer to the Articles of Impeachment of the Houſe of Commons againſt him, which was read by the Clerk. *See Page* 538.

A Meſſage was ſent to the Houſe of Commons by Sir *John Francklyn* and Sir *Richard Holford*, to carry down a Copy of the ſaid Anſwer, and to acquaint them, *That they having on the Firſt Day of* April *laſt ſent up to their Lordſhips an Impeachment againſt* William *Earl of* Portland, *for High Crimes and Miſdemeanors; and there being as yet no particular Articles exhibited againſt him, their Lordſhips think themſelves oblig'd to put them in mind thereof.*

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That *Henry Baldwyn*, *Samuel Baldwyn*, *Thomas Engeham*, *George Liddell*, *Charles Saunderſon*, *Edward Hayman*, *John Mum*, *Benjamin Baldwyn*, *Reginald Marriot*, and *John Digby*, do, and they are hereby required to attend this Houſe To-morrow at Ten of the Clock, as Witneſſes on the behalf of *John* Lord *Sommers*.

Die Martis, 17° *Junij*, 1701.

The Lord *Wharton* reported his Majeſty's Anſwer to the Addreſs in relation to the Original Treaties, *viz.*

That his Majeſty would do what he could towards it; and that he had not the Original Papers.

As to the Addreſs for Guards, his Majeſty hath complied with it, and given Order for them accordingly.

A Meſſage was brought from the Houſe of Commons by the Earl of *Dyſert* and others, (the 17th of *June*,) to acquaint this Houſe, " That the Commons, in this whole Proceeding againſt the Impeached Lords, have acted with all imaginable Zeal to bring them to a ſpeedy Tryal; and they doubt not but 'twill appear, by comparing their Proceedings with all others upon the like Occaſion, That the Houſe of Commons have nothing to blame themſelves for, but that they have not expreſſed the Reſentment *THEIR ANCESTORS* have juſtly ſhewed upon much leſs Attempts which have been made upon their Power of Impeachments.

" The Commons on the 31ſt of *May*, acquainted your Lordſhips, that they thought it proper from the Nature of the Evidence, to proceed in the firſt Place upon the Tryal of the Lord *Sommers*. Upon the firſt Intimation from your Lordſhips ſome Days afterwards, That you would proceed to the Tryal of any of the Impeached Lords, whom the Commons ſhould be firſt ready to begin with; notwithſtanding your Lordſhips had before thought fit to appoint which Impeachment ſhould be firſt tried, and affix a Day for ſuch Tryal, without conſulting the Commons, who are the Proſecutors:

" The Commons, in this whole Proceeding againſt the Impeached Lords, have acted with all imaginable Zeal to bring them to a ſpeedy Tryal; and they doubt not but 'twill appear, by comparing their Proceedings with all others upon the like Occaſion, That the Houſe of Commons have nothing to blame themſelves for, but that they have not expreſſed the Reſentment *THEIR ANCESTORS* have juſtly ſhewed upon much leſs Attempts which have been made upon their Power of Impeachments.

" The Commons on the 31ſt of *May*, acquainted your Lordſhips, that they thought it proper from the Nature of the Evidence, to proceed in the firſt Place upon the Tryal of the Lord *Sommers*. Upon the firſt Intimation from your Lordſhips ſome Days afterwards, That you would proceed to the Tryal of any of the Impeached Lords, whom the Commons ſhould be firſt ready to begin with; notwithſtanding your Lordſhips had before thought fit to appoint which Impeachment ſhould be firſt tried, and affix a Day for ſuch Tryal, without conſulting the Commons, who are the Proſecutors:

A Meſſage was ſent to the Houſe of Commons by Sir *John Francklyn* and Sir *Lacon William Child*, (on the 20th Inſtant) to acquaint them, " That the Lords in Anſwer to the Meſſage of the Commons of the Seventeenth Inſtant, ſay, the only true way of determining which of the Two Houſes has acted with the greateſt Sincerity, in order to bring the Impeached Lords to their Tryals, is to look back upon the reſpective Proceedings.

" The Lords do not well underſtand what the Commons mean by that Reſentment which they ſpeak of in their Meſſage. Their Lordſhips own the Houſe of Commons have a Right of Impeaching: And the Lords have the undoubted Power of doing Juſtice upon thoſe Impeachments, by bringing them to Tryal, and condemning or acquitting the Parties in a reaſonable Time. This Power is derived to them from their Anceſtors, which they will not ſuffer to be wreſted from them by any Pretences whatſoever.

" Their Lordſhips cannot but wonder, that the Commons ſhould not have propoſed a Committee of both Houſes much ſooner, if they thought it ſo neceſſary for the bringing on the Tryals; no mention being made of ſuch a Committee from the Firſt of *April* to the Sixth of *June*, although during that Interval their

" The Commons determining to expedite the " Tryals to the utmoſt of their Power, in hopes of " attaining that End, and for the more ſpeedy and " eaſy adjuſting and preventing any Differences " which had happened, or might ariſe, previous to " or upon theſe Tryals, propoſed to your Lordſhips " at a Conference, the moſt Parliamentary and Ef- " fectual Method for that Purpoſe, and that which " in no manner intrenched upon your Lordſhips " Judicature, That a Committee of both Houſes " ſhould be nominated to conſider of the moſt " proper Ways and Methods of Proceedings upon " Impeachments according to the Uſage of Par- " liament.

" In the next Meſſage to the Commons upon " *Monday* the 9th of *June*, your Lordſhips thought " fit, without taking the leaſt Notice of this Pro- " poſition, to appoint the *Friday* then following, " for the Tryal of the ſaid Lord *Sommers*; where- " unto, as well as to many other Meſſages and Pro- " ceedings of your Lordſhips upon this Occaſion, " the Houſe of Commons might have juſtly taken " very great Exceptions; yet, as an Evidence of " their Moderation, and to ſhew their Readineſs to " bring the Impeached Lords to ſpeedy Juſtice, the " Commons inſiſted only on their Propoſition for " a Committee of both Houſes, to Settle and Ad- " juſt the neceſſary Preliminaries to the Tryal; parti- " cularly, Whether the Impeached Lords ſhould ap- " pear on their Tryal at your Lordſhips Bar as " Criminals: Whether being under Accuſations " of the ſame Crimes, they ſhould ſit as Judges on " each others Tryal for thoſe Crimes, or ſhould " Vote in their own Caſes, as 'tis notorious they " have been permitted by your Lordſhips to do in " many Inſtances which might be given: To which " Particulars your Lordſhips have not yet given a " direct Anſwer, though put in Mind thereof by " the Commons.

" Your Lordſhips, at a Conference, having of- " fered ſome Reaſons why you could not agree to " a Committee of both Houſes, to adjuſt the ne- " ceſſary Preliminaries, the Commons thereupon " deſired a Free-Conference, and your Lordſhips " agreed thereunto; at which 'tis well known to " many of your Lordſhips, who were then preſent, " what moſt ſcandalous Reproaches and falſe Expreſſions, highly reflecting upon the Honour and Juſtice of " the Houſe of Commons, were uttered by *John* Lord *Haverſham*, whereby the Commons were under a " neceſſity of withdrawing from the ſaid Free-Conference; for which Offence the Commons have, with " all due regard to your Lordſhips, prayed your Lordſhips Juſtice againſt the Lord *Haverſham*, but have " as yet received no manner of Satisfaction.

" Delays were frequently complained of by the " Houſe of Lords.

" The Manner in which the Commons demand " this Committee, the Lords look upon as a direct " invading of their Judicature; and therefore, as " there never was a Committee of both Houſes " yielded to by the Lords in caſe of any Impeach- " ment for High Crimes and Miſdemeanors; ſo " their Lordſhips do inſiſt, that they will make no " new Precedent upon this Occaſion. Many Im- " peachments for Miſdemeanors have in all times " been determined without ſuch a Committee: And " if now the Commons think fit, by an unprece- " dented Demand, to form an Excuſe for not pro- " ſecuting their Impeachments, it is demonſtrable " where the Obſtruction lies.

" As to the Preliminaries which the Commons " mention in particular, as proper to be ſettled at " ſuch a Committee, they have received the Re- " ſolutions of the Houſe of Lords therein by their " Meſſage of the Twelfth Inſtant; from which (be- " ing Matters relating entirely to their Judicature) " their Lordſhips cannot depart.

" As to the laſt Pretence the Commons would " make to ſhelter the delaying the Tryals, from " ſome Expreſſions which fell from the Lord *Ha- " verſham* at the Free-Conference, at which Offence " was taken; their Lordſhips will only obſerve,

" *Firſt*, That they have omitted nothing which " might give the Commons all reaſonable Satisfa- " ction, of their Purpoſe to do them Juſtice in that " Matter, ſo far as is conſiſtent with doing Juſtice " to that Lord; and alſo to preſerve all good Cor- " reſpondence with them, as appears by the ſeveral " Steps they have taken.

" *Secondly*, That this Buſineſs has no Relation to " the Tryals of the Impeached Lords: And there- " fore their Lordſhips cannot imagine why the " Commons ſhould make Satisfaction and Repara- " tion againſt the Lord *Haverſham*, a neceſſary Con- " dition for the going on with the Tryals, and at " the ſame time find no Difficulty in proceeding " on other Buſineſs.

" The Commons reſtrain themſelves from enumerating your Lordſhips very many irregular and unpar- " liamentary Proceedings upon this Occaſion; but think it is what they owe to Publick Juſtice, and all " the Commons of *England*, whom they repreſent, to declare ſome few of thoſe Reaſons, why they pe- " remptorily refuſe to proceed to the Tryal of the Lord *Sommers* on the 17th of *June*.

" *Firſt*, Becauſe your Lordſhips have not yet agreed, that a Committee of both Houſes ſhould be ap- " pointed for ſettling the neceſſary Preliminaries; a Method never until this time denied by the Houſe " of Lords, whenſoever the Commons have thought it neceſſary to deſire the ſame.

" *Secondly*, Should the Commons (which they never will do) be contented to give up thoſe Rights " which have been tranſmitted to them from THEIR ANCESTORS, and are of abſolute neceſſity to " their Proceedings on Impeachments; yet whilſt they have any Regard to Publick Juſtice, they never can " appear as Proſecutors before your Lordſhips, till your Lordſhips have firſt given them Satisfaction, " that Lords Impeached of the ſame Crimes ſhall not ſit as Judges on each others Tryals for thoſe Crimes.

" *Thirdly*, Becauſe the Commons have, as yet, received no Reparation for the great Indignity offered " to them at the Free-Conference by the Lord *Haverſham*. The Commons are far from any Inclination, " and cannot be ſuppoſed to be under any neceſſity of delaying the Tryal of the Lord *Sommers*: There is " not any Article exhibited by them in maintenance of their Impeachment againſt the Lord *Sommers*, for " the Proof whereof they have not full and undeniable Evidence, which they will be ready to produce as " ſoon as your Lordſhips ſhall have done Juſtice upon the Lord *Haverſham*; and the neceſſary Prelimina- " ries, in order to the ſaid Tryal, ſhall be ſettled by a Committee of both Houſes.

" The Commons think it unneceſſary to obſerve to your Lordſhips, that moſt of the Articles whereof " the Lord *Sommers* ſtands Impeached, will appear to your Lordſhips to be undoubtedly true, from Mat- " ters

" ters of Record, as well as by the Confeſſion of the ſaid Lord *Sommers*, in his Anſwer to the ſaid Ar-
" ticles; to which the Commons doubt not but your Lordſhips will have a due Regard when his Tryal
" ſhall regularly proceed.

The Houſe being moved to go into *Weſtminſter-Hall*, in order to the Tryal of the Lord *Sommers*:

After Debate this Queſtion was put, Whether this Houſe ſhall go this Day into the Court in *Weſtminſter-Hall*, in order to proceed upon the Tryal of the Lord *Sommers*, according to the Order of the Day?

It was reſolved in the Affirmative.

A Meſſage was ſent to the Houſe of Commons by Mr. Baron *Tracy*, and Mr. Baron *Berry*, to acquaint them, that the Lords intend preſently to proceed to the Tryal of *John* Lord *Sommers* in *Weſtminſter-Hall*.

The Meſſengers being returned acquainted the Houſe, that the Commons were adjourned.

Then this Queſtion was propoſed, Whether the Earl of *Orford*, and Lord *Halifax* may withdraw at the Tryal of the Lord *Sommers*?

Then this previous Queſtion was put, Whether this Queſtion ſhall be now put?

It was reſolved in the Affirmative.

Then the Main Queſtion was put, Whether the Earl of *Orford*, and Lord *Halifax* ſhall have Leave to withdraw at the Tryal of the Lord *Somers*?

It was Reſolved in the Affirmative.

Then the Lord-Keeper deſired, that ſome further Directions be given to him in order to the Tryal in the Hall; and thereupon it was propoſed that this Proclamation be made in the Hall, *viz.*

Whereas a Charge of High Crimes and Miſdemeanors has been exhibited by the Houſe of Commons, in the Name of Themſelves, and all the Commons of England, *againſt* John *Lord* Sommers, *all Perſons concerned are to take notice, that he now ſtands upon his Tryal, and they may now come forth in order to make good the ſaid Charge.*

After Debate the Queſtion was put, Whether this Proclamation ſhall be made.

It was reſolved in the Affirmative.

Ordered, That the ſaid Proclamation be made in the Hall before the reading the Articles of Impeachment, and the Lord *Sommers* Anſwer; and alſo after they are read.

Ordered, That the Court in *Weſtminſter-Hall* be cleared for the Lords.

Then the Houſe adjourned to *Weſtminſter-Hall*, and the Lords were called by the Herald, and went as Ordered; and being Seated in the Hall the Houſe was reſumed.

Then Proclamation was made for Silence, as follows:

Our Sovereign Lord the King, ſtrictly Charges and Commands all manner of Perſons to keep Silence, upon pain of Impriſonment.

Then the Lord-Keeper asked Leave for the Judges to be Covered; which was agreed to.

Then Proclamation, as Ordered, was made.

After which, the Articles againſt *John* Lord *Sommers* were Read, and alſo his Lordſhip's Anſwer to them.

After which the ſame Proclamation was again made.

Then the Lord-Keeper declared the Houſe was ready to hear the Evidence againſt *John* Lord *Sommers*, and therefore deſired the Lords to give Attention.

The Lord *Sommers* moved to have his Council heard.

Whereupon the Houſe adjourned to the Houſe above, and went back in the ſame manner as they came down, and being there the Houſe was reſumed.

The Houſe being moved to acquit the Lord *Sommers*; and after long Debate, and hearing the Judges to ſeveral Queſtions asked them by the Lords; This Queſtion was propoſed,

That *John* Lord *Sommers* be acquitted of the Articles of Impeachment againſt him exhibitted by the Houſe of Commons, and all things therein contained, and that the ſaid Impeachment be diſmiſſed.

Then this Queſtion was put, Whether the Queſtion now Stated, ſhall be put in the Court below.

It was Reſolved in the Affirmative.

Then it was agreed and ordered, That in *Weſtminſter-Hall* the Lord Keeper ſhall read the Queſtion, and then call the Junior Baron preſent firſt, and ask every Lord, Whether *Content*, or *Not Content*, and that every Lord ſtand up when called to, and give his Vote *Content*, or *Not Content*; and that the Lord-Keeper, having taken their Votes, declare the Majority; and if the Majority be for Acquitting the Lord *Sommers*, the Lord-Keeper is to declare it ſo, and particularly to the Lord *Sommers*.

Then the Houſe adjourned again to *Weſtminſter-Hall*, and the Lords went in the ſame manner as before; and being come there, the Houſe was Reſumed, and Proclamation was made for Silence.

The Lord-Keeper put the Queſtion as follows,

That *John* Lord *Sommers* be Acquitted of the Articles of Impeachment againſt him, Exhibited by the Houſe of Commons, and all Things therein contained, and that the ſaid Impeachment be diſmiſſed.

Then the Lord-Keeper aſked every Lord, Whether *Content*, or *Not*.

Lord *Haverſham*	Content.
Lord *Herbert*	Content.
Lord *Jeffreys*	Not Cont.
Lord *Godolphin*	Not Cont.
Lord *Guilford*	Not Cont.
Lord *Dartmouth*	Not Cont.
Lord *Oſſulſton*	Content.
Lord *Osborne*	Content
Lord *Cornwallis*	Content.
Lord *Granville*	Content.
Lord *Berkely*	Content.
Lord *Lexington*	Not Cont.
Lord *Rockingham*	Content.
Lord *Lucas*	Content.
Lord *Colepeper*	Content.
Lord *Byron*	Content.
Lord *Fermyn*	Not Cont.
Lord *Mohun*	Content.
Lord *Howard Eſc.*	Not Cont.
Lord *Lovelace*	Content.
Lord *Hunſdon*	Not Cont.
Lord *North*	Content.
Lord *Wharton*	Content.
Lord *Eure*	Content.
Lord *Fitzwalter*	Content.
Lord *Lawarr*	Not Cont.
Lord *Bergevenny*	Content.
Lord Biſhop of *Chicheſter*	Content.
Lord Biſhop of *Lincoln*	Content.
Lord Biſhop of *St. Aſaph*	Content.
Lord Biſhop of *Briſtol*	Content.
Lord Biſhop of *Glouceſter*	Content.

Lord Biſhop of *Peterborough*	Content.
Lord Biſhop of *Norwich*	Content.
Lord Biſhop of *Coventry* and *Litchfield*	Content.
Lord Biſhop of *Ely*	Content.
Lord Biſhop of *Bangor*	Content.
Lord Biſhop of *Sarum*	Content.
Lord Biſhop of *Exeter*	Not Content.
Lord Biſhop of *Rocheſter*	Not Content.
Lord Biſhop of *London*	Not Content.
Lord Viſc. *Weymouth*	Not Content.
Lord Viſc. *Say* and *Seale*	Content.
Earl of *Rothford*	Content.
Earl of *Romney*	Content.
Earl of *Warrington*	Not Content.
Earl of *Scarbrough*	Content.
Earl of *Marlborough*	Not Content.
Earl of *Montague*	Content.
Earl of *Portland*	Content.
Earl of *Plymouth*	Not Content.
Earl of *Abingdon*	Not Content.
Earl of *Rocheſter*	Not Content.
Earl of *Nottingham*	Not Content.
Earl of *Berkeley*	Content.
Earl of *Radnor*	Content.
Earl of *Macleſfeld*	Content.
Earl of *Feverſham*	Not Content.
Earl of *Shaftsbury*	Content.
Earl of *Burlington*	Content.
Earl of *Bath*	Content.
Earl of *Eſſex*	Content.
Earl of *Scarſdale*	Not Cont.
Earl of *Thanet*	Not Cont.
Earl of *Carnarvon*	Not Cont.
Earl of *Kingſton*	Content.
Earl of *Stamford*	Content.
Earl of *Peterborough*	Not Content.
Earl of *Rivers*	Content.
Earl of *Denbigh*	Not Content.
Earl of *Dorſet*	Content.
Earl of *Suffolk*	Content.
Earl of *Huntingdon*	Content.
Earl of *Derby*	Not Cont.
Earl of *Oxford*	Not Cont.
Lord Chamberlain	Not Cont.
Earl Marſhal	Content.
Lord Great Chamberlain	Not Cont.
Marquis of *Normanby*	Not Cont.
Duke of *Newcaſtle*	Content.
Duke of *Schonberg*	Content.
Duke of *Bolton*	Content.
Duke of *St. Albans*	Content.
Duke of *Northumberland*	Not Cont.
Duke of *Somerſet*	Not Cont.
Lord Steward	Content.
Lord Privy-Seal	Content.
Lord Archbiſhop of *Canterbury*	Content.

The Lord-Keeper declared the Majority was for Acquitting; and then declared,

That *John* Lord *Sommers* was Acquitted of the Articles of Impeachment againſt him Exhibited by the Houſe of Commons, and all Things therein contained, and that the ſaid Impeachment was diſmiſs'd.

And alſo declared to the Lord *Sommers*, That he was Acquitted.

Then the Houſe adjourned to the Houſe above; and being come thither, the Houſe was reſumed, and the following Order made:

It is Conſidered, Ordered, and Adjudged by the Lords Spiritual and Temporal in Parliament aſſembled, That *John* Lord *Sommers* ſhall be, and he is hereby Acquitted of the Articles of Impeachment againſt him Exhibited by the Houſe of Commons, and all Things therein contained; and that the ſaid Impeachment ſhall be, and is hereby diſmiſſed.

It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Proceedings in this Houſe upon the Impeachments be printed; and that the Lords Committees appointed to conſider of the Manner of Proceeding on Impeachments, do meet To-morrow at Ten a-Clock, and inſpect the Journals, and draw up the Matter relating thereunto, in Order to be printed, and report to the Houſe.

Die Mercurii 18° *Junij*, 1701.

It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That this Houſe will proceed to the Tryal of *Edward* Earl of *Orford*, on *Monday* the Three and Twentieth Day of this Inſtant *June*, at Ten of the Clock in the Forenoon, in *Weſtminſter-Hall*.

A Meſſage was ſent to the Houſe of Commons by Sir *John Francklyn*, and Dr. *Edisbury*, to acquaint them, *That this Houſe hath appointed* Monday, *the Three and Twentieth Day of this Inſtant* June, *for the Tryal of* Edward *Earl of* Orford, *in* Weſtminſter-Hall, *at Ten a-Clock.*

A Meſſage from the Houſe of Commons by the Lord *Mordant* and others (on *June* the 20th) to acquaint this Houſe, *That in Anſwer to the Meſſage of the Lords, appointing* Monday *next for the Tryal of the Earl of* Orford, *that the Lords have been acquainted, That the Commons would proceed, in the firſt place, againſt the Lord* Sommers; *and they are ready to go to that Lord's Tryal, as ſoon as ever the Commons have received Satisfaction for the Affront offer'd to the Houſe of Commons by the Lord* Haverſham *at the Free Conference; and that the neceſſary Preliminaries are adjuſted by a Committee of both Houſes.*

Die Jovis 19° *Junij*, 1701.

The Houſe being moved, That an Anſwer be drawn to the Meſſage received from the Houſe of Commons the Seventeenth Inſtant, it is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Committee appointed to conſider of the Manner of Proceeding on Impeachments, do withdraw preſently, to draw an Anſwer to the ſaid Meſſage.

Then the Houſe was adjourned during Pleaſure, and the Lords went to the Committee; which being ended,

The Houſe was reſumed, and the Earl of *Stamford* reported what they had drawn in Anſwer to the Meſſage received from the Houſe of Commons the Seventeenth Inſtant; which was read, and agreed to.

A Meſſage was ſent to the Houſe of Commons by Sir *John Francklyn*, and Sir *Lacon William Child*. *See Page* 545.

This

This Day *John* Lord *Haverſham* delivered his Anſwer to the Charge of the Houſe of Commons Exhibited againſt him the Thirteenth Inſtant; which was read by the Clerk, as follows, *viz.*

The ANSWER of John *Lord* Haverſham *to the Charge Exhibited againſt him by the Commons, for Words ſpoken at a Free Conference, on the Thirteenth Day of this Inſtant* June, *One Thouſand Seven Hundred and One.*

THE ſaid Lord *Haverſham*, ſaving to himſelf all Advantages of Exception to the ſaid Charge, and of not being prejudiced by any want of Form in this his Anſwer; and alſo ſaving to himſelf all Rights and Privileges belonging to him, as one of the Peers of this Realm; for Anſwer to the ſaid Charge, ſaith, That on the Sixth Day of *June*, One Thouſand Seven Hundred and One, the Commons, by a Meſſage ſent to the Lords, deſired a Conference upon their Meſſage to the Commons of the Fourth of *June*: In which Conference they propoſed to the Lords, That a Committee of both Houſes might be nominated, to conſider of the moſt proper Ways and Methods of proceeding on the Impeachments of the Lords, according to the Uſage of Parliament. That on the Tenth of *June*, the Lords deſired another Conference with the Commons; in which they delivered them their Reaſons, why they could not agree to the appointing of ſuch Committee, (*viz.*) *Firſt*, That they could not find that ever ſuch a Committee was appointed on Occaſion of Impeachments for Miſdemeanors; and their Obligation to be cautious in admitting any Thing new in Matters relating to Judicature. *Secondly*, That although a Committee of this Nature was agreed to, upon the Impeachments of the Earl of *Danby*, and the Five Popiſh Lords for High-Treaſon; yet the Succeſs, in that Inſtance, was not ſuch as ſhould encourage the purſuing the ſame Method, though in the like Caſe: And that after much Time ſpent at that Committee, the Diſputes were ſo far from being there adjuſted, that they occaſioned the abrupt Concluſion of a Seſſion of Parliament. *Thirdly*, That the Method of Proceedings on Impeachments for Miſdemeanors, are ſo well ſettled by the Uſage of Parliament, that no Difficulties were likely to happen, nor none had been ſtated to them: And that all the Preliminaries in the Caſe of *Stephen Goudett*, and others, (which was the laſt Inſtance of Impeachments for Miſdemeanors) were eaſily ſettled and agreed to, without any ſuch Committee. *Fourthly*, That the Propoſal of the Commons came ſo very late, that no other Fruit could be expected of ſuch a Committee, but the preventing of the Tryals during this Seſſion. Whereupon the Commons, on the Twelfth of *June*, deſired of the Lords a Free Conference, on the Subject-Matter of the laſt Conference. That the Lords, on the ſaid Twelfth of *June*, came to Two Reſolutions in relation to the Lords Impeached: " Firſt, That no Lord of " Parliament, Impeached of High Crimes and Miſ- " demeanors, and coming to his Tryal, ſhall, upon " his Tryal, be without the Bar. Secondly, That " no Lord of Parliament, Impeached of High " Crimes and Miſdemeanors, can be precluded " from Voting on any Occaſion, except in his own " Tryal. And by Meſſengers of their own, the Lords acquainted the Commons with the ſaid Two Reſolutions, and alſo that they agreed to a Free Conference with the Commons, and appointed the next Day. That upon the Thirteenth of *June*, Mr. *Harcourt*, one of the Managers, begin the Free Conference on the Part of the Commons, and argued upon the Four Reaſons given by the Lords, why they could not agree to the appointing a Committee of both Houſes; and principally relied upon the Inſtance in the Caſe of the Popiſh Lords; and inſiſted upon the Delay, that the not agreeing to the Nomination of ſuch a Committee would neceſſarily occaſion, whereby the Lords Tryals, and the Juſtice due to the Nation, would be retarded. And departing from the Subject-Matter of the ſaid Conference, (which was, whether it were requiſite to appoint or not appoint ſuch a Committee) the ſaid Manager diſcourſed upon the latter of the Two Reſolutions of the Lords communicated to the Commons, and ſaid, *That he wiſhed the Lords had ſent down their Reaſons, as well as their Reſolutions:* Which Words ſeemed to the ſaid Lord *Haverſham*, to carry therein an Implication as if the ſaid Reſolution could have no Reaſon to juſtify it. That Sir *Bartholomew Shower*, another Manager for the Commons, obſerved the ſame Method of Diſcourſe: And having argued upon the Lords Reaſons, departed from the Subject-Matter of the Free Conference; and inveighing againſt the Manner of the Lords Judicature aſſerted by their Reſolutions, ſaid, *That it was abhorrent to Juſtice.* Which Expreſſions being foreign (as the ſaid Lord *Haverſham* apprehended) to the Subject-Matter of the ſaid Free Conference, which was, Whether ſuch Committee of both Houſes ſhould be appointed or not? the ſaid Lord being appointed by the Lords for one of the Managers of the ſaid Free Conference on their Behalf, in Vindication of the Honour and Juſtice of the Houſe of Peers, and of their Judicature and Reſolutions, in Anſwer to what had been ſaid by the Managers for the Commons, he ſpoke to the Effect following:

" *Gentlemen*, I ſhall begin what I have to ſay, " as that worthy Member who opened this Con- " ference, That there is nothing the Lords more " deſire that to keep a good Correſpondence, which " is ſo neceſſary to the Safety of the Nation, and " the Diſpatch of publick Buſineſs; and nothing " they have more carefully avoided, than what " might create a Miſunderſtanding between the " Two Houſes. A greater Inſtance of which could " not be given, than the Meſſages my Lords " returned to ſome the Commons had ſent them up; " in which they took care to expreſs themſelves ſo " cautiouſly, that no Heat might ariſe from any " Expreſſion of theirs. And as to what the worthy " Members mentioned, in relation to Delay, the " repeated Remembrances ſent the Commons, with " relation to the ſending up the Articles againſt " the Impeached Lords, are a ſufficient Inſtance " how deſirous they are that theſe Matters ſhould " proceed. And the Lords have this Satisfaction, " that it is not on their Part that the Tryals " are not in a greater Forwardneſs; they cannot but " look upon it as a great Hardſhip that any ſhould " lie under long Delays on Impeachments. Perſons " may be incapable; Facts may be forgotten; Evi- " dences may be laid out of the way; Witneſſes " may dye; and many the like Accidents may hap- " pen. The Inſtance the worthy Members give of " the Popiſh Lords, as it is a Crime of another Na- " ture, and not fully to the Point, ſo it ſeems to " make againſt what it was brought for: For the " worthy Members ſay there was but One of the " Lords brought to Juſtice, though Four more (as " I take it) were Accuſed. And can any Man be- " lieve that the Commons have a Mind to bring

" only

" only One of theſe Lords to Tryal? It is incon-
" ſiſtent with the Opinion that every Body muſt
" have of their Juſtice. And as to the Point of
" Judicature, it were very hard upon the Lords,
" that no Perſon ſhould be brought to Tryal, till
" the Judicature of the Houſe be ſo firſt. The Ju-
" dicature of the Lords is their Peculiar, and hath,
" in former Ages, been Sacred with the Commons
" themſelves. And this Houſe perhaps hath as
" much Reaſon to be jealous and careful of it, as
" any other Houſe ever had; eſpecially when one
" ſingle Precedent is ſo urged and inſiſted upon.
" One Thing there is, which a Worthy Member
" mentioned, though I cannot ſpeak to it at large,
" becauſe I think my ſelf bound up by the Reſolu-
" tions of the Houſe; yet it muſt have ſome An-
" ſwer; (that is) As to the Lords Voting in their
" own Caſe; it requires an Anſwer, though I can-
" not enter into the Debate of it. The Commons
" themſelves have made this Precedent; for in theſe
" Impeachments they have allowed Men, equally
" concerned in the ſame Facts, to Vote in their own
" Houſe: And we have not made the Diſtinction in
" ours, that ſome ſhould Vote, and ſome not. The
" Lords have ſo high an Opinion of the Juſtice
" of the Houſe of Commons, that they believe
" Juſtice ſhall never be made uſe of as a Maſk for
" any Deſign. And therefore give me Leave to ſay,
" though I am not to argue it, 'Tis to me a plain De-
" monſtration, that the Commons think theſe Lords
" innocent; and I think the Propoſition is undenia-
" ble: For when there are ſeveral Lords in the ſame
" Circumſtances, in the ſame Facts, there is no
" Diſtinction; and the Commons leave ſome of
" theſe Men, at the Head of Affairs, near the King's
" Perſon, to do any Miſchief, if they were inclina-
" ble to it; it looks as if they thought them all in-
" nocent. This is a Thing I was in hopes I ſhould
" never have heard aſſerted, when the Beginning of
" it was from the Houſe of Commons.

The ſaid Lord being here interrupted, he deſired to be heard out, and that his Words might be taken down in Writing. But the Managers for the Commons broke up, and departed, refuſing to hear any Explanation. Now the ſaid Lord, as to any implicit Charge of a Deſign to reflect on, or diſhonour the Houſe of Commons, denies any ſuch Deſign or Intention, having for many Years had the Honour to ſit in the Houſe of Commons, and having ever had an honourable and reſpectful Senſe thereof: But the ſaid Lord was led to expreſs himſelf in the manner aforeſaid, for the Reaſons aforeſaid, and takes himſelf to be juſtified therein, by the Facts and Reaſons following.

That the Nature of that Conference was, That it ſhould be free: The Occaſion of it, Becauſe either Houſe apprehended the other to be in an Error: And the End of it, That each Side may urge ſuch Facts as are true, and ſuch Reaſons as are forcible to convince. That one Article of the Impeachment againſt *John* Lord *Sommers* was, That the Treaty of Partition, of One Thouſand Six Hundred Ninety Nine, was ratified under the Great Seal, which then was in the Cuſtody of the ſame Lord, then Lord Chancellor of *England*. That the Commons, on the Firſt of *April*, One Thouſand Seven Hundred and One, reſolved, That the Earl of *Portland*, by negotiating and concluding the Treaty of Partition, was guilty of a High Crime and Miſdemeanor; and purſuant thereto, lodged an Impeachment againſt him in the Houſe of Peers: Which Vote and Impeachment could not have Reference to any Treaty, other than the Treaty of Partition of One Thouſand Six Hundred Ninety Nine; the Treaty of One Thouſand Six Hundred Ninety Eight, not being before the Houſe of Commons till after the Time of that Vote and Impeachment; and yet the Earl of *Jerſey*, who then was Secretary of State, and a Privy-Counſellor, and actually Signed the ſaid Treaty of One Thouſand Six Hundred Ninety Nine, as a Plenipotentiary with the Lord *Portland*, ſtands Unimpeached, and continues at the Head of Affairs, being Lord-Chamberlain, near his Majeſty's Perſon, and in his Preſence and Councils (without Complaint.) That the Earl of *Orford*, and the Lords *Sommers* and *Halifax*, are ſeverally Impeached for adviſing the Treaty of Partition of One Thouſand Six Hundred Ninety Eight; and yet Mr. Secretary *Vernon*, who then was Secretary of State, and a Privy-Counſellor, and acted in the promoting of the Treaty of Partition of One Thouſand Six Hundred Ninety Eight, ſtands Unimpeached, and ſtill continues one of the Principal Secretaries of State: And Sir *Joſeph Williamſon*, who then was a Privy-Counſellor, and tranſacted and Signed the Treaty of Partition of One Thouſand Six Hundred Ninety Eight, as a Plenipotentiary, ſtands Unimpeached. That the Lord *Halifax* is Impeached, for that he, being a Commiſſioner of the Treaſury, aſſented to the paſſing of divers Grants from the Crown, to ſeveral Perſons, of Lands in *Ireland*; and yet Sir *Edward Seymour*, Sir *Stephen Fox*, and Mr. *Pelham*, who being ſeverally Lords Commiſſioners of the Treaſury, did ſeverally aſſent to the paſſing of divers like Grants from his Majeſty of Lands in *Ireland*, ſtand Unimpeached. That in the Impeachments againſt the Earl of *Orford* and Lord *Sommers*, one of the Articles againſt them is for procuring a Commiſſion to Captain *William Kidd*; and likewiſe a Grant under the Great Seal, of the Ships and Goods of certain Perſons therein named, to certain Perſons in Truſt for them; and yet other Lords, equally concerned in procuring the ſaid Commiſſion and Grant, ſtand Unimpeached. That the ſaid Mr. Secretary *Vernon*, Sir *Edward Seymour*, Sir *Stephen Fox*, and Mr. *Pelham*, notwithſtanding their being Parties in the ſame Facts charged in the ſaid reſpective Impeachments, have been permitted to Sit and Vote in the Houſe of Commons touching the ſaid Impeachments, and the Matters thereof. That theſe Facts being true and publickly known, the Conſequences reſulting therefrom (as the ſaid Lord *Haverſham* apprehended) are undeniable, (*viz.*) That the doing of the ſame Thing by Two Perſons in equal Circumſtances, cannot be a Crime in one, and not in the other. That the Commons had no Reaſon to inſiſt, That the Lords ſhould not permit that in their Members, which the Commons had firſt permitted, and continued to permit, and ſo begun the firſt Precedent in their own Members. That it muſt be thought, that the Impeached Lords (notwithſtanding the Facts alledged in the Impeachments) are innocent of Danger to the King, when the Lord *Jerſey* and Mr. Secretary *Vernon*, who are reſpectively concerned in the Partition-Treaties, are permitted, without Complaint, to be at the Head of Affairs, and in the King's Preſence, and of his Councils, as not dangerous: That the Word *Innocent*, uſed in the Words ſpoken by the ſaid Lord *Haverſham*, can extend no farther than to ſuch Matters as were done by the Impeached Lords, of the ſame Nature with whae was done by thoſe Unimpeached. All which Facts being true, and the Conſequences obvious, the ſaid Lord being ready to prove the ſame; he inſiſts,

That the Words ſpoken by him at the ſaid Free Conference, were not ſcandalous or reproachful, nor falſe or reflecting on the Honour or Juſtice of the Houſe of Commons, but were ſpoken upon a juſt occaſion given, in anſwer to ſeveral Expreſſions that fell from the Managers for the Commons, remote (as he conceives) from the Matter in Queſtion, and reflecting on the Honour and Juſtice of the Houſe of Peers, and in Maintenance and Defence of the Lords Reſolution and Judicature, and conformable to the Duty he owes to the ſaid Houſe. And the ſaid Lord humbly demands the Judgment of this Honourable Houſe therein. And the ſaid Lord *Haverſham* denies, That he ſpoke the Words ſpecified in the ſaid Charge, in ſuch Manner and Form as the ſame are therein ſet down. And having thus given a true Account of this Matter, and it being true and indiſputable, That ſome Lords in this Houſe, equally concerned in Facts, for which other Lords are Impeached by the Houſe of Commons, are ſtill near the King's Perſon, in the greateſt Places of Truſt, and Honour, and unimpeached; and alſo, That ſeveral Members of the Houſe of Commons, equally concerned in the ſame Facts, for which ſome of the Lords are Impeached, do however remain unimpeached: The ſaid Lord thinks ſuch a Truth could never have been more properly ſpoken, in the Maintenance and Defence of your Lordſhips Judicature and Reſolutions. And inſiſteth, That what he ſaid at the Free Conference was not any ſcandalous Reproach, or falſe Expreſſion, or any ways tended to make a Breach in the good Correſpondence between the Lords and Commons, or to the interrupting the Publick Juſtice of the Nation, by delaying the Proceedings on the Impeachments; as in the ſaid Charge alledged, but agreeable to Truth, in Diſcharge of his Duty, and in the Defence of the undoubted Right and Judicature of this Houſe.

HAVERSHAM.

Ordered, That a Copy of the Lord *Haverſham*'s Anſwer be ſent to the Houſe of Commons.

Then a Meſſage was ſent to the Houſe of Commons, by Sir *John Francklyn* and Sir *Lacon William Child*, to carry down a Copy of the aboveſaid Anſwer.

Die Veneris 20° *Junij*. 1701.

A Meſſage from the Houſe of Commons by the Lord *Mordant* and others. *See Page* 548.

Ordered, That the Committee appointed to conſider of the manner of Proceedings on Impeachments, do meet preſently and draw an Anſwer to this Meſſage.

The Earl of *Stamford* reported from the Lords Committees appointed to conſider of the Manner of Proceedings on Impeachments, the Anſwer drawn by them, in Anſwer to the Commons Meſſage this Day; which was read and agreed to as follows:

A Meſſage was ſent to the Houſe of Commons by Mr. *Gery* and Dr. *Newton*, to acquaint them,

" That in Anſwer to the Meſſage of the Houſe " of Commons of this Day, the Lords do acquaint " the Commons, That they might have known by " the Records of the Houſe of Lords, That the Lords " have proceeded to the Tryal of the Lord *Somners*, " on *Tueſday* laſt being the Day appointed; and " the Commons not appearing to maintain their " Articles againſt the ſaid Lord, the Lords have by " Judgment of their Houſe acquitted him of the " Articles of Impeachments againſt him, exhibited " by the Houſe of Commons, and all things therein " contained, and have diſmiſſed the ſaid Im- " peachment.

" And the Lords have appointed *Monday* next " for the Tryal of the Earl of *Orford*, on which " Day they will proceed on the ſaid Tryal.

" The Commons ſtill preſſing for a Committee " of both Houſes, (which the Lords never can con- " ſent to, for the Reaſons already given,) their " Lordſhips can infer nothing from their perſiſt- " ing in that Demand, than that they never de- " ſigned to bring any of their Impeachments to a " Tryal.

" As to the Lord *Haverſham*, his Anſwer is now " before the Houſe of Commons, and the Lords " reſolve to do Juſtice in that Matter.

Die Sabbati 21° *Junij*, 1701.

The Houſe being moved to conſider what is fit to be done, in Relation to the Charge of the Houſe of Commons againſt *John* Lord *Haverſham*, and after due Conſideration thereof, and the Lord *Haverſham* deſiring to be proſecuted, it was propoſed as follows,

That the Anſwer of *John* Lord *Haverſham* to the Charge ſent up againſt him by the Houſe of Commons, having been ſent down to that Houſe, It is reſolved by the Lords Spiritual and Temporal in Parliament aſſembled, That unleſs the ſaid Charge ſhall be proſecuted againſt the ſaid Lord *Haverſham* with effect by the Commons, before the End of this Seſſion of Parliament, the Lords will declare and adjudge him wholly innocent of the ſaid Charge.

Then this Queſtion was put, Whether this Reſolution ſhall be agreed to?

It was reſolved in the Affirmative.

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That Sir *David Mitchell*, Sir *Edmund Harriſon*, *George Dorrington*, Eſq; *Joſeph Burchet*, Eſq; Capt. *George Bynns*, *Brooke Bridges*, Eſq; *George Cornwal*, Eſq; Capt. . . . . *Griffith*, ... *Holmes*, *Edmund Hayman*, and . . . . *Traverſe*, Eſq; his Majeſty's Surveyor General, do, and they are hereby required to attend this Houſe on *Monday* next at Ten of the Clock in the Forenoon, as Witneſſes on the behalf of *Edward* Earl of *Orford*.

A Complaint being this Day made of certain Printed Votes of the Houſe of Commons dated the 20th Inſtant, wherein there are ſeveral Things highly reflecting on the Houſe of Peers; It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Conſideration thereof ſhall be adjourned to *Monday* next, and all the Lords ſummoned to attend with ſpecial Notice of this Order.

Die Lunæ 23° *Junij* 1701.

The Earl of *Stamford* acquainted the Houſe from the Lords Committees appointed to draw, or extract out of the Books, what is to be Printed in Relation to the Lords impeached, and the Proceedings thereupon, what was tranſcribed in order thereunto, and that there was more to be extracted, which as yet was not tranſcribed: Whereupon it was Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That any Three of the Lords of the ſaid Committee do meet when they pleaſe, after the Houſe is up, and give Order to the Clerk for what ſhall be further tranſcribed out of the Journals, in Order to the Printing thereof.

The Houſe reſumed the adjourned Debate upon the Printed Votes of the Houſe of Commons of the Twentieth

tieth Inſtant. After Debate, It was propoſed declare, That the Reſolutions of the Houſe of Commons in their Votes of the Twentieth Inſtant, contain moſt unjuſt Reflections on the Honour and Juſtice of the Houſe of Peers, and are contrived to cover their affected, and unreaſonable Delays in proſecuting the Impeached Lords.

The Queſtion was put, Whether this ſhall be the Reſolution of the Houſe?

It was reſolved in the Affirmative.

I. It is reſolved by the Lords Spiritual and Temporal in Parliament aſſembled, That the Reſolutions of the Houſe of Commons in their Votes of the Twentieth Inſtant, contain moſt unjuſt Reflections on the Honour and Juſtice of the Houſe of Peers, and are contrived to cover their affected and unreaſonable Delays in proſecuting the Impeached Lords.

It being alſo propoſed to declare, That the ſaid Reſolutions do manifeſtly tend to the Deſtruction of the Judicature of the Lords, to the rendring Tryals on Impeachments impracticable for the future, and to the ſubverting the Conſtitution of the *Engliſh* Government:

The Queſtion was put, Whether this ſhall be the Reſolution of the Houſe?

It was reſolved in the Affirmative.

II. It is reſolved by the Lords Spiritual and Temporal in Parliament aſſembled, That the ſaid Reſolutions do manifeſtly tend to the Deſtruction of the Judicature of the Lords, to the rendring Tryals on Impeachments impracticable for the future, and to the ſubverting the Conſtitution of the *Engliſh* Government.

It being alſo propoſed to declare, That whatever ill Conſequences may ariſe from the ſo long deferring the Supplies for this Year's Service, are to be attributed to the fatal Council of putting off the Meeting of a Parliament ſo long, and to the unneceſſary Delays of the Houſe of Commons.

After Debate, The Queſtion was put, Whether the laſt Words ſhall ſtand part of the Reſolution? It was reſolved in the Affirmative.

Then the whole Reſolution was read, and the Queſtion was put, Whether theſe Words ſhall be the Reſolution of the Houſe? It was reſolved in the Affirmative.

III. It is reſolved by the Lords Spiritual and Temporal in Parliament aſſembled, That whatever ill Conſequences may ariſe from the ſo long deferring the Supplies for this Year's Service, are to be attributed to the fatal Council of putting off the Meeting of a Parliament ſo long, and to the unneceſſary Delays of the Houſe of Commons.

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the ſeveral Reſolutions made this Day be printed, with what was formerly Ordered to be printed out of the Journals relating to the Lords that were Impeached.

Then the Houſe was adjourned during Pleaſure to Robe.

The Houſe was reſumed.

The Houſe was called over by the Clerk, and the Names of the Lords preſent ſet down by the Heralds.

Then the Houſe was adjourned to *Weſtminſter-Hall*, and the Lords went in the ſame Order as they did to the Lord *Sommers*'s Tryal, and being come to the Hall and ſeated, the Houſe was reſumed.

Leave was given to the Judges to be covered.

Proclamation being made for Silence, the following Proclamation was made for Proſecution, *viz.*

Whereas a Charge of High Crimes and Miſdemeanors has been exhibited by the Houſe of Commons, in the Name of themſelves, and all the Commons of England, *againſt* Edward *Earl of* Orford; *all Perſons concerned are to take Notice, that he now ſtands upon his Tryal, and that they may now come forth in order to make good the ſaid Charge.*

Then the Articles of Impeachment againſt *Edward* Earl of *Orford* were read, and alſo his Lordſhip's Anſwer to the ſaid Articles.

Then the ſame Proclamation as before was made for Proſecution; and the Lord Keeper declared, That the Court is now ready to proceed upon the Tryal of *Edward* Earl of *Orford*, and therefore their Lordſhips are to give Attention.

The Earl of *Orford* ſaid, his Council were ready to be heard, if the Houſe pleaſed.

Then the Houſe was moved, and did adjourn to the Houſe above, and returned in the ſame manner as they went down.

Then the Houſe was reſumed, and Ordered, That the ſame Method be obſerved in giving Judgment in the Hall, as was at the Lord *Sommers*'s Tryal, and the like Queſtion put in the Hall.

The Houſe being called over, and the Name of every Lord preſent writ down for the Lord-Keeper:

The Houſe was again Adjourned to *Weſtminſter-Hall*, where the Houſe was Reſumed, and Proclamation made for Silence.

Then the Lord-Keeper put this Queſtion,

That *Edward* Earl of *Orford* be Acquitted of the Articles of Impeachment Exhibited againſt him by the Houſe of Commons, and all Things therein contained, and that the ſaid Impeachment be Diſmiſſed.

The Lord-Keeper asked every Lord preſent, whether *Content*, or *Not Content*, beginning at the loweſt Baron.

Lord *Haverſham* Content.
Lord *Herbert*
Lord *Oſſulſton*
Lord *Cornwallis*
Lord *Berkeley*
Lord *Rockingham*
Lord *Lucas*
Lord *Colepeper*
Lord *Mohun*
Lord *Lovelace*
Lord *North*
Lord *Wharton*
Lord *Eure*
Lord *Fitzwalter*
Lord *Bergevenny*
Lord Biſhop of *Chicheſter*
Lord Biſhop of *Peterborough*
Lord Biſhop of *Lincoln*
Lord Biſhop of *Norwich*
Lord Biſhop of *Coventry* and *Litchfield*
Lord Biſhop of *Ely*
Lord Biſhop of *Sarum*
Lord Viſcount *Say* and *Seale*
Earl of *Rochford*
Earl of *Scarborough*
Earl of *Montague*
Earl of *Portland*
Earl of *Berkeley*
Earl of *Radnor*
Earl of *Maclesfeld*
Earl of *Shaftsbury*
Earl of *Burlington*
Earl of *Eſſex*

Earl

Earl of *Kingſton*	
Earl of *Stamford*	
Earl *Rivers*	
Earl of *Huntingdon*	
Earl Marſhal	
Duke of *Newcaſtle*	
Duke of *Schonberg*	
Duke of *Bolton*	
Lord Steward	
Lord A. B. of *Canterbury*	Content.

After which, the Lord-Keeper declared, that the Votes were Unanimous in the Affirmative.

Then the Lord-Keeper declared, That *Edward* Earl of *Orford* was Acquitted of the Articles of Impeachment againſt him, Exhibited by the Houſe of Commons, and all Things therein contained, and that the ſaid Impeachment be diſmiſſed.

And his Lordſhip alſo declared to the Earl of *Orford*, That he was acquitted.

Then the Houſe Adjourned to the Houſe above; and being reſumed, it is Conſidered, Ordered, and Adjudged, by the Lords Spiritual and Temporal in Parliament aſſembled, That *Edward* Earl of *Orford* ſhall be, and is hereby acquitted of the Articles of Impeachment againſt him, exhibited by the Houſe of Commons, and all Things therein contained, and that the ſaid Impeachment ſhall be, and is hereby diſmiſſed.

Die Martis 24° *Junij*, 1701.

It is Ordered by the Lords Spiritual and Temporal in Parliament Aſſembled, That all the Articles of Impeachments, and Anſwers to them; the Lord *Haverſham*'s Charge and Anſwer; the Lord *Sommers*, and Earl of *Orford*'s Tryal; and all other Things relating thereunto; and the Reſolutions of *Monday* laſt, be Tranſcribed and Printed; and that the Duke of *Bolton*, the Earl of *Stamford*, the Lord *Wharton*, the Lord *North*, Lord *Haverſham*, and Lord *Sommers*, or any Three of them, do Inſpect the Journals, and take care, that what is or ſhall be Tranſcribed, in Order for Printing, be perfect; and give order to the Clerk for Printing thereof.

Then the Houſe taking into Conſideration, that there were ſeveral Lords Charged and Impeached by the Commons, and no Proſecution againſt them, Ordered as follows, *viz.*

The Houſe of Commons not having proſecuted their Charge, which they brought up againſt *John* Lord *Haverſham*, for Words ſpoken by him at a Free-Conference the Thirteenth Inſtant; It is this Day Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the ſaid Charge againſt *John* Lord *Haverſham*, ſhall be, and is hereby Diſmiſſed.

The Earl of *Portland* being Impeached by the Houſe of Commons, of High Crimes and Miſdemeanors, the firſt Day of *April* laſt: It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Impeachment againſt *William* Earl of *Portland* ſhall be, and is hereby Diſmiſſed, there being no Articles Exhibited againſt him.

The Houſe of Commons having Impeached *Charles* Lord *Halifax* of High Crimes and Miſdemeanors, on the Fifteenth Day of *April* laſt, and on the Fourteenth Day of this Inſtant *June* exhibited Articles againſt him; to which he having anſwered, and no further Proſecution thereupon: It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the ſaid Impeachment, and the Articles exhibited againſt him ſhall be, and they are hereby diſmiſſed.

The Houſe of Commons having Impeached *Thomas* Duke of *Leeds*, of High Crimes and Miſdemeanors, on the Seven and Twentieth of *April*, One Thouſand Six Hundred Ninety Five, and on the Nine and Twentieth of the ſaid *April* exhibited Articles againſt him, to which he anſwered, but the Commons not Proſecuting: It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the ſaid Impeachment, and the Articles exhibited againſt him ſhall be, and they are hereby Diſmiſſed.

The Proſecution and Tryal of Col. NICHOLAS BAYARD, *in the Province of* New-York, *for* High-Treaſon, *Anno* $170\frac{1}{2}$.

ON the 16th of *January*, 1701, Capt. *John Nanfan*, Lieut. Governor, and the Council, made the following Order, *viz.*

At a Council held at Fort William Henry, *this 16th of* January, 1701. *Preſent the Honourable* John Nanfan, *Eſq*; *&c.*

"IT is hereby ordered, That Alderman *John Hutchins* do appear before this Board to Morrow Morning, and then and there produce to the Board the Addreſs to his Majeſty, the Addreſs to the Parliament, and the Addreſs to the Lord *Cornbury*, which was Signed by ſeveral of the Inhabitants of this City, and Soldiers of the Gariſon, in his Houſe about three Weeks ſince, on the Penalty that ſhall thereon enſue.

By Order of Council, B. Coſens.

Whereupon Mr. *Hutchins* appeared, and for neglecting or refuſing to deliver up the ſaid Addreſſes, on the 19*th* of *January* was committed to the common Goal of the City of *New-York*, for the ſigning of Libels, ſaid to be againſt the Adminiſtration of the Government.

On the 20*th*, Col. *Bayard*, Mr. *Rip van Dam*, Mr. *Philip French*, and Mr. *Thomas Wenham* addreſſed the Lieutenant-Governor and Council as followeth, *viz.*

To the Honourable *John Nanfan*, Eſq; Lieut. Governor, and the Honourable Council of the Province of *New-York*.

The Humble Addreſs of Nicholas Bayard, Rip van Dam, Philip French, *and* Thomas Wenham, *on behalf of themſelves, and ſome of the reſt*

reſt of the Freeholders and Inhabitants of the Province of New York.

Humbly ſheweth,

"THAT whereas by a Mittimus, bearing Date the 19th of *January*, 1701. Alderman " *Hutchins* ſtands committed for ſigning of Libels " ſaid to be againſt the Adminiſtration of the Go- " vernment; which pretended Libels we underſtand " to be an Addreſs to his Majeſty, another to the " Parliament, and another to my Lord *Cornbury*, " whom we underſtand by certain Advice we have " received from *England*, to be nominated by his " Majeſty to ſucceed the late Earl of *Bellomont*, as " our Governor; Copies of which (by ſaid Mitti- " mus) we find are expected from ſaid *Hutchins*, " and is Part of his Charge in the Commitment, " the Copies of which Originals (being in our " Hands or Cuſtodies) he cannot deliver: If there " be no further Crime to be alledged againſt him, " we hope to make good the Legality of the ſaid " Addreſſes, and pray that the ſaid *Hutchins* may be " releas'd from his Impriſonment, or be admitted " to Bail; and your Petitioners ſhall ever pray.

N. B. R. v. D. P. F. T. W.

Col. *Bayard*, and the other three Gentlemen, having perſonally delivered this Writing, and refuſing to ſurrender the Copies of the ſaid Addreſſes, had time given them, on their Parole, to appear next Day. And afterwards, the ſame Day, the Lieut. Governor did deliver the above Addreſs to his Majeſty's Attorney-General of this Province, for his Opinion in Law therein, which the ſaid Attorney-General gave in Writing; and on the 21ſt Day came into the Council-Chamber, and there delivered it to the Lieut. Governor; which was read, and ordered to be entred in the Council-Book, *in hæc verba.*

May it pleaſe your Honour,

" I Have well conſidered the humble Addreſs of *Nicholas Bayard*, *Rip van Dam*, *Philip French*, " and *Thomas Wenham*, for the Releaſe of Alder- " man *Hutchins* from his Impriſonment, ſent me " by your Honour Yeſterday; and have alſo weighed " the ſeveral Matters ſworn, and otherwiſe taken in " Council before your Honour, which do in any re- " ſpect relate thereto; and upon the whole, in obe- " dience to your Honours Commands, I humbly " preſent you with my Judgment and Opinion in " Law, as follows:

" 1*ſt*, That neither the Addreſs or Petition it ſelf, " or any Matter therein contained, is Criminal or " Illegal.

" 2*dly*, That the Refuſal of the Petitioners at the " Council-Board to produce the Copies (of certain " Original Addreſſes mentioned in their Petition) " owned by them to be in their Cuſtody, and by " their Petition alſo, is not ſuch a Contempt to the " Council, or other Offence againſt the Law, for " which the Petitioners may legally be committed.

Jan. 21. 1701. *Sa. Sh. Broughton.*

And afterwards the ſaid Perſons appeared, and continuing their Refuſal to ſurrender the ſaid Copies; notwithſtanding the Opinion of the Attorney-General, the ſaid Lieut. Governor and Council iſſued the following Warrant.

By the Honourable John Nanfan, *Eſq; his Majeſty's Governor and Commander in Chief of the Province of* New-York, *and Territories depending thereon in* America, *&c. and his Majeſty's Honourable Council for this Province*: To Iſaac D' Reimer, *Eſq; High Sheriff of the City and County of* New-York, *Greeting.*

" WHereas by an Act of General Aſſembly of " this Province, made in the Year 1691, " Entituled, *An Act for the quieting and ſettling* " *the Diſorders that have lately happened within this* " *Province, and for eſtabliſhing and ſecuring their* " *Majeſty's preſent Government againſt the like Diſor-* " *ders for the future*: It is among other Things " Enacted, *That whatſoever Perſon or Perſons ſhall* " *by any manner of Way, or upon any Pretence* " *whatſoever, endeavour by Force of Arms, or other-* " *ways, to diſturb the Peace, Good, and Quiet of* " *this their Majeſty's Government, as it is now eſta-* " *bliſhed, ſhall be deemed and eſteemed as Rebels and* " *Traytors unto their Majeſties, and incur the Pains,* " *Penalties and Forfeitures, as the Laws of* Eng- " land *have for ſuch Offences made and provided.* " Notwithſtanding which, Col. *Nicholas Bayard*, as " has appeared by the Oaths of ſeveral Perſons ex- " amined before Us in Council, by Conſpiracy and " Combination with *John Hutchins*, Eſq; lately " committed by us, together with ſeveral other Per- " ſons diſaffected to this his Majeſty's Government, " to the manifeſt Diſturbance of the Peace of the " ſame, by divers indirect Practices hath drawn in " Soldiers, and others, to ſign ſcandalous Libels, " whereby they have endeavoured to render the " paſt and preſent Adminiſtration vile and cheap " in the Eyes of the People; and the ſaid Col. " *Nicholas Bayard* hath incited the People to diſ- " own the preſent Authority, and caſt off his Ma- " jeſty's Government, as it is now eſtabliſhed: The " Council hath unanimouſly thought fit, and do " reſolve, That the ſaid *N. Bayard* be committed " for High-Treaſon. Theſe are therefore in his " Majeſty's Name to require and command you, " immediately on your Receipt hereof, to take into " your Cuſtody the Body of the ſaid Col. *Nicholas* " *Bayard*, and him in the Common Goal of this " City in cloſe Cuſtody to keep and ſecure, until he " ſhall be from thence delivered by due Courſe of " Law; and for your ſo doing this ſhall be your " ſufficient Warrant. Given under our Hands and " Seals at *Fort William Henry* in *New-York*, in Coun- " cil this 21ſt of *January*, *Anno Domini* 1701, and " in the 13th Year of the Reign of our Sovereign " Lord *William* III^d. by the Grace of God, of *Eng-* " *land*, *Scotland*, *France* and *Ireland*, King, De- " fender of the Faith.

John Nanfan, *R. Walters*, *A. D. Peyſter*, *T. Weaver*, *S. Staats.* *W. Atwood.* } True Copy, Examin'd by me,

I. D. Reimer, Sheriff.

Which Act of Aſſembly, mentioned in the Warrant of Commitment, followeth in theſe Words, *viz.*

An Act for the quieting and ſettling the Diſorders that have lately happened within this Province, and for the eſtabliſhing and ſecuring their Majeſties preſent Government againſt the like Diſorders for the future.

" FOraſmuch as the Good and Quiet, Eaſe, Pro- fit, Benefit and Advantage of the Inhabitants " within this Province, doth chiefly conſiſt in and

" altogether

" altogether rely and depend upon their bearing true " Faith and Allegiance unto their Majesties Crown " of *England*, which is, and can only be the Sup- " port and Defence of this Province. And whereas " the late hasty and inconsiderate Violation of the " same, by the setting up a Power over their Ma- " jesty's Subjects, without Authority from the " Crown of *England*, hath vitiated and debauched " the Minds of many People, *&c.* and hath also " brought great Waste, Trouble and Destruction " upon the good People of this Province, their Ma- " jesty's Loyal Subjects: For the Prevention whereof " in Time to come, be it therefore Enacted and Or- " dained by the Governor and Council, and Repre- " sentatives met in General Assembly, and it is " hereby Published, Declared, Enacted and Or- " dained by the Authority of the same, That there " can be no Power and Authority held and exer- " cised over their Majesty's Subjects in this their " Province and Dominion, but what must be de- " rived from their Majesties, their Heirs and Suc- " cessors. And we do hereby recognize and ac- " knowledge, That their Majesties *William* and " *Mary* are, and as of Right they ought to be by " the Laws of the Realm of *England*, our Liege " Lord and Lady, King and Queen of *England*, " *France*, and *Ireland*, and the Dominions there- " unto belonging, *&c.* That thereby their Princely " Persons are only invested with the Right to rule " this their Dominion and Province; and that none " ought or can have Power, upon any Pretence " whatsoever, to use or exercise any Power over " their Subjects in this Province, but by their im- " mediate Authority under their Broad Seal of their " Realm of *England*, as now establish'd.

" And be it further Enacted by the Authority " aforesaid, That whatsoever Person or Persons shall " by any manner of Way, or upon any Pretence " whatsoever, endeavour by Force of Arms or other- " wise, to disturb the Peace, Good, and Quiet of " this their Majesties Government, as it is now " established, shall be deemed and esteemed as Re- " bels and Traytors unto their Majesties, and incur " the Pains, Penalties, and Forfeitures, as the Laws " of *England* have, for such Offences, made and " provided.

Upon Col. *Bayard*'s Commitment, the City Militia were by Beat of Drum called to Arms, and a whole Company daily appointed to guard the Prison for about a Week following, and Defaulters strictly punished; which was burdensome to the People, and occasioned great Clamour; whereupon it was taken off.

The Prisoners being informed, that a Special Commission was order'd for their speedy Tryal, petitioned the Lieutenant-Governor and Council, on the Sixth of *February*, in these Words.

To the Honourable John Nanfan, *Esq*; *Lieutenant-Governor*, &c. *and the Honourable Council*, &c.

The Humble Petition of Nic. Bayard *and* John Hutchins, *Sheweth*,

" THAT your Petitioners are very sensible of " the Favour intended them by your Ho- " nours, in appointing a Special Court for their " Tryal; that, in Consideration of their Age, they " might not be confin'd in a Prison till the ordinary " Time for meeting of the Supreme Court. But " the Papers being at present out of their Hands, " which they shall have Occasion for, in order to " make their Innocency appear, and not being like- " ly to get them in so short a Time as is prefix'd " for the said Tryal; your Petitioners humbly pray, " That they may not be obliged to come to Tryal " before the usual Sitting of the Supreme Court. " And your Petitioners shall ever pray, *&c.*

To which a verbal Answer was given to Col. *Bayard*'s Son, That out of mere Grace the Court shou'd be deferred for Five Days.

On the 19th of *February*, the Commissioners sate, and published their Commission in these Words, *viz.*

" WILLIAM the Third, by the Grace of " God, of *England*, &c. To our loving " Subjects *William Atwood*, Esq; *Abraham D'Peyster*, " Esq; and *Robert Walters*, Esq; sendeth Greeting. " Know ye, That we have assigned you, or any " Two or more of you, whereof you the said *Wil-* " *liam Atwood* we will to be one, our Justices, to " enquire by the Oaths of good and lawful Men of " the City of *New York*, and by such other Means, " Ways and Methods, which to you shall be the " better known, by whom the Truth of the Matter " may be the better known, on the 19th Day of " this Instant *February*, of whatsoever Treasons, " Misprisions of Treasons, Insurrections, Rebellions, " Murders, Felonies, Manslaughters, Homicides, " Rapes, Burglaries, Misprisions, Confederacies, " False Reports, Trespasses, Riots, Routs, Unlaw- " ful Assemblies, Contempts, Faults, Negligences, " Concealments, Oppressions, Champarties, Deceits, " Misdemeanors, and other Misdeeds, Offences and " Injuries whatsoever, committed by *Nicholas Bay-* " *ard* and *John Hutchins*, and also the Accessaries " of them, in the Province of *New York* aforesaid; " and by who or by whom, to who or to whom, " how, when and in what manner, and of other " Articles and Circumstances in the Premises, either " or any of them concerning; and the same Trea- " sons, Offences, and other the Premises for this " Time, to hear and determine according to the " Laws and Customs of *England*, and of this our " Province of *New York* in *America*. And we com- " mand, That on the said Day, at the City-Hall of " the said City, you or any Two or more of you, " as is aforesaid, diligently make Enquiry upon the " Premises, and all and singular the Premises hear and " determine, and do and accomplish these Things in " Form aforesaid, which unto Justice appertains to be " done thereupon, according to the Laws and Customs " of our Kingdom of *England*, and of our said Pro- " vince; saving unto us our Amerciaments, and " other Things thereof unto us belonging. Also we " command our Sheriff of our said City, That on " the said Day, on the said Place, he cause to come " before you, or any such Two of you, as aforesaid, " or more, such and so many good and lawful Men " of his Bailiwick, by whom the Truth of the " Matter may be the better enquired into. *In Testi-* " *mony* whereof, We have caused the Great Seal of " our Province to be hereunto affixed. Witness " *John Nanfan*, Esq; Lieutenant-Governor and " Commander in Chief of the Province of *New* " *York*, &c. in Council at *Fort William Henry* the " 12th Day of *February*, in the 13th Year of our " Reign, *Anno* 1701.

And Proclamation being made in the usual manner, the Pannel of the Grand Jury was called over; those who appeared and were sworn, were

Johan. D'Peyſter, Forem.	*Aryen Hogelant*,
David Provooſt,	*William Jackſon*,
Martin Clock,	*John Corbitt*,
Leendert Huygen,	*Johannis van Cortland*,
Barent Reynders,	*Caleb Cooper*,
Johannis vander Spiegell,	*John van Hoorn*,
Johannis Outman,	*Burger Myndero*,
Hendrick Gilliſen,	*Gerret van Hoorn*,
Peter van Tillburgh,	*Jacobus D'Key*,
Johannis van Gieſen,	*Abraham Kipp*,
Abraham Keteltas,	*Johannes van Santa*.

Jacob Boelen and *Johannes Hardenbrook* did not then appear.

Before the Jurors were ſworn, the Council for the Priſoner objected againſt ſome of them, for declaring before ſeveral Witneſſes, then ready to be produc'd in Court, *That if* Bayard's *Neck was made of Gold, he ſhould be hang'd*; at the ſame time boaſting that they were of the Jury; and prayed, That ſince that Jury was ſummoned upon that Special Matter, ſuch might not be ſworn. Which the Court over-ruled.

Mr. *Atwood*, the firſt Commiſſioner, gave a long Charge to the Jury, aggravating the Facts ſuppoſed againſt the Priſoner, and poſitively aſſerting, That thoſe Facts were Treaſon not only within the Words of this Act of Aſſembly, but alſo by the Common Law before the Statute of the 25 of *Edw.* 3.

The Jurors having received the Charge, the Court adjourned till next Day.

The Court being met the 20th, the Indictment againſt Col. *Bayard* was delivered by the Court to the Grand Jury; and Mr. *Weaver* (appointed Sollicitor-General for this Service) attended them with the Proofs, and inſiſted to be preſent with the Grand Jury, and that no Perſon ſhould be ſent for, but whom he ſhould name; and that no Queſtion ſhould be aſk'd them, but ſuch as he ſhould approve of. On the other hand, *John Corbitt*, *Caleb Cooper*, *John Cortland*, and *Jacob d Key* inſiſted, that the King's Council ought not be preſent with them at their private Debates, and that they had a Right to ſend for what Perſons, and aſk what Queſtions for their Information they ſhould think needful. Whereupon Mr. *Weaver* did threaten them, and (to uſe his own Expreſſion) *would cauſe them to be trounced*, taking down their Names. And the Grand Jury broke up without acting.

The Court, in the Afternoon, met according to Adjourment; and the Grand Jury being ſent for, Mr. *Weaver* made Complaint, That he was obſtructed by ſome of the Grand Jury, who would not acquieſce to his being preſent at the Examination of the King's Evidence, and would have other Evidences ſent for than what were by him produced. And thereupon Mr. *Atwood* did diſcharge the aboveſaid Four Perſons from their further Service; and cauſed *Jacob Boelen*, who was abſent when the others were ſworn, to be ſent for from his Houſe, ſworn and added to the Grand Jury; and the Court adjourned till Seven a-Clock that Evening, but did not meet till about Midnight, when ſending to know if the Jury had found the Bill, and being informed they were ſeparated, he adjourn'd the Court till next Morning at Eight a Clock; and in the way from the Court, in Paſſion ſaid, [*If the Grand Jury will not find a Bill againſt Col.* Bayard, *I will bring an Information againſt him of High-Treaſon, and try him upon that.*]

February 21. The Court met, and the Grand Jury appearing in Court, the Indictment was brought in by the Foreman, endorſed *Billa Vera*, and ſigned with his Name. Upon which Mr. *Atwood* immediately diſcharged the Jury.

Whereupon the Council for the Priſoner informed the Court, that the Bill was not found by Twelve Jurors. And upon Examination it appeared to the Commiſſioners, that of ſuch of the Jurors who remained in Court, Eight of the Nineteen were againſt finding the Bill; as appears by the Minutes of the Court entred by Order, *viz.*

Jacob Boelen,	*Johannis Van Santa*,
Abraham Kipp,	*William Jackſon*,
John Van Hoorn,	*Burger Myndero*,
Gerret Van Hoorn,	*Johannis Vanderſpiegel*.

Which Eight importuned the Court, that the Foreman might be brought upon his Oath, and the reſt ſent for to witneſs the Truth, That they only found the Signing the Addreſſes, and not the Treaſon. To which Mr. *Atwood* made Anſwer, They were no longer Jurors; they had preſented the Bill, and the Court was poſſeſs'd of it; it was now a Record, and there is no Averment againſt a Record.

Ordered, The Priſoner come to Tryal on *Monday* next come Sevennight; to which Day the Court adjourned accordingly.

On *Monday* the 2d of *March*, the Commiſſioners met according to Adjournment.

Mr. *Nicoll* (Council aſſigned for Coll. *Bayard*) moved, that the Indictment might be quaſhed, not being found by Twelve Men. And to prove the Matter of Law, offered to produce Authorities; and to prove the Matter of Fact, offered to produce Evidences in Court, if either were inſiſted on, the Grand Jury being then by *Subpœna* in Court.

Mr. *Sollicitor-General*. What is moved in Behalf of the Priſoner, is moſt improper; foraſmuch as the Indictment is found, and ſigned by the Foreman *Billa Vera*, there can be no Averment allowed againſt a Record brought in by the Body of a Grand Jury; and therefore I deſire the Priſoner may be ſent for, and arraigned.

Mr. *Nicoll*. This is a Matter of great Weight and Moment; and concerns not only the Life and Fortune of the Priſoner and his Poſterity, but the Right of every *Engliſhman* in the Province: It is not only lawful, but highly reaſonable, that an Indictment for High-Treaſon ſhould be found by Twelve Men at leaſt. By the Statute 13 *E.* 1. *W.* 2. c. 13. reciting, that Sheriffs feigning many times certain Perſons to be indicted of Felonies and other Treſpaſſes, take Men not culpable nor lawfully indicted, and impriſon them.

" Whereas they were not lawfully indicted by " Twelve Jurors, it is ordained, That Sheriffs, " where they have Power to enquire of Treſpaſſes " by the King's Precept or by Office, ſhall cauſe " Inqueſts, *&c.* to be taken by lawful Men, and by " Twelve at leaſt, which ſhall put their Seals to " ſuch Inquiſitions. [Here it is obſervable, that there is twice *legitimo modo* in a few Lines.]

Coke Inſt. 2. *Part* 387. ſays, Two Things are provided, or rather declared by this Act:

1. *Per legales homines ad minus duodecim faciant Inquiſitiones.*

Coke Inſt. 1. *fol.* 126. The Indictment is defin'd an Accuſation found by an Inqueſt of Twelve or more upon their Oath.

Poulton de pace, &c. An Indictment of Treaſon, Felony, Treſpaſs, or any other Offence, is an Inquiſition taken and made by Twelve Men at leaſt.

Coke

Coke Inſt. 3. *fol.* 30. No Peer of the Realm, or other Subject, ſhall be convicted by Verdict; but the ſaid Offence muſt be found by above Four and Twenty, that is, by Twelve or above, at his Indictment, *&c.*

11 *H.* 4. 9. Inqueſts had been taken of Perſons named to the Juſtices, without due Return of the Sheriff; of which ſome outlaw'd before the ſaid Juſtices of Record, ſome fled to Sanctuary, *&c.* for Treaſon, ſome for Felony: Granted, that henceforth no Indictment be made by ſuch Perſons, but by Inqueſts of the King's lawful Liege People, in ſuch manner as was uſed in the Time of his Noble Progenitors; and if any Indictment be made hereafter in any Point to the contrary, that the ſame Indictment be alſo void, revoked, and for ever holden for none.

Crook Eliz. 654. *Clyncard* was indicted on the 8th of *H.* 6. the Record was *ad Seſſionem Pacis*, &c. *per Sacramentum* A. B. C. D. *& aliorum legalium hominum in Comitatu prædicto preſentatus exiſſit*, &c. And it appeareth not that it was *per Sacramentum duodecim*; for if it were preſented by a leſſer Number, it was clearly ill, therefore it was revers'd.

Mr. *Atwood.* There can be no Averment againſt a Record: If you can produce any Authority that it was ever allowed to make an Averment againſt a Record, and ſpeak to that Head, you ſhall be heard; but to go on upon this Head, Whether or no the Grand Jurors are or can be brought to reveal the Counſel which they are ſworn to keep ſecret, cannot be allowed.

Mr. *Nicoll.* The Grand Jury conſiſted of Nineteen Perſons, whereof Eight have openly in Court proteſted that they found no Treaſon.

Mr. *Atwood.* I have by me the Oaths of Two Men, That the Bills were found by Fourteen *Billa Vera*; they are ſo endors'd, have been publickly read in Court, and are of Record; for which Reaſon I nor no body elſe can enquire further of it.

Mr. *Nicoll.* This concerns the Subject's Life, and your Honour ought to be Council for the Priſoner; and if a Miſunderſtanding happens by the Ignorance of the Jurors, ſo that the Bill is returned contrary to their Intendment, the Priſoner ought to be aſſiſted.

Mr. *Sol. Gen.* Pray ſhew us any Authority, where an Averment has been offered againſt a Record?

Mr. *Emot.* May it pleaſe your Honour, I am joined with Mr. *Nicoll* as Council for the Priſoner. The Queſtion that now ſeems to lie before your Honour is, Whether there can be any Averment offer'd againſt a Record? There is an Act of Parliament of the 11th of *H.* 4. wherein it is enacted, That a Grand Jury ſhall conſiſt *de bonis & legalibus hominibus*: And ſo likewiſe runs the Tenor of the Writ of *Venire*; for want of ſuch Perſons, the ſame Statute does declare the Indictment void. So that it is a good Exception to an Indictment, to aver that any one of the Grand Jury was an Alien; which is Matter of Fact. How ſhall this Averment be made, if ſo be there be no Averment againſt a Record? And what Benefit has the Priſoner of this Act, unleſs an Averment be allowed againſt the Record of this Indictment, if it ſhould ſo happen that ſome of the Grand Jury are not ſo qualified as the Act requires? Which ſeems to me ſufficient Reaſon, that an Averment in the Caſe at the Bar, is good againſt a Record.

Mr. *Atwood.* The Statute gives the Particulars that may be averred, and no others can be allowed.

Mr. *Emot.* 'Tis very hard upon the Subject: The Court appoints the Foreman of the Grand Jury, and he may chance to be a Perſon prejudiced againſt the Priſoner, who may ſign and return the Bill *Billa Vera*, without the Conſent of his Fellows, or a ſufficient Number; and becauſe it's Matter of Record, ſhall no Averment be allowed againſt the Bill?

Mr. *Atwood.* A Grand Jury, in a certain Caſe, on an Indictment for Words ſpoken, found *Billa Vera*; but as to the *malitioſe*, *Ignoramus*; which made the Bill void: So in this Caſe, if the Jury, as to the Fact in the Indictment, had found *Billa Vera*, and as to Treaſon *Ignoramus*; the Bill had been void, and the Court muſt have taken notice of it. But to this Bill there is no Endorſement but *Billa Vera:* The Court has received and publiſhed the Verdict, and therefore will proceed.

Mr. *Emot.* But the Matter of Fact only appeared to the Jury; and when they underſtood the Bill to be laid treaſonable, they immediately objected againſt it.

Mr. *Atwood.* The Bill is found, and appears to the Court Matter of Record; ſo that you need not inſiſt any further upon that Head. A Grand Jury is an Inqueſt of Office, and an Inqueſt of Office may be found by a leſs Number than Twelve. Mr. Sheriff, bring your Priſoner to the Bar.

Mr. *Nicoll.* I have ſomething elſe to offer.

Mr. *Atwood.* Sheriff, ſtay a little.

Mr. *Nicoll.* I have a Second Objection in Behalf of the Priſoner; and it is, That the Juries ſhould have been returned by Precepts under the Hands and Seals of the Commiſſioners; which we underſtand was not.

This appears in *Hale*'s Pleas of the Crown, *pag.* 134. Sir *Edw. Coke*'s 4th Page of the *Inſtitutes*, Title *Oyer and Terminer*, ſays the ſame. There is a ſpecial Clauſe in the Writ of *Oyer* and *Terminer*, which ſays, *We have commanded our Sheriff to ſummons, at ſuch Days and Places as you ſhall appoint, ſuch good and lawful Men, by whom the Truth may be the better known.* How ſhall the Sheriff know thoſe Days and Places, but by the Commiſſioners Precept? And how ſhall the Truth be known, if the Grand Jury are permitted to have no other Evidence but what are brought *ex parte Regis*?

Mr. *Sol.* The Grand Jury are only to enquire for the King, and to receive or ſend for no other Evidence than what are brought for the King.

Mr. *Nicoll.* You may tell that to ſomebody elſe, not to me; that is contrary to their Oath, which is, That they ſhall diligently enquire, and true Preſentment make.

Mr. *Atwood.* All the Books ſpeak of the King's Evidence only, and agree that the Grand Jury may and ought to find upon probable Evidence, as appears in *Babbington.*

Mr. *Emet.* Sir *Edw. Coke* ſays, Part 4. of the *Inſtitutes*, Title *Oyer* and *Terminer*, That the Juries ought to be returned by Precepts under the Hands and Seals of the Commiſſioners. There is no Diſtinction made between the Grand Jury and the Petty Jury; ſo that the *Venire's* as well for one as the other, ought to have been under the Hands and Seals of the Commiſſioners.

Mr. *Sol.* When you had the Government, Dr. *Staats* had a Bill found againſt him by Eight Men of a Jury of Fifteen.

N. B. A private Perſon oppoſed the Aſſertion, but he was commanded Silence.

Mr. *Nicoll.* I never heard of it, nor believe it to be true; but that is not to be taken for a Precedent, were it true.

Mr. *Atwood.* Gentlemen you ſeem to miſtake the Lord Chief Juſtice *Coke*, where he ſays, There ſhall be 24 Peers upon the Arraignment of a Peer, *&c.* for if there be but 13 Peers, and the Majority agree to it, it is underſtood to be found by 12 of them.

There is ſomething in that which you offer, of the Precept being under the Hands and Seals of the Cnmmiſſioners in the Return of the Petty Jury; but this does not at all affect the Grand Jury: For which Reaſon, if you ſee Cauſe to move it, Time may be granted to mend that Miſtake. Is there nothing elſe you have to offer?

Mr. *Nicoll.* Nothing at preſent.

Mr. *Atwood.* Mr. Sheriff, bring the Priſoner to the Bar.

Which was done accordingly.

Clerk of the Crown. Nicholas Bayard, hold up thy Hand. You ſtand indicted, *&c.*

City and County of New-York, *in the Province of* New-York *in* America. *Anno Regni Regis Gulielmi Tertii, nunc Angliæ*, &c. *Decimo Quarto.*

" THE Jurors ſworn, and charg'd to enquire " for our Sovereign Lord the King upon " our Oaths, do preſent *Nicholas Bayard* of the City " of *New-York* in the Province of *New-York* in " *America* Eſq; for that he the ſaid *Nicholas Bay-* " *ard*, the Fear of God in his Heart not having, nor " the Duty of his Allegiance weighing, but being " moved and ſeduced by the Inſtigation of the " Devil, as a Rebel and Traytor againſt the moſt " Serene, moſt Illuſtrious, moſt Clement and moſt " excellent Prince, our Sovereign Lord *William* the " Third, by the Grace of God, of *England, Scotland,* " *France* and *Ireland*, and of this Province of *New-* " *York* King, Defender of the Faith, *&c.* His, the " ſaid *Nicholas Bayard* ſupreme, true, lawful and " undoubted Sovereign Lord; the cordial Love, and " true and due Obedience, Fidelity and Allegiance, " which every Subject of our Lord the King that " now is, towards him our ſaid Lord the King " ſhould bear, or of Right ought to bear, with- " drawing and utterly to extinguiſh, intending and " contriving, and with all his Strength purpoſing, " deſigning, conſpiring and endeavouring, with di- " vers other Rebels and Traytors, to the Jurors un- " known, the Government of this Province of *New-* " *York*, under him our ſaid Sovereign Lord the King " that now is of Right happily and duly eſtabliſhed, " to deſame, ſubvert, change and alter, and to " diſturb the Peace, Good and Quiet of this his " ſaid Majeſty's Government of this his ſaid " Province of *New-York*, as it is now, and hath " been for ſeveral Years laſt paſt eſtabliſhed; on the " Tenth Day of *December* laſt paſt, and in the 13th " Year of the Reign of our Sovereign Lord that now " is, in the Dock Ward of the ſaid City and County " of *New-York*, and divers other Times and Days " as well before as after, at the ſaid Ward, and elſe- " where in the City and County of *New-York* afore- " ſaid, falſly, maliciouſly, deviliſhly, rebelliouſly, " and traiterouſly did compaſs, imagine, contrive, " purpoſe, deſign, intend and endeavour to deſame, " ſubvert, change and alter, and to diſturb the Peace " Good and Quiet of this his Majeſty's Government " of *New-York* as it now is, and hath for ſeveral " Years laſt paſt been eſtabliſhed. And the ſame " moſt abominable, wicked and deviliſh, rebellious, " treaſonous and traiterous Contrivances, Intentions " Purpoſes and Endeavours aforeſaid, to fulfil, per- " fect, and bring to effect, he the ſaid *Nicholas* " *Bayard*, by Conſpiracy as aforeſaid, afterwards, " to wit the ſaid Tenth Day of *December* laſt paſt, " in the Year aforeſaid, in the ſaid City and County " of *New-York* aforeſaid, and divers other Days and " Times as well before as after, falſly, maliciouſly, " adviſedly, clandeſtinely, rebelliouſly and traiter- " ouſly, with Force of Arms, *&c.* did uſe divers " indirect Practices and Endeavours, to procure " Mutiny and Deſertion among the Soldiers in Pay, " belonging to his Majeſty's Fort and Gariſon of " Fort *William-Henry*, in or near the ſaid City and " County of *New-York* aforeſaid, and did draw in " Numbers of them the ſaid Soldiers and others, " to ſign falſe and ſcandalous Libels againſt his " Majeſty's ſaid Government, as it is now, and " hath for ſeveral Years laſt paſt been eſtabliſhed in " this Province: Which ſaid Libels, by the Procure- " ment of the ſaid *Nicholas Bayard* as aforeſaid, were " ſigned by the ſaid Soldiers and others, and were like- " wiſe ſigned by him the ſaid *Nicholas Bayard*; in one " or more of which ſaid Libels, amongſt other " Things highly reflecting on the paſt and preſent " Adminiſtration of the Government under his Ma- " jeſty in this Province, it is inſinuated and declared, " That his Majeſty's Subjects within this Province, " are and have been for ſome Years laſt paſt, by " Perſons entruſted with the Adminiſtration of the " ſaid Government under his Majeſty, *oppreſſed*; " and that the ſaid Government hath been and is " rendred *cheap and vile* in the Eyes of the People, " as alſo that the preſent *General Aſſembly* of this " Province is not a lawful Aſſembly. By which, " and divers other malicious Scandals in the ſaid Li- " bels contained, he the ſaid *Nicholas Bayard* hath " incited his Majeſty's Subjects of this Province to " diſown the preſent Authority, and Government " thereof, and to caſt off their Obedience to his " Majeſty's ſaid Government, as it now is, and " hath for ſeveral Years laſt paſt been eſtabliſhed, " againſt the Duty of his the ſaid *Nicholas Bayard's* " Allegiance, againſt the Peace of our Sovereign " Lord the King that now is, his Crown and " Dignity, as alſo againſt the Form and Effect of " one Statute or Act of General Aſſembly of this " Province, enacted in the Year of our Lord God " 1691. entituled, *An Act for quieting and ſettling* " *the Diſorders that have lately happened within* " *this Province, and for eſtabliſhing and ſecuring* " *their Majeſty's preſent Government againſt the* " *like Diſorders for the future.*

Clerk What ſay you, Are you Guilty, or Not Guilty of the Indictment?

Priſoner. Not Guilty. And puts himſelf upon God and the Country, *&c.*

Priſoner. I deſire I may be allowed Two Clerks to take the Minutes of the Tryal.

Mr. *Atwood.* No, you have a Solicitor allowed, he may take Notes; any other will not be ſuffered to do it.

Priſoner. I find it was allowed my Lord *Ruſſel* and others, to employ Clerks to take their Tryals: I pray the ſame Liberty.

Mr. *Atwood.* It was allowed my Lord *Ruſſel*, but you would not be willing to meet with the Hard- ſhips of his Tryal.

Mr. *Sol. Gen.* Perhaps the Council will not inſiſt upon the Miſtake of the *Venire.*

Mr. *Nicoll.* We ſhall not inſiſt on that.

Mr. *At-*

Mr. *Atwood.* But we will have it amended; and thereupon ordered a Precept to be directed to the Sheriff, under the Hands and Seals of the Commiſſioners, to return a Petty-Jury the 6th Inſtant; to which Day the Court adjourned.

March 6th. The Commiſſioners met. The Priſoner was brought to the Bar, and the Petty-Jury being called, conſiſting of Eighty, ſome of them did not appear. Whereupon it was ordered, that the Defaulters of the Petty-Jury be amerced Ten Pounds each, if they did not appear in the Afternoon, or ſhew a reaſonable Cauſe; and the Court adjourned till Three in the Afternoon, when they met again.

Mr. *Sol. Gen.* moved, That the Court might be adjourned till To-morrow Morning, the King's Evidence being diſguiſed with Drink, which was granted.

Mr. *Nicoll* moved, That it would be a Favour to the Priſoner to put off the Tryal till *Monday*.

Mr. *Atwood.* No, I will take care to do my Duty, whatever other People do. We ſhall not give Mr. *Veaſy* the Opportunity of another Sermon againſt us.

Mr. Veaſy was then Miniſter at New-York.

Mr. *Atwood.* I obſerve Mr. *Jamiſon* to have Pen and Ink. Mr. *Jamiſon*, you are not permitted to write.

Jamiſon. I only take Minutes for my private Satisfaction.

Mr. *Atwood.* 'Tis true, an Attorney or Practitioner of the Court may take Notes for his private uſe, but you are no longer an Attorney of this Court, nor ſhall you be permitted to practiſe, until you purge your ſelf of having ſigned the Addreſſes. Put up your Pen and Ink.

March 7. The Commiſſioners met, and the Attorney-General was called, but did not appear.

Mr. *Atwood.* Mr. Secretary, let a Minute be made, That it appears to this Court that the Attorney-General hath neglected his Majeſty's Service. It is no wonder the People here contemn his Majeſty's Authority; ſince the Attorney-General, tho' commanded to proſecute by the Government, hath neglected to do the ſame, and hath given a Judgment and Opinion directly contrary to the Lieut. Governor and Council.

Mr. *Atwood.* Sheriff, fetch the Priſoner. Which was done.

Mr. Secretary. Before we proceed, read the Petition which was given me this Morning by Col. *Bayard*'s Son. Which was read *in hæc Verba.*

To the Honourable William Atwood, *Eſq*; Abraham D' Peyſter, *Eſq*; *and* Robert Walters, *Eſq*; *Judges of this Special Court.*

The Humble Petition of Nicholas Bayard, *Sheweth,*

"THAT your Petitioner's Council have informed him, that on Yeſterday they prayed, in the Petitioner's behalf, the Favour of this Court to prove before your Honours by the Oaths of the major Parts of the Grand Jury, there alſo *ſubpœna'd* in Court, that the Indictment brought in for High-Treaſon againſt your Petitioner by Capt. *Johannes D' Peyſter* (as being Foreman of the ſaid Grand Jury) was not found nor agreed to by any Twelve of that Jury, tho' the moſt Part of them (as is evidently known) are your Petitioner's mortal Enemies, for no other Cauſe, but on Account of the unhappy Diviſions within this Province. Which ſaid Prayer of your Petitioner's Council (as he is alſo informed) you Honours have been pleaſed to over-rule, as not being practicable by the common Form of Court's Proceedings. But, *May it pleaſe your Honours*, This being a Matter of that moment, whereof hardly a Precedent is to be found, as that a Foreman ſhall ſo far impoſe upon a whole Grand Jury, as to bring in an Indictment *Billa Vera*, which the ſaid Inqueſt did not find nor agree unto, neither in Matter nor Form: Your Petitioner therefore moſt humbly prays, that your Honours will be pleaſed to take the Premiſes into your Honours ſerious Conſideration, and to grant your Petitioner that Favour, as to have all the ſaid Nineteen of that Grand Inqueſt ſworn before your Honours, to diſcover the Truth, and to afford your Petitioner ſuch Relief therein, as to your Honours ſhall be thought moſt juſt and expedient. But if it ſhould ſo happen (as your Petitioner does not hope) that your Honours do not think fit to grant this your Petitioner's moſt humble Requeſt; your Petitioner further prays leave to acquaint your Honours with the exceſſive and almoſt unparallel'd Hardſhips your Petitioner, in this very Tryal, labours under. In the firſt Place, for that the Grand Jury, altho' your Petitioner had often prayed Mr. Sheriff that he might have the Favour and Juſtice of being tried by *Engliſhmen*, and of *Engliſh* Extraction, of the beſt Character for Knowledge, Integrity, Juſtice, Conſcience and Eſtates; yet notwithſtanding your Petitioner had not one allowed him of *Engliſh*, but all of them of *Dutch* Extraction and Education, and ſeveral of 'em ignorant to that degree, that they can neither write nor read, nor ſo much as underſtand the *Engliſh* Language; tho' ſufficient Numbers of *Engliſhmen* of very good Ability, Underſtanding, Integrity, Conſcience, and Eſtate, were to be had in the Bailiwick.

"And for a ſecond Inſtance of your Petitioner's Hardſhips, he finds now alſo a Petty Jury impanell'd to ſerve upon his Tryal, all of 'em except five or ſix, in like Manner of *Dutch* Extraction and Education, moſt of 'em handy-craft and labouring Men; very few that ever were of any Juries whatſoever, and extreme ignorant in the *Engliſh* Language.

Your Petitioner therefore moſt humbly prays, That your Honours will be pleaſed to take the Premiſes into your Honours favourable and ſerious Conſideration, and to afford your Petitioner ſuch Relief therein, as to your Honours in Juſtice and Equity ſhall think fit. And as in Duty bound, &c.

N. Bayard.

Mr. *Atwood.* Let a Minute be entred, that the Petition was read, and that it does appear to the Court that the Bill was found by more that Twelve of the Grand Jury.

Mr. *Atwood.* Col. *Bayard*, the Laws do indulge you with Council, did you adviſe with them concerning this Petition?

Bayard. No, I did not.

Mr. *Atwood.* 'Twere better you had; for you have acted very indiſcreetly in this Matter; to arraign the Juſtice of the Grand Jury.

The Jury being called, appeared.

Timon van Burſert. Priſoner accepts.

Mr. *Sol. Gen.* I challenge him for the King.

Mr. *Emot.*

Mr. *Emot.* You are not to challenge, Mr. *Solicitor*, without Cauſe, by the Statute 23 *Ed.* 1.

Mr. *Sol.* By the common Law the King could challenge without Cauſe, but by the Statute that was taken away; and in the late Tryal of *Peter Cook* it is ſaid by Lord Chief Juſtice *Treby*, That the King ſhould ſhew Cauſe, if not enough on the Pannel to ſerve, but not elſe.

Mr. *Atwood.* It is a Thing ſo plain, I wonder you will inſiſt on it.

Mr. *Nicoll.* We ſay the King ſhould ſhew Cauſe, but do not ſay when.

Gysber van Inbrough. Priſoner accepts.

Mr. *Sol.* Challenges for the King.

Gerryt Unckle. Priſoner accepts.

Mr. *Sol.* Challenges, *&c.*

William Janeway. Priſoner accepts.

Mr. *Sol.* Challenges, *&c.*

Iſaac Stoutenburgh. Priſoner accepts.

Mr. *Sol.* I don't challenge him, but deſire he may be ſworn on a *Voire dire*, whether any Perſon hath been with him on behalf of the Priſoner, to deſire him to be favourable to the Priſoner on this Tryal. [Who was ſworn upon a *Voire dire*, and afterwards for the Tryal.]

Richard Sacket. Priſoner. *I make no Challenge.*

Mr. *Sol.* I deſire to know whether I may not firſt have him ſworn upon a *Voire dire*, and afterwards challenge him?

Mr. *Atwood.* No, you muſt challenge peremptorily firſt.

Priſoner. *I pray the Sollicitor may firſt make all his Challenges, and only leave me a Pannel of Forty-Eight Jurors.*

Mr. *Atwood.* No, that muſt not be.

[*Memorandum.* The reſt of the Eighty Jurors in the Pannel were in like manner challenged by the Priſoner or Sollicitor, till the Number of Twelve were ſworn, *viz.* one of them an Alien, two no Freeholders, and all the reſt *Dutchmen*, or of *Dutch* Extraction born here, very ignorant of the *Engliſh* Language, and of mean Capacities to an extreme Degree.]

The Name of the Petty Jurors were as follows, *viz.*

Iſaac Stoutenburgh,	*Barent Kool,*
Jacobus Vanderſpiegel,	*Goert Olpherto,*
Andries Marſhalk,	*Samuel Beekman,*
Gerret Viele,	*Cornelis Clopper,*
Thomas Saunders,	*Conrael Teneyck,*
Jacob Corneliſſe,	*Jacobus Goelet.*

Mr. *Sollicitor* made an Introductory Diſcourſe and Harangue of about an Hour long, and had ſome Sheets of Paper in his Hand, out of which he read ſeveral ſcurrilous and falſe Reflections on the *Engliſh* Inhabitants of this Colony, with the *French* and principal *Dutch*, having Retroſpection for many Years paſt, only deſigned to incenſe and inflame the Jury, charging the Priſoner to be the *Head of a Faction*, a malignant Party, who had endeavoured to introduce *Popery* and *Slavery*, Diſturbers of our *Iſrael*, as they had been that of Capt. *Leyſler*'s Government, which (he ſaid) was now juſtified at Home to be Legal; that the ſaid Party was a *Neſt of Pirates, Betrayers of our Prince and his Laws, a Parcel of Banditti*'s, who had offered the late Earl of *Bellamont* a Reward of Ten Thouſand Pounds to connive at Piracies, and One Thouſand Pounds to himſelf to ſolicit it. That ſome mean and broken Merchants in *London* had made Complaints in their Behalf to the Lords of Trade and Plantations, and to the Parliament againſt the ſaid Earl, but that the ſaid Earl's Proceedings were approved of: And uſed ſcandalous Reflections on Mr. *Veaſy* the Miniſter of *Trinity-Church*, and againſt Col. *Smith* the firſt Member of Council, though nothing relating to this Tryal, and owned himſelf of the *Leyſlerian* Party, and that he would ſtand and fall by it, *&c.*

Then called his Witneſſes, who gave their Evidences in the following Words, as they were taken in open Court, and ſince agreed unto by all of them reſpectively, as followeth:

Samuel Clows ſworn, ſaith,

Gentlemen, When I come to ſpeak of the Addreſſes, I muſt pray you to take notice, that I can ſpeak poſitively to but very few Things that is in them; what I ſay is to the beſt of my Remembrance and Underſtanding; for I may be miſtaken in both. 'Twas about a Fortnight or three Weeks before Col. *Bayard*'s Commitment, that I happened to come to his Houſe about ſome Buſineſs not at all relating to this Matter; concerning which, as we were talking, Col. *Bayard* ask'd me, if I had ſeen the Addreſſes? I anſwered, No. He then ſhewed me three Addreſſes, the firſt was to my Lord *Cornbury*, the Perſons addreſſing in it called themſelves Inhabitants of *New-York*, and others diſtant from it, and being ſome of them could not perhaps be preſent at his Lordſhip's Arrival here, did, by way of Addreſs, congratulate his Lordſhip into this Government, wiſhing him all Health and Proſperity here, and that the Name of *Party* might be baniſh'd from among us. After I had read it, Col. *Bayard* ask'd me if I had any Thing to ſay againſt it? I anſwered no, and then ſigned it. The other two Addreſſes were one to the King, and the other to the Houſe of Commons, or to the Parliament, (I am not poſitive which); as I had read them, I remember I made this Obſervation in my ſelf, that they contained nearly both the ſame Things; and in them, or one of them, to the beſt of my Remembrance, were contained theſe Things, The Perſons addreſſing called themſelves *Engliſhmen*, and others, who though Foreigners, yet entituled to the Privileges of *Engliſhmen* here. It ſpeaks concerning the late Revolution here, of which I have but a confus'd Idea, and can remember nothing particular; afterwards it ſpeaks concerning my Lord *Bellamont*'s Adminiſtration, in ſeveral Articles, of which I can remember but one, which is, that the *Hotteſt* and *Ignoranteſt* of the People were put into Places of Truſt. Then it ſpeaks concerning the late Aſſembly here, and tells you, That after this Aſſembly had choſe a Speaker, ſome of the Repreſentatives were informed that he was an *Alien*; upon which they made a Motion to the Houſe, that that Matter might be enquired into; but that Motion being refuſed, one Half of the Repreſentatives, or Ten of them, left the Houſe; notwithſtanding which, the remaining Part of the Repreſentatives, with ſome others they took in, did proceed to make Acts; in one of which Acts they gave a Sum of Money to the Lieut. Governor, to tempt him to paſs theſe Acts; and likewiſe a Sum to the Chief Juſtice of this Province, to find Law and Form for their Proceedings; and that theſe Things tended to the rendring the Government vile and cheap in the Eyes of the People.

Sol. What Names do you remember you ſaw to the Addreſſes?

Clows. I ſaw ſeveral Names there, but whether to all Three or to Two of them, or only to that of my Lord *Cornbury*, I cannot ſay; but I did, to the beſt

beſt of my remembrance, ſee the Names of *Rip van Dam*, *Matthew Ling*, *Charles Wooley*, *Robert Livingſtone*, and Mr. *Anderſon*; but I am not certain whether I ſaw Mr. *Jamiſon*'s Name there or no. When I had read them, I told Col. *Bayard* they contain'd Things done before my time, and I did not therefore think it proper for me to ſign them; upon which he replied, then don't ſign them.

Mr. *Sol.* I ſhall read what you ſaid before the Council.

Clows. Do ſo, if you pleaſe.

Mr. *Sol.* Don't you remember that it was ſaid, that my Lord *Bellamont* had put the moſt ingenious and honeſteſt Men of the Province out of all Places of Truſt?

Clows. No, I cannot remember that.

Mr. *Sol.* I think you ſaid ſo before the Council.

Clows. Perhaps I might ſay ſomething like it when I was before the Council, though I don't believe there is any eſſential Difference between what I now ſay, and what I ſaid to the Council; yet if there be, I hope what I then ſaid will not be taken to my Prejudice: I was then ſent for by the Governor's Letters, which ſeemed to import that he had Buſineſs with me of a far different Nature than to examine me about this Matter, ſo that I was then in a Surprize.

Mr. *Sol.* But you believe what you then ſpoke was true.

Clows. Without doubt; and I hope Mr. *Coſens* took care truly to write down what I then delivered; but whether he did expreſs my Meaning right or no, I know not; for I did not look over his Notes till the Day I ſaw them at your Chamber.

Mr. *Sol.* Was not the Aſſembly called an Illegal Aſſembly? And that they had made Acts prejudicial to the Country.

Clows. No, I do not remember that.

Mr. *Sol.* Was it not ſaid, that the Scum of the People were put into all Places of Truſt?

Clows. Perhaps I might before the Council uſe the Word *Scum*, but I now think it was, that the *Hotteſt* and *Ignoranteſt* were put into Places of Truſt.

Mr. *Sol.* Mr. *Clows*, Pray tell us what was the Reaſon you did not ſign the other two Addreſſes?

Clows. I think I am not at this time obliged to tell that, being it does not at all affect the Matter.

Mr. *Atwood.* Yes but it does; you muſt tell us.

Clows. One of the chief Reaſons was, becauſe I then thought that the ſaying the Aſſembly had given a Gift to the Lieut. Governor to tempt him to paſs their Acts, was a Reflection upon the Lieut. Governor; but it is my Judgment now that it was no Reflection at all upon him.

Mr. *Sol.* How! And don't you think ſo now?

Mr. *Atwood.* He only ſpeaks it as his Judgment.

Mr. *Sol.* Don't you remember that the Aſſembly was called the *Pretended Aſſembly*?

Clows. No.

Mr. *Sol.* Don't you remember it was ſaid, their *Illegal Proceedings*? Don't you remember the Word *Illegal*?

Clows. No, I cannot remember that; and I did deſire you at your Chamber to put that Word out of the Clerk's Notes.

Col. *Bayard.* Did I ever ask you to ſign them?

Clows. No, you did not, you was ſo far from doing that, that you rather perſuaded me not to ſign them, and ſo did Madam *Bayard* who was then in the Room.

Mr. *Nicoll.* Do you remember any Thing of the Word *Oppreſſion* in the Addreſs?

Clows. No, I do not remember that Word.

Mr. *Sol.* That the King's Subjects were oppreſſed here?

Mr. *Nicoll.* Was the Aſſembly called an *Unlawful Aſſembly*?

Clows. No. Gentlemen, I can ſpeak poſitively to but few of theſe Things: What I ſay, is to the beſt of my Remembrance and Underſtanding.

Peter Odyre *a* Frenchman *Sworn*; *and for that he could ſpeak no* Engliſh, *Mr.* Brieſack *Chaplain to the Gariſon was Sworn to be his Interpreter.*

Mr. *Sol.* What do you know of the Papers that were at Col. *Bayards*; and did you ſign them, or who deſired you ſo to do?

Odyre. Going by Col. *Bayard*'s Houſe, one Mr. *Bodinot* told me I muſt ſtep into Col. *Bayard*'s, and ſign an Addreſs to the King; and as I was a going in, I met Col. *Bayard* coming forth of his Houſe; and going in I ſaw the Addreſſes lying on the Table.

Mr. *Sol.* Did Col. *Bayard* then perſuade you to ſign them, or did he tell you it was for your good to ſign them?

Odyre. Col. *Bayard* then told me, I might ſign if I would, or that I might not; and the Col. alſo told me it was for the good of the Country, and that if I was willing I might ſign them, if not I might let them alone, and then went away.

Mr. *Sol.* I will now prove the Addreſſes ſigned at the Coffee-Houſe, and that Col. *Bayard* attended there for that Purpoſe.

W. Richardſon, *Inhabitant and Houſe-keeper in the City Sworn.*

Mr. *Sol.* What do you know, Mr. *Richardſon*, concerning the ſigning the Papers at the Coffee-Houſe?

Richardſon. One Day drinking at one *Spencers*, I was deſired to go to the Coffee-Houſe, which I did; and when there, I ſaw a great many People, I believe near a Hundred; and coming above Stairs, I ſaw Papers on the Table, which were called Addreſſes, which I ſigned with others; and I ſaw among others Col. *Bayard* there, but he ſeemed to be no more acting or concerned than any other.

Mr. *Atwood.* You are very forgetful of what you ſwore before the Governor and Council; but to put you in Mind ſomewhat of it; Did no Body tell you what Papers were to be ſigned?

Richardſon. No Body at all.

Mr. *Sol.* How many Papers did you ſign?

Richardſon. I ſigned Three, but did not know what they were, but was told they were Addreſſes to the King and my Lord *Cornbury*, and the Parliament; but did not read any of them; but I think one of them complained that the People lay under ſome Hardſhips here.

Mr. *Sol.* You declared much more before the Council.

Richardſon. I was then called ſuddenly before the Council, and was ſurprized.

John Baſhford ſworn.

Mr. *Sol.* Mr. *Baſhford*, tell the Court and Jury what you know concerning the Papers at the Coffee-Houſe.

Baſhford. I was at the Coffee-Houſe, where I ſaw the Papers or Addreſſes, but don't know what they were or contained; and I ſigned Four or Five Papers there, but did not ſtay half a Quarter of an Hour. When I was there, I ſaw Col. *Bayard* amongſt many others in the Room, but did not

ſee his Name as I remember, to any of the Papers.

[*N. B.* Theſe five Papers were the three Addreſſes, and the two Duplicates.]

Mr. *Atwood.* Theſe Witneſſes are very unwilling or very forgetful, having given a much different Account of Things upon their Oaths before the Governor and Council.

Baſhford. I have now had time to recollect my ſelf, but was then under a Surprize, not knowing what I was ſent for.

Mr. *Michael Chriſtian* ſworn.

Mr. *Atwood.* Mr. *Chriſtian*, What do you know concerning the Papers or Addreſſes ſigned at the Coffee-Houſe?

Chriſtian. I remember ſome time ſince, about *Chriſtmas* I believe, I was at the Coffee-Houſe, where I ſaw the Addreſſes with many other People, but can't tell how many.

Mr. *Atwood.* Do you believe there were more than Twenty?

Chriſtian. No, I believe there were not. I found three Addreſſes there, and ſigned them all, but the Subſtance thereof I cannot now remember; it is a good while ſince, and therefore cannot ſpeak poſitively to it. I remember a Queſtion was asked me at the Council, Whether there was any Complaints in the Addreſſes that the Soldiers wanted their Pay? I believe I might then anſwer ſomething about it, but I do not know any ſuch Thing in the Addreſſes, either of the Soldiers or their Pay. I remember that Col. *Bayard* was then at the Coffee-Houſe when I ſigned the Addreſſes, but don't remember that any Body deſired me to ſign.

Mr. *Atwood.* How many Hands, Mr. *Chriſtian*, did you ſee to the Addreſſes?

Chriſtian. I cannot tell how many, but remember Col. *Bayard* amongſt others was there; but he never asked me to ſign either of the Addreſſes, nor can I remember that there was any Thing concerning either the Soldiers or their Pay in the Addreſſes.

Mr. *Atwood.* Certainly theſe Gentlemen are very unwilling Evidences: Mr. *Chriſtian* is a Gentleman of good Learning, and it's ſtrange that he ſhould be ſo forgetful, that he cannot remember what was given in on his Oath before the Governor and Council; he has either a weak or treacherous Memory.

Mr. *Hugh Gray* ſworn.

Mr. *Sol.* Mr. *Gray*, What do you know concerning the ſigning of thoſe Papers at the Coffee-Houſe?

Gray. About *December* laſt being at the Coffee-Houſe, I met there one Mr. *Scot*, who asked me to go up into the Upper Room, which I accordingly did; and when there, I ſaw on the Table ſome Papers, which afterwards I underſtood were Addreſſes to the King, Parliament, and Lord *Cornbury*: Some Body asked me to ſign them, which I did accordingly, but don't know who it was. I remember Col. *Bayard* was there amongſt others, ſmoaking a Pipe of Tobaccco; I believe there might then be about Ten Hands to the Papers, and about Five in the Room; that I read all the Addreſſes, but cannot now remember the Contents of them.

Mr. *Atwood.* Mr. *Gray*, Do you remember there was any Complaints againſt the Government in thoſe Addreſſes?

Gray. No.

Mrs. *Hannah Hutchins* ſworn.

Mr. *Sol.* Now, May it pleaſe your Honours, I will prove the Papers ſigned at another Place.

Mr. *Atwood.* Mrs. *Hutchins*, What do you know concerning theſe Papers brought to your Houſe?

Mrs. *Hutchins.* About *Chriſtmas* laſt Col. *Bayard* brought ſome Papers to my Houſe, and left them with me, but did not ſtay at all, but bid me ſhew them to my Husband, who was then at Church; theſe Papers remained at my Houſe about Three Days, and then I delivered them to a Negro, who was ſent for them, but do not remember whoſe Negro it was: Col. *Bayard* was not at our Houſe while the Papers lay there.

Mr. *Sol.* Now I ſhall proceed to prove what ſort of People were drawn in to ſign theſe Papers.

John Read ſworn.

Mr. *Atwood.* What do you remember concerning any Addreſſes or Papers at the Houſe of Alderman *Hutchins.*

Read. Being on the 26th of *December* at Mr. *Hutchins*'s Houſe, I there ſaw ſome Papers, which one Mr. *Burroughs* then preſent asked me to ſign, telling me they were Addreſſes to the King, Parliament and Lord *Cornbury*, made for the good of the Country, and which were lying on the Bed there; and thereupon I ſigned them, but did not read them; I did not ſee Col. *Bayard* there, but believe I ſaw his Name to the Papers. I ſaw a great Number of Names ſubſcribed to the Papers, as near as I can judge about Two Hundred.

Mr. *Sol.* Of what Age are you?

Read. About Seventeen Years of Age.

Edward Marſhal Sworn.

Mr. *Atwood.* Where did you ſee theſe Papers, and what do you know of them?

Marſhal. Going one Day about *Chriſtmas* to the Houſe of Mr. *Hutchins*, to get a Witneſs to a Letter of Attorney, I ſaw there Five Addreſſes which I ſigned; one was to the King, another to the Parliament, and another to the Lord *Cornbury*, congratulating his Arrival. I read ſome of them, but found nothing in any of them that reflected upon the Governor; there was ſome Complaint of the Speaker of the Aſſembly being an *Alien.* Looking on the Names of the Subſcribers, I ſaw the Name of *Edward Marſhal* before I had ſigned, but I don't know but there may be more *Edward Marſhals* than one in the Province. I did not ſee Col. *Bayard* at the Houſe, nor his Name to the Papers.

John Buckly Sworn.

Mr. *Atwood.* What do you know concerning any Papers at the Houſe of Mr. *Hutchins*?

Buckly. Coming home from the Fort, and paſſing by Mr. *Hutchins*'s Houſe, I was asked to walk in by Mr. *Hutchins*, which I did; and being come into the Upper Room I ſaw ſome Papers there, which were called Addreſſes, but I did not read any of them, but that to my Lord *Cornbury*, which as I underſtood was a Compliment and Congratulation to him at his Arrival here. Mr. *Hutchins* then asked me to ſign it, but I refuſed it, becauſe being a Lieutenant in the Gariſon, I was unwilling to do any ſuch Thing before any of my Elder Officers had done it. But I did not ſee Col. *Bayard* nor his Name there.

Francis Cherman Sworn.

Mr. *Atwood.* Give an Account what you know concerning any Papers or Addreſſes at the Houſe of Alderman *Hutchins.*

Cherman. Coming a while ago to Mr. *Hutchins*'s Houſe, and going up Stairs, I ſaw certain Papers there, and ſome People: Mr. *Hutchins* asked me to ſign thoſe Papers, telling me they were Addreſſes to the King and my Lord *Cornbury*; that they were for the Good of the Country and the *Engliſh*, and I expected by it to be made free of the City, and ſigned therefore;

therefore; but did not ſee Col. *Bayard* there, nor don't remember the Contents of the Papers.

One *Button* Sworn.

Mr. *Atwood.* What do you know concerning theſe Papers, *&c.*

Button. Hearing by ſome of my Fellow-Soldiers that there were ſome Papers or Addreſſes at Capt. *Hutchins*'s, I was willing to go and ſee what they were; and coming to the Houſe there I found Five Papers, and ſigned them all Five, but do not remember to whom they were directed. Capt. *Hutchins* was there, but ſaid nothing at all to me about the Papers or ſigning them; nor can I remember whether they were in Paper or Parchment. I believe there were then about Thirty Names ſubſcribed, but ſaw neither Col. *Bayard* nor his Name there.

i. e. The Three Addreſſes, and the Duplicates of two of them.

Robert Crannel Sworn.

Mr. *Atwood.* What do you know, *&c.*?

Crannell. Some time ſince I came to Mr. *Hutchins*'s, and there found Five Addreſſes; I read that to my Lord *Cornbury*, and ſome of the Two others to the King and Parliament: In one of them, to the beſt of my remembrance, was contained a Complaint that the People of this Province lay under more Hardſhips than formerly, and that the Speaker of the Aſſembly of this Province was an *Alien.* I ſaw Col. *Bayard*'s Name to that to my Lord *Cornbury*, but am not acquainted with his Hand-Writing at all. After I had read ſome Part, and been told what the reſt of the Papers were, I ſigned them all Five, but no Body deſired or perſwaded me to do it.

Mr. *Atwood.* Your Evidence is not ſo full as when you gave in your Information on Oath before the Council.

Crannel. But it is, and I know nothing more.

One *Griggs* Sworn.

Mr. *Atwood.* What do you know, *&c.*

Griggs. I was deſired by one *Bovell* a Soldier in the Gariſon, to go to Mr. *Hutchins*'s Houſe, and ſign ſome Papers; I was told and believed it was to make me free of the City; thereupon I went to Mr. *Hutchins*'s, and there ſigned them, but did not ſee Col. *Bayard* there.

One *Garnet* Sworn.

Mr. *Atwood.* Tell the Court what you know, *&c.*

Garnet. A great many of the Soldiers of the Gariſon ſigned, and they expected thereby to be made free of the City, many of them being Tradeſmen.

One *Fleming* Sworn.

Mr. *Atwood.* What do you know, *&c.*?

Fleming. Coming ſome time ſince to the Houſe of Mr. *Hutchins*, I there ſaw ſome Rolls opened, with a great many Names thereto, but did not ſee any other Writing, to this I put my Name, and alſo then put down two or three Names for others, at their Requeſt, they having firſt put their Marks: I and the others expected by this to be made free of the City. I believe out of 160 Men now belonging to the Fort, or thereabouts, there may be about Thirty that ſigned.

After the Addreſſes were full, they ſigned on the Back ſide.

One *Bovell* Sworn.

Mr. *Atwood.* What do you know, *&c.*?

Bovell. Coming to Capt. *Hutchins*'s, I was ſhewn ſome Papers, which I was told were Addreſſes, to which I put my Mark, without being deſired by any Body; I cannot Write nor Read. When I had ſet my Mark, Mr. *Hutchins* told me, that if any of my Fellow Soldiers would come and ſign alſo, they might; if not, they might let it alone. By this ſigning I expected to be made free of the City, but not from being a Soldier; but never heard Capt. *Hutchins* ſay ſo.

Mr. *Sol.* I have now no more Witneſſes againſt the Priſoner. Here is a Paper ſigned by him, I deſire the Clerk of the Council may be ſworn to prove the ſame.

Mr. Coſens *the Clerk of the Council Sworn.*

Col. *Bayard.* I own that Paper, It is a Petition to the Lieut. Governor and Council in Behalf of Alderman *Hutchins* then in Priſon; owning, with Mr. *French*, Mr. *Wenham*, and Mr. *Van Dam*, that the Copies of the three Addreſſes to the King, the Parliament, and the Lord *Cornbury*, were in our Hands.

Then the Petition was read, and was the ſame as is Enter'd in Pag. 554.

After this, the Act of Aſſembly on which the *Mittimus* is grounded, was read. And after that, the Commiſſion to the Lord *Bellamont* at large, and the Lieut. Governor's Commiſſion.

Mr. *Sol.* I deſire Mr. *Emot* may be ſworn, whether he did not give Advice to a certain Perſon about that Clauſe in the Addreſs to the Lieut. Governor in Favour of Alderman *Hutchins*, viz. *That the Lord* Cornbury *ſucceeded the Earl of* Bellamont *as Governor in* New-York.

Mr. *Emot* was commanded by Mr. *Atwood* to be ſworn; and being ſworn, ſaid, I told Mr. *French* theſe Words in the ſaid Addreſs did not run current, and might give ground of Exception to ſome who would be apt to ſtrain every Word to the Priſoner's Diſadvantage. To which Mr. *French* replied, They had drawn the Addreſſes themſelves, and believed it was well enough.

Mr. *Sol.* I have now proved by the Witneſſes thoſe falſe and ſcandalous Libels ſet forth in the Indictment, whereby the Good, Peace and Quiet of the Government has been diſturbed, which by this Act of Aſſembly is High-Treaſon. I have likewiſe proved that the Soldiers were drawn in to ſign thoſe ſcandalous Libels, and that ſome did ſign blank Rolls, which was liſting of Soldiers, and is Treaſon. By theſe Words in the Petition to the Lieut. Governor and Council, *viz.* [*Who we underſtand by certain Advice we have received from* England, *to be nominated by his Majeſty to ſucceed the late Earl of* Bellamont *as our Governor*] is a diſowning and caſting off the preſent Authority, and his Majeſty's Government.

Mr. *Nicoll.* Your Honour and the Jury will pleaſe to take Notice that the Indictment conſiſts of divers Heads, as, That the Priſoner did compaſs, imagine, contrive, purpoſe and deſign to deſame, ſubvert, *&c.* the Peace, Good and Quiet of this his Majeſty's Government.

That he uſed divers indirect Practices and Endeavours to procure Mutiny and Sedition amongſt the Soldiers.

That he drew in Numbers of them the ſaid Soldiers and others, to ſign falſe and ſcandalous Libels; and that he had ſigned them himſelf.

That in theſe Libels it is declared, That the Subjects in this Province are and have been for many Years laſt paſt, by thoſe entruſted in the Adminiſtration of the Government, oppreſs'd; and that the Government hath been and is rendred cheap and vile in the Eyes of the People; as alſo that the General Aſſembly of this Province is not a lawful Aſſembly:

By which means, *&c.* he hath incited his Majeſty's Subjects to caſt off their Obedience to his Majeſty's ſaid Government.

The Priſoner is not directly charged here with any Fact, except his own ſigning the ſaid Libels, but for Endeavours; the reſt are forc'd Concluſions and ſtrain'd Inferences drawn from thence. It is not alledged, that the Peace of the Government hath been diſturbed, or that any Mutiny or Sedition hath been amongſt the Soldiers, or that any one of his Majeſty's Subjects hath caſt off his Obedience to his Majeſty's ſaid Government. By the Courſe of the Evidence, it appears there was an Addreſs to the King, an Addreſs to the Houſe of Commons, and an Addreſs to my Lord *Cornbury*, and a Petition or Addreſs to the Lieutenant-Governor and Council; but all the Evidence is very lame and weak, as to the Three firſt. If we ſhould admit the making or ſigning of them to be any Fault or Crime, more eſpecially if the ſame ſhould amount to Treaſon: For by none of the Evidence it does appear, that thoſe Addreſſes ſigned at the Coffee-houſe were the ſame Addreſſes which were at Col. *Bayard*'s, or that the Addreſſes at Alderman *Hutchins*'s were the ſame which were at the Coffee-houſe, or the ſame which were at Col. *Bayard*'s: There is no Proof that the Priſoner ſigned theſe Addreſſes: Here is not ſo much as the Likeneſs or Compariſon of Hands produced, alledged, or proved; tho' if it were, that would not do. In the great Tryal of the Biſhops, Mr. *Pollexfen* there affirms, *p.* 60. *That Compariſon of Hands is not good in a criminal Caſe*; and offers the Lady *Car*'s Caſe in *Siderfin*'s Reports, *p.* 418, 419. where it is ſo adjudged.

But I ſhall not dwell upon the Evidence; it is certainly the Right of the Subject to petition the King, whenever he conceives himſelf aggriev'd. In the Biſhops Tryal, *p.* 160. Mr. *Pollexfen* ſays, *I never thought it*, nor hath it ſince been thought by any body elſe, *to be a Crime to petition the King.* *Pag.* 121. Serjeant *Levinz* affirms, *The Subjects have a Right of petitioning the King in all their Grievances.* So ſay all our Books of Law; ſo ſays the Statute of the 13th of *Charles* 2. *They may petition.* *Pag.* 126. Sir *Thomas Powis*, then Attorney-General, acknowledges Acceſs to the King by Petition is open to every body; the moſt inferior Perſon is allowed to petition the King. *Pag.* 135. Mr. Juſtice *Holloway* ſays, *It's the Birthright of the Subject to petition the King.* If it's the Birthright of the Subject to petition the King, to procure or draw in Men to do what it's their Birthright to do, can never amount to a Crime.

Mr. *Atwood.* I do not ſay Petitioning the King is a Crime, but it may be to petition the Houſe of Commons in the Plantations, where the King governs by his Prerogative.

Mr. *Nicoll.* I cannot think it a Crime, for the Subjects of the Plantations to petition the Houſe of Commons; it's every Day's Practice: Conſult the Votes in every Seſſions, you'll find many Addreſſes, Petitions, and Complaints from the Subjects of the Plantations: It ſeems to be the Right of the Subjects to petition the Houſe of Commons. The Statute of the 13th of *Charles* the 2d, *c.* 5. reſtrains the Common Law; by that it plainly appears to be the Right of the Subject to petition the Houſe of Commons, or the King. The Proviſo in that Act ſays, *That neither that Act, nor any thing therein contained, ſhall be conſtrued to extend or hinder any Perſon or Perſons, not exceeding the Number of Ten, to preſent any publick or private Grievance or Complaint to any Member of the Houſe of Commons after his Election, or to the King's Majeſty.* The Act of Recognition of *primo William* and *Mary*, declaring the Rights and Liberties of the Subjects, and ſettling the Succeſſion of the Crown, thereby it is enacted amongſt other Things, *That it is the Right of the Subject to petition the King; and all Commitments and Proſecutions for ſuch Petitioning are illegal.* And they do claim, demand, and inſiſt upon all and ſingular the Premiſes, as their undoubted Rights and Liberties; and that no Declaration, Judgment, Doings or Proceedings to the Prejudice of the People, in any the ſaid Premiſes, ought in any wiſe hereafter to be drawn into Conſequence or Example. Here is no Grant of any new Privilege, but a Claim and Acknowledgment of an Ancient Right; and Petitions to the Parliament are as ancient as Parliaments themſelves. If the Subjects of the Plantations may not petition and complain to their Prince, they are in a worſe Condition than Slaves. The Cries of the Oppreſſions in the Plantations have gone up to Heaven, and are again come down upon the Earth, and have inſpired and moved the King and Parliament of *England*, to make a Law to check the exorbitant Actions of Governors in the Plantations, and make them accountable in *England* for their Miſcarriages abroad; which can never be diſcovered to the King but by Petition. The Statute is in theſe Words:

An Act to puniſh Governors of Plantations in this Kingdom, for Crimes by them committed in the Plantations.

'WHereas a due Puniſhment is not provided 'for ſeveral Crimes and Offences committed out of this his Majeſty's Realm of *England*; 'whereof divers Governors, Lieutenant-Governors, 'Deputy-Governors, or Commanders in Chief of 'Plantations and Colonies within his Majeſty's Dominions beyond the Seas, have taken Advantage, 'and have not been deterred from oppreſſing his 'Majeſty's Subjects within their reſpective Governments and Commands, nor from committing ſeveral other great Crimes and Offences, not deeming themſelves puniſhable for the ſame here, nor 'accountable for ſuch their Crimes and Offences to 'any Perſon within their reſpective Governments 'and Commands: For Remedy whereof, *Be it enacted by the King's moſt Excellent Majeſty, by and with the Advice and Conſent of the Lords Spiritual and Temporal and Commons in Parliament aſſembled, and by Authority of the ſame*, That if 'any Governor or Commander in Chief of any Plantation or Colony within his Majeſty's Dominions 'beyond the Seas, ſhall, after the Firſt Day of *Auguſt*, 1700, be guilty of oppreſſing any of his Majeſty's Subjects beyond the Seas, within their reſpective Governments or Commands, or ſhall be 'guilty of any other Crime or Offence, contrary to 'the Laws of this Realm, or in force within their 'reſpective Governments and Commands, ſhall be 'enquired of, heard and determined in his Majeſty's Court of *Kings-Bench* here in *England*, or 'before ſuch Commiſſioners, and in ſuch County of 'this Realm, as ſhall be aſſigned by his Majeſty's 'Commiſſion, and by good and lawful Men of the 'ſame County; and that ſuch Puniſhments ſhall be 'inflicted on ſuch Offenders, as are uſually inflicted 'for Offences of the like Nature committed here 'in *England*.

This

This Profecution ſeems to be made to fruſtrate and evade this Act of Parliament. The Subject is oppreſs'd, or conceives himſelf to be ſo, and complains of this Oppreſſion; this complaining is made TREASON! Here is a ſtrange and fatal Dilemma on the Subjects of the Plantations: They muſt either ſuffer their Oppreſſions, or be hang'd for Traytors if they complain!

What relates to the Act of Aſſembly of this Country, it can by no natural or legal Conſtruction be extended to make the Priſoner culpable. It is plain by the whole Purport of the Act, that it has made no new Treaſon; it only recognizes the King and Queen; and enacts, That thoſe who ſhall do any thing deſtructive to that Eſtabliſhment, by Force of Arms or otherwiſe, ſhall be *Rebels* and *Traitors*; which they would be without this Act. If this Addreſs and Petition had been to the *French* King, the Thing had been of another Nature. By the ſame Conſtruction every petty Battery, or other little Treſpaſs, may be a Treaſon.

The Petition of Col. *Bayard*, and the other Three, is ſo far from diſowning the Government, that it is a direct acknowledging of the ſame. The Direction of the Petition is, *To the Lieutenant-Governor, and the Council*: The Expreſſion (*That they have Advice that the Lord* Cornbury *is to ſucceed the Earl of* Bellamont) can with no Juſtice or common Senſe be conſtrued to be a diſowning and caſting off of the Government. I think it will hardly be affirmed, that the Council ſucceeded the Earl of *Bellamont*, and Captain *Nanfan* the Council; if ſo, after the Earl of *Bellamont*, who was Captain-General? We had Seven Captains-General; which is an Abſurdity I ſuppoſe none will alledge. A familiar Example will demonſtrate the Weakneſs and Falſity of this Conſtruction: If a Captain of a Company be killed or abſent, the Lieutenant or next Officer has the full Command of the Company, as the Captain had, or could have; but I think no Man will ſay he ſucceeds the Captain, or that when another Captain is appointed, he ſucceeds that Lieutenant or other Officer. So that I cannot think there is any Fact or Crime alledged or proved againſt the Priſoner, to charge him with this high Crime of Treaſon, or indeed with any other Crime whatſoever.

Some time after the E. of Bellamont's *Death, Capt.* Nanfan, *the Lieut. Governor, was at* Barbadoes.

Mr. *Emot*. By your Honours Permiſſion, I am of Council for Col. *Bayard* the Priſoner at the Bar: But by reaſon I am unwilling to ſpend too much of your Time, this Tryal already having been very long; and Mr. *Nicoll*, who is alſo of Council of the ſame Side, having amongſt other things made it very evident, that for the Subject to petition his Majeſty, is their ancient and undubitable Right;

I ſhall therefore make it my Buſineſs only, as near as I can, to demonſtrate to this Court and Jury, That had the King's Council made ample Proof of all the Matters of Fact alledged in the Indictment, as the ſigning the Addreſſes, and other Things therein contained, to have been true; yet, in point of Law, they cannot amount to that Grand Crime of *High-Treaſon*.

In order to this, I ſhall, with as much Brevity as I can, examine into, and put your Honours in mind, and withal inform the Gentlemen of the Jury, what the Law of *England* (by which we are, or ought to be govern'd here) hath been, for near the Space of Four Hundred Years laſt paſt, relating to this Grand Crime of High-Treaſon; whereby it will manifeſtly appear, how cautious the Parliaments of *England* have been in making and increaſing the Laws to take away Mens Lives, and particularly for High-Treaſon. And I ſhall begin with the Statute of the 25th of *Edw.* 3. a Statute to which the greateſt Regard has been paid of any Act of Parliament whatſoever, unleſs *Magna Charta*, as hereafter I ſhall briefly ſhew.

I muſt alſo obſerve to your Honours, that before the making of this Act of Parliament of the 25th of *Edw.* 3. which was in *Anno* 1350, and which was the very firſt Act relating to Treaſons, ſo many Things were charged as High-Treaſon by the Common Law, and there were ſo many Ambiguities and Diverſities of Opinions, that both Hiſtory and our Books of the Law ſufficiently inform us, ſcarce any Man knew how to behave himſelf. But now, by this Statute, the Particulars and Species of this Grand Crime are reckoned up, and all others excluded, till declared by Parliament. For tho' nothing can concern the King, his Crown and Dignity, more immediately than High-Treaſon, which our Law calls *Crimen læſæ Majeſtatis*, a Crime wronging Majeſty; yet this good King *Edward* III. at the Requeſt of the Lords and Commons of *England*, in a Parliamentary Way, and to make all After-Ages happy, makes a plain Declaration of ſuch Offences as ſhould for the future be deem'd for High-Treaſon, and none other, unleſs declared by Parliament.

This Act of Parliament is branch'd out by Sir *Edward Coke*, in the Third Part of his *Inſtitutes*, into Six Claſſes or Heads; which I ſhall the rather take notice of, for that Tryals of this Nature are very rare in the Plantations; and they are theſe:

1. The Compaſſing or Imagining the Death of the *King*, *Queen* or *Prince*, and declaring the ſame by ſome Overt-Act.

The Killing or Murthering of the *Chancellor*, *Treaſurer*, *Juſtices*, &c. in their Place doing their Office, *&c.*

2. To violate, or carnally to know the *King's Conſort* or *Queen*, the *King's Eldeſt Daughter* unmarried, or *Prince's Wife*.

3. Levying of War againſt the King.

4. Adhering to the King's Enemies, and declaring the ſame by ſome Overt-Act; and this muſt not be *Inimicus*, *ſed Hoſtis*.

5. Counterfeiting of the *Great Seal*, *Privy Seal*, or *King's Coin*, &c.

6. And *Laſtly*, Bringing into the Realm *Counterfeit Money*, to the Likeneſs of the King's Coin, *&c.*

Now, if there is any other Offence which was not comprehended within one of theſe Claſſes, the ſame was thereby declared to be no Treaſon.

In a Clauſe of which Act of Parliament we find theſe Words; which I ſhall the rather read, becauſe I apprehend it will very much concern this enſuing Tryal.

" And becauſe that many other like Caſes may " happen in Time to come, which a Man cannot " think or declare at this preſent Time, it is or- " dained, That if any other Caſe, ſuppoſed Trea- " ſon, which is not above ſpecify'd, do happen be- " fore any Juſtices, the Juſtices ſhall tarry, without " any going to Judgment of the Treaſon, till the " Cauſe be ſhewed and declared before the King " and his Parliament, whether it be judged Treaſon " or other Felony.

By this we may eaſily perceive, and it's very obvious, that this Clauſe was made to prevent the Judges from taking upon them to declare any things to be High-Treaſon, but ſuch as are particularly expreſs'd by this Statute of the 25th of *Edw.* 3. or by ſome other ſubſequent Act.

Again, in the Reign of *Richard* II. we find ſundry other Things were declared by Parliament to be High-Treaſon, which were not comprehended within the Statute of 25 *Edw.* 3. But yet upon the coming in of *Hen.* 4. it was again enacted and declared, That nothing ſhould for the future be adjudged High-Treaſon, but what was ſo ordained by the aforeſaid Statute 25 *Edw.* 3. The Words are theſe:

1 *H.* 4. c. 10. " That whereas in Parliament, in " the 21ſt Year of the late King *Richard*, divers " Pains of Treaſon were ordained by Statute, inaſ- " much as there was no Man who knew how he " ought to behave himſelf, to do, ſpeak or ſay, for " doubt of ſuch Pains; it's accorded and aſſented " by the King, Lords and Commons, That in no " Time to come, any Treaſon be adjudged other- " wiſe than it was ordained by the Statute, in the " Time of his Noble Grandfather King *Edw.* 3.

Now this Statute, I am humbly of Opinion, is directly in the Negative, which ſays, That for the future nothing ſhall be adjudged Treaſon, otherwiſe than it was ordained by the aforeſaid Statute of the 25th of *Edw.* 3.

Yet nevertheleſs, this Indictment is grounded upon an Act of Aſſembly of this Province; which is, I am humbly of Opinion, not only contrary, but directly repugnant to the aforeſaid Statute, (which appeareth to me to limit all new Species of Treaſon to be declared in Parliament, and not elſewhere) which, if it ſhould admit of ſuch a Conſtruction as is now intended, I think I may modeſtly ſay, it will introduce Five Hundred ſeveral new Species of Treaſon: So that his Majeſty's good Subjects of this Province would fall under much greater Hardſhips than whatever the People of *England* were ſenſible of before the making of this Act (which I cannot too often mention) the 25th of *Edw.* 3.

If we look further downward, upon the coming in of *Edw.* 6. which was in the Year 1546, ſundry new Species of Treaſon having been again introduced by Act of Parliament, it was in the very firſt Year of his Reign enacted, That no Offence made Treaſon by any Statute, ſhould be ſo deemed and adjudged for the future, but ſuch as were made Treaſon by the aforeſaid Statute of 25 *Edw.* 3. other than ſuch as were by that preſent Statute ordained and declared.

But yet in Queen *Mary*'s Time, in the firſt Year of her Reign, this grand Crime was brought to its Ancient Standard; and it was then declared in Parliament, *That no Act nor Offence whatſoever ſhould be deemed Treaſon or Miſpriſion of Treaſon, but ſuch as were declared by the Statute* 25 Edw. 3. And the Subſtance of the Preamble is this, *That the State and Safety of the King ſtandeth more aſſuredly by the Love of his Subjects, than Fear of his Laws.*

So that upon Examination, we find how careful and cautious the People and Parliament of *England* have been in introducing and increaſing of Sanguinary Laws, and that through the Revolution of many Ages. And hereby it's very remarkable, what a great Regard has been in all Ages paid to this venerable Statute of 25 *Edw.* 3. which with great Care has been continued down to us to this very Time, and is now in its full Force. Sir *Edward Coke*, treating thereof, tells us, That the Parliament in which this Act was made, for many Years after was called, *Benedictum Parliamentum*, the Bleſſed Parliament.

If we look but into the Bill of Attainder of *Thomas* Earl of *Strafford*, in the Year 1640 and 41, even in thoſe Times, what Regard was paid to this Statute, which I have ſo often mentioned, wherein it was provided, That the Judgment againſt the ſaid Earl ſhould never be drawn into Precedent: And the Words are theſe, " Provided, That no Judge or " Judges, Juſtice or Juſtices whatſoever, ſhall ad- " judge or interpret any Act or Thing to be Treaſon, " nor hear or determine any Treaſon in any other " manner, than he or they ſhould or ought to have " done before the making of this Act.

Now, if we do but reflect upon the great Concern and Care that has been taken through all Ages, by the wiſe People of *England*, in preventing the Judges from interpreting any Act or Thing whatſoever to be Treaſon, but ſuch only as are enumerated in the Statute 25 *Edw.* 3.

And at the ſame time give our ſelves leave to think, how induſtriouſly we labour to introduce an Act of Aſſembly of this Province, to make, as I ſaid before, even Five Hundred new and never-heard-of Species of Treaſon: I ſay, if we do but conſider this, 'tis Matter of great Amazement, and more eſpecially in ſuch an Age as this, and in ſo happy a Reign, where no Man ever queſtioned, or at leaſt doubted of the true Enjoyment of our Laws and Liberties, tho' never ſo remote from the Fountain Head.

I am afraid, I have already treſpaſſed upon your Honours Patience; I ſhall therefore conclude with ſome Obſervations upon the Act of Aſſembly, upon which this Indictment is laid.

Now both the Title, Preamble and Words of this Act of Aſſembly, and the Cauſe of making thereof, is very obvious, (however the ſame may be now interpreted) which were theſe Two:

1ſt, For the future, to prevent the ſetting up a Power over his Majeſty's Subjects in this Province, without Authority from the Crown of *England*; which was found to be of fatal Conſequence in the late unhappy Diſorders in this Province.

2dly, To expreſs the Love, Loyalty and hearty Affection of the People to their Majeſties King *William* and Queen *Mary*; and as far as in them lay, to recognize them their Sovereign Liege Lord and Lady. I doubt not but your Honours will ſee Cauſe to recommend the ſame to the Jury, in delivering the Charge: And that no ſtrain'd Conſtruction of this Act of Aſſembly can ever affect the Priſoner Col. *Bayard*, or in the leaſt blaſt his long-experienc'd Loyalty to the Crown of *England*, and in a ſpecial manner to his preſent Majeſty King *William*.

I had almoſt forgot to beg Leave of the Court to apply my ſelf to the Gentlemen of the Jury, to obviate ſome Objections, or rather a vulgar Error that uſually hath crept in amongſt them upon Tryals, and particularly upon Indictments; which is, they do believe,

That if the Matters of Fact alledged in the Indictment be but proved, they are to have no Regard to Mattter of Law: Which I take to be a very great and dangerous Error in them.

For tho' it be true, and muſt be granted, that Matters of Fact are the moſt common and proper Object of a Jury's Determination, and Matters of Law that of the Judges; yet as Law ariſeth out of, and is interwoven and complicated with Fact, it cannot but fall under the Jury's Conſideration. For, ſhould

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it be otherwiſe, if a Perſon ſhould be indicted for doing any common, innocent or lawful Act, if it be but cloathed and diſguized in the Indictment with the Name of Treaſon, or ſome other high Crime, and proved by Witneſſes to be done, then the Jury would lie under a Neceſſity of finding the Priſoner Guilty. No:

Do we not find in moſt general Iſſues, upon *Not Guilty* pleaded, as upon Indictments of Treſpaſſes, Breach of the Peace, Felony, and even in Caſes of High-Treaſon; yet the Jury do not find the Fact of the Caſe by it ſelf, leaving the Law to the Court, but find the Party Guilty, or Not Guilty.

And this will more evidently appear upon Indictments of Murder, that the Jury are Judges as well of Matter of Law as of Fact. For is it not every Day's Practice, where Perſons are indicted of Murder? The Jury doth not only find them *Guilty* or *Not Guilty*; but many Times upon hearing and weighing of Circumſtances, the Jury brings in the Priſoner not only *Guilty* or *Not Guilty* in general, but brings them in either *Guilty of Murder*, or *Manſlaughter by Miſadventure*, or *Se Defendendo*? &c.

So the Jury being well apprized of the true Matter of Fact, of which they are ſole Judges, can better apply the Matter of Law; for, ſays my Lord *Cook*, *It is by fitly applying Matters of Fact and Law together, that the Jury brings forth their Verdict*; which I hope you Gentlemen of the Jury will carefully do.

Priſoner. I deſire ſome of my Evidences may be called to give an Account of my Life and Converſation. Which was granted.

Mr. *Veaſy*, Miniſter of *Trinity-Church*, being ſworn, ſaid, I have been for ſix Years perſonally acquainted with Col. *Bayard*; during which Time his Life and Converſation recommended him in to World as an Exemplary *Chriſtian*. And the frequent Expreſſions of his Zeal and Affection to his Majeſty's Perſon and Government, convinced me that he was a good Subject.

Priſoner. Call Capt. *John Kipp*. Who being called, was abſent.

Call Capt. *Tudor*.

Tudor ſworn, ſaid, I have known Col. *Bayard* 26 Years, a moderate, civil, good Man, has been employed in almoſt all Offices of the greateſt Truſt in the Government, never diſaffected, but ſtood up for the *Proteſtant Religion* and King *William*.

Priſoner. To prove that I have upon ſundry Emergencies, during the late War, advanced of my private Fortune upon Loan without Intereſt, ſeveral conſiderable Sums of Money, for the Preſervation of his Majeſty's Intereſt and Government in *New-York*, of which upwards of 200 *l.* Money in Specie lent, is ſtill unpaid; I deſire Mr. *Famiſon*, who was then Clerk of the Council, may be ſworn.

Famiſon being called, appeared ——

Mr. *Atwood*. Mr. *Famiſon* has refuſed to purge himſelf of ſigning thoſe Addreſſes, and is *Particeps Criminis*, for which Reaſon he cannot be allowed to be an Evidence.

The Evidence being ſworn and examined, the Solicitor-General, without anſwering the Authorities offered by the Priſoner's Council, relating to the Treaſon, ſumm'd up the Evidence, as to Matter of Fact.

Mr. *Atwood* gave the Charge to the Jury, in a long Diſcourſe; and among other Things inſiſted, That the Indictment was not laid upon the Act of 25 *E.* 3. nor any Act of Parliament, but upon an Act of Aſſembly of this Province, confirmed by his Majeſty, which had Power to make Acts for High-Treaſon, as well as the Parliament of *England*; and that the ſaid Statute was confined to *England*, becauſe by the ſaid Statute it is enacted, That if any Doubt ſhould ariſe, the ſame be adjourned unto Parliament, which muſt be underſtood of the Parliament of *England*.

That it is High-Treaſon by the Act of Aſſembly, by any Manner of Ways, or upon any Pretence whatſoever, by Force of Arms, or otherwiſe, to diſturb the Peace, Good and Quiet of the Government, as it is now eſtabliſhed; which he ſaid was proved by Overt Acts laid in the Indictment; which were by ſigning of Libels againſt the Government, and thereby enticing the People to caſt off and diſown the ſame; and chiefly by the Soldiers ſigning Complaints againſt their chief Officers, which tended to Mutiny, and was Treaſon by the Common Law.

That by bringing the Papers to *Hutchins*'s Houſe, the Priſoner had made himſelf guilty of all that was done there, by the Soldiers and others ſigning thoſe Papers.

That the Right of petitioning the King was not in Diſpute, but the Manner of doing it made it criminal.

That it was plain the Addreſs of the Priſoner and his Three Fellows, was a diſowning of the preſent Authority, and caſting off his Majeſty's Government as it was then eſtabliſhed; for Capt. *Nanfan* ſucceeded the Lord *Bellamont* (as by the Commiſſion appeared) and not my Lord *Cornbury*; which was a plain Overt Act of Treaſon, by the Meaning and Words of the Act of Aſſembly.

That it appeared undeniable, that the Priſoner and his Son were always by the Papers, and that it was done with a great Number of People to affront the Government.

That the drawing in Soldiers to ſign Petitions, is Mutiny and Sedition by the Law; and drawing of them in on falſe Pretences, in Hopes of Freedom in the City, and ſubſcribing their Names on Blank Liſts, is liſting of Soldiers, and may be applied to invite in any Foreign Power. And thereupon ſtrenuouſly inſiſted on the Validity of the Evidence, That the Facts laid in the Indictment were undeniably proved, and that thoſe Facts did amount to High-Treaſon, within the Words and Meaning of this Act of Aſſembly, and that therefore the Jury could not do otherwiſe than bring in the Priſoner Guilty.

The Conſtable being ſworn to keep the Jury, the Court adjourned till Nine a Clock at Night. And the Jury then not being agreed, the Court did adjourn till *Monday* nine a Clock, the 9th of *March*.

On *Monday* the 9th, the Priſoner was brought to the Bar, and the Jury ſent for. They were aſked if they were agreed in their Verdict? They anſwered, They were not agreed, but deſired ſome Direction of the Court. *Jacob Goelet* appeared as Foreman of the Jury, and read ſome Notes of what he ſaid the Witneſſes had ſworn. Which were denied to have been ſworn by the Council for the Priſoner, who prayed Mr. *Atwood* to ſatisfy the Jury of the Truth of the Evidence.

To this he anſwered, That he could not do it after the Charge given; but affirmed, it was no new Thing (as ſome pretended) after Charge given, to ſatisfy the Jury in ſome Matters of Law; and told, that he had received Letters from the Jury, and

and answered them, which Answers were only his private Opinion. That if they were under any Difficulty, whether the Matters of Fact alledged in the Indictment, and which were proved to them, were Treason or no, they might find the Prisoner Guilty; who had his Advantage in moving in Arrest of Judgment, and might be relieved as to Matter of Law.

Mr. *Emot.* This is not fair to give the Jury a Handle to find the Prisoner guilty, in Expectation of Relief in Arrest of Judgment; for they are Judges both of Law and Fact, as the Case is now circumstanced: If they will enslave themselves and their Posterity, and debar themselves of all Access to their Prince, they will be worse than Negroes.

Mr. *Atwood.* This is not to be suffered, to offer these Things to the Jury after they have received their Charge; therefore be silent. Then proceeding, he renewed his Charge to the Jury, aggravating the supposed Crimes for the Space of about half an Hour.

Mr. *Emot.* I pray your Honour to be heard one Word *(which he often repeated,* and at last was granted him.) The Facts laid in the Indictment were not proved, as to the disowning and casting off the Government, encouraging of Mutiny in the Soldiers, or disquieting the Peace of the Government: Addressing the King is the undoubted Right of the Subject, both by Common Law and Acts of Parliament. If the Subject for Complaints of Grievances, set forth by Petition, shall be attainted for High-Treason, we are are in a worse Condition than Slaves.

Mr. *Atwood* check'd him, and commanded Silence.

Mr. *Nicholl.* The Act of Parliament to punish Governors in the Plantations for oppressing the Subject, is rendred useless and of no Effect, if the Subjects are deprived of this Liberty to complain, and set forth their Grievances, by Petition to their King.

Prisoner. I crave that *Jacobus Goelet* may read over his Paper concerning the Evidence given, and Liberty to controul the Mistakes. *This was denied.*

Prisoner. I crave that Col. *D' Peyster* and Capt. *Walters*, who are joined in the Commission, will declare their Opinions singly, if they have agreed That to be Treason which Mr. *Atwood* has declared to be so, either by the Common Law, or Act of Assembly, if the Facts laid in the Indictment should be admitted to be proved, as indeed they are not.

To this he received no Answer.

After this, the Jury were sent out, and the Court adjourned till Three a Clock in the Afternoon.

At which Time the Commissioners meeting, the Prisoner was brought to the Bar; the Jury were sent for. And being come, were asked, if they were agreed of their Verdict? Which they answered in the Affirmative, and that they found the Prisoner *Guilty.*

Council. We pray Time to offer Reasons in Arrest of Judgment.

Mr. *Atwood.* Let these Reasons be offered Tomorrow Morning.

Court adjourned till Eleven a Clock next Morning.

March 10*th.* The Commissioners met, and the Prisoner being brought to the Bar, he offered the following Reasons in Arrest of Judgment, in these Words, *viz.*

Bayard. That no Overt Act, alledged in the Indictment, is proved by the Oaths and Testimonies of Two lawful Witnesses, as by the Statute of 7 *W.* 3. is directed.

That if the Overt Act, as alledged in the Indictment, should be admitted to be so proved, yet neither by the Law of *England*, or by any legal genuine Construction of the Act of Assembly of this Country, on which the Indictment is grounded, any of the said Overt Acts can amount to High-Treason.

Mr. *Atwood.* Tho' the Reasons offer'd by the Prisoners Council, are properly and learnedly offered, I could off-hand answer and controul them all; yet I will not do it; let them be left with the Sollicitor General. And adjourn'd the Court until Ten a Clock the next Morning; which accordingly was done.

March 11. The Commissioners met, and the Prisoner brought to the Bar.

Mr. *Nicholl.* It does not appear that any one Overt Act, alledged in the Indictment, has been proved by the Oaths of Two lawful Witnesses, as by the Statute of 7 *W.* 3. ought to be done.

Mr. *Atwood.* The Jury are the sole Judges of the Evidence, and if there has been any Omission in that, it is now help'd by the Verdict.

Mr. *Nicoll.* 'Tho' 'tis very plain to me, and I suppose to the Court, that what I have affirmed in this Matter is Truth, ; yet I shall not much insist upon it, because if the Acts themselves should be admitted to be true, they do not fall under any of the Heads or Species of Treason so made by the *English* Laws, or by any natural and reasonable Construction of the Act of Assembly of this Government; which being wholly Matter of Law, I shall leave to your Honours Consideration.

Mr. *Emot.* I very well remember that the Court was pleased to tell the Jury, after they had been together some Days, and not being agreed upon the Verdict, *That if they were under any Difficulty, whether the Overt Acts laid in the Indictment, if proved, were Treason; if they found the Prisoner guilty, he had his Remedy by moving the Matter of Law in Arrest of Judgment.*

I therefore humbly offer, in Arrest of Judgment, That if the Overt Acts laid in the Indictment were admitted to be proved, yet in Point of Law they cannot amount to High-Treason, within the meaning of the Act of Assembly upon which the Indictment is laid.

For I take it, that all Acts of Parliament, and consequently Acts of Assembly, are to be understood and taken by reasonable Construction, to be gathered and collected out of the Words of the Act only, and that according to the natural, grammatical, plain and legal Sense thereof, without any forced Interpretation.

Then if so, this Act of Assembly, both by the Title, Preamble, and the enacting Part thereof, plainly demonstrates the Meaning of the Law-makers, and what was thereby designed for the future to prevent. The Title of this Act is in these Words: *An Act for the quieting and settling the Disorders that have lately happened within this Province, and for establishing and securing their Majesties present Government against the like Disorders for the future.* Now what these Disorders were, we have great cause to remember, and they are very well known to this Court to have been occasioned by some Persons setting up an Arbitrary Power over the King's Subjects without the Authority from the Crown of *England*, as appears from the Preamble of the said Act, part whereof is in these Words:

And

And whereas the late haſty and inconſiderate Violation of the Good and Quiet of this Province, by the ſetting up a Power over their Majeſties Subjects without Authority from the Crown of England, *hath vitiated and debauched the Minds of many People,* &c. *For the Prevention whereof in Time to come, be it enacted,* &c. *That whatſoever Perſon or Perſons ſhall by any Manner of Ways, or upon any Pretence whatſoever, endeavour by Force of Arms, or otherwiſe, to diſturb the Peace, Good and Quiet of this their Majeſties Government, as it is now eſtabliſhed, ſhall be deemed and eſteemed as Rebels and Traytors,* &c.

From hence it plainly appears, that the Intention of the Law-makers was only to declare ſuch Perſon or Perſons Rebels and Traytors, as ſhould for the future ſet up a Power over his Majeſty's Subjects in this Province, without Authority from the Crown of *England*; which undoubtedly is Treaſon within the Statute of 25 *E.* 3.

But it can never be underſtood (without the greateſt of Violence to the reaſonable Conſtruction of the ſaid Act of Aſſembly, and the plain Intention of the Makers thereof) to be conſtrued to extend to the ſigning the Addreſſes mentioned in the Indictment, which is the only Thing the Priſoner is poſitively charged withal; for all the reſt are only preſumptive, conſtructive and accumulative Crimes, drawn from thence.

But ſays Mr. *Sollicitor*, the Words of this Act of Aſſembly are in generals, *That if any Perſons ſhall endeavour by Force of Arms, or otherwiſe, to diſturb the Peace, Good and Quiet of the Government, ſhall be deemed and eſteemed Rebels and Traitors.*

Now from the Word [*Otherwiſe*] Mr. *Solicitor* would fain inſinuate that the Priſoner is within the Meaning of the Act of Aſſembly: A very fine Explanation! For by ſuch a Conſtruction as this, every Breach of the Peace, ſudden Quarrel, or ſmall Battery, ſhall be deemed Treaſon. I ſhall not further add upon this Head, but only offer my humble Opinion, That here in the Plantations we are not capable in our Aſſemblies to make and declare any new Species of Treaſon, but ſuch as are comprehended in the Statute of 25 *E.* 3. or ſome other ſubſequent Statute.

Tho' what already has been offered, I hope will be ſufficient to ſtay and arreſt Judgment, yet I have ſeveral other Things in behalf of the Priſoner (by your Honours Permiſſion) to move in Arreſt of Judgment, and which are not mentioned in the Reaſons which were aſſigned in Writing; and I pray Liberty to offer them *Ore Tenus*.

Mr. *Atwood*. Mr. *Emot*, you have Liberty granted you; go on.

Mr. *Emot*. I thank your Honour. And the Reaſons that I ſhall now further aſſign why Judgment ought not to paſs againſt the Priſoner, according to the Verdict of the Jury, are theſe Three.

1*ſt*. That *Andries Marſhalk*, one of the Petty-Jury, is an *Alien*, and of Foreign Birth, born in *Zeland*, and came over into this Province in the Year 1684.; and that *Jacobus Goelet* the Foreman of the Jury, is alſo an *Alien*, and hath lately ſent for *England* to procure a Denization.

2*dly*. That the *Viſne* or *Venire* in the Precept to ſummon the Petty-Jury, under the Hands of the Commiſſioners, is wrong awarded, or rather, not awarded at all.

3*dly*. That the ſaid Precept is not returned by the Sheriff, or any Endorſement thereupon, and ſigned by him; againſt the known Laws of *England*, and more particularly the Statute of 12 *E.* 2. *Cap.* 5. called, *The Statute of* York.

Mr. *Atwood* in a long Speech ſaid, What the Sollicitor has offer'd is ſufficient to over-rule the Reaſons exhibited in Arreſt of Judgment; for 'tis evidently proved that the Priſoner has diſturbed the Peace, Good and Quiet of the Government, as it is now eſtabliſhed, *viz.*

1*ſt*. By enticing the People to ſign ſcandalous Libels againſt the Government, at the Coffee-Houſe, and at his own Houſe, by the Oath of *Peter Odyre*, telling him, it was for the Good of the Country; and his bringing them to Alderman *Hutchins*'s, makes him equally guilty to the Soldiers ſigning Complaints againſt their chief Officers, thereby enticing them for Mutiny; which Soldiers are part of the Seven Thouſand Men raiſed by Act of Parliament for the Defence of the Kingdom; which is High-Treaſon by the Common Law, as well as by Act of Aſſembly.

2*dly*. By the Priſoner's diſowning the Aſſembly to be lawful.

3*dly*. By charging the Lieut. Governor to be brib'd to paſs their Acts of Aſſembly.

4*thly*. By charging the Government to be in the Hands of hot and ignorant Men.

5*thly*. By the Addreſs to the Lieut. Governor, diſowning and caſting off the preſent Authority, declaring the Lord *Cornbury* to ſucceed the late Earl of *Bellamont* in the Government.

I hope the Priſoner by this Time is convinc'd of his Crime, as well as that Clergy-man who ſpoke ſo much in his Vindication; and that the Priſoner will now be duly penitent, and make a true Confeſſion of it.

Col. *Bayard*. May it pleaſe your Honour, I ever abhorr'd that heinous and abominable Crime of High-Treaſon, as much as Death it ſelf: I call God and my own Conſcience to witneſs, That I am as innocent of it as the Child unborn: I never ſpoke to any of the Soldiers to make any Complaint, or ſign any Addreſſes, or other Paper whatſoever. I own I was preſent at the Coffee-Houſe, at the ſigning of an Addreſs to the King, another to the Parliament, and another to the Lord *Cornbury*; and I own the Two firſt contained ſome Complaints of Grievances we ſuppoſed to lie under, and the latter a Congratulation.

I had the beſt Council I could get for ſo doing, and that it was the Subjects Right to Petition the King, by the Act of the Firſt of *W.* & *M.* and I think the Subjects ſhould be worſe than Slaves, if they ſhall be arraigned for High-Treaſon for complaining to their Prince.

I muſt further beg leave to ſay, Your Honour was much miſtaken in ſumming up juſt now what the Witneſſes had ſworn; and the Jury (by that Paper the Foreman read in Court) had likewiſe a wrong Notion of it; which I deſired then I might controul, but your Honour over-ruled it, as not to be allowed after the Charge was given. It was not proved by any of the Witneſſes, that the Peace of the Government had been diſturbed: None of 'em ſaid I had enticed any Perſon whatſoever to ſign the Addreſſes; nor that I was preſent at the Soldiers ſigning at *Hutchins*'s, much leſs that I enticed them to Mutiny. I knew nothing of their ſigning, I was not at the Houſe all that Time. Mr. *Solicitor* had Mrs. *Hutchins* ſworn, who ſaid the ſame. None of 'em ſay, that in the ſaid Addreſs the Aſſembly was called *Unlawful*, but only that the Speaker was an *Alien*; nor that the Lieut. Governor was bribed, but tempted: Nor that the Government was in the Hands of *hot* and *ignorant Men*, but that *hot* and *ignorant Men* were *put in Offices*, and that there-

thereby the Government was like to be rendred *Cheap* and *Vile*. And as for the Addreſs to the Lieut. Governor, it was only ſaid, *We had received Advice from* England *that the Lord* Cornbury *was to ſucceed the Earl of* Bellamont *as our Governor*; which by no Colour can be conſtrued to be a caſting off, or diſowning of the preſent Authority. And tho' all had been proved, as it is not, what your Honour, as above, has been pleaſed to ſay, I humbly conceive it cannot amount to a Miſdemeanor, and much leſs to that heinous Crime of *High-Treaſon*.

Mr. *Atwood*. The Right of Petitioning the King is not in Diſpute, but the Manner of doing it makes it *Criminal*; neither does that Liberty extend to the Parliament.

Mr. *Emot*. I humbly move, that we may have Liberty to offer other Reaſons *Ore Tenus*. *Which the Court granted.*

Mr. *Atwood*. Adjourn the Court till *Friday* Morning the 13th Inſtant. *Adjourn'd accordingly.*

On the 12th in the Morning, the Priſoner wrote a Letter to Col. *De Peyſter*; ſome of the Contents whereof were by Mr. *Atwood* retorted upon the Priſoner in open Court, at the Time he paſſed Sentence againſt him; for which Reaſon the Priſoner has permitted it to be publiſhed, and it is as followeth:

Col. D' Peyſter; *Sir*,

"I Take leave to acquaint you, That tho' it "has pleaſed God to ſuffer your ſelf, and "ſome of your Relations to be the likely chief In- "ſtruments of the total Deſtruction both of my "ſelf and all my Family and Poſterity; that yet "notwithſtanding I have that Peace with my ſelf "(and I can but only thank God for his all-ſufficient "Grace of ſtrengthning me in it) that I am re- "conciled to all Mankind whatſoever, and that I "hope one of my laſt Prayers will be, That God "out of his infinite Mercy will graciouſly pardon "all thoſe that have had a Hand to cut me off. "*Sir*, Believe me, as you may give Credit to the "Words of a dying Man (ſince I find the Job is "to be done, and that it is now paſt your Power "to ſtop the Current) that I ſhall alſo die with "a clear and good Conſcience, and as free of that "horrid Crime laid to my Charge, as the Child "yet unborn. And therefore I hope God's merci- "ful Hand, who has never left nor forſaken me, "will continue to ſupport me to the very laſt, "and that I may look Death in the Face, as a "good Chriſtian ought to do; humbly ſubmitting "my All to his moſt Wiſe, moſt Juſt, and moſt "Merciful Diſpenſations: For I am ſenſible there "is no more than one Death for me, and that in "all Probability, conſidering my Age, it might "have been very ſoon, tho' this Tribulation had "not befallen me. I ſhall only add, That I hope "in God's Mercy for the Pardon of all my mani- "fold Sins and Tranſgreſſions, thro' the only Merits "of my Saviour Jeſus Chriſt; and that when I "ſhall be no more, he will continue his Grace to "my dear Wife, and my Poſterity. And laſtly, "That my Blood, which is ſtruck at (by your "Brother's own Expreſſions to my ſelf, and your "Brother-in-Law's to others, both not long ſince) "may be the laſt to be ſpilt on Account of our "diſmal and unhappy Diviſions; tho' I fear out "of my Aſhes ſuch farther Calamities may ariſe "to this poor bleeding Province, that Poſterity will "have Cauſe long to lament: For it is not to be "expected, that all the Plots, Contrivances and In- "triegues uſed in this Matter, (many of which I "aſſure you are already diſcovered) will have their "*Exit* with my ſelf. It had been more pardon- "able to have ſtabb'd me in my Sleep, or with "*Joab*'s Hand, under a Pretence of Friendſhip, "than to do it with *Ahab* under a Colour and "Cloak of Juſtice; and of the Two, I leave others "to conſider if this latter exceeds not the former; "ſince it's not to be ſuppos'd, that *Ahab*'s was ſo "much out of Malice; but the Vineyard being de- "nied him on his offering the Worth of it in "Money, occaſioned the Innocent to be arraigned "and ſlain for a pretended Crime of *Blaſphemy* "and *High Treaſon*.

"*Sir*, Theſe above Lines are the Sincerity of "my Thoughts this Morning; aſſuring you, that "I never had a Thought before late laſt Night "to write to your ſelf one Word about this Sub- "ject; ſo altogether unknown to all Mankind what- "ſoever, nor don't intend them any further; where- "fore I deſire you'll make ſuch Uſe of them, for "your own Conſideration, as God may direct "you. I am, Sir,

Your humble Servant,
N. Bayard.

March 13. The Court being met according to Adjournment, the Priſoner being brought up, moved, That foraſmuch as Mr. *Nicoll* was out of Town, by reaſon of the Indiſpoſition of his Family, another Council might be aſſigned in his Stead. Which was granted, and the Court adjourned till *Monday* the 16th Inſtant, at Nine a Clock.

March 16. Before the ſitting of the Court, the Priſoner ſent a Petition to Mr. *Atwood*, and the reſt of the Commiſſioners, *viz.*

To the Honourable William Atwood, *Eſq*; Abraham D' Peyſter, *Eſq*; *and* Robert Walters, *Eſq*; *Judges of this Special Court.*

The Humble Petition of Nicholas Bayard, *Sheweth*,

"THAT your Petitioner being altogether "unacquainted what is practicable and al- "lowable in Law to be offered in Arreſt of Judg- "ment; yet ſince your Petitioner's Life, and all "what is near and dear unto him is concerned, "he humbly craves Leave (beſides the Reaſons al- "ready offer'd by your Petitioner's Council in Ar- "reſt of Judgment) to lay before your Honours, "and to pray your Honours favourable Conſidera- "tion thereupon.

"*Firſt*, That the Verdict of the Grand Inqueſt "was not ſufficiently found by any Twelve of "that Inqueſt, as in his former Petition is ſet "forth.

"*Secondly*, That the Petty Jury (in a Manner) "forc'd upon your Petitioner, were all of them "Parties concerned againſt your Petitioner in the "very Matter he was tried for, on Account of "the unhappy Diviſions within this Province; all "of 'em extream ignorant of the *Engliſh* Language, "to that Degree that ſcarcely one of them is able to "ſay the *Lord's Prayer* in the *Engliſh Tongue*, and "much leſs to comprehend the Matters of Law, and "what has been offered in behalf of your Peti- "tioner at his Trial.

"*Thirdly*, That all what has been ſworn againſt "your Petitioner, was, Firſt, That the Petitioner's "Name was ſeen to the Addreſs to the Lord "*Cornbury*, but that they knew not whether it was "his Hand-Writing. Secondly, That the Peti- "tioner had been preſent at the Coffee-Houſe, and

" at his own Houſe, when the Addreſſes to the " King, another to the Parliament, and another to " the Lord *Cornbury*, were ſigned by ſeveral of the " Freeholders, Freemen, and Inhabitants of this " City; but that he had deſired none of them to " ſign the ſame. 3*dly*, That the Petitioner had " brought ſome Papers, ſuppoſed to be the ſaid Ad- " dreſſes, to the Houſe of Alderman *Hutchins*. " 4*thly*, That the Addreſs to the Lord *Cornbury* con- " tain'd only a Congratulation at his ſafe Arrival, " and a hearty Deſire, that with it all our Diviſions " might be healed, and that the very Name of " *Party* and *Faction* might vaniſh, and be extin- " guiſh'd; and that in the Two former, or in one " of them, either to the King or Parliament, ſome " Complaints were made of Grievances, without " remembring the Particulars: Only Mr. *Clows* " ſwore, That to his beſt Remembrance, in both, or " in one of the Addreſſes to the King or the Parlia- " ment, mention was made, That ſome of the *hot-* " *teſt* and *ignoranteſt* of the People were put in Of- " fices; That the Speaker of the Aſſembly was " challenged to be an Alien; That the ſaid Aſſem- " bly had given a Gift to the Lieutenant-Governor, " to tempt him to paſs their Acts, and another to " the Judge; and that thereby his Majeſty's Go- " vernment was like to be render'd *Vile* and *Cheap* " in the Eyes of the People. And ſwore further, " That in none of them any Reflections were made " (as he conceived) to the Prejudice of the Lieut. " Governor; and that in none of them, the Words " *Unlawful* or *Oppreſſion* were mentioned.

" *Fourthly*, That all the reſt of the Evidences " ſwore nothing (againſt your Petitioner,) but that " they had ſigned the Addreſſes at Alderman " *Hutchins*'s; that two or three of the Soldiers had " a Glaſs of Wine given them, but not for ſigning, " it being *Chriſtmas*-Time; and that ſome of them " expected to be made Free of the City, but not of " the Gariſon.

" *May it pleaſe your Honours*; Your Petitioner " finds, by the Notes himſelf has taken at his " Tryal, that nothing more has been ſworn againſt " him: Whereupon the Jury, being ignorant Peo- " ple, found him guilty; becauſe ſome Part of the " Indictment was proved, as to the ſigning of the " ſaid Addreſſes, and what the Contents of them " were, only by the Oath of one Witneſs.

Your Petitioner therefore humbly prays, That your Honours will be pleaſed to take the Premiſes into your ſerious Conſideration, Whether by the Laws of England, *or this Province, it can amount to the Crime of High-Treaſon, what has been ſworn againſt him, as above expreſs'd? And if not, that your Honours will favourably order an Arreſt of Judgment for the Reaſons above-mentioned*, &c. *what has been already offered to your Honour by the Petitioner's Council. And as in Duty bound*, &c.

N. BAYARD.

The Court being met, the Priſoner was brought to the Bar, and the Petition laſt mentioned read.

Mr. *Atwood*. Mr. *Emot*, we are ready to hear the Arguments you have to offer, for the laſt Three Reaſons you have aſſigned in Arreſt of Judgment.

Mr. *Emot*. I am ready: 1ſt, *Andries Marſhalk*, one of the Petty Jury, is an Alien; we have Two Evidences to prove the ſame. And----

Mr. *Atwood*. We cannot admit you any ſuch Proof; for tho' this might have been a good Exception for Cauſe before he or they had been ſworn; but now it's too late: therefore go on to the next.

Mr. *Emot*. This ſeems very hard; for we ought to have been tried by the King's lawful Liege People, and we apprehend theſe are not ſuch; but we came not to the Knowledge of this till after the Tryal.

Mr. *Atwood*. Pray, Mr. *Emot*, delay the Court no longer; but proceed to the ſecond Reaſon aſſigned.

Mr. *Emot*. The 2d *Reaſon* is, that the *Viſne* or *Venue* in the Precept to ſummon the Petty Jury, is wrong awarded, or rather not awarded at all. Our happy Conſtitution of Government is, That all Tryals of this Nature muſt be by the Verdict of Twelve Men, and that as near as may be of the Neighbourhood where the Fact ariſeth, or is alledged to ariſe in the Indictment. Yet nevertheleſs, the Precept to ſummon the Jury, we find is directed to the Sheriff, to return Eighty Men of his Bailiwick; whereas he is Sheriff as well of the County of *New-York*, as of the City; and at the ſame time, the Matters of Fact alledged in the Indictment are ſaid to be committed in the *Dock* and *Eaſtward* of this City. So that this is a Miſ-Trial, upon which no Judgment can be given. And of this we have a Multitude of Authorities in our Books: And firſt, in *Arundel*'s Caſe, *Coke*'s *Rep. part 6. fol.* 14. *b.* It was for the Murder of one *Parker*; and the Caſe was thus: The Murder was alledged to be done at the City of *Weſtminſter*, in a certain Street there, called *King-ſtreet*, in the Pariſh of St. *Margaret*'s: For the Tryal of the Iſſue a Jury was return'd, *De vicinitate Civitatis Weſtm.* *Arundel* being found guilty, moves in Arreſt of Judgment; aſſigning for Cauſe, that the Jury ought to have been out of the Pariſh of St. *Margaret*'s, and not in general out of the Neighbourhood of the City of *Weſtminſter*; and it was adjudged a Miſ-Tryal, and the Verdict was ſet aſide: And this I find was done upon a Special Conſult of the Judges at *Serjeants-Inn*.

So that we ſee how cautious the Laws of *England* are, and the Judges thereof, that all Tryals of this Nature ſhall follow the *Venue*, and that the Jury ſhall be ſummoned from the Neighbourhood where the Fact ariſeth. And the Reaſon thereof is grounded upon this Suppoſition and Preſumption, That the Neighbourhood are the beſt and moſt proper Judges of Matters of Fact; for indeed it's the Rule in the Law, That *Vicinus facta vicini preſumitur ſcire*.

But let me obſerve to your Honours, That our Caſe at the Bar is much more uncertain, as to the awarding of the *Venire facias*, or Precept to ſummon the Jury; for the Fact is alledged to be done at the *Dock* and *Eaſtward* of this City, and Iſſue joined thereupon. Yet the Precept is directed to the Sheriff, to ſummon the Jury of his Bailiwick, which, as I ſaid before, contains both the City and County of *New-York*, and without mentioning any Neighbourhood, and therefore may come out of the County, as well as from the City; and therefore of Neceſſity muſt be eſteemed a Miſ-Tryal.

To this it may be objected by ſuch as are ignorant of our Laws, *That notwithſtanding the Jury was ſummoned from the Neighbourhood of the City of* New-York, *and not from the County; for that they know the Perſons to be ſuch.* But this not appearing to be ſo upon Record, avails nothing; for the Rule of the Law is, *What appears not, is not: Exiſtentibus & non apparentibus eadem eſt ratio.*

Crook's *Rep.* In *London*, the Pariſh and Ward is mentioned; and therefore it was adjudged, That it

was not good to alledge any thing done generally in *London*; but it muſt be laid to be done in ſome Pariſh, from which a *Venue* may be awarded.

In *Crook*'s *Jac.* p. 399. *Tycos* againſt *Weſtcome*. In this Caſe, a *Venire fac'* was awarded from *T.* and not *de Viceneto de T.* Reſolved to be ill, and not amendable: Yet in this Precept the *Viſne* is not ſo much as of a Ward of the City of *New-York*, nor of any other Neighbourhood whatſoever, but in general from his Bailiwick. So that I humbly pray, that for this Reaſon the Jury's Verdict may be ſet aſide, this being a Miſ-Tryal, upon which no Judgment can be entred: And ſhall proceed to the *Third Reaſon* aſſigned.

3. That the Precept to ſummon the Jury is not returned by the Sheriff, or any Endorſement thereupon, and ſigned by him, againſt the known Laws of *England*, and more particularly the Stat. of 12 *Edw.* 2. *c.* 5. This Statute enjoins, that the Sheriff ſhall put his Name to every Return made by him; ſo that the Court may know of whom they took ſuch Return, if need be. And I ſhall endeavour to prove, from ſundry adjudged Caſes ſince the making of this Statute, that this Precept to ſummon the Jury not being endorſed by the Sheriff, the Tryal is ill, and not amendable.

The Caſe of *Holdſworth* againſt Sir *Stephen Proctor*, in *Crook*'s *Rep. Part* 2. *p.* 188. Sir *Stephen Proctor* moved in Arreſt of Judgment, for that the Name of the Sheriff was not endorſed upon the Writ of *Diſtringas* with *Niſi prius*; and it was ruled, That the Tryal was ill, and not amendable by any the Statutes of *Jeofals*: For, ſay the Judges, it's all one with the Caſe of a *Venire facias*, where the Name of the Sheriff is not thereto; which hath been frequently over-ruled, as being no Return, nor helped by any Statute of *Jeofals*. For the Statute of 18 *Eliz.* as I ſhall ſhew hereafter, from adjudged Caſes, and from the beſt Authorities in Law, doth only help imperfect and inſufficient Returns, and that only in Caſes Civil between Party and Party; but here is no Return at all.

In *Rowland*'s Caſe, in Lord *Coke*'s *Rep. Book* 5. *p.* 41. in Ejectment upon a Verdict for the Plantiff, the Defendant moved in Arreſt of Judgment; for the *Venire facias* was not returned or endorſed by the Sheriff, tho' the *Poſtea* made mention that the Jury was returned *per Mandatum Juſticiorum*: Yet in this Caſe it was ruled, That that would not help it; for the Judges ſaid, That where there is no Return, it cannot be help'd by the Statute of 18 *Eliz.* or any other of the Statutes of *Jeofals*; for that Statute only helps imperfect and inſufficient Returns, and ſuch as want Form, and not ſuch as are not return'd at all.

Again, in Sir *Arthur Blackmore*'s Caſe, in *Coke*'s 8th *Rep. fol.* 156. in this Caſe it was adjudged, that the Statute of 18 *Eliz.* doth not help a Tryal, where no Return is made upon the Writ of *Venire fac'*; as was formerly, ſay they, adjudged in *Rowland*'s Caſe before-cited. And our Books are full of Authorities of this Nature; but I ſhall not give you the Trouble to mention any more.

Mr. *Sollicitor*. Mr. *Emot*, theſe Authorities which you have here cited, it's true, are grounded upon the Statute which you have mentioned of 12 *Ed.* 2. but this Statute has only relation to Writs; and in this Caſe the Sheriff ſummoned the Jury, not by Virtue of a Writ, but a Precept under the Hands of the Commiſſioners; which differs the Caſe.

Mr. *Emot*. Mr. *Sollicitor*, then you ſay that the Caſe at the Bar is not within the Words of this Statute of 12 *Edw.* 2. for that this is a Precept to ſummon the Jury, and not a Writ, and ſo conſequently the Sheriff not obliged to ſign and return the ſame. A very wiſe Diſtinction!

However, I ſhall endeavour to ſhew, that this Precept is within the Reaſon and Equity of the Statute, and that the ſame ought to be returned and ſigned by the Sheriff. In order thereto, I ſhall put this Court in mind, how Statutes have from Time to Time been taken by Equity in divers Manners; that thoſe Things which are alike in Reaſon, are alike in Law; and that where an Act of Parliament hath been made to remedy ſome Miſchiefs, that the ſame hath been extended to other Things, in like Degree, and that even in Penal Laws. As for Example:

Stat. of *Glouceſt.* c. 5. By this Statute, an Action of Waſte is given againſt one who holds for Years; yet by the Equity of this Statute, a Man ſhall have an Action againſt him who holds but for half an Year, notwithſtanding the Act be Penal.

Weſtm. 2. c. 3. This Statute gives an Action of *cui in Vita*, after the Coverture diſſolved by Death: Yet if the Coverture be diſſolved by Divorce, the Wife ſhall have, by the Equity of this Statute, a Writ of *cui ante Divortium*.

And laſtly, the *Stat.* 25 *Edw.* 3. *de proditionibus*. This Statute expreſly ſays, That no Caſe ſhall be taken by Equity, unleſs it be adjudged in Parliament; and yet by the Equity of the Words of that Statute, which are, *If the Servant kill the Maſter*, it is taken, *If the Maid kill the Miſtreſs*; that this is Petty-Treaſon.

So that from hence I am humbly of Opinion, That we are fairly within the Equity of the *Stat.* 12 *Edw.* 2. Beſides, a Writ and Precept in this Caſe are only Synonimous Terms, and ſignify one and the ſame Thing.

Theſe Reaſons were over-ruled.

And the Court ordered the Sheriff to make a Return upon the Precept to ſummon the Jury, conform to the above *Stat.* 12 *Edw.* 2. which the Court ſaid they had Power to do, and to help that Defect.

Mr. *Emot*. I find your Honour has over-ruled all the Reaſons that we have offered in Arreſt of Judgment, in Behalf of the Priſoner Col. *Bayard*, why Judgment ought not to paſs againſt him, according to the Verdict of the Jury; but have not as yet obſerved, that either Col. *D' Peyſter* or Captain *Walters* have given their Opinion to all, or any of the Reaſons we have offered. I humbly therefore pray, that we may have their Opinion, ſo that we may know by what Hands we fall.

Mr. *Atwood*. Mr. *Emot*; You which have been aſſigned Council for the Priſoner, have hitherto, in all the Courſe of the Tryal, carried your ſelves like Men of your own *Profeſſion*, you muſt not now therefore begin to menace the Court. You ſhall have the Opinion of the reſt of the Commiſſioners.

Whereupon Mr. *Atwood* turning himſelf to them, and whiſpering them, they ſeverally did declare, That they were of Opinion with Juſtice *Atwood*, in that the Reaſons offered were not ſufficient to arreſt the Judgment.

Mr. *Atwood*. Col. *Bayard*, have you any thing to ſay, why Sentence ſhould not paſs againſt you?

Priſoner. I have nothing more to offer, than what my Council have offered, and what is contained in my laſt Petition.

Mr. *Atwood*. I am ſorry to find you ſo impenitent of your Crime, which is ſo heinous and abominable in the Sight of God and Man. You have lately

lately made Reflections upon the Proceedings of this Court againſt you, as if it had been a Deſign to do the Job; comparing your Caſe to that of *Naboth*'s Vineyard: But I hope God will open your Eyes, that you may be convinced, and repent of the Crime.

Then he pronounced Sentence in theſe Words:

It is conſidered by the Court here, that you be carried to the Place from whence you came; that from thence you be drawn upon a Hurdle to the Place of Execution; that there you be hanged by the Neck; and being alive you be cut down upon the Earth, and that your Bowels be taken out of your Belly, and your Privy-Members be cut off, and you being alive they be burnt before your Face; and that your Head be cut off, and that your Body be divided into Four Quarters; and that your Head and Quarters be placed where our Lord the King ſhall aſſign. And the Lord have Mercy upon your Soul.

Priſoner. I deſire to know whether I may have leave to anſwer to your Honour's Speech made before Sentence.

Mr. *Atwood.* No.

Priſoner. Then God's Will be done.

The Priſoner was remanded.

Alderman *Hutchins* of *New-York* was Tried, Convicted and Condemned of High-Treaſon, for the ſame Facts with which Col. *Bayard* was charg'd, and had the ſame Uſage both before, in and after his Tryal.

The TRYAL *of* WILLIAM FULLER, *on* Wedneſday, May *the* 20*th*, 1702.

Proclamation was made for all Perſons concerned to attend.

THEN the Gentlemen that were of the Jury were Sworn.

Peter White,		*Acton,*
Ab. Burnett,		*Procter,*
John Cooper,		*S. Stone,*
Edward Pinfold,		*Troughton,*
James Dod,		*Jo. Watſon,*
Boden,		*Dan. Carpenter.*

The Queen againſt *William Fuller*, upon an Information for Libels.

Mr. *Montague.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, The Information ſets forth —— "That the Defendant being an Impoſtor, and a common Lyar, and a Perſon of an "ill Name and Reputation, falſly, maliciouſly, "wickedly and ſeditiouſly contriving, practiſing, "and intending the late King *William* and his Subjects, falſly and unlawfully to delude and deceive, "and Diſcords between the ſaid late King and "the Peers, and the Noblemen of this Kingdom, "and the great Officers and Miniſters intruſted by "the ſaid late King, in Buſineſs relating to the Government of this Kingdom of *England*, and other "Subjects of the ſaid Kingdom, to move, excite, "and ſtir up; and alſo to bring the Noblemen and "Peers, and the great Officers and Miniſters aforeſaid, and other faithful Subjects, into Hatred and "Contempt with the ſaid late King; and to get "and obtain ſeveral great Sums of Money fraudulently and deceitfully from the ſaid late King: "He, the ſaid *William Fuller*, the firſt Day of *January* laſt at *London*, &c. (to perfect and bring to "Effect his ſaid wicked Practices and Intentions, "and of and concerning a Correſpondency between "divers Officers and Subjects of the ſaid late King "and the late King *James*, while he reſided at St. "*Germains* in *France*, falſly pretended to be had, "and of divers Sums of Money by the ſaid late "King *James* diſtributed amongſt the Subjects of "the late King *William*, falſly pretended to be ſent "here into *England*;) did falſly, wickedly, maliciouſly, and ſcandalouſly Write and Print, and "cauſe to be Printed, a falſe, ſcandalous, and defamatory Libel, Entituled, *Original Letters of* "*the late King's*, (meaning the late King *James*) "*and others, to his greateſt Friends in* England, "*with the Depoſitions of* Thomas Jones *and* Thomas Widdrington, *Eſqs*; *proving the Corruption* "*lately practiſed to ruin this Nation.* "In which "falſe, feigned, and ſcandalous Libel, among other "Things are contained as follows: 1ſt *Page. Thomas Jones*, Eſq; depoſeth, That he being at St. *Germains*, the Court of the late King *James* in *France*, in *January*, 1692, the ſaid late King being in his Cloſet, ſent for this Deponent, and there commanded the ſaid Deponent to begin his Journey for *England*, in Company with Colonel *Tho. Dallaval*, and Mr. *George Hayes*; and the ſaid late King did then, and there, deliver to this Deponent ſeveral Letters and Papers, to divers Noblemen and others in *England*, to whom this Deponent had ſeveral times before and ſince brought Letters from the late King and his Queen, and pretended Secretaries of State, delivered according to Order. This Deponent further ſaith, by the Oath he hath taken, That the late King *James*, at the time aforeſaid, in his Cloſet at St. *Germains*, did deliver to this Deponent a Paper, being an Order for this Deponent to receive Six Thouſand Pounds; which Sum this Deponent was to pay to ſeveral Perſons in Places in Truſt then in *England*, to engage them more firmly to endeavour the invalidating the Evidence of *William Fuller*, (who, as the ſaid late King expreſſed, had been by him, his Queen, and chief Servants, intruſted and employed in their moſt ſecret and weighty Concerns, for a conſiderable time after the late King

King and Queen's coming to *France*). (P. 7.) And this Deponent ſaith, He informed Mr. *Fuller*, that *Dallaval* and *Hayes* were come to Town, and lodged at an *Apothecary*'s in *Holborn*, which Houſe *Hayes* formerly lodged at; but that *Dallaval* not being well, they could not come to him; therefore this Deponent ſaid to *Fuller*, that they deſired him to come to them; but he urged his Condition rendred him unfit, begging of the Deponent, to intreat them not to fail to attend the Houſe of Commons at the time appointed. All which this Deponent imparted the ſame Day to Coll. *Dallaval* and Mr. *Hayes*, and with them went the ſame Evening to three Gentlemen that were then Members of Parliament; and this Deponent had a Letter from one of thoſe three Gentlemen, (that was a Member of Parliament) directed to one of the Secretaries to the then Secretary of State, which this Deponent was to carry to him the next Morning; which accordingly he did by Seven of the Clock. And this Deponent ſaith, He paid the ſaid Under-Secretary 500 Guineas. And this Deponent ſaith, That when he left the Secretary, he went directly to the *Sun-Tavern* in *King-ſtreet Weſtminſter*, where he found the three Members with *Dallaval* and *Hayes*, and an eminent Banker of the City of *London*: Then this Deponent deſired the Banker to give his Bill to pay each of thoſe three Gentlemen that had been Members 1000 Pounds, payable on ſight; which being done, the ſaid Banker delivered alſo to one of them his Bill for 1500 *l.* to be paid on Demand, for the uſe of a conſiderable Perſon, whoſe Station would not permit him to be preſent. And this Deponent ſaith, by the Oath he has taken, That the ſeveral Sums of Money before-mentioned, with ſeveral leſſer Parcels, were ſo diſpoſed of by him, according to the late King's eſpecial Directions. And this Deponent ſaith, He has now by him the Receipts of each Perſon for the reſpective Bills and Moneys he diſpoſed of, with the true Copies of his Original Bills, delivered to him by the late King's own Hand. This Deponent ſaith, He delivered to the late King a Letter he had for him, from the three Gentlemen that were Members, and alſo ſeveral others he brought from *England*. And foraſmuch as this Deponent ſaith, As he hath formerly been employed to bring Letters, and Bills, and Orders, from the late King *James* and the *French* K. and their Miniſters; this Deponent ſaith, That he has kept a Journal of the ſame, and is ready to lay it before either or both Houſes of Parliament when required And this Deponent ſaith alſo, by the Oath he hath taken, That he can produce his Original Orders, that he receiv'd from the late King's, and the *French* King's own Hands, for the diſtributing more than One Hundred Fourſcore Thouſand Pounds *Sterling* for their Uſe to Perſons that were in Places of Truſt. And this Deponent ſaith, He can produce the Receipt of each Perſon to whom the Money was paid, and alſo the Perſons from whom this Deponent received the ſaid Sum or Sums by the Order aforeſaid.

Tho. Jones.

(2*d Book*) "The Information further ſets forth, "That the Defendant, the Day and Year aforeſaid, "(to perfect and bring to effect his further moſt "wicked Practices and Intentions againſt divers "Officers, and other Subjects of the late King "*William*, upon a feigned and pretended Corre- "ſpondence between them and the late King *James*, "whilſt he reſided in *France*, and of ſeveral Sums "of Money ſent by the ſaid King *James* out of "*France* into *England*, to be diſtributed amongſt "the Subjects of the late King *William*) another "moſt falſe and ſcandalous Libel, [Title Page] "(entitled, *Twenty Six Depoſitions of Perſons of "Quality and Worth*) falſely, wickedly, and moſt "deceitfully, did write, print, and cauſe to be "printed; in which ſaid falſe and ſcandalous Libel, "amongſt other Things, are contained, *viz.* [5th "Page.]" *Mr.* Jones *has alſo made Oath, That he paid* 5000 *l. more, by the late King's Order, to ſeveral Perſons in Places of Truſt, that they might compleat my Ruin, and invalidate me for ever. Nor is this all; for the ſame Mr.* Jones *will prove by undeniable Witneſs and Demonſtration, that he has diſtributed more than One hundred fourſcore Thouſand Pounds in Eight Years laſt paſt, by the* French *King's Order, to Perſons in publick Truſt in this Kingdom.*

W. Fuller.

"And the ſaid Defendant *Fuller* afterwards, the "ſaid Day, &c. falſely, unlawfully, and wickedly "did publiſh, utter, and for Truth affirm, the "ſaid ſeveral falſe and ſcandalous Libels, without "any lawful Authority. Whereas, in Truth, the "ſaid *Thomas Jones* did not depoſe upon his Oath, "as is contain'd in the ſaid falſe and ſcandalous Li- "bel; but that the ſaid ſcandalous Libels were and "are falſe and feigned, and altogether contrary to "Truth, to the great Scandal and Abuſe of the "late King *William*, and his great Officers and "Miniſters, and other the faithful Subjects of the "ſaid late King, to the evil Example of others, "and againſt the Peace of the ſaid late King, his "Crown and Dignity.

He pleaded not Guilty, and Iſſue joined thereupon.

The Caſe. "The Defendant *Fuller* is ſo noto- "rious a Cheat, and his Practices ſo publickly "known to all Men, that there need not much to "be ſaid here to aggravate his Offences; for in the "Year 1691, he was cenſur'd by the Houſe of "Commons, proſecuted, convicted, and puniſhed "for thoſe very Crimes he now ſtands to be tried; "and notwithſtanding that Sentence and Puniſh- "ment, he ſtill perſiſts in his villainous Practices "and Deſigns.

"About two Years ſince, he applied himſelf to "the chief Miniſters at Court, and inſinuated what "Diſcoveries he could make relating to the Cheat "of the Birth of the pretended Prince of *Wales*, "and of great Sums of Money received by ſeveral "Perſons of Quality here, from the late King "*James* and the *French* King, and of ſeveral Cor- "reſpondencies had between them, and the great "Officers of State here in *England*; but not meet- "ing with that Encouragement he expected, he "then undertakes to write and publiſh the two "ſcandalous Libels mentioned in the Information, "and cauſed great Numbers of them to be printed "and ſold about the Town; and then petitions "the Houſe of Peers to be heard, to make out the "Truth of what he wrote and publiſh'd. The "Houſe of Peers, by his Importunity, appointed "a Day for him to produce thoſe Perſons he men- "tion'd, to make good his Accuſations and Charge, "which he undertook to do; but failing from "time to time, their Lordſhips ordered him to be "committed, and proſecuted for an Impoſtor; but "the Defendant being an harden'd Rogue, was no "way humbled atthis Order, but immediately

"thereon

" thereon applies himſelf by Letters to the Speaker " of the Houſe of Commons, alledging the ſame " Matters, as he had done before to the Houſe of " Lords. The Houſe of Commons ordered him " to be brought to their Bar, where he only de- " ſired Ten Days Time to produce thoſe Perſons " mention'd in his Libels; and that Houſe, (to " leave him no Excuſe) granted him a Fortnight; " but having trifled with the Houſe of Commons, " as he had done before with the Houſe of Lords, " they voted him an incorrigible Rogue, and or- " dered him to be proſecuted. What the Reaſons " were for this unparallel'd Impudence, whether " for the ſake of Gain, or Malice to thoſe Gentle- " men he hints at in his Libels, are yet Secrets.

Sir *Edward Northey.*

Mr. *Att. Gen.* My Lord, the Charge has been very fully opened, and I need not ſay much. His Crime is his publiſhing theſe two Books, (mention'd in the Information.) He has been ſome Time ſetting up for an Evidence, pretending to diſcover a ſecret Correſpondence between the late King *James*, and ſeveral Perſons here in *England*. He made an Offer of ſome ſuch Diſcovery about Ten Years ago, and he then applied himſelf to the Houſe of Commons, and they gave him Time to produce his Witneſſes; but after all, he could produce none, and the Houſe ordered him to be proſecuted as a Cheat and Impoſtor; and he was proſecuted accordingly, convicted----, and ſet in the Pillory. Now ſome Time laſt Winter, he did apply himſelf to ſome of the late King's Miniſters, and pretended he would produce *Thomas Jones*, and *Tho. Witherington*, to make conſiderable Diſcoveries. They heard him, but he could never produce theſe Men before them. And afterwards having no Encouragement from them, he took on him to publiſh theſe two Books, mention'd in the Information, whereof he ſtands now accuſed. And after he was before the Parliament, he firſt applied himſelf to the Houſe of Lords, and they heard what he had to ſay, and gave him Time to produce his Witneſſes; but he could not do it, and thereupon the Lords were pleaſed to direct this Proſecution. Then he applied himſelf to the Houſe of Commons, and they gave him Time likewiſe to produce his Witneſſes; but he could produce none; whereupon they Voted him a Cheat, a falſe Accuſer, and an incorrigible Rogue. My Lord, theſe Books were publiſhed with a very malicious Deſign, and no doubt, he had other People, who do not now appear, to ſupport him in it; and I doubt not but he would have ſet up Witneſſes to have ſworn whatever he would have them, if he had met with any Encouragement. He has the Impudence to put in the Frontiſpiece of his Books, *Publiſhed by Command*; but being ask'd in the Houſe of Peers, by whoſe Command? He ſaid it was by his own Command. And he has publiſhed in the Books, that he would produce Witneſſes to prove the diſtributing of an Hundred and eighty thouſand Pounds to Perſons in Places of Truſt, and to produce Receipts for the ſame, and he hath an Opportunity now of doing it. We will prove the Charge upon him.

Mr. *Soll. Gen.* My Lord, the Matter of the Information has been fully opened; but we are to conſider the ill Conſequences of it. This is a new Practice for a Man to publiſh Things of this Nature, and not be able to prove any thing: But he pretends to ſet up a ſecond Witneſs to make out what he has ſaid; that is, *Jones*, as if *Jones* were to relieve him. Now if that were true, it would be a great Thing to corroborate what he did ſay; but he has never produced this *Jones*, but only has printed ſomething that he calls *Jones*'s. If it were only what depended on his private Knowledge, the Caſe were otherwiſe; but when he pretends to bring *Jones* to prove it, and does not produce him, he makes himſelf guilty of the Scandal; and it is very neceſſary that this Man ſhould be brought to Puniſhment. I will not trouble your Lordſhip further, but call our Witneſſes.

Mr. Serj. *Darnel.* The Matter has been opened ſo fully, that there is no need for me to ſay any thing; we will now call our Witneſſes.

Mr. *Att. Gen.* My Lord, we will prove that *Fuller* carried this Book to the Preſs, and not Mr. *Jones*, therefore we may well preſume it was his own.

Mr. *Coniers.* He could never produce *Jones*, but he could frame Depoſitions for him.

Then Fuller's *Book was produced.*

Mr. *Serj. Darnel.* Call Mr. *Buck*, [who appeared, and was ſworn.] Mr. *Buck*, Who cauſed that Book to be publiſh'd?

Mr. *Buck.* Mr. *Fuller.*

Mr. *Serj. Darnel*, How do you know that?

Mr. *Buck.* He brought it to me in Manuſcipt, and he ſaid he took theſe Depoſitions out of the Secretaries-Office.

Mr. *Serj. Darnel.* But what did he deſire you to do?

Mr. *Buck.* He deſired me to print it: And he ſaid, Becauſe it was not done ſooner, it had done the King Ten thouſand Pound Damage.

Mr. *Coniers.* Did he make any Alteration in them afterwards?

Mr. *Buck.* No, only alter'd the Miſtakes of the Preſs?

Mr. *Att. Gen.* Was that Book printed by his Order?

Mr. *Buck.* Yes.

W. Fuller. My Lord, I will not give theſe Gentlemen the Trouble to prove it; I own it was writ by me.

Mr. *Att. Gen.* Do you own the other Book too? Mr. *Buck*, look on that Book, [then the other Book was ſhewn him] By whoſe Order was that Printed?

Mr. *Buck.* By Mr. *Fuller*'s Order.

Mr. *Fuller.* My Lord, if it be the Book I publiſh'd, I will own it. [Then it was ſhewn him.] Yes, my Lord, it was printed by my Order.

L. C. J. Holt. Read the Title.

Clerk. *Original Letters from the late King* James, *&c. Publiſhed by Command.*

L. C. J. Holt. By whoſe Command was it publiſh'd?

Mr. *Att. Gen.* By *Fuller*'s.

L. C. J. Holt. His Order is a Command, it ſeems.

Then ſome Paragraphs were read.

Mr. *Att. Gen.* If Mr. *Fuller* will produce this *Jones*, to make good what he ſays, he will do a great Piece of Service; otherwiſe, he deſerves to be ſeverely cenſur'd.

L. C. J. Holt. Read the other Part.

Then the Clerk read the Title.

W. Fuller.

W. Fuller. Pray read the whole Title.

L. C. J. Holt. He is in Love with it.

Clerk. [Reads the Title] *Twenty ſix Depoſitions of Perſons of Quality and Worth, with Letters of the late Queen, Father* Corker, *and Mrs.* Mary Grey, *&c. Publiſh'd by Command.*

Mr. *Att. Gen.* Read the reſt.

Clerk. *Mr.* Fuller*'s Anſwer to the chief Objections made againſt him*, &c----. *Mr.* Jones *made Oath, that he had paid* 5000 *l. more to ſeveral Perſons by the late King's Order, that he might compleat my Ruin, and invalidate my Evidence for ever*, &c.

Mr. *Att. Gen.* My Lord, we have proved his publiſhing of theſe Books. We will now hear what he can ſay for himſelf.

W. Fuller. My Lord, I humbly beg you will hear what I have to ſay?

L. C. J. Holt. Yes, yes. Have you any Council?

W. Fuller. No, my Lord, I have none; I have no Money to procure Council. I have put my Thoughts in Writing, and I beg Leave to read it.

L. C. J. Holt. But you muſt ſpeak to the purpoſe. What do you ſay concerning the publiſhing theſe Books?

W. Fuller. That is what I have to offer.

L. C. J. Holt. But can you make it appear that they are true?

W. Fuller. My Lord, I hope I ſhall.

L. C. J. Holt. Have you any Witneſſes?

W. Fuller. I have none here at preſent. But if your Lordſhip will pleaſe to hear the Terms upon which the Witneſſes would have come in, I can produce them: If your Lordſhip will grant your Warrant for *Jones*, I will forfeit my Life if he appear not.

L. C. J. Holt. You might have had *Subpæna's* for your Witneſſes againſt this Day.

W. Fuller. My Lord, I did endeavour it; but I had not Money to bear their Charges.

L. C. J. Holt. You made the ſame Excuſe before the Houſe of Lords and Commons.

W. Fuller. If it can be made appear that I had any Aſſiſtance from the Houſe of Lords, or the Houſe of Commons, I own I am in the wrong.

L. C. J. Holt. What Aſſiſtance would you have had from them? Or what would you have from me?

W. Fuller. The Houſe of Lords ſummoned me before them; and I deſired-----

L. C. J. Holt. If you take on you to write ſuch Things as you are charged with, it lies upon you to prove it at your Peril.

Mr. *Att. Gen.* My Lord, he did appeal to the Lords; and they gave him from Time to Time to produce his Witneſſes, and he could not do it.

L. C. J. Holt. If you have any Witneſſes, I will hear them; but to hear you make a Speech, it is to no purpoſe.

W. Fuller. My Lord, I hope you will believe it to be to the purpoſe, if you pleaſe to hear me.

Mr. *Coniers.* What ſignifies your Belief?

W. Fuller. Why am I not to be believ'd?

L. C. J. Holt. What? Becauſe you have ſtood in the Pillory for an Impoſtor heretofore.

Mr. *S. Darnel.* The whole Nation do not believe you; for the Lords and Commons did not, who repreſent the whole Nation.

W. Fuller. The Lords did not think fit to put it to the Tryal. Theſe Gentlemen charge me to have abuſed ſeveral Perſons: I would be glad to know who theſe Perſons are.

Mr. *Att. Gen.* I cannot tell who they are; your Book promiſes to make that appear.

W. Fuller. If a Man of an ill Character abuſe the Nation, I hope I ſhall not ſuffer for that.

L. C. J. Holt. How came you to write theſe Books, that are not true?

W. Fuller. My Lord, I believe they are all true.

M. *Att. Gen.* Produce the Original Affidavits made by *Jones*, which you cauſed to be printed.

Mr. *Serj. Darnel.* Produce the Receipts in for the Money, which you ſay you have; and then you will do ſomething.

W. Fuller. Do I ſay it?

Mr. *Serj. Darnel.* Yes, if that Print be yours.

W. Fuller. I wonder a Man of your Gravity ſhould aſſert ſuch an Untruth in the Court.

L. C. J. Holt. If you have any Witneſſes, produce them.

W. Fuller. My Lord, I preſume you cannot but remember, that in *Crone*'s Caſe I behaved my ſelf honourably, and was owned to have done the Nation good Service.

L. C. J. Holt. That was formerly, and ſignifies nothing to what you do now.

W. Fuller. I ventur'd ſeveral times into *France*, and back again: Shew me a Man that ever did ſo beſides?

Mr. *Att. Gen.* If you had made out the Diſcovery you pretended to make, I ſhould have commended you.

W. Fuller. After I had made that Diſcovery, the Court at St. *Germains* did what they could to ruine me. There have been a great many Books lately printed, to prove the Legitimacy of the Prince of *Wales*, and none of them taken notice of.

L. C. J. Holt. You charge a great many Perſons with correſponding with *France*, and cannot prove it.

W. Fuller. I charge none, my Lord.

L. C. J. Holt. You charge all that are intimated in the Books. The ſame Mr. *Jones* will prove by undeniable Demonſtration, that he diſtributed more than 180000 *l.* by the *French* King's Order, to ſeveral Perſons employed under the Government. Now theſe Perſons are ſcandalized; for you produce no Proof of what you charge them with: And you ſay, I had the Original of this from Mr. *Jones*, &c. Where are they?

W. Fuller. If your Lordſhip will pleaſe to grant me your Warrant, I will produce them.

L. C. J. Holt. If you take on you to make good theſe Things, you cannot in Juſtice require my Warrant to fetch in others to prove what you ſay; you muſt prove it.

W. Fuller. By his own Confeſſion, he has been guilty of High-Treaſon; and therefore will not appear without a Warrant.

L. C. J. Holt. You cannot pretend to have a Right to any Warrant.

W. Fuller. If your Lordſhip pleaſe to give me Leave to ſay ſomething in my Defence-----

L. C. J. Holt. Yes, if it be to any Purpoſe.

W. Fuller. I am unacquainted with the Laws, and have not-----

L. C. J. Holt. What is that to the Purpoſe? You are not to make Libels, nor traduce Miniſters of State. What have you to ſay to that?

W. Fuller. When I had printed this Book, I was ſummoned before the Lords; and after that was committed to the *Fleet*. My Friends were all called before the Lords; and by my Lord *Jeffreys* and other Lords, there were ſuch Queſtions aſked, as I believe were never aſk'd before----

L. C. J. Holt.

L. C. J. Holt. This is not to be endured; you do but aggravate your Crime.

W. Fuller. This is not what I would offer.

L. C. J. Holt. If you can offer any Matter to prove what you have writ, let us hear it.

W. Fuller. Mr. *Jones* has confeſs'd himſelf guilty of High-Treaſon, and therefore cannot appear.

L. C. J. Holt. Where is he? Where did he make this Confeſſion?

W. Fuller. In the Country.

L. C. J. Holt. Before whom?

W. Fuller. I do not know that; I was not with him when he did it.

L. C. J. Holt. Where is the Man?

W. Fuller. If your Lordſhip will pleaſe to give me your Warrant, I will produce him.

L. C. J. Holt. Shall I make a Bargain with you? Why have you not produced him all this while, before the Houſe of Lords, and the Houſe of Commons?

W. Fuller. Mr. Attorney did ſay I appealed to the Lords. I was called before them; I made no Application to them, but was called by the Order of the Houſe.

Mr. *At. Gen.* But you was there.

W. Fuller. I was there; and there were Three Letters read of mine in the Houſe, and I deſire they may be read here.

L. C. J. Holt. What is that to the purpoſe? Can you produce your Witneſſes?

W. Fuller. Mr. *Jones* is now in *Hampſhire*.

L. C. J. Holt. Have you not had Time enough to procure him?

W. Fuller. My Lord, I cannot force him. I was with the Secretary of State, and told him, *Jones* will not come in voluntarily; if the Lords will grant a Warrant, he may be brought. I offer'd this to the Houſe of Commons too, but it was not granted. I could not force him.

Mr. *Serj. Darnel.* The Secretary of State ſent one or two for him.

W. Fuller. He ſent no body.

L. C. J. Holt. Gentlemen of the Jury, you hear what the Purpoſe of this Information is, and you hear how it is proved; and you hear the Witneſs ſay, He brought theſe two ſcandalous Books to the Preſs, and that he corrected them; and he owns, he was the Publiſher of them: And if you believe he did do ſo, you are to find him Guilty.

The Jury brought him in Guilty, without going from the Bar.

The Tryals of Colonel RICHARD KIRKBY, *Captain* JOHN CONSTABLE, *Captain* COOPER WADE, *Captain* SAMUEL VINCENT, *and Captain* CHRISTOPHER FOGG. October 8, 9, 10, 12. 1702.

AT a Court-Martial held on Board her Majeſty's Ship the *Bredah*, in *Port-Royal* Harbour in *Jamaica* in *America*, the 8th, 9th, 10th, and 12th Days of *October*, 1702.

Preſent,

The Honourable *William Whiſton*, Eſq; Rear-Admiral of her Majeſty's Ships for the *Weſt-India* Squadron, Preſident.

Samuel Vincent,	*William Ruſſel*,
John Hartnoll,	*Barrow Harris*,
Chriſtopher Fogg,	*Hercules Mitchell*,
John Smith,	*Philip Boyce*,
John Redman,	*Charles Smith*.
George Walton,	

Arnold Browne, Eſq, Judge-Advocate.

Who being all duly ſworn, purſuant to the Act of Parliament;

Octob. 8. Proceeded to the Tryal of *John Arthur*, Gunner of the *Defiance*, on a Complaint exhibited by *Francis Knighton*, Third Lieutenant of the *Defiance*, and *George Foſter*, Gunner of for hiding and concealing Forty Three Barrels of Powder in the Wadd-Room, and covering them with Wadds and Coins, *&c.* when a Survey of her Majeſty's Stores of Ammunition after an Engagement was ordered; and denying to the Surveyors, that there was any more Powder on Board, than was in the Powder-Room and Gun-Room, *viz.* One Hundred; which, upon a Second Survey, were diſcovered. It was proved alſo, That he had Two Keys to the Powder-Room; and that having loſt or miſlaid his own, he, without making any Application to the Commanding Officer then on Board, who kept the other Key, prevailed with *William Baker*, Carpenter of the ſaid Ship, to break open the Door.

In Mitigation of his Offence, he alledged, That examining into the Powder-Room, he found Three Barrels that had received wet, which cauſed his Removal of the Forty Three Barrels; but had little to ſay for his concealing them from the Surveyors. Whereupon the Court adjudged, That the ſaid Offence falling under the 33d Article of War, the ſaid *John Arthur* ſhould be carried from Ship to Ship in a Boat, with a Halter about his Neck, the Provoſt-Marſhal declaring his Crimes; and all his Pay, as Gunner, to be mulct'd and forfeited to the Cheſt at *Chatham*; and be render'd uncapable of ſerving her Majeſty in any other Employment.

Octob. 8, 9. COlonel *Richard Kirkby*, Commander of the *Defiance*, was tryed before the aforeſaid Court, (except Captain *Samuel Vincent*, and Captain *Chriſtopher Fogg*, who appeared as Witneſſes for the Queen,) on a Complaint exhibited by the Judge-Advocate on the Behalf of her Majeſty, of Cowardice, Neglect of Duty, Breach of Orders, and other Crimes committed by him at a Fight at Sea, commenced the

19th of *Auguſt*, 1702. off of St. *Martha*, in the Latitude of Ten Degrees *North*, near the Main Land of *America*, between the Honourable *John Benbow*, Eſq; Vice-Admiral of the Blue Squadron of her Majeſty's Fleet, and Admiral and Commander in Chief, *&c.* on Board her Majeſty's Ship *Bredah*, *Chriſtopher Fogg*, Commander, and Six other of her Majeſty's Ships, *viz.* the *Defiance*, *Richard Kirkby* Commander; the *Falmouth*, *Samuel Vincent* Commander; *Windſor*, *John Conſtable* Commander; *Greenwich*, *Cooper Wade* Commander; *Ruby*, *George Walton* Commander; and the *Pendennis*, *Thomas Hudſon* Commander: And Monſieur *Du Caſſe*, with Four *French* Ships of War: Which continued until the 24th of *Auguſt* inclusive.

The Witneſſes that were ſworn in Behalf of the Queen; *viz.*

The Honourable *John Benbow*, Eſq; Admiral.
2 *Captains.*
8 *Lieutenants.*
5 *Maſters.*
5 *Inferior Officers.*

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Who depoſed, That the ſaid Colonel *Richard Kirkby*, the Van in the Line of Battel, the 19th of *Auguſt*, about Three in the Afternoon, the Signal of Battel being out, the Admiral was forc'd to ſend his Boat on Board of *Kirkby*, and command his making more Sail, and get a-breaſt of the Enemy's Van, for that he was reſolved to fight them. About Four the Fight began; but the ſaid *Kirkby* did not fire above Three Broadſides, then luffed up out of the Line, and out of Gun-ſhot, leaving the Admiral engaged with Two *French* Ships till dark, and the ſaid *Kirkby* receiving no Damage: That his Behaviour cauſed great Fear of his Deſertion. At Night the ſaid *Kirkby* fell a-ſtern, leaving the Admiral to purſue the Enemy.

That the 20th, at Day-light, the Admiral and *Ruby* were within Shot of all the Enemy's Ships; but Colonel *Kirkby* was near Three or Four Miles a-ſtern. The Admiral then made a new Line of Battel, and took the Van himſelf, and ſent to each Ship, with a Command to the ſaid *Kirkby* to keep his Line and Station; which he promiſed to do, but did not; keeping Two or Three Miles a-ſtern, tho' the Signal for Battel was out all Night. The *French* making a Running Fight, the Admiral and *Ruby* plied the Enemy with their Chaſe-Guns till Night. That the 21ſt Day, at Light, the Admiral was on the Quarter of the Second Ship of the Enemies Rear, and the *Ruby* on the Board-ſide, very near, who plied him warmly, and met the ſame Return; by which he was ſo much diſabled, though the Admiral came in to his Aſſiſtance, that he was forc'd to be towed off: And this prevented the Admiral's Deſign of cutting off the Enemy's ſternmoſt Ship. This Action laſted Two Hours; during which Time, the ſaid *Kirkby* lay a Broad-ſide of the Sternmoſt Ship; as did alſo the *Windſor*, *John Conſtable* Commander. The Admiral then commanded the ſaid *Kirkby* to ply his Broadſides on him. But this having no Effect, the ſecond Time he commanded the ſame; but he fired not one Gun: Nay, his own Boatſwain and Seamen repeated the Admiral's Command to him; but were ſeverely us'd, and threatned that he would run his Sword through the Boatſwain. And had the ſaid *Kirkby* done his Duty, and Captain *Conſtable* his, they muſt have taken or deſtroyed the ſaid *French* Ships. The Admiral, tho' he received much Damage in his Sails, Rigging, Yards, *&c.* yet continued the Race all Night. That the 22d, in the Morning at Day-light, the *Greenwich* was Three Leagues a-ſtern; and the *Defiance*, Colonel *Kirkby*, with the reſt of the Ships, Three or Four Miles, the *Falmouth* excepted, whoſe Station was in the Rear: That the ſaid Captain *Samuel Vincent*, ſeeing the Behaviour of the ſaid *Kirkby*, and the reſt, came up with the Admiral, and ſent his Lieutenant on Board, deſiring Leave to aſſiſt him; which was accepted: The ſaid *Kirkby* never coming up; and by his Example the reſt did the ſame, as if they had a Deſign to ſacrifice the Admiral and *Falmouth* to the Enemy, or deſert. The Enemy were now about a Mile and an half a-head, ſtanding in to the Shore with a ſmall Breeze at *W.* fetched within *Sambey*, the Admiral firing at the Sternmoſt till Night, and continued the Purſuit; and a *Flemiſh* Ship that was in Monſieur *Du Caſſe*'s Company, on Board of which was all the *French* and *Spaniſh* new Governors and other Officers, made her Eſcape. That the 23d, in the Morning, at Day-light, the Enemy bore *North-Weſt*, diſtant about Four or Five Miles, the Admiral and *Falmouth* purſuing; but the ſaid Colonel *Kirkby*, with the reſt of the Ships, being Three or Four Miles a-ſtern; (tho' there was not a Ship but, before and after the Battel, ſailed better than the Admiral.) About Seven in the Evening, it having been ſome time calm, a Gale of Wind ſprung up, the Admiral and *Falmouth* were about Two Miles from the Enemy; and at Eight, the ſaid *Kirkby* and his ſeparate Squadron was fair up with the Admiral: And this Day the Admiral ſent away the diſabled *Ruby*, *George Walton* Commander, to *Port-Royal*; and under his Convoy the *Anna* Galley, retaken from the *French*.

That the 24th, in the Morning, about Two of the Clock, the Admiral came up with the Sternmoſt of the Enemy within Call, and the *Falmouth* pretty near; but the ſaid Colonel *Kirkby*, with the reſt of the Ships, according to Cuſtom, were Three or Four Miles a-ſtern. The Admiral and *Falmouth* engaged the ſaid Ship; and at Three the Admiral was wounded, his Right Leg being broke, but commanded the Fight to be vigorouſly maintained; and at Day-light the Enemy's Ship appeared like a Wreck, her Mizon Maſt ſhot by the Board, her Main Yard in Three or Four Pieces, her Foretopſail Yard the ſame, her Stays and Rigging all ſhot to pieces. Soon after Day, the ſaid *Kirkby*, with the reſt of the Ships, being to windward of the ſaid diſabled Ship, he the ſaid *Kirkby*, with the reſt of his ſeparate Squadron, fired about Twelve Guns at the ſaid Ship; and fearing a ſmart Return from her, he lower'd his Mizon Yard, his Topſails on the Caps, ſet his Spritſail, Spritſail Topſail, and Foretopſail Stayſail, and having waired his Ship, ſet his Sail, and run away before the Wind from the poor diſabled Ship, the reſt following his ſaid Example; though they had but Eight Men kill'd on Board them all (except the Admiral.) The other Three *French* Men of War were at this Time of Action about Four Miles diſtant from their maimed Ship; whereupon the Enemy ſeeing the Cowardice of the ſaid Colonel *Kirkby*, and the reſt of the *Engliſh* Ships, in a Squale bore down upon the Admiral, who lay cloſe by the diſabled Ship; and having got in their Spritſail Yard, gave him all their Fire; and running between him and the diſabled Ship, remann'd her, and took her in. The Admiral's Rigging being very much ſhatter'd, was oblig'd to lie and refit till Ten a-Clock,

a-Clock, and then continued the Purſuit; and the reſt of the Fleet following in the greateſt Diſorder imaginable, the Admiral commanded Captain *Fogg* to ſtand a-breaſt of the Enemies Van, and then to attack him, and having then a fine ſteady Gale, the like not happening during the whole Engagement; and further ordered that he ſhould ſend to all the Captains to keep the Line of Battel, and behave themſelves like *Engliſhmen*; and this Meſſage was ſent by Captain *Wade* then on Board the *Bredah*. That the ſaid Colonel *Kirkby* on the Receipt of this Meſſage, and ſeeing the Admiral's Reſolution to engage, came on Board him, who then lay wounded in a Cradle; and without common Reſpect of enquiring after his Health, he the ſaid *Kirkby* expreſſed theſe Words following, *viz. That he wonder'd that the Admiral ſhould offer to engage the* French *again, it being not neceſſary, ſafe, nor convenient, having had Six Days Trial of their Strength*; and then magnified that of the *French*, and leſſened that of the *Engliſh*. But the Admiral being ſurprized at his Speech, ſaid it was but one Man's Opinion, and that he would have the reſt of the Captains; and accordingly ordered the Signal to be made for all the Captains to come on Board; and at this Time the Admiral and the reſt of the Ships were to Windward, and within Shot of the Enemy, and had the faireſt Opportunity that in ſix Days preſented, to chaſe, engage, and deſtroy the Enemy.

That the ſaid Colonel *Kirkby* had endeavoured to poiſon the reſt of the Captains; forming a Writing under his own Hand, which was cowardly and erroneous: The Subſtance of which was, Not to engage the Enemy any more. He the ſaid Colonel *Kirkby* brought it to the Admiral, who reproved him for it, ſaying it would be the Ruin of all: Upon which he the ſaid Colonel *Kirkby* went away, but writ another in the following Words.

At a Conſultation held on board her Majeſty's Ship Bredah, *the 24th of* Auguſt, 1702. *off of* Carthagena, *on the main Continent of* America.

It is the Opinion of us whoſe Names are underwritten,

1. Of the great Want of Men in Number, Quality, and the Weakneſs of thoſe they have.

2. The general Want of Ammunition of moſt Sorts.

3. Each Ship Maſts, Yards, Sails and Rigging, being all in a great Meaſure diſabled.

4. The Winds are ſo ſmall and variable, that the Ships can't be govern'd by any Strength: Each Ship,

5. Having experienced the Enemy in Six Days Battel, following the Sqnadron conſiſting of Five Men of War and a Fireſhip, under the Command of Monſieur *Du Caſſe*; their Equipage conſiſting in Guns from 60 to 80, and having a great Number of Seamen and Soldiers on Board for the Service of *Spain*.

For which Reaſons above-mentioned, we think it not fit to engage the Enemy at this Time, but to keep them Company this Night, and obſerve their Motion; and if a fair Opportunity ſhall happen of Wind and Weather, once more to try our Strength with them.

Richard Kirkby, Samuel Vincent, John Conſtable, Chriſtopher Fogg, Cooper Wade, and *Thomas Hudſon.*

That during the Six Days Engagement, he never encouraged his Men; but by his own Example of dodging behind the Mizon Maſt, and falling down upon the Deck on the Noiſe of Shot, and denying them the Proviſions of the Ship, the ſaid Men were under great Diſcouragement. That he amended the Maſter of the Ship's Journal of the Tranſactions of the Fight, according to his own Inclination.

All which being proved aforeſaid:

The ſaid Colonel *Richard Kirkby* denied the whole excepting the pretended written Conſultation: Which being ſhown to him, he own'd his own Hand and Name too. He brought ſeveral of his Men to give an Account of his Behaviour during the Fight; but their Teſtimonies were inſignificant; and his Behaviour to the Court and Witneſſes moſt unbecoming a Gentleman. And being particularly ask'd by the Court, why he did not fire at the Enemies Sternmoſt Ship, which lay point-blank with him the 21ſt of *Auguſt*? He replied, Becauſe they did not fire at him, for that they had a Reſpect for him: Which Words upon ſeveral Occaſions, during the Trial, he repeated Three ſeveral Times.

Where upon due Conſideration of the Premiſes, of great Advantages the *Engliſh* had in Number, being Seven to Four, of Guns 122 more than the other; with his Acts and Behaviour as aforeſaid, and more particularly his ill-timed Paper or Conſultation as afore-recited, which obliged the Admiral for the Preſervation of her Majeſty's Fleet, to give over the Chaſe and Fight, to the irreparable Diſhonour of the Queen, her Crown and Dignity, and came to *Port-Royal, Jamaica*: For which Reaſons the Court was of Opinion, That he fell under the 11th, 12th, 14th and 20th Articles of War; and adjudged accordingly, That he be ſhot to Death: But further decreed, That the Execution of Col. *Kirkby* be deferred till her Majeſty's Pleaſure be known therein; but he continued a cloſe Priſoner till that Time.

CAptain *John Conſtable*, Commander of the *Windſor*, was Tryed before the aforeſaid Court, on a Complaint exhibited by the Judge Advocate on the Behalf of the Queen, for Breach of Orders, Neglect of Duty, and other ill Practices committed during a Fight commenced the 19th of *Auguſt*, 1702. as aforeſaid. *(Refer to Colonel* Kirkby's *Tryal.)*

The Witneſſes ſworn on the behalf of the Queen, were,

2 *Captains*,
7 *Lieutenants*,
5 *Maſters*,
2 *Other Officers*,
The Honourable John Benbow, *Eſq*; *Admiral.*

17 *Witneſſes.*

Who depoſed, That Captain *John Conſtable* never kept his firſt nor ſecond Line of Battel, but acted in all Things as Colonel *Kirkby* had done. That the Admiral had fired Two Guns to command him into the ſecond Line of Battel. That he did ſet more ſail in order to come into the Line, and his Station; but upon Colonel *Kirkby*'s calling to him to keep his Line, he accordingly did. That the Admiral ſent his Lieutenant *Landgridge* to com-

mand him the ſaid *Conſtable* to keep his Line of Battel within half a Cables Length of the Ship before him, which was twice verbally delivered. And that he ſigned the Paper, *Conſultation*, as is in Colonel *Kirkby*'s Tryal aforeſaid; tending to the Hindrance and Diſſervice of her Majeſty, &c. and was drunk during the Fight, &c.

All which being fully proved as aforeſaid; the ſaid Captain *John Conſtable*, denied his Breach of Orders, or Neglect of Duty; but owned the ſigning the Paper, or Conſultation prepared by Colonel *Kirkby*, and did it at his Requeſt, and for that he had received Damage in his Maſts and Rigging; and own'd no other Article to be true, but that he had ſigned to. He called ſeveral Witneſſes to his Behaviour during the Fight; who all declared he kept the Quarter-Deck during the Engagement, and encouraged his Men to fight; and that ſometimes he gave them Drams of Rum; and that Verbal Meſſage delivered by Lieutenant *Landgridge*, was delivered him in ſome Heat and Paſſion, and was underſtood to be, to keep the Line within half a Cable's Length, and to follow *Kirkby*, which he did. That he ſo underſtood it himſelf, and ſeveral of his Men: He prayed the Mercy of the Court, and ſo concluded, &c.

Where upon due Conſideration of the Premiſes, the Court were of Opinion, that the ſaid *John Conſtable*, Captain, fell under the 12th, 14th, and 20th Articles of War; and adjudged the ſaid Captain *John Conſtable* to be immediately caſhier'd, and render'd incapable of ſerving Her Majeſty, and be impriſoned during her Majeſty's Pleaſure, and ſent home to *England* a Priſoner in the firſt Ship the Admiral ſhall think fit; and be confined a Priſoner till then.

Oct. 10, 12. CAptain *Cooper Wade*, Commander of the *Greenwich*, was Tryed before the aforeſaid Court; on a Complaint exhibited by the Judge Advocate, on the Behalf of the Queen, of high Crimes and Miſdemeanors, of Cowardiſe, Breach of Orders, and Neglect of Duty, and other ill Practices, committed during a Fight, commenc'd the 19th of *Auguſt*, 1702. as aforeſaid. *Refer to that Part of Colonel* Kirkby's *Tryal.*

The Witneſſes ſworn on behalf of the Queen.
The Honourable *John Benbow*, Eſq; Admiral,
9 *Lieutenants*,
3 *Maſters*,
3 *Inferior Officers*.

16 *Witneſſes*.

Who depoſed, That during the Six Days Engagement, he never kept the Line of Battel, fired all his Shot in vain, not reaching half way to the Enemy; That he was often told the ſame by his Lieutenants and other Officers; but notwithſtanding, he commanded them to fire, ſaying they muſt do ſo, or the Admiral would not believe they fought if they did not continue the Fire. That during the whole Fight the Admiral was engaged in, the ſaid Captain *Wade* received but one Shot from the Enemy; That he was in Drink the greateſt Part of the Time of Action; And that he ſigned the Paper or Conſultation drawn up by Colonel *Kirkby*, as aforeſaid; and in the Time of Fight arraigned the honourable Courage and Conduct of the Admiral.

All which being fully proved as aforeſaid:

That the ſaid Captain *Cooper Wade* denied the Arraignment of the honourable Courage and Conduct of the Admiral, during the whole Six Days Engagement; declaring the Bravery and good Management of the Admiral in this Time of Action, and that no Man living could do more or better, for the Honour of the Queen and Nation. He called ſome Perſons to juſtify his Behaviour, who ſaid little in his Favour. He begged the Mercy of the Court, and ſo concluded. Whereupon the Court was of Opinion, That the ſaid *Cooper Wade* fell under the 11th, 12th, 14th and 20th Articles of War; and accordingly adjudged the ſaid *Cooper Wade* to be ſhot to Death: But it is farther declared by the Court, That the Execution of the ſaid *Cooper Wade* be deferred till her Majeſty's Pleaſure be known therein; but be continued a cloſe Priſoner till that Time.

October 12. CAptain *Samuel Vincent*, Commander of the *Falmouth*, and Captain *Chriſtopher Fogg*, Commander of the *Bredah*, were tryed before the aforeſaid Court, on a Complaint exhibited by the Judge Advocate, for high Crimes and Miſdemeanors, and ill Practices in Time of Admiral *Benbow*'s Fight with Monſieur *Du Caſſe* as aforeſaid, in ſigning a Paper called a Conſultation and Opinion held on Board the *Bredah*, the 24th of *Auguſt*, 1702. *(Which is* Verbatim *recited in Colonel* Kirkby's *Tryal, to which refer.)* It tending to the great Hindrance and Diſſervice of her Majeſty's Fleet then in Fight: And the ſaid Paper ſo written, being ſhowed to each of them, they ſeverally owned their Hands to the ſame. But the ſaid Captain *Vincent* and Captain *Fogg*, for reaſon of ſigning the ſame, alledged, That being deſerted during each Days Engagement by Colonel *Richard Kirkby* in the *Defiance*, Captain *John Conſtable* in the *Windſor*, Captain *Cooper Wade* in the *Greenwich*, and Captain *Thomas Hudſon* in the *Pendennis*, and left as a Prey to Monſieur *Du Caſſe*, they had great reaſon to believe they ſhould be Captives to the Enemy. And the Honourable *John Benbow*, Eſq; Admiral, &c. coming into Court, declared, That during the Six Days Fight the ſaid Captain *Fogg* behaved himſelf with great Courage, Bravery, and Conduct, like a true *Engliſhman*, and Lover of his Queen and Country: And that the ſaid Captain *Samuel Vincent* valiantly and couragiouſly behaved himſelf during the ſaid Action, and deſired Leave to come into his the ſaid Admiral's Aſſiſtance, then engaged with the Enemy, and deſerted by all the reſt of the aboveſaid Ships; which he did, to the Relief of the ſaid Admiral, who otherwiſe had fallen into the Hands of Monſieur *Du Caſſe*.

Whereupon the Court being of Opinion, That the ſigning of the aforeſaid Paper brought them under the Cenſure of the 20th Article of War, accordingly adjudged Captain *Samuel Vincent*, and Captain *Chriſtopher Fogg*, to be ſuſpended: But the Execution thereof is hereby reſpited, till his Royal Highneſs Prince *George* of *Denmark*, Lord High Admiral of *England*, &c. his further Pleaſure be known therein.

Captain *Thomas Hudſon*, Commander of the *Pendennis*, died on Board his ſaid Ship, in the Harbour of *Port-Royal*, at *Jamaica*, the

At Five-a-Clock the 12th Day of *October*, 1702. the Preſident, &c. having finiſhed all the Buſineſs before the Court, diſſolved the ſame.

THE

The Tryals of Haagen Swendsen, Sarah Baynton, John Hartwell, *and* John Spurr, *at the* Queen's-Bench Bar, November *the 25th*, 1702. *Published by Authority.*

ON *Wedneſday* the 18th of *November*, the Grand-Jury of *Weſtminſter* found the Bill of Indictment againſt the Defendants. On that Day an *Habeas Corpus* was moved for, and left at *Newgate*, and the Keeper refuſed to bring up the Priſoners on *Thurſday*, but brought them on *Friday* Morning; and then they were Arraigned, and ſeverally pleaded not Guilty; and the Court then appointed the Tryal to be on *Wedneſday* the 25th, that being the laſt Day that they could be tried, to have Sentence given againſt Convicted Perſons in that Term.

Mr. *Swendſen* moved for a longer Time, alledging, That a *German*, a material Witneſs for him, was gone into *Yorkſhire*. The Court then told him, that if any Perſon would Swear that any of his Witneſſes could not be at the Tryal on *Wedneſday*, the Court would put off the Tryal; but no Oath thereof being made, the Tryal came on upon the Day appointed.

The Court being ſat, at which were preſent the Right Honourable the Lord Chief Juſtice Holt, *Sir* John Powell, *Sir* Littleton Powis, *and Sir* Henry Gould:

Haagen Swendſen being brought to the Bar, Proclamation was made for Silence; and he being a Foreigner, claimed as his Right, the Benefit of a Party Jury; which was allowed him, and leave to Challenge whom he would. He Challenged ſome; and the Gentlemen ſworn were, *viz.*

George Ford, Eſq;	*Francis Chapman*,	Gent.
Enoch Roofe, Gent.	*Eraſmus Johnſon*,	
Timothy Thornbury, Eſq;	*Robert Bampton*,	
Abraham Faulcon, Gent.	*Matthew Boddin*,	
John Pack, Eſq;	*Thomas Pitts*,	
James Boyneth, Gent.	*Henry Henderſon*,	

Cler. of Arr. Haagen Swendſen hold up thy Hand. Which he did.

Cl. of Arr. Gentlemen of the Jury look upon the Priſoner at the Bar. *He ſtands Indicted by the Name of* Haagen Swendſen, *late of the Pariſh of St.* Giles *in the Fields, in the County of* Middleſex, *Yeoman; for that on the Sixth of* November, 1702, *one* Pleaſant Rawlins, *Gentlewoman, and a Virgin, and Unmarried, Grand-daughter and Heir of* William Rawlins, *Sen. then deceaſed, and Daughter and Heir of* William Rawlins, *Jun. before then alſo deceaſed, was above the Age of Sixteen, and under the Age of Eighteen, and then had Subſtance and Eſtate in Moveables and in Lands and Tenements*, viz. *in Money, Goods and Chattels, to the Value of* 2000 *l. and in Lands and Tenements to the Value of* 20 l. per Annum, *to Her and the Heirs of her Body.*

And that the ſeveral Perſons, Swendſen, Baynton, Hartwell, Spurr *and* Tho. Holt, *the ſaid 6th Day of* November, *with Force and Arms, the ſaid* Pleaſant Rawlins, *as aforeſaid, being Unmarried, and Heir, and having Subſtance and Eſtate at the Pariſh of St.* Giles *in the Fields, in this County, for the Lucre of ſuch Eſtate and Subſtance of the ſaid* Pleaſant Rawlins, *did unlawfully, feloniouſly, violently, and againſt the Will of the ſaid* Pleaſant Rawlins, *take, carry, and lead away, with intent to cauſe and procure the ſaid* Pleaſant Rawlins, *againſt her Will, in Matrimony to the ſaid* Haagen Swendſen *to be joined, and to him to be Wedded and Married; and that the ſaid* Haagen Swendſen *being a Man of a diſhoneſt Converſation, and of none, or very little Eſtate or Subſtance, then, and there, by the Help and Procurement of the other Defendants, did feloniouſly marry the ſaid* Pleaſant Rawlins, *and was joined to her in Matrimony; and then, and there, her did carnally know; to the great Diſpleaſure of God, againſt the Laws of the Queen, to the Diſgrace and Diſparagement of the ſaid* Pleaſant Rawlins, *and to the great Grief and Diſconſolation of all her Friends, to the evil Example of all others, againſt the Form of the Statute, and againſt the Queen's Peace, her Crown and Dignity. And that the ſaid* Tho. Holt, *after the ſaid* Pleaſant Rawlins *had been ſo unlawfully, violently, and feloniouſly taken, carried, and led away, and to the ſaid* Haagen Swendſen *Married and Wedded as aforeſaid; well knowing the ſaid* Pleaſant Rawlins *to have been ſo taken and led away againſt her Will, and to the ſaid* Haagen Swendſen *to be Wedded and Married, afterwards*, viz. *the ſaid Sixth Day of* November, *in the ſaid firſt Year of the Reign of this Queen, at the Pariſh aforeſaid, the ſame* Pleaſant Rawlins, *and alſo the ſaid* Haagen Swendſen, *did wilfully, knowingly and feloniouſly receive, abet, comfort, conceal and aſſiſt, the ſaid* Haagen Swendſen, *with the ſaid* Pleaſant Rawlins *to lye, and her carnally to know, then and there did feloniouſly incite, abet, help, cauſe and procure, againſt the Form of the ſaid Statute, and againſt the Queen's Peace, her Crown and Dignity.*

Cler. of Arr. Upon which Indictment he hath been arraign'd, and pleaded not Guilty, put himſelf upon God and you the Jury at the Bar, being half Foreigners and half Natives.

Cryer. O yes! If any one will give Evidence on behalf of our Sovereign Lady the Queen, againſt the Priſoner at the Bar, let them come forth, and they ſhall be heard; the Priſoner ſtands at the Bar for his Deliverance.

Mr. *Swendſ.* Pray, my Lord, let me have Pen and Ink, I am not allowed Council; (which his Lordſhip granted.) My Lord, I would beg the Favour of your Lordſhip, that the Evidence may be examined apart.

Mr. *Sol. Gen.* Is it not your Lordſhip's Pleaſure to call the other Jury, the Facts are ſo twiſted together, and have ſuch a Dependance one upon another, that there will be an Inconvenience to us, if it be otherwiſe?

Mr. *Serj. Darnel.* They may ſtand at the Bar by themſelves.

Mr. *Montague.* Or elſe it will break our Evidence; they may ſtand on the other ſide.

L. C. J. Holt. He muſt be tried ſingle.

Mr. *Sol. Gen.* May it pleaſe your Lordſhip, and Gentlemen of the Jury, I am of Council for the Queen: It was formerly reckon'd a leſs Crime to ſteal a Fortune of 10000 *l.* than to ſteal 12 *d.* of her Money or Goods; but in the Third Year of the Reign of King *Henry* VII. to cure this Defect in the Law, an Act of Parliament was made, whereby the taking away a Woman, having Goods or Lands, or being an Heir apparent, contrary to her Will, and afterwards Marrying her, is made Felony, and upon this Law the preſent Indictment is grounded.

Pleaſant Rawlins was the Daughter of Mr. *William Rawlins*; he having left her a conſiderable Eſtate, appointed *George Bright* and *William Buſby* to be her Guardians. Mr. *Bright* being dead, the other Guardian Mr. *Buſby*, for the better Education of Mrs. *Rawlins*, placed her under the Care of his Siſter *Sabina Buſby*. Mrs. *Buſby* and Mrs. *Rawlins* have lodged about Three Years laſt at the Houſe of the Widow *Nightingale*. *Haagen Swendſen*, with Mrs. *Baynton*, lodged at Mrs. *Blake*'s in *Holborn*, and there they firſt projected and contrived how they might make a Prey of this young Gentlewoman. The firſt Step they took towards executing this Deſign, was to get Lodgings at Mrs. *Nightingale*'s Houſe for Mrs. *Baynton*; for which Purpoſe ſhe was to paſs for a Country Gentlewoman of a plentiful Fortune. One Mrs. *St. John* was ſent to Mrs. *Nightingale* to take Lodgings for Mrs. *Baynton*, commending her to be a very good Woman; and that having the Misfortune of a Law-Suit, and being obliged for that Reaſon to attend it in Town, 'twas her greateſt Care to lodge in ſo reputable a Houſe as Mrs. *Nightingale*'s was. Under this Pretence, Lodgings were there taken for her. At her firſt coming, ſhe was forced to put on a Diſguiſe; ſhe ſeem'd to live a virtuous Life, that ſhe might ingratiate her ſelf into the Favour of the Family, as often as ſhe had an Opportunity of converſing with any of them: She pretended ſhe had a Brother of a good Eſtate, one of the beſt Men in the World; and ſhe hoped he would ſhortly come to Town, that ſhe might ſee him. In a little Time after came this *Swendſen* (being nothing related to her) and appeared as her Brother, and frequently viſited her under Pretence of that Relation. But Mrs. *Baynton* was too well known in Town to continue long undiſcover'd; Notice was ſoon given to Mrs. *Buſby* of the vicious Life Mrs. *Baynton* had led, and that ſhe was not fit to be in the ſame Houſe with her. Mrs. *Baynton* having diſcovered this, and finding ſhe had no Time to bring about her Deſigns by Frauds and Wiles, and that no other Way was left but open Force, the Priſoner at the Bar and ſhe took Meaſures accordingly; and in order thereto 'twas agreed, that a Writ ſhould be taken out againſt Mrs. *Rawlins*. Mrs. *Baynton* contrives to get Mrs. *Rawlins* and Mrs. *Buſby* into a Coach, and at a Place appointed a Signal was given, and the Writ executed; and Mrs. *Buſby*, Mrs. *Rawlins*, and Mrs. *Baynton*, were all carried in the Coach to the *Star* and *Garter* Tavern in *Drury-Lane*, where particular Care was taken to ſeparate Mrs. *Buſby* and Mrs. *Rawlins*, becauſe unleſs they did that, they could not hope to accompliſh their Deſigns. Mrs. *Buſby* was by Force kept at that Tavern, without any Proceſs againſt her till the Marriage was over; but Mrs. *Rawlins* was forcibly carried to *Hartwell*'s the Bailiff's Houſe. Mrs. *Baynton* pretended to be much concern'd for Mrs. *Rawlins*, and went in all Haſte to call ſome of her Friends to be Bail for her. Some Time after Mrs. *Rawlins* was got to *Hartwell*'s, in comes Mrs. *Baynton*, pretending that by mere Accident ſhe had diſcover'd her being there, hearing her Name as ſhe was paſſing by the Door; that ſhe had been in Search, but could find no Help; and that her laſt Hopes was her dear Brother *Swendſen*, and ſhe doubted not but he would Bail her: He by Agreement had been plac'd near the Bailiff's, and ſo was ſoon found, and brought thither, and was very ready to aſſiſt her. In order to her Diſcharge, the Priſoner, the Bailiff, and Mrs. *Baynton*, carry Mrs. *Rawlins* to another Tavern, where they had a Parſon ready for the Purpoſe, and there this young Gentlewoman, thro' divers Artifices, of which you ſhall have a full Account, was conſtrain'd to Marry. Theſe are the principal Circumſtances, and they ſhall be plainly proved to you.

Mr. *Serj. Darnel.* My Lord, I think it neceſſary to open a little the Manner of getting this young Lady away, and the Contrivance of getting her into the Coach; for your Lordſhip knows, that if any are taken away without their Conſent, tho' they do afterwards conſent to be Married to ſuch Taker, yet he is guilty within this Statute. They were reſolved to take this Woman by Force, when they found they could not otherwiſe accompliſh their End. And Mrs. *Baynton* knowing Mrs. *Buſby* and Mrs. *Rawlins* were uſed every *Friday* Morning to go to a Chapel called *Oxendon Chapel*, Mrs. *Baynton* ſaid, *I am going to* Golden-Square, *and if you are going to the Chapel, I'll ſet you down if you pleaſe:* They, glad of ſuch a Convenience, thought no Harm, but went in the Coach. They had gone no further than *Dartmouth-Street*, but theſe Bailiffs come. *Hartwell* opens the Coach, and goes into it; they cry out to the People for Help; *Hartwell* pluck'd up the Glaſſes, and thoſe Bayliffs about the Coach cryed, *It is an Arreſt of a Cheat that owes Money to Tradeſmen.* By this Means they carried her to the *Star* and *Garter* in *Drury-Lane*. When they had them there, the next Thing was to get her away from her Friend *Busby*, for unleſs that were done, they deſpair'd of getting her to marry *Swendſen*. Mrs. *Baynton* pretended to go find out Mrs. *Rawlins*'s Friends to Bail her; but that was to meet with *Swendſen*: As ſoon as Mrs. *Baynton* was gone, the Bayliffs forced Mrs. *Rawlins* from Mrs. *Busby*, and Mrs. *Busby* was kept there by Force till Five a-Clock, till all was over. The Bayliffs as they carried Mrs. *Rawlins* away, called her Jade and Slut, and bid her pay her Debts; and ſaid, *Put on your Mask you Jade, for we will have no Mob to reſcue you*; ſhe put on her Maſk, and the reſt of the Bayliffs followed her, and ſaid, *She was a Cheat and was arreſted.* Then it was Time to open the Scene. *Hartwell* carried her to his Houſe, and Mrs. *Baynton* pretending to be coming by and hearing of her Name, open'd the Door, and by an extraordinary Manner burſt into the Houſe, and told her, *Madam, I went to all your Friends, but could find none at home; but I have been with my dear Brother* Swendſen, *who will come with another to Bail you, and 'twill not be long before they come*; for they were placed at the *Five Bells* very near *Hartwell*'s Houſe: Upon this ſhe went out again, and brought in *Swendſen*, and one *Holt* who keeps the *Mitre* Tavern in *King-ſtreet*, *Weſtminſter*. And truly when they were there, and talked of being Bail, then they would all go in a Coach to the *Vine* Tavern, the Place where they deſigned the Marriage;

Marriage; and they had got Two proper Inſtruments ready there for the Buſineſs, the Chaplain and the Clerk of the *Fleet*. When they had her there, my Lord, the Bailiff ask'd if ſhe had any Bail? Mrs. *Baynton* ſaid, that Mr. *Swendſen* and Mr. *Holt* would be her Bail; the Bailiff ſaid, *I will not take* Swendſen's *Bail, he is a Man I know not, but Mr.* Holt *I know, I will take his.* The poor Woman begged upon her Knees, for Chriſt's Sake let me ſend for my Friends; and they pretended to ſend for abundance of them, but none came. Then ſhe was threatned with *Newgate*, for that often came out; *If you cannot get Bail, to* Newgate *you muſt go, and there muſt lye.* This was often ſaid by *Hartwell.* Then Mrs. *Baynton* cryed (as ſhe could do at command) *O how I pity you Mrs.* Rawlins, *Is there no way in the Law to help you? I believe if you were married that would put an End to the Action.* Then ſpeaking to the Bayliff ſaid, *If this Gentlewoman were married, would it not put an End to it?* The Bayliff ſaid, *I can't tell but it might, if ſuch a Thing were.* Well, now her rich Brother *Swendſen* is propoſed, ſhe muſt be married to him; the Bayliffs threatning her ſeverely, that to *Newgate* ſhe muſt go if ſhe did not. Immediately they brought in the Chaplain and Clerk of the Fleet, and read the Form of Marriage, and after carried her to ſeveral Places, leſt they might be followed and prevented, Beds being provided for the Purpoſe at thoſe Places, as your Lordſhip ſhall hear. And, my Lord, this taking of this Woman thus away againſt her Will, is an Offence againſt the Act of 3 *Hen.* VII. and my Lord, we deſire that the Statute may be read.

L. C. J. Holt. It ſhall be explain'd.

Mr. *Broderick.* My Lord, there was a whole Night compleated before the Priſoner was ſeized.

Then Mr. W. Busby *is called for, and ſworn.*

He is asked, Do you know Mrs. *Pleaſant Rawlins?*

Mr. *Serj. Darnel.* Give an Account of her.

Mr. *Busby.* She is the Daughter of *William Rawlins* Deceaſed, who left his Eſtate to Dr. *Bright* and my ſelf, to be ſold for Payment of his Debts and Legacies, and left the Surpluſage to his Daughter, which is about 2000 *l.*

Mr. *Serj. Darnel.* What Lands has ſhe?

Mr. *Busby.* She has 20 *l.* a Year.

Mr. *Serj. Darnel.* What Age is ſhe of?

Mr. *Busby.* She is near Eighteen.

Mr. *Montague.* Was ſhe ever married, or no?

Mr. *Busby.* She was unmarried.

Then Mrs. Sabina Busby *was called and ſworn, as alſo Mrs.* Nightingale.

Mr. *Swendſen.* My Lord, I beg the favour that only one Witneſs be heard at a Time.

Mr. *Sol. Gen.* Mrs. *Nightingale*, Do you know Mrs. *Pleaſant Rawlins*, and Mrs. *Busby?*

Mrs. *Nightingale.* Yes, I do.

Mr. *Sol. Gen.* Have they lodged at your Houſe?

Mrs. *Nightingale.* Yes.

Mr. *Sol. Gen.* How long?

Mrs. *Nightingale.* Above Three Years.

Mr. *Sol. Gen.* Have you any Knowlege of Mrs. *Baynton?*

Mrs. *Nightingale.* Yes.

Mr. *Sol. Gen.* How came you acquainted with her?

Mrs. *Nightingale.* One Mrs. *St. John* came to me to know whether I took Boarders? I ſaid, I had taken ſome, but would take no more, unleſs it were the ſame Ladies again.

L. C. J. Holt. Who was it came to you?

Nightingale. One Mrs. *St. John.*

Sol. Gen. Mrs *Nightingale*, ſpeak out, that my Lord may hear you.

L. C. J. Holt. Did Mrs *Busby* lodge with you?

Nightingale. Yes, my Lord, we were very intimate before; and ſince it pleaſed God to take away her Husband, I was pleaſed with her, and very willing to take her into my Houſe.

Sol. Gen. Acquaint his Lordſhip how Mrs. *St. John* came to you.

Nightingale. Yes, my Lord, as near as I can. She came to me, and ask'd me, If I took Boarders? I told her, No, I would take none, except it were thoſe Ladies I had before: She told me, ſhe had an Acquaintance that was a Widow Lady that came out of *Wiltſhire*, about a Suit of Law, and would be in a very ſober Family near a Church. But however, I denied her Lodgings, and did expect to hear no more of her. But about three Weeks or a Month after, ſhe came to me again, and asked me whether I had altered my Reſolution?

L. C. J. Holt. Go on.

Nightingale. My Lord, Mrs. *St. John* ſaid, that the Lady was come to Town on the *Saturday* Night before, very much indiſpos'd in her Journey. I asked her whether ſhe knew this *Baynton* or no? Mrs. *St. John* ſaid, Yes; ſhe was very intimate in the Family, and ſhe ſaid a great deal more of her, which I cannot remember. She ſaid alſo, that ſhe would have Boarded her her ſelf, and would have been glad of her Company, if ſhe had had Conveniences for her. Then ſhe asked me, whether ſhe ſhould come her ſelf and give her own Character? We thought no harm, ſhe being a Woman, and not a Man. She further ſaid, that Mrs. *Baynton* had ſeen a Maid whom I knew, and ſhe believed ſhe would take her. I enquired of another who lived in the *Mews*, if he knew Mrs. *Baynton*; he ſaid, Yes, and that ſhe came of a good Family. At length ſhe came, and made a very modeſt Appearance in her Behaviour and Garb. She ſaid to me, that I was very curious in taking in Boarders, and for that ſhe liked me the better. I conſented ſhe ſhould come. She asked me what I would have a Week? I told her Twelve Shillings for her ſelf, and Ten Shillings for her Maid. She concluded to come on the *Wedneſday* following; which ſhe did with her Maid, a modeſt Girl, and a Neighbour, which gave me the more Encouragement. She carried her ſelf very well till *Michaelmas*-Day at Night, when we heard of her new Brother; ſhe ſeem'd elevated at the News, and fell into Convulſion-Fits, which I believed were real Fits. She ſaid ſhe had a dear Brother, a good Chriſtian, and he would come on the Morrow. When he came, he brought two Gentlewomen with him, very modeſt, which I never ſaw before, nor ſince. Mrs. *Baynton* made a Pot of Coffee, and ſent for a Bottle of Wine, and ſhe told her Brother before me, what good Lodgings ſhe had, and ſaid ſhe wiſhed he would come and lodge near them, for ſhe knew he had but a puny Stomach, and believed he would like her Victuals. He ſaid it was not convenient for him, becauſe his Buſineſs called him every Day to the *Change*. She ſaid alſo, there was a Bowling-Green near them, where he might divert himſelf. But all would not do. She asked me what I would have a Meal if her Brother ſhould come at any Time; I ſaid, when I had other Ladies, if any of their Friends came, I had Twelve-Pence a Meal of them. On *Friday* he came; I went to Church,

Church, and left them together at Cribbage, as I found them at my Return.

L. C. J. Holt. What Day of the Week was this?

Mrs. *Nightingale.* The *Friday* before the Sacrament. Mrs. *Baynton* ſaid to Mr. *Swendſen*, before Mrs. *Buſby*, You have an extraordinary Hand at making Punch; ſo they agreed to make a Bowl the *Monday* following; but Mrs. *Rawlins* hardly drank any, ſhe not liking any ſtrong Liquors. After this, ſhe told me, her Brother was very ill of his Journey, being lately come out of the Country, tho' I don't underſtand he was in't. The *Monday* before *Michaelmas*-Day, we were at Dinner with two more than our Family, when Mrs. *Baynton* ſaid, ſhe had an Intereſt in a *Norway* Ship, and invited us all aboard; But he, *viz.* Mr. *Swendſen*, did not come to our Houſe till Four Days after; but on *Friday* we concluded to go on *Saturday*; there were Eight of us in Company in all, Mrs. *Rawlins*, Mrs. *Busby*, I and my Daughter, and Mr. *Ball* another Lodger, belonging to the Exchequer. We went, and had much Diſcourſe; after having drank a Glaſs of Wine, the Cloath was laid, and the Maſter offered a Bowl of Punch; ſays Mr. *Swendſen*, *Ladies, I would pleaſe you all, and leave you all to your Liberties to drink what you pleaſe.*

L. C. J. Holt. Is this Perſon Mrs. *Baynton*'s Brother?

Mrs. *Night.* This is he that went for her Brother.

L. C. J. Holt. Whereabouts is your Houſe?

Night. Near *Tuttle-fields.*

Mr. *Sol. Gen.* This Mrs. *Baynton* came to you under the Character of a Country Lady on a Law-Suit; do you underſtand that ſhe was ſo?

Mrs. *Night.* My Lord, She ſaid ſhe came from the *Bath.*

Mr. *Sol. Gen.* You miſapprehend the Queſtion; Do you underſtand that her Pretence was true or not?

Night. I enquired of ſeveral Perſons, who acquainted me that the *Bayntons* lived in *Wiltſhire*; but it was not long before we began to ſuſpect her, for there ſeemed to be an extraordinary Love between her and *Swendſen*, more than is uſual between Brother and Siſter. I ſaid, Madam, I wonder you don't marry your Brother. She ſaid, ſhe thought that 'twas not lawful. I ſaid there was ſuch a Thing done in *Weſtminſter*, of a Man's marrying Two Siſters.

Mr. *Sol. Gen.* Pray call to mind what Time it was that you firſt gave Notice to her that ſhe ſhould not continue in your Lodgings.

Night. When I firſt miſtruſted her, I gave Notice of it in my Family. But we being all Women, and fearful of her, thought not fit to give her Warning till her Month was up. But before that, ſhe came to me, and told me, and ſaid, Mrs. *Nightingale*, I have received a Letter from my Siſter *Baynton* in the Country, which informs me, that the Truſtees will agree, and ſo I deſign to return when my Month is up, for this Town is very chargeable. Very well ſaid I, for I expect ſome Ladies very ſhortly. I went down to my Family and expreſs'd my Joy to them, and ſaid, I was very glad Mrs. *Baynton* had prevented me, for if ſhe had not given me Warning, I would have given her Warning, for I reſolved ſhe ſhould not ſtay.

Mr. *Sol. Gen.* Mrs. *Nightingale*, it ſeems you had Notice of Mrs. *Baynton*'s ill Carriage; did you take any Notice of it to her ſelf?

Night. No; I did not, but I gave the Maid Notice as ſoon as I ſuſpected any thing.

Mr. *Sol. Gen.* Do you know whether the Maid had told any Thing to her or not?

Night. The Maid ſaid to her, Madam, don't you ſee a Strangeneſs in the Family? Yes, ſaid ſhe, I can ſee and bear a great deal; but when I am rouzed, I'll be like a Lion.

Mr. *Sol. Gen.* How long was this before Mrs. *Rawlins* was taken away?

Night. I can't prefix the Time, but it was before ſhe gave me Warning.

L. C. J. Holt. Was ſhe gone from your Houſe before this Thing happen'd.

Night. No, my Lord ſhe told me on *Wedneſday* that her Time was out; but ſaid, There is a Fellow in Town that I fear will cheat me, and I am taking out a Statute of Bankruptcy againſt him, which I think will cauſe me to ſtay in Town a Week longer; ſhe alſo told me, ſhe had taken a Place in the Coach to go on *Thurſday*, but muſt loſe her Earneſt, for this Buſineſs would detain her a Week longer.

Mr. *Raymond.* Did you ever obſerve they were together in private?

Night. No, my Lord, we never had any Suſpicion of Mr. *Swendſen*, but of the Woman; for ſhe could put on all Manner of Diſguiſes.

Mrs. Busby *being called, ſhe is ſworn.*

Mr. *Sol Gen.* Mrs. *Busby*, pray do you know Mrs. *Rawlins?*

Mrs. *Busby.* Yes, I do.

Mr. *Sol. Gen.* How came you firſt acquainted with her?

Mrs. *Busby.* My Brother *Busby* was one of her Guardians, and put her under the Care of my Husband, while he was living, which was four Years ago this *Chriſtmas*. She came to us by the Conſent of her Guardian.

Mr. *Sol. Gen.* At what Place did you lodge?

Mrs. *Busby.* We lived in *Stretton-Grounds*, but ſince my Husband died, which is Three Years laſt *July*, I left Houſe-keeping, and then we went and lodged at Mrs. *Nightingale*'s.

Mr. *Sol. Gen.* How long have you continued at Mrs. *Nightingale*'s?

Mrs. *Busby.* We have continued there ever ſince.

Mr. *Sol. Gen.* Do you know Mrs. *Baynton?*

Mrs. *Busby.* Yes, I do, ſhe lodg'd at Mrs. *Nightingale*'s.

Mr. *Sol. Gen.* Was there any body who uſed to come to her there?

Mrs. *Busby.* None except a *Change*-Woman.

Coun. Do you know any Thing of Mr. *Swendſen?*

Mrs. *Busby.* Sir, The firſt of his coming to Mrs. *Nightingale*'s, was the Day after *Michaelmas* Day. Mrs. *Baynton* ſaid, that ſhe had a Brother that was to come to Town, which he did the Day after, with Two Gentlewomen, which I never ſaw, either before or ſince; but Mr. *Swendſen* after this came ſeveral Times to her as her Brother, her Siſter's Husband; and ſhe deſired that he might dine with her ſometimes; for which ſhe agreed with Mrs. *Nightingale* at 12 *d. per* Meal.

Mr. *Sol. Gen.* Was this Mrs. *Rawlins* at any Time in private with *Swendſen?*

Mrs. *Busby.* Never that I know of in all my Life; we were always in Company together when he dined there, and the Times that he dined there we computed to be 9 or 10; he was there ſometimes when we were not at home.

Mr. *Sol.*

Mr. *Sol. Gen.* How did Mrs. *Baynton* behave her ſelf when ſhe was at Mrs. *Nightingale*'s?

Buſby. We thought very well of her, till at laſt we diſcerned too much Freedom between Mr. *Swendſen* and her ſelf; we ſuſpected her Virtue, and thought ſhe would drink; and were informed ſhe would Swear: She ſaid ſhe muſt ſtay in Town about a Month or Six Weeks about a Suit of Law. Her Maid told her of the Strangeneſs of the Family; ſhe ſaid they had beſt be civil, or elſe ſhe would ſtay and plague them. She told Mrs. *Nightingale* at length, the Town was chargeable, and her Buſineſs done, and that ſhe would return into the Country.

Mr. *Sol. Gen.* What do you know concerning Mrs. *Rawlins* being taken away?

Mrs. *Buſby.* Mrs. *Baynton* knowing it was our Cuſtom to go to *Oxendon Chapel* every *Friday* Morning, ſhe came and told us ſhe had occaſion to go to *Golden Square*; and that being in the way, ſhe invited us to go with her in the Coach, and ſhe would ſet us down at or near the Chapel. When we came to *Dartmouth-Street*, ſomebody bid the Coachman ſtop: I expected ſhe ſhould ſet us down as ſhe promiſed. On that ſide where I ſat there were old Buildings, and as I was looking out, I heard Mrs. *Baynton* cry out to the Coachman, Drive on; and all of a ſudden I ſaw a Man in the Coach, which was *Hartwell* the Bayliff. Mrs. *Rawlins* and I were in a very great Fright, knowing nothing. I ſaid for God s ſake let's come out, we are not concerned. *Hartwell* ſaid we were the Perſons that he came for. I begg'd of him to let us come out: *Hartwell* had his Arms about Mrs. *Rawlins*'s Side, and ſaid, 'tis this Lady and you that I am concerned about. I ask'd him what it was. Said he, let you and I have two or three Words together, and all will be well enough. I ſaid, you don't think I will ſay any thing to you, unleſs I have my Friends by me; Mrs. *Baynton* in the Coach, ſaid, No, Madam, be ſure you don't. I could not tell what he would do with us; at length he carried us all to the *Star* and *Garter* Tavern in *Drury-Lane*. I preſs'd him to let us go to *Fleetſtreet*, for I had Friends there. *Hartwell* was very angry, and would hear nothing of it. When we came to *Drury-Lane*, Mrs. *Baynton* would have had us put on our Masks; I ſaid I had done nothing amiſs, and I would not. When we were in the Room at the Tavern, Mrs. *Baynton* haſtned out of the Room as faſt as ſhe could, pretending to go for my Friends. Mrs. *Rawlins* and I were in a great Conſternation, wondring what they would do with us: I took hold of her Arm, and told her I would live and die with her. The Bailiffs came in, and ſaid ſhe was their Priſoner, and took her by Violence from me: They told me ſhe muſt go with them, for they ſaid ſhe was arreſted by a Writ out of one Court, and I by one out of another. When ſhe was going, I put my Head out of the Window, and cry'd, *Murder*, *Murder*, ſeveral times: When I pull'd in my Head again, *Spur* ſaid, What have you got by your Bawling? And ſaid they were better known there than I. They brought a Man to me, who ſaid he had Orders to keep me, and that he had only a Crown for his Pains; but he would not ſuffer me to ſend for any body. The Gentlewoman of the Houſe came up, and ſaid I had done a Diſkindneſs to her Houſe by crying out Murder: She ſaid to me, Look and ſee whether your Name be ſpelt right, for it may be a falſe Arreſt, *&c.* *Wakeman* that went away with Mrs. *Rawlins*, came back again, and ſaid, the young Woman was well, and that he left her eating Fowl and Bacon; I ſaid, I wiſh ſhe was well. The Gentlewoman of the Houſe bid the Bailiff ſhew me the Writ: He ſaid he could not read well; but there was the Name of *Sabina Busby*, at the Suit of one *Jones*: But when he heard my Complaints a conſiderable while, he ſaid he would go to my Friends, and would go as cheap as a Porter, and as ſoon. I ſent him to Mr. *Thornton* and Mr. *Naſh*: He pretended to go, but return'd no more till Night.

Mr. *Sol. Gen.* You ſay you cry'd out Murder, how did Mrs. *Rawlins* behave her ſelf then?

Mrs. *Busby.* It was her great Fright and Crying that made me endeavour her Reſcue; when we ſaid we wou'd dye together, then it was when they forc'd her from me; the Surprize was ſo great that made me cry out after that manner that I did: Upon which ſome Neighbours came in, but they told them it was an Arreſt, and therefore they wou'd not meddle in it.

Mr. *Sol. Gen.* Mrs. *Busby*, they kept you till Night, you ſay; did they take or require Bail for you before you was diſcharged?

Mrs. *Busby.* I'll tell you, Sir, if you pleaſe: I did not know what I was arreſted for, it might be Murder or Treaſon, for ought I knew. There was a little Boy by, ſaid, Madam, I know Mr. *Unkle* your Friend in *Newmarket*, and I'll go for him: He went, but when he return'd again, he ſaid he was not at home; which I thought was a Lye. There was a poor Man, a Labourer, working in the Chimney, he gave me a Wink, and ſaid, Madam, I'll go for him; but I ſaid to him, Pray don't leave me; I began to be afraid, for I did not know how my Life might be concern'd. Said the little Boy, I'll go any where for you. I ſent him for Two Gentlemen, who came: The Bailiffs ſaid they had an Action of 200 *l.* againſt me; the Gentlemen told the Bailiffs they were come to bail me: The Bailiffs were very impudent, but ſhuffl'd about awhile, and left me, and took no further notice.

L. C. J. *Holt.* Did they take any Bail for you?

Mrs. *Busby.* No, they left me with theſe Gentlemen.

Mr. *Mountague.* When you went out in the Morning, did you deſign to go any where elſe but to Chapel.

Mrs. *Busby.* No where elſe.

Mr. *Mountague.* Was it your Invitation to Mrs. *Baynton*, or her Invitation to you to go in the Coach?

Mrs. *Busby.* It was Mrs. *Baynton*'s Invitation to me; I had not a very good Opinion of Mrs. *Baynton*, for we ſuſpected her Virtue in the Family, by reaſon of her too familiar Carriage to her Brother; but being to go ſhortly away, I apprehended no harm.

Mr. *Mountague.* Did Mrs. *Rawlins* go with you?

Mrs. *Busby.* She did.

Mr. *Mountague.* Mrs. *Busby*, do you know the Priſonner? Is this the Man that came to Mrs. *Nightingale* s Houſe?

Mrs. *Busby.* Yes, Sir.

Judge Powel. How long was it from the Time that you were parted after Arreſting, that you ſaw Mrs. *Rawlins* again.

Mrs. *Busby.* The firſt time after was on *Saturday*, when they were before the Recorder.

L. C. J. *Holt.* When did you find her?

Mrs. *Busby.* On *Saturday* in the Afternoon.

L. C. J. *Holt.* Was you at the finding?

Mrs. *Busby.* No, my Lord.

L. C. J. *Holt.* What Time was it?

Mrs. *Busby.* About Noon, I believe.

Mr. *Mountague.* When you ſaw her put into the Coach, did you hear her cry out?

Mrs. *Buſby.* No, Sir; it was I that cry'd out.

Mr. *Mountague.* Did Mr. *Swendſen* make any Entertainments, or no?

Mrs. *Busby.* But one, as I know of.

Priſoner ſpeaks to Mrs. *Busby*, and ſaid, Have you done?

Mrs. *Busby.* I think ſo.

Priſoner. If you have, I'll aſk you a Queſtion; Did you know of any Love between Mrs. *Rawlins* and me?

L. C. J. *Holt.* Did you know any thing of Love between Mrs. *Rawlins* and the Priſoner, or no?

Mrs. *Busby.* No, my Lord.

Mrs Baynton's *Maid called and ſworn.*

Mr. *Sol. Gen.* Pray, did you know Mrs. *Baynton*?

Maid. Yes.

Mr. *Sol. Gen.* Was you her Servant?

Maid. Yes, Sir.

Mr. *Sol. Gen.* Who recommended you to her?

Maid. Mrs. *St. John.*

Mr. *Sol. Gen.* Do you know one Mr. *Swendſen*?

Maid. Yes, my Lord; there he is; *pointing to him.*

Mr. *Sol. Gen.* Did you ever ſee him before you were hired to your Miſtreſs.

Maid. No, my Lord; I never ſaw him before?

Mr. *Sol. Gen.* Did you ſee him when you was with your Miſtreſs?

Maid. Yes, my Lord.

Mr. *Sol. Gen.* Do you know whether there was any Relation between them?

Maid. Yes, my Lord; they went for Brother and Siſter.

Mr. *Sol. Gen.* How long was you with her?

Maid. About a Month.

Mr. *Sol. Gen.* How did ſhe behave her ſelf?

Maid. Till the laſt of her Time, very well; but the Family had a Miſtruſt of her long before ſhe went away.

Mr. *Sol. Gen.* Do you know the Reaſon why they miſtruſted her?

Maid. I do not know, my Lord.

Mr. *Sol. Gen.* Do you know what was the Cauſe the Family miſtruſted her?

Maid. They thought her a looſe ſort of a Woman, and therefore they miſtruſted her.

L. C. J. *Holt.* Did they diſcern any Familiarity betwixt them?

Maid. No more than as Brother and Siſter.

Mr. *Sol. Gen.* After this Suſpicion, do you know whether the Family expreſs'd any Reſentment?

Maid. No, my Lord.

Mr. *Sol. Gen.* Did you live with her when Mrs. *Rawlins* was taken away?

Maid. Yes, my Lord; but I went away the next Day.

Mrs. Berkley *Sworn.*

Mr. *Sol. Gen.* Mrs. *Berkley*, pray was you preſent when the Priſoner was taken up; and do you know whether he and Mrs. *Baynton* were Brother and Siſter?

Mrs. *Berkley.* I went to Mr. *Swendſen* himſelf, and ſaid, Is this wicked Woman your Siſter? Says he, I cannot ſay ſhe is; but I have made her my Tool, and ſhe has done my Buſineſs, and I would get rid of her To-morrow, but that being *Sunday* I will not; but on *Monday* I'll give her a Reward for what ſhe has done, and then I'll diſcharge her, and never ſee her more.

Mr. *Mountague.* Relate what Diſcourſe you had with him, to the Gentlemen of the Jury.

Mrs. *Berkley.* I aſk'd Mr. *Swendſen*, Whether Mrs. *Baynton* was his Siſter? He ſaid, No, ſhe is not my Siſter; but I have gained my End, in making her a Tool to my dear Wife: I'll gratify her for what ſhe has done, and put her away on *Monday*, and never ſee her more.

Council. I think you lodged in the Houſe with her?

Mrs. *Berkley.* No; but I was a Neighbour, and was very frequently there.

Council. Did you ſee any thing to cauſe you to miſtruſt that there was any thing more than ordinary betwixt them?

Mrs. *Berkley.* No Cauſe at all, that I know of?

Mr. Blake *and his Wife Sworn.*

Mr. *Sol. Gen.* Mr. *Blake*, pray do you know Mrs. *Baynton*?

Mr. *Blake.* Yes, Sir.

Mr. *Sol. Gen.* How long have you known her?

Mr. *Blake.* About Twelve Years.

Mr. *Sol. Gen.* Pray is ſhe a Country Lady that has got a good Jointure?

Mr. *Blake.* I know nothing but that ſhe works for her Living.

Mr. *Sol. Gen.* Hath ſhe any Eſtate in the Country?

Mr. *Blake.* None, as I know of.

Council. Do you know the Priſoner at the Bar?

Mr. *Blake.* Yes, Sir.

Council. Where did he lodge at any Time?

Mr. *Blake.* He lodged at my Houſe.

Council. How long?

Mr. *Blake.* About 6 or 7 Months.

L. C. J. *Holt.* Where is your Houſe?

Mr. *Blake.* In *Red-Lion-ſtreet.*

L. C. J. *Holt.* What other Lodgers had you at the ſame Time?

Mr. *Blake.* I had a Parliament-Man lodged with me at the ſame Time.

L. C. J. *Holt.* Where did Mrs. *Baynton* lodge?

Mr. *Blake.* In the oppoſite Room againſt the Gentleman.

L. C. J. *Holt.* How long time?

Mr. *Blake.* About Seven Months.

Council. How long was Mrs. *Baynton* gone from your Houſe before this Matter happened?

Mr. *Blake.* About Five or Six Weeks.

L. C. J. *Holt.* How long before *Michaelmas*?

Mr. *Blake.* I cannot certainly tell; but I believe much about that Time.

Council. When they were in your Houſe, what did you ſee betwixt them?

Mr. *Blake.* Nothing of any harm, as I know of.

L. C. J. *Holt.* Mr. *Blake*, did you never ſee any harm by Mrs. *Baynton*?

Mr. *Blake.* Not as I know of.

Mr. *Sol. Gen.* Do you know whether ſhe lay in at your Houſe?

Mr. *Blake.* I know not; for ought I know ſhe might: I know nothing of Womens lying in.

Mr. Wakeman *called and Sworn.*

Mr. *Sol. Gen.* Were you one of the Bayliffs that Arreſted Mrs. *Busby* and Mrs. *Rawlins*?

Wakeman. I was the Man that executed the *Marſhal's-Court* Writ, and Arreſted them.

L. C. J. *Holt.* Who employed you?

Wakeman. Mr. *Hartwell.*

L. C. J. *Holt.* Were you at Mr. *Hartwell*'s Houſe?

Wakeman. My Lord, I'll tell you the Truth of the Matter: On *Wedneſday* before they were Arreſted,

reſted, Mr. *Hartwell* was at my Houſe to ſee for me; but being not at home, but in the Country, I came home about 11 at Night: My Daughter ſaid to me, there was a Writ left by Mr. *Hartwell* for me to be ſerved, and it muſt be done To-morrow Morning. On the Morning he came to me, and ſaid, Mr. *Wakeman*, will you execute a Writ? He carried me to the *Mitre*-Tavern, and called for a Pot of Ale and a Bottle of White-Wine, and we had a Toaſt and ſome Cheeſe. While I was there, one Mr. *Holt* came in, a Man that I never ſaw in all my Life, and ſaid, The Buſineſs cannot be done this Day.

L. C. J. *Holt*. What Day of the Week was this?

Wakeman. *Thurſday*; he appointed me to call upon him at Nine next Morning. He ſaid, if I came firſt we ſhou'd get what we had before: He came in before we had done, and the Man of the Houſe was dreſſing himſelf in the Kitchin: We eat a Toaſt, and drank the Wine, and after that, we had another. Mr. *Holt* call'd Mr. *Hartwell* out, and ſaid, It cannot be done; by and by he ſaid it might be done: I don't know what it was, but they took me to *Stretton-ſtreet*; Mr. *Hartwell* and Mr. *Spurr* was with me: I was aſham'd to ſtand in the Street, ſo I went into an Alehouſe, and drank a ſingle Pot of Drink.

Mr. *Sol. Gen*. Had you ſeen Mr. *Swendſen* before that Morning?

Wakeman. No: I never ſaw him before in all my Life. At that, if it pleaſe your Honour, Mr. *Hartwell* and Mr. *Spurr* went before, and bid me follow the Coach. I did ſo as near as I could, but could not keep pace with the Coach, being lame; but at *Dartmouth* Ground Mr. *Spurr* ſtopp'd the Horſes, and then I came up to the Coach; and Mr. *Hartwell*, I ſuppoſe, gave the Word of Arreſt, and into the Coach he went; but I did not go in becauſe there was no room, but rid behind it. The Coach was order'd to go to the *Star* and *Garter* Tavern in *Drury-Lane*. When we came there, we went into a Back-Room; and the Gentlewoman that had a Band-box ſaid to Mrs. *Rawlins*, I will go to ſome of your Friends.

L. C. J. *Holt*. What did they do in *Stretton*-Grounds?

Wakeman. They were Arreſted there: The Gentlewoman was carry'd by Mr. *Hartwell* to his Houſe, and I follow'd them; but meeting with a Gentlewoman of my Acquaintance, ſhe ſtopp'd me. When I came to *Hartwell*'s Houſe, Where is ſhe, ſaid I? They told me ſhe was below Stairs. I ſaid, I had a little Buſineſs elſewhere, that will detain me about an Hour: He gave me Leave to go. When I went out, Mr. *Holt* call'd me over the way, and aſk'd me, If Mr. *Hartwell* was at home? I ſaid, Yes. And is the young Gentlewoman there too? I likewiſe ſaid, Yes. He led me to the Five *Bells* in *Witch-ſtreet*, into a Room where there were Three Boxes, and carry'd me to the middlemoſt Box, and there was a Gentleman.

Council. Was it the Priſoner at the Bar?

Wakeman. Yes, I think ſo. At that Mr. *Holt* fill'd me a full Glaſs, which I drank off; and I told him, I was going to do ſome Buſineſs in St. *Martin*'s. And when I had done that, I went to *Hartwell*'s Houſe again: I enquir'd for the Gentlewoman. Mrs. *Hartwell* ſaid, her Huſband was gone along with the Gentlewoman to *Holborn* to make an end of the Matter. I aſk'd her, Whereabout? She ſaid, At the *Vine* Tavern. I went thither, and aſk'd for Mr. *Hartwell*. There was he, and Mr. *Butler*, and a Tallow-Chandler going to eat Stakes: They invited me to eat ſome with them; which I did. Mr. *Holt* came into the room two or three times: Then Mr. *Holt* told me, I was diſcharged of my Priſoner; ſo away I went.

L. C. J. *Holt*. You were eating Stakes, you ſay, at the *Vine* Tavern; was ſhe there then?

Wakeman. There is a Court againſt the Tavern, and I ſaw the Gentlewoman looking out of the *Vine* Tavern, where there were new Saſh-Windows; as I came over the way, thro' the Court, this Gentlewoman look'd out of the Window.

L. C. J. *Holt*. What, before you went in?

Wakeman. Yes, my Lord; but I went in and ſaw him alone, but knew not whom he was.

L. C. J. *Holt*. Did you ſee Mrs. *Rawlins* there?

Wakeman. No, not at the Tavern.

Mr. *Sol. Gen*. When *Hartwell* took away this Gentlewoman, did ſhe go away quietly, or did Mrs. *Busby* and ſhe make an Outcry?

Wakeman. She was a little frighted.

L. C. J. *Holt*. Where was it you firſt ſaw Mr. *Swendſen*?

Wakeman. At the *Five-Bell* Tavern.

L. C. J. *Holt*. When was it you ſaw him there?

Wakeman. About Twelve a-Clock.

L. C. J. *Holt*. Where was it he gave you the Pot of Drink?

Wakeman. At the *Five Bells*; but it was Mr. *Holt* that gave it me.

L. C. J. *Holt*. How many were there in Company there?

Wakeman. Only Mr. *Holt*, and Mr. *Swendſen*.

Council. What was the Occaſion of your going?

Wakeman. Mr. *Holt* call'd me.

Council. When was it you ſaw him out of the Window?

Wakeman. About an Hour and a Quarter after.

Council. What Anſwer did you give, when they aſk'd you where the Gentlewoman was?

Wakeman. I ſaid, ſhe was at Mr. *Hartwell*'s.

Council. You ſaid you ſerv'd a Writ on Mrs. *Rawlins*, had you no Proceſs againſt Mrs. *Busby*?

Wakeman. No, none at all.

L. C. J. *Holt*. On what Account did you keep Mrs. *Busby*?

Wakeman. I did not keep her; but one *Spurr* was employed to do it.

Council. You came back to Mrs. *Busby*'s; did not you ſay that you had been with the young Gentlewoman, who was eating Fowls and Bacon?

Wakeman. Mr. *Hartwell* aſk'd me to eat ſome.

Coun. Did not you ſhew Mrs. *Busby* a Writ, and read it to her?

Wakeman. I cou'd never read a *King's-Bench* Writ.

L. C. J. *Holt*. Can you read a *Marſhal's-Court* Writ?

Wakeman. Yes, but not the *Latin* of it.

Coun. When you went to *Hartwell* at the *Vine*-Tavern, did you aſk for Mrs. *Rawlins*?

Wakeman. Yes, yes; I aſk'd where ſhe was? They told me they were making an end of it. My Lord, I had like to have forgot; I aſked where was the Priſoner? And Mr. *Holt* told me, they had juſt made an end of the Buſineſs.

Mrs. Pleaſant Rawlins *Sworn*.

Mr. *Sol. Gen*. Give an Account to his Lordſhip, after what manner you were Arreſted, and carried from Tavern to Tavern.

Mrs. *Rawlins*. My Lord, I was Arreſted with Madam *Busby*, and carried to the *Star* and *Garter* Tavern in *Drury-Lane*.

L. C. J. *Holt.* How were you carried thither?

Mrs. *Rawlins.* I was in a Coach going to *Oxendon Chapel*, when Three Bailiffs were about the Coach.

Mr. *Sol. Gen.* Where did they carry you?

Mrs. *Rawlins.* They carried us to the *Star* and *Garter* in *Drury-Lane.*

Mr. *Sol. Gen.* Who did they carry with you?

Mrs. *Rawlins.* There was Mrs. *Busby*, Mrs. *Baynton* and I, and *Hartwell* the Bailiff; when we came to the *Star* and *Garter*, they forced me up Stairs into a Back Room, but we got into a forward Room; but we had not been there long till they parted Mrs. *Busby* and I; Mrs. *Baynton* was gone, for our Friends as ſhe pretended. I was in a very great Fright, but Mrs. *Busby* ſaying we will dye together, they took me by Force from her; *Hartwell* ſwore a great Oath, and thruſt me down Stairs and forced me out of a Back-Door into an Alley. When he went to put me into a Coach, I cry'd out Murder; then he threaten'd to put me into *Newgate.* He carry'd me to his own Houſe, and no body came to help me a great while; but Mrs. *Baynton* ſaid, that as ſhe was going by the Door ſhe heard my Name, and came in in a mighty Fright; ſhe ſaid to me, Madam, I pity you, will no body Bail you? She told me I will ſend to my Brother who ſhall be Bail for you. She ſent for him, he came into the Room, and he ſaid what is the Matter with you, I ſaid, Enough is the Matter when I am arreſted for 200 *l.* and owe no Man a Penny. Said he in a Jocoſe way, what makes you affrighted at that, I have a good mind to arreſt you my ſelf. Then they took me thence to the *Vine* Tavern in *Holborn*, where I was an Hour or Two before I heard any Thing of Marrying or any ſuch Thing.

Coun. What did they do with you all that Time?

Mrs. *Rawlins.* They got a Dinner ready, and after we had dined, ſhe begged of me to have her Brother, and ſaid, that if I did not marry him, I ſhould be ruined. I told her I would do nothing without the Advice of my Friends. I deſired my Friends to be ſent for, but they would not admit it. She looked on my Ring on my Finger, and ſaid let me ſee your Ring from your Finger. I ſaid, No, you ſhall not. She ſaid I will force it off. I ſaid I'll try that: But ſhe forced it from me.

Priſoner. Remember you are upon your Oath.

Mrs. *Rawlins.* I know I am. When ſhe took my Ring away, I aſked her what ſhe would do with it; ſhe ſaid ſhe would go and get a Wedding Ring made by it. I told her I would not marry without the Advice of my Friends. Away ſhe went and bought a Ring, and came up again, and ſaid to her Brother, ſhe had a Ring; well ſaid I, give me my Ring and do what you will with the other; ſhe ſaid, If I did not marry her Brother I ſhould be ruined for ever.

There was a Miniſter in the Houſe, whom they ſaid had been there about a Quarter of an Hour, but I ſuppoſed longer; they brought him with the Clerk up Stairs; the Parſon ſaying I hear there is a Couple to be married, he aſked no Queſtions, but told me if I did not marry this Gentleman, I ſhould be ſent to *Newgate* and ruined for ever.

Coun. Give an Account of what was after the buying the Ring.

Mrs. *Rawlins.* When they brought the Ring, they ſaid to me, will you be married or no? I anſwered, I will not, there are none of my Friends here, and I will not marry without the Conſent of my Friends; They ſaid, If I did not I ſhould be ruined for ever. So with many Threats and Perſuaſions, they at laſt prevail'd with me to marry. I was forced to marry him out of Fear, not of going to *Newgate*, but of being murthered.

Coun. Where did they carry you?

Mrs. *Rawlins.* To *Blake*'s Houſe in *Red-Lyon-ſtreet, Holborn.*

L. C. J. Holt. What Time of the Day was it?

Mrs. *Rawlins.* I cannot give an exact Account; but I think it was Candle-light.

Priſoner. It was about Twelve a-Clock at Noon.

L. C. J. Holt. What Time was it that you were marry'd?

Mrs. *Rawlins.* My Lord, it was about Three a-Clock.

L. C. J. Holt. When you went to *Blake*'s Houſe, who was with you there?

Mrs. *Rawlins.* None but Mr. *Swendſen*, Mrs. *Baynton* and I.

L. C. J. Holt. Was there any Force or Threats us'd when you were at *Blake*'s Houſe?

Mrs. *Rawlins.* Yes, there was my Lord.

L. C. J. Holt. Give an Account of it.

Mrs. *Rawlins.* They thruſt me up Stairs, and ordered to have a Bed ſheeted. Mrs. *Baynton* ſaid to me, Undreſs and go to Bed. I ſaid I wou'd not. She ſaid ſhe wou'd pluck my Cloaths off my Back. I ſaid ſhe ſhould not. She ſaid ſhe would pluck off my Cloaths and make me go to Bed.

Coun. What did ſhe do with you?

Mrs. *Rawlins.* She put me to Bed.

Coun. Did ſhe uſe any Violence with you?

Mrs. *Rawlins.* Such Violence that made me go to Bed.

L. C. J. Holt. How came you to be releaſed?

Mrs. *Rawlins.* It was *Saturday* Morning before I was releaſed; there was ſome of my Friends came to the Place where I was.

L. C. J. Holt. Then you were with him all Night?

Mrs. *Rawlins.* Yes, my Lord.

L. C. J. Holt. Mr. *Swendſen*, will you aſk her any Queſtions?

Priſoner. She muſt be my chiefeſt Evidence my Lord, when the Witneſſes come; ſhe muſt be the chiefeſt of them.

L. C. J. Holt. You will not aſk her any Queſtions now, but when the Witneſſes are call'd.

Priſoner. My Lord, I preſume ſhe does not go out of the Court. *Orders given for her to ſit down.*

Mr. *Sol. Gen.* We have done with our Evidence at preſent.

L. C. J. Holt. Mr. *Swendſen*, What do you anſwer to the Evidence?

Priſoner. My Lord I am very much unprepar'd for a Tryal at preſent.

L. C. J. Holt. Why ſo?

Priſoner. Becauſe I had but little Time for Preparation, and I am not prepar'd, I deſire that I may be allow'd Council.

L. C. J. Holt. No, no, it cannot be allow'd you; and as for the Time of your Tryal you were told, if you would ſhew good Cauſe to have it put off yet, the Court would have done it.

Priſoner. Then I hope if I ſpeak any Thing that may be prejudicial to my Cauſe, that the Court will not take Advantage from it.

The firſt Time I was at Mrs. *Nightingale*'s, I was deſired by Mrs. *Buſby* and Mrs. *Baynton* to make a Bowl of Punch, which I did, and we were very merry over it; then I invited them to go on Board a Ship

Ship, which they all did, and we in a ſhort Time came very well acquainted. My Lord, I deſire my Wife might ſtand by her ſelf, and none of them near her.

L. C. J. Holt. There is none near her that will hurt her.

Priſoner. My Lord, I beg ſhe may ſtand by her ſelf, that I may have a fair Tryal; I pray your Lordſhip to grant me this Favour. My Lord, will you pleaſe to grant it?

L. C. J. Holt. Muſt I grant it only for your Humour?

Priſoner. 'Tis not a Humour, my Lord, but of a great Conſequence to me: Will your Lordſhip grant me it? I beg it, my Lord, for 'tis the moſt material Thing I have to aſk; I beg all thoſe People may be removed from her, 'tis the greateſt and moſt material Thing I have to ſay.

L. C. J. Holt. I m ſorry for it?

Priſoner. It is ſo, good my Lord grant me that.

L. C. J. Holt. There's no body near her that concerns you at all.

Priſoner. There are thoſe by her that will do me no Kindneſs. *Then ſhe is ordered to be removed.*

Mr. *Sol. Gen.* My Lord, her ſtanding there is enough to diſorder her.

Priſoner. My Lord, ſhe is very well.

L. C. J. Holt. Remove her a little further.

Coun. My Lord, he does it on purpoſe to fright her.

Priſoner. We went (as I was telling your Lordſhip) aboard a Ship, and they invited me to come the Week following to partake of a Treat; accordingly I went, and there was one Mr. *Pugh*, and he and I made a Bowl of Punch. Mr. *Pugh* at that Time courted Mrs. *Rawlins*, and that little Time I was acquainted with her, I diſcerned ſhe had a Kindneſs for me, as I had for her; and I told her I could not be eaſy while ſhe ſuffered Mr. *Pugh* to kiſs her; ſhe deſired me to be eaſy, and it ſhould be remedied.

L. C. J. Holt. Mrs. *Rawlins*, do you remember any ſuch Thing?

Mrs. *Rawlins.* My Lord, I do not remember any ſuch Thing, or that any ſuch Words ever came out of my Mouth.

Priſoner. Did not you ſay this, Mrs. *Rawlins*, Mrs. *Swendſen* I ſhould ſay, did not you ſay, if I would not ſit by you you would not eat a Bit or a Crumb; when I ſat by you and profered my Place to another, can you ſay you were not offended?

Mrs. *Rawlins.* No, I was not.

Priſoner. Are not you upon your Oath, did not you give me ſome Encouragement?

Mrs. *Rawlins.* I do not know how I could ſhew it you, I know not of any ſuch Thing.

L. C. J. Holt. You ought to ſpeak the Truth, becauſe his Life depends upon it. Did you in the firſt Place ever admit of his Courtſhip, in order to marry you?

Mrs. *Rawlins.* No, my Lord, I don't remember any ſuch Thing.

L. C. J. Holt. Did you ever ſhew any Kindneſs to him upon any ſuch Account?

Mrs. *Rawlins.* No, I don't know I ſhew'd him any more Kindneſs than all the reſt of the Family ſhewed him.

L. C. J. Holt. Was you ever in his Company alone?

Mrs. *Rawlins.* No, my Lord.

Priſoner. To give me more Eaſe and Satisfaction after Dinner we had our Bowl and Walnuts; Mrs. *Swendſen* pilled the Kernels and gave them to me; ſhe gave them faſter than I could eat; ſhe heaped my Plate with them, every one at the Table took notice of it, and ſhe jogged me with her Knee, that I ſhould take them, and gave ſome to Mrs. *Baynton*, and bid her take them and give to me.

L. C. J. *Holt.* Mrs. *Buſby*, Were you there?

Mrs. *Buſby.* Yes, my Lord.

L. C. J. *Holt.* Did you ſee any Thing of this kind?

Mrs. *Buſby.* No, my Lord.

Priſoner. Will your Lordſhip be pleaſed to aſk her your ſelf?

L. C. J. *Holt.* Mrs. *Rawlins*, did you e'er give pilled Walnuts to him, or ſend them to him in particular?

Mrs. *Rawlins.* No, my Lord, I do not know that I was more kind to him than the reſt of the Company.

Priſoner. Every Body took notice of it, and Mr. *Pugh* in particular.

L. C. J. *Holt.* What do you ſay, Mr. *Swendſen*?

Priſoner. My Lord, Mr. *Pugh*, if he were here, would ſay the ſame as I do. He was afraid I ſhould get away his Lady.

L. C. J. *Holt.* Where is he?

Court. He is in the Court.

L. C. J. *Holt.* You may have him for a Witneſs if you will.

Priſoner. More than this, before he went away ſhe told him ſhe did not care for him; this ſhe ſpoke to make me more eaſy ſtill. This I believe Mr. *Pugh* can witneſs, in as much as Madam *Buſby* complain'd to her about it, at Mr. *Scoreman*'s the Picture-Drawers, who is one of my Evidences; I deſire he may be called.

L. C. J. *Holt.* Well, let him be called.

So he was call'd and came.

L. C. J. *Holt.* Hear ye, he calls you to be a Witneſs, you are not to be upon your Oath, but are under the higheſt Obligation to tell the Truth.

Mr. *Scoreman.* While I was drawing a Gentlewoman's Picture, Mrs. *Baynton*'s, there was a Fire, it began to be Cold, they fell into Diſcourſe about Mr. *Swendſen* and Mrs. *Rawlins*, Mrs. *Buſby* was there at the ſame Time, they fell into Diſcourſe about Mr. *Swendſen* and the young Lady.

L. C. J. *Holt.* Was ſhe there?

Mr. *Scoreman.* Yes.

L. C. J. *Holt.* Where was it?

Mr. *Scoreman.* At my Lodgings; there were Mrs. *Busby*, the young Lady, and Mrs. *Baynton*.

L. C. J. *Holt.* Whoſe Picture were you drawing?

Mr. *Scoreman.* Mrs. *Baynton*'s. They fell into Diſcourſe relating to a Matter of Love, between Mr. *Swendſen* and the young Lady. She ſaid the young Lady had a Love for Mr. *Swendſen* more than the other.

L. C. J. *Holt.* You heard her ſay ſo?

Mr. *Scoreman.* No, but I can ſay Mrs. *Baynton* ſaid ſo.

L. C. J. *Holt.* But tell us what you heard.

Mr. *Scoreman.* She ſhould have ſaid ſo, I did not hear her my ſelf, but afterwards upon a Diſcourſe ſhe ſaid afterwards, what ſhe had ſaid ſhe would ſtand to.

L. C. J. *Holt.* What did ſhe ſay?

Mr. *Scoreman.* I do not know that ſhe ſaid ſo or not.

Priſoner. My Lord, may I ſpeak it as well as I can, he cannot ſpeak *Engliſh* right, I'll ſpeak it to him, my Lord.

L. C. J.

L. C. J. *Holt.* No, no. Did you hear Mrs. *Busby* ſay any Thing? What did ſhe ſay?

Mr. *Scoreman.* In way of Diſcourſe ſhe ſaid ſo.

L. C. J. *Holt.* What, in way of Diſcourſe, did ſhe ſay nothing?

Mr. *Scoreman.* I heard the Lady only ſay that Word, that all ſhe had ſaid ſhe would ſtand to.

L. C. J. *Holt.* What did you hear them talk about?

Mr. *Scoreman.* They were playing at Cards, and ſhe took up the Tricks of Mr. *Swendſen*, which diſcovered Love.

L. C. J. *Holt.* The Queſtion is, Whether you did hear them ſpeak any Thing of Love, or not?

Priſoner. My Lord, he would ſpeak better with an Interpreter,

L. C. J. *Holt.* Let an Interpreter be called for?

L. C. J. *Holt.* What Countryman are you?

Priſoner. My Lord, he is a *Dane.*

The Interpreter, a Jury-man, was ſworn, and beginning to talk with Mr. Scoreman; *and then he ſaid, he's none of my Country, he is a* Dutchman, *I don't underſtand him.*

L. C. J. *Holt.* He ſpeaks *Engliſh* well enough.

Priſoner. Very well; but he knows not where he begins: He would ſay what Mrs. *Busby* and Mrs. *Baynton* were ſpeaking, but knows not how to utter himſelf.

L. C. J. *Holt.* He cannot ſay any thing for you.

Scoreman. I heard but a few Words, and cannot ſay much of it.

L. C. J. *Holt.* You muſt have a better Witneſs, or you are in a dangerous Condition.

Priſoner. My Lord, Mr. *Pugh* complained to Madam *Busby*, that ſhe ſlighted him very much.

L. C. J. *Holt.* What, for Love of you?

Priſoner. Yes, my Lord; I could tell you of divers things that paſs between Lovers, that would be impertinent for me to relate to wiſe Men.

L. C. J. *Holt.* Let us hear ſome of them?

Priſoner. When we were by our ſelves, ſhe kiſſed me; and ſqueezed me by the Hand, when we walked privately in the Garden.

L. C. J. *Holt.* Did ſhe kiſs you?

Priſoner. Yes, my Lord, and ſqueez'd me often.

L. C. J. *Holt.* Did you not think her very coming?

Priſoner. Yes, I did; and when we talk'd of Marriage, ſhe ſeem'd to be very well pleaſed.

L. C. J. *Holt.* Mrs. *Rawlins*, you hear what he ſays: Did you ſqueeze him by the Hand, and kiſs him? Is it true?

Mrs. *Rawlins.* No, my Lord, I did no ſuch Trick, not I; and as for walking in the Garden, I did not walk in the Garden alone with him.

Priſoner. I could mention a great many of theſe little Things; but if ſhe denies them I cannot help it.

My Lord, the laſt time I was at the Houſe we had a Barrel of Oyſters. I ſtood with my Hands behind me, and as ſhe paſſed by at any time, ſhe gave me Squeezes by the Hand.

L. C. J. *Holt.* What ſay you to this Mrs. *Rawlins*?

Mrs. *Rawlins.* My Lord, I did not do ſo upon my Oath.

L. C. J. *Holt.* She ſays ſhe did not do it, upon her Oath.

Priſoner. Now for the Matter of Fact; as for the Arreſt, I never knew any Thing of it directly or indirectly, till I ſaw her at the Bayliff's Houſe.

L. C. J. *Holt.* If ſhe did know any Thing of, or was conſenting to the Arreſt, why did you force her to the Tavern, and Marry her with a Parſon you had provided for that Purpoſe?

Priſoner. She Married me with as much Freedom as could be in a Woman.

L. C. J. *Holt.* What ſay you to that Mrs.?

Priſoner. Will your Lordſhip pleaſe to ask her, whether I offered any Violence to her either by Word or Deed.

L. C. J. *Holt.* Mrs. *Rawlins*, give an Account how you were carried from the Bayliff's Houſe.

Mrs. *Rawlins.* My Lord, when I was at *Hartwell's* the Bayliff's Houſe, Mrs. *Baynton* pretended to come accidentally by, and that ſhe heard my Voice, and came in and ſaid, *How do you do, Mrs.* Rawlins? You know how I do, ſaid I. She pretended to help me, and propoſed to go to her Brother to Bail me; and he came, and I was carried from thence in a Coach to the *Vine* Tavern. ---- *She was asked whether he came into the Coach to her?*

Mrs. *Rawlins.* Yes, he did.

L. C. J. *Holt.* Did you cry out when they put you into the Coach?

Mrs. *Rawl.* No, my Lord, I did not cry out then, I made no Noiſe then.

L. C. J. *Holt.* What did he do then?

Mrs. *Rawl.* They carry'd me to the *Vine-Tavern* a Priſoner.

Sol. Gen. She went willingly enough from *Hartwell's* Houſe to the *Vine-Tavern*, becauſe ſhe thought that there ſhe ſhould be Bailed.

L. C. J. *Holt.* Mrs. What was the Pretence of your being carried from *Hartwell's* Houſe?

Mrs. *Rawl.* My Lord, they would not tell me before they carry'd me to the Place.

L. C. J. *Holt.* Mr. *Swendſen*, Will you ask any other Queſtions?

Priſoner. Not yet, my Lord. I deſire the Parſon may be called that Marry'd us. *Which was done.*

L. C. J. *Holt.* Come Dr. you are not upon your Oath; How come you to be concern'd in this Match?

Parſon. My Lord, it was at the *Vine-Tavern* where I ſaw them in *Holborn.*

L. C. J. *Holt.* Was it the *Mitre*, or the *Vine*?

Parſon. The *Vine*, I believe, my Lord.

L. C. J. *Holt.* How came you there?

Parſon. There was a Gentleman fetch'd me and the Clerk from the *Fleet.*

L. C. J. *Holt.* What to do?

Parſon. He ſaid there was a Gentleman there to ſpeak with us. When we came there, the Clerk and I went up one Pair of Stairs and Drank a Pint of Wine. Then we were led into another Room; I asked him what I was to do. He told me for to Marry him to that Young Gentlewoman.

L. C. J. *Holt.* Was there a Licenſe.

Parſon. Yes; When I ſaw the Licenſe I read it, and ſaw it a true Licenſe; Then I asked the Gentlewoman her Name, to know whether it was the ſame that was in the Licenſe; and found it was the ſame.

L. C. J. *Holt.* Was it written in the Licenſe, that the Marriage was to be performed at the *Vine-Tavern*?

Parſon. No my Lord. But a Blank was left.

L. C. J. *Holt.* Did you take the Queen's Duty?

Parſon. No, my Lord, but returned their Names to the Superviſor: My Lord, when I asked her Name, I alſo asked her whether ſhe was willing to be Married. She ſaid ſhe was willing. And another Gentlewoman was with her, that ſaid ſhe was her Siſter: I ſaid to her; Madam, if you conſent, and your Siſter is willing, here is a Licenſe, for I believe there is no Danger to Marry you.

L. C. J. *Holt*. Did you ask her any other Way than in your Form, *Will you have this Man to your Wedded Husband.*

Parſon. I ask'd her whether ſhe was willing to Marry, ſhe ſaid, Yes, ſhe was willing.

L. C. J. *Holt*. But did you ask her before you did the Office?

Parſon. Yes, my Lord, I did, and ſhe conſented to it.

Counſel. Pray who was the Perſon that came to the *Fleet* to you, to carry you to the *Tavern*; was it the Gentleman at the Bar?

Parſon. No, 'twas not him.

Mr. *Mountague*. How long was it before you went to him, after you went into the Tavern?

Parſon. My Clerk and I went in, and ſat the Drinking a Pint of Wine, about a Quarter of an Hour; then we went to the Gentleman.

L. C. J. *Holt*. Do you think that they ſhould grant Licenſes to Marry in a Tavern, and out of Canonical Hours?

Parſon. I never did it in all my Life before, and never will do it again.

Sol. Gen. What was the Reaſon why you were conducted into another Room, and not where they were?

Parſon. I know not the Reaſon.

Sol. Gen. How long were you in the Room where they were?

Parſon. I cannot well tell.

L. C. J. *Holt*. Did you Marry them as ſoon as you came in?

Parſon. Almoſt as ſoon.

Mr. *Mountague*. Did you ever Marry any at a Tavern before?

Parſon. No, my Lord.

Sol. Gen. Will your Lordſhip be pleaſed to hear the Licenſe read.

L. C. J. *Holt*. It may be read. You may ſee the Date and the Names. The Licenſe is Dated *Oct*. 14. 1702. The Names *Haagen Swendſen* in the Pariſh of St. *Paul's Shadwell*; and *Pleaſant Rawlins* in the Pariſh of St. *Mary White-Chappel*

Counſel. Is there any Blank left?

Parſon. Yes, there is a Blank left that the Marriage may be in the Pariſh Church of St. *Mary White-Chappel*, *vel* a Blank.

Mr. *Mountague*. Were you Entertained there?

Parſon. Before the Marriage, the Clerk and I drank a Pint of Wine in the firſt Room.

Mr. *Mountague*. Had you any Victuals then?

Parſon. Not before they Married; but after.

Sol. Gen. Pray Sir, did you beſpeak a Dinner before the Marriage?

Parſon. No, Sir, the Gentleman beſpoke a Fowl.

Mr. *Dan. Cotchett*, was called.

Priſoner. My Lord, I deſire he may be asked whether he heard any Noiſe, or whether any Violence was offered to the Young Woman?

L. C. J. *Holt*. Did you hear any Noiſe, or perceive any Violence offered to the Young Woman.

Mr. *Cotchett*. No, my Lord.

Priſoner. Ask Mrs. *Cotchett*, whether any Noiſe or Violence was offer'd to the Young Lady?

L. C. J. *Holt*, I'll ask her that Queſtion; Was there any Noiſe, or Violence uſed to the Young Lady?

Mrs. *Cotchett*. No, my Lord, there was no Noiſe; they came in and asked for a Room, and I ſhewed them a lower Room, but they would not have that, but went up. Soon after Mr. *Holt* the Vintner came down and went out, and Mr. *Hartwell* call'd for a Pint of Wine for the Coachman, but the Drawer grumbled at it, and ſaid he did not know who'd pay for't. Then Mr. *Hartwell* the Bayliff told me it was an Arreſt, and that the Parſon was to be Bail for the Lady, and at that I very much wondred; and afterwards they told me there was a Wedding above, which we admired at, that there ſhould be a Wedding, and Bayliffs; And after all was over, the Gentleman and the Lady went out at the Back-Door, and took Coach.

Priſoner. Did you ſee Mrs. *Swendſen* diſcontented when ſhe went out?

Mrs. *Cotchett*. No, my Lord, ſhe ſeemed not Diſcontented; what I know I'll ſpeak, and no more.

Sarah Walker called.

L. C. J. *Holt*. Do you live at the *Vine-Tavern*?

Walker. Yes, my Lord.

L. C. J. *Holt*. What Place?

Walker. Cook, my Lord.

L. C. J. *Holt*. Was you in the Houſe when that Young Gentlewoman was carried Priſoner there? Where were you then?

Walker. In the Bar, my Lord.

L. C. J. *Holt*. Did you keep the Bar?

Walker. No, my Lord; but I was waſhing the Bar at that time.

L. C. J. *Holt*. Did you hear any Noiſe?

Walker. No, my Lord.

L. C. J. *Holt*. Did you hear of a Wedding?

Walker. Yes, my Lord.

Priſoner. My Lord, Will you be pleas'd to ask her, if ſhe was not had before the Recorder, and promis'd a Reward if ſhe would ſay any thing for their Service?

L. C. J. *Holt*. What do you ſay to this?

Walker. My Lord, only this, That if I knew any Thing, and diſcover'd it, I ſhould be ſatisfied for my Trouble.

L. C. J. *Holt*. Were you ſent up Stairs to the Gentlefolks to receive Directions for the Supper?

Walk. Yes.

Sol. Gen. When you came up into the Room, what Condition was the Young Gentlewoman in?

Walker. She ſat at one end of the Room, and ſeemed to be very Melancholly.

Sol. Gen. How did ſhe look when ſhe went away?

Walker. Not Melancholly then. When Orders were given about the Supper, I asked her what Sauce ſhe would have, ſhe ſaid ſhe would eat nothing at all.

Mr. Blake's *Daughter being called.*

Priſoner. Ask what ſhe knew of my Wife?

Blake. My Lord, She carried it very well; the Lady was pleaſed to ſay that I ſhould wait upon her, I offered to pluck off her Shoes and Stockings when ſhe went to Bed, ſhe held out her Legs, and I pull'd off her Shoes and Stockings.

Sol. Gen. Were you preſent at the beginning before ſhe began undreſſing?

Mrs. *Blake*. Yes.

Sol. Gen. When ſhe was come in, were you there all the time?

Mrs. *Blake*. No, I run to and fro.

Sol. Gen. Do you know Mrs. *Baynton*?

Mrs. *Blake*. Yes, Sir.

Sol. Gen. Pray did ſhe ever lie in at your Houſe?

Blake. Yes, Sir.

Sol. Gen. Hath ſhe a Husband?

Blake. I cannot tell.

L. C. J. *Holt*. Did you make the Bed in Mr. *Swendſen*'s Chamber?

Blake.

Blake. Yes my Lord, I made it where he lay, I ſaw nothing.

L. C. J. *Holt.* How long was it after from the time they came, to the time they went to Bed?

Blake. I know not, they came into the Houſe juſt about Dinner.

L. C. J. *Holt.* What time was it?

Blake. About three or four a Clock in the Afternoon.

L. C. J. *Holt.* How long was it after they came before they went to Bed?

Blake. About two Hours or thereabout.

L. C. J. *Holt.* Do you think that 5 or 6 a Clock was a fit time to go to Bed?

Blake. I knew not what was betwixt them.

Sol. Gen. Is it uſual to go to Bed at that time at your Houſe?

Blake. No; I did not know what was betwixt them.

Mr. *Mountague.* What time did they riſe again?

Blake. About 7 a Clock.

Mr. *Mountague.* Did they lie at your Houſe that Night?

Blake. No; they did not.

L. C. J. *Holt.* When did they go away?

Blake. They went away as ſoon as Supper was done.

Priſoner. My Lord, I deſire ſhe may be asked whether my Wife was Sorrowful or Diſcontented, or Unwilling to go to Bed.

L. C. J. *Holt.* What time was it they went to Bed?

Blake. About Four a Clock.

L. C. J. *Holt.* Did you know what the Deſign was?

Blake. No, my Lord, I did not know any otherwiſe, than as Mr. *Swendſen* told me the Young Lady was his Wife.

L. C. J. *Holt.* What time did they riſe again?

Blake. About two Hours, they roſe up and got to Supper.

Judge *Powis.* What time did they go from your Houſe?

Blake. Between Eight and Nine a Clock.

L. C. J. *Holt.* Where did they go? Do you know where they went?

Blake. Indeed my Lord, I cannot tell.

Mr. *Blake* Sworn.

Sol. Gen. Mr. *Blake*, How long have you known Mrs. *Baynton.*

Blake. About 12 Years.

Sol. Gen. Did you ever know that Mrs. *Baynton* had a Husband?

Blake. I cannot tell, it was reported that ſhe had one.

Mr. *Sol. Gen.* Did you ever ſee Mr. *Baynton?* Did he own her to be his Wife?

Blake. My Lord, They did not live with me while he was living.

Mr. *Sol. Gen.* How long has he been dead?

Blake. I don't certainly remember; about 3 or 4 Years.

Mr. *Sol. Gen.* How long is it ſince Mrs. *Baynton* lay in at your Houſe?

Blake. About 4 Months ago.

Mr. *Sol. Gen.* When ſhe was ſuch a Woman as this, and brought a Gentlewoman to your Houſe, and ordered a Bed to be made, how could you admit her into your Houſe again?

Blake. I did not know that it was any clandeſtine Thing.

L. C. J. *Holt.* Have you any more Witneſſes, Mr. *Swendſen?*

Priſoner. Let the Conſtable be called for.

L. C. J. *Holt.* What Queſtions ſhall I ask him?

Priſoner. Ask him what it was my Wife ſaid to him?

Conſtable. My Lord, the Man was in one Room and the Woman in another; when I opened the Door, the Gentleman asked her how ſhe did.

L. C. J. *Holt.* What Gentleman was it?

Conſtable. It was the Gentleman that gave me the Warrant. He ſaid to her, Are you married? Yes; There is my Husband. She ſeemed very much ſatisfied: He ſaid to her, Madam, I wiſh you much Joy, and if you pleaſe to go to the Recorder's, there is your Guardian to approve of what you have done: But when ſhe was dreſs'd, ſhe would go to the next Juſtice of the Peace: They could not agree about going, but they drank each of them a Glaſs of Wine and went away. The Gentlemen that brought me the Warrant was alſo with me.

L. C. J. *Holt.* Are they here?

Conſtable. The Warrant was to take up the Bailiffs and all together.

L. C. J. *Holt.* Where do you live?

Conſtable. In *Lincolns-Inn-Fields.*

L. C. J. *Holt.* In what Houſe did you ſee them?

Conſtable. 'Twas in *Red-Lyon-Street*, over againſt the *Red-Lyon* Tavern.

L. C. J. *Holt.* About what Time of the Night was it?

Conſtable. About 7 a-Clock.

L. C. J. *Holt.* What Night was it?

Conſtable. Indeed my Lord I cannot tell.

Mr. *Mountague.* Whoſe Houſe was it? Was it *Blake*'s Houſe?

Conſtable. Yes it was ſo.

L. C. J. *Holt.* Where is your Warrant?

Conſtable. They took it away from me.

L. C. J. *Holt.* But you ought not to have parted from your Warrant.

Conſtable. The Men were not there that the Warrant run for.

L. C. J. *Holt.* Was not the Warrant againſt Mr. *Swendſen?*

Conſtable. The Warrant was for ſuch Men as took the young Gentlewoman away. I cannot tell whether his Name was there or no.

L. C. J. *Holt.* Mrs. *Rawlins*, what were thoſe Men who came along with the Conſtable; were they your Friends?

Mrs. *Rawlins.* Yes my Lord, They were my Friends.

L. C. J. *Holt.* What is this *Geary?*

Mrs. *Rawlins.* He is an Acquaintance of Madam *Busby*'s.

L. C. J. *Holt.* Did you ſay you conſented to the Marriage before them?

Mrs. *Rawlins.* If I did, I did not know what ſaid.

Priſoner. My Lord, I deſire ſhe may be aſked what ſhe ſaid to the Conſtable.

Mrs. *Rawlins.* My Lord, I did not know whether I ſaid ſuch a Thing; if I did, I was not in my Senſes, I did not know what I ſaid.

Priſoner. My Lord, I hope you will give me leave to ſpeak. She ſaid to the Conſtable, I am very well content with the Marriage, and this is the Ring that married us.

L. C. J. *Holt.* What ſay you to that Mrs. *Rawlins?*

Mrs. *Rawlins.* I don't know but I might; but I did not know what I ſaid.

L. C. J.

L. C. J. *Holt.* Had you been in Bed then?

Mrs. *Rawlins.* Yes, we were in Bed about an Hour.

Mr. *Sol. Gen.* Was there any Threats uſed by Mrs. *Baynton?*

Mrs. *Rawlins.* Yes, my Lord; ſhe ſaid that I muſt own him for my Husband, or elſe we were all ruined.

Juſtice Baber *called.*

Priſoner. My Lord, he is one of the chiefeſt Witneſſes that I have, I deſire it may be aſked him, what my Wife declared to him of her own Accord.

J. *Baber.* My Lord I think it was *Friday* Night, the 6th of this Month, the Priſoner here at the Bar, and I ſuppoſe that may be the Gentlewoman too, *pointing to her*, and another Gentlewoman and a Woman came to me to my Houſe in *York-Buildings*, and deſired me, but the Priſoner in particular, that I would adminiſter a voluntary Oath to the young Lady, which ſhe was willing to take, that ſhe was married to this Gentleman. I told him that I had nothing to do to confirm Marriages, and told them I was loth to meddle with it.

L. C. J. *Holt.* How came they to you? Had they any Officers?

J. *Baber.* No, my Lord, they came in a Coach without any Officer.

L. C. J. *Holt.* Was there any Oath taken?

J. *Baber.* No, my Lord.

Coun. What was the Reaſon that you did not tender the Oath?

J. *Baber.* Becauſe I thought I had nothing to do with it.

Coun. What Sort of Frame was the young Woman in?

J. *Baber.* In very great Diſorder; not like a Gentlewoman, but in a very confuſed Condition: She ſpoke what ſhe ſaid, by her own Conſent; but with much Diſorder.

Priſoner. My Lord, I deſire it may be aſked Juſtice *Baber*, whether I deſired him to tender the Oath to my Wife.

L. C. J. *Holt.* Did Mr. *Swendſen* deſire you to tender the Oath?

J. *Baber.* He did put me upon it at the firſt.

Priſoner. I ne'er did ſo in all my Life.

Mr. Bulkley *called.*

Priſoner. My Lord, I deſire this Man may be heard.

Mr. *Bulkley.* This Gentleman, on the 7th of *November*, in the Forenoon, ſtopped at the Porch of my Door, and gave me Order to wait upon him, upon the Buſineſs of my Calling.

L. C. J. *Holt.* What is your Calling?

Bulkley. A Barber. He told me that he was Married. I aſked him, What, are you Married? Yes, ſaid he, I am; and here's my Wife; and the Gentlewoman ſhe ſaid ſo too. At that, I wiſhed them much Joy and Happineſs. The Young Woman ſaid, She did not queſtion it, ſince what ſhe had done, was with her own voluntary Conſent.

Mr. Hudſon *called.*

Priſoner. What did you hear my Wife ſay?

Mr. *Hudſon.* When Mr. *Swendſen*, with his Wife, came to our Houſe, (my Lord,) he bid her take Mr. *Blake* by the Hand, and aſk him how he does. She ſaid, Yes, my Dear. She went into the Houſe and took my Maſter by the Hand, aſk'd him how he did. Mr. *Swendſen* ſaid, This is my dear Wife; and ſhe ſaid, This is my dear Husband, and took him about the Neck and kiſſed him.

L. C. J. *Holt.* What Trade are you?

Mr. *Hudſon.* An Upholſterer; Mr. *Blake* is my Maſter.

L. C. J. *Holt.* You ſay the young Woman took Mr. *Blake* by the Hand, and ſaid, How do you do: Did ſhe ever ſee Mr. *Blake* before?

Mr. *Hudſon.* Not that I know of. But Mr. *Swendſen* ſaid, This is my dear Wife.

Mr. *Sol. Gen.* When was this?

Mr. *Hudſon.* On *Saturday* Morning.

Mr. *Sol. Gen.* If they lay there over-night, what Neceſſity was there for *Swendſen* to tell Mr. *Blake* that was his dear Wife.

Mr. *Hudſon.* He did not ſay ſo to him, but to his Wife; and ſhe kiſſed him.

Mr. *Mountague.* What need he to tell Mr. *Blake* that was his Wife, when he knew it before?

Mr. *Hudſon.* Why may not I, if I had a Wife, come to her and ſay, My dear Wife?

Mr. *Sol. Gen.* Mr. *Blake*, Pray was Mrs. *Rawlins* at your Houſe before then.

Mr. *Blake.* Never as I know of.

Mr. Green *called.*

Priſoner. I deſire that this Man be aſked what he heard my Wife ſay before the *Recorder*.

L. C. J. *Holt.* What did you hear the young Woman ſay before the *Recorder*?

Mr. *Green.* She owned that ſhe was married to the Gentleman, by her own Conſent, without any Force or Compulſion.

L. C. J. *Holt.* Did ſhe marry him willingly?

Mr. *Green.* Yes, my Lord, ſhe ſaid ſo.

Priſoner. My Lord, I deſire he may tell how ſhe behaved her ſelf there.

L. C. J. *Holt.* What ſaid ſhe?

Mr. *Green.* She ſaid ſhe was married to that Gentleman without Force or Compulſion.

Coun. Did ſhe ſay nothing elſe?

Mr. *Green.* This is all that I remember.

Mr. *Sol. Gen.* Did the Gentlewoman continue in that Tone all the while ſhe was at the *Recorder*'s?

Mr. *Green.* No, I believe ſhe did not.

L. C. J. *Holt.* Was the *Recorder* by then?

Mr. *Green.* Yes, the *Recorder* was by. Then he asked her whether ſhe was married by her own Conſent?

L. C. J. *Holt.* What did the *Recorder* ſay more?

Mr. *Green.* He ſaid, he was afraid ſhe was drawn in by this Man, who he feared was a Spark and Bully of the Town.

Coun. Pray, when ſhe ſaid ſhe was married by her own Conſent, had Mr. *Swendſen* her Hand in his?

Mr. *Green.* Yes.

L. C. J. *Holt.* Then I aſk you whether *Swendſen* was afterwards withdrawn?

Mr. *Green.* He was ſo.

L. C. J. *Holt.* And did you hear what ſhe ſaid after that?

Mr. *Green.* No, I did not, I was thruſt out.

L. C. J. *Holt.* Where do you live?

Mr. *Green.* I live in *Carter Lane*. I belong to the General Poſt-Office.

L. C. J. *Holt.* How came you to be acquainted with this Matter?

Mr. *Green.* My Lord, I came into *Red-Lyon-ſtreet* accidentally, Two Doors off Mr. *Swendſen*'s: I went to Mr. *Swendſen*'s Lodgings, and aſked how he did? I was told he was very well, that he had married a Fortune, and was in Bed with his Lady.

L. C. J. *Holt.* What was the Man's Name?

Mr. *Green.* His Name was *Blake*, my Lord; it was a pure accidental Thing to me.

L. C. J. *Holt.* How long have you known Mr. *Swendſen?*

Mr. *Green.* I have known him ſeveral Years.

L. C. J. *Holt.* Have you dealt with him?

Mr. *Green.* Yes, I have; and I believe here are many preſent, can give a better Account of him than I can.

Priſoner. My Lord, I deſire he may be aſked what my Wife ſaid to the *Recorder?*

Mr. *Green.* My Lord, upon Examination ſhe ſeemed to be much ſurprized upon that Occaſion, but what ſhe did, ſhe ſaid was voluntarily; and that as he was her Huſband, ſo ſhe would own him; and when ſhe was aſked whether ſhe was in Drink; ſhe ſaid ſhe was never given to drinking.

Priſoner. And as I have been repreſented by ſome as a Bully of the Town, I deſire I may have my Friends heard as to my Life and Converſation.

One of his Friends called.

L. C. J. *Holt.* Where do you live?

Anſw. At *Ratcliff*; my Education has been at Sea. I have been acquainted with Mr. *Swendſen* Two Years, and have found him to be a very honeſt and ingenious Man.

L. C. J. *Holt.* Had you any Dealings with him?

Anſw. Yes, my Lord, I have dealt with him for 3000 *l.* and better?

L. C. J. *Holt.* In what Manner did you deal with him?

Anſw. I conſigned my Effects to him.

L. C. J. *Holt.* From whence?

Anſw. From *England* to *Norway.*

L. C. J. *Holt.* How could they be conſigned to him when he was here?

Anſw. He was not here then, but at *Norway.* In *May* 1701. he came over, and had a Ship of mine, called the *Swan*, and ſold her for my Account.

Coun. Did you apprehend that he traded for himſelf, or as a Factor?

Anſw. He traded for himſelf; and I can ſhew you the Bills of Lading that will ſhew they were for his Account: And I believe all that knew him, will give him the Character of an honeſt Man.

Mr. Evans *called.*

L. C. J. *Holt.* What do you know of Mr. *Swendſen?*

Mr. *Evans.* I was in *Norway*, and found then that he lived in very good Repute and Credit there among all People, the beſt of Trading People; and I found he had a familiar Converſe with them: I was with him at the *Generance* and *Admirance*, which are the chief Offices in the Place: I was by his Letter of Recommendation credited by the moſt eminent Merchants of *Norway.* At that Time he had ſeveral Ships conſigned to him for Lading, at a Time when Goods were difficult to be gotten, and he did load them.

Another Witneſs called.

L. C. J. *Holt.* What do you know of Mr. *Swendſen?*

Anſw. My Lord, I was born in *Norway*, where this Gentleman lived for ſome Years, and was eſteemed worth 10000 Dollars. I have had no great Dealings with him, but when he wanted Money, when Money was ſhort with him, I lent him ſome, which he paid again very honeſtly.

Priſoner. Call *John Shorey.*

Shorey. The Knowledge I have had of him was cauſed by his buying ſeveral Parcels of Goods of me, and order'd them to be Shipp'd, and paid me honeſtly for them.

Another Witneſs called.

L. C. J. *Holt.* What ſay you?

Anſw. I have known this Gentleman about Two Years: The firſt of my Knowledge was, I had a Bill of Exchange of 50 *l.* drawn upon him, which he paid very honeſtly. I never heard any otherwiſe, but that he was a very honeſt, juſt Man.

Mr. *Sol. Gen.* I would obſerve to your Lordſhip, that the principal Part of our Evidence the Priſoner hath given no Anſwer to; that is, the Force: If the taking and detaining Mrs. *Rawlins* was by Force as ſeveral of our Witneſſes have teſtified. And if ſhe married while ſhe was under that Force, no ſubſequent Act or Conſent of hers can leſſen the Offence, if the Jury could give Credit to the Priſoner's Evidence, and believe her Conſent was real.

The Gentlewoman did herſelf confeſs, that after ſhe had been hurried from Tavern to Tavern, ſhe did declare he was her Husband, and that ſhe conſented to the Marriage; but what afterwards happen'd, plainly ſhews that it was through Fear and nothing elſe: Had ſhe really conſented to the Marriage, why was ſhe carried to the Juſtice of Peace to take an Oath, that ſhe was married by her own voluntary Conſent? Whilſt the Priſoner held her by the Hand before the Recorder, ſhe confeſſed that ſhe married with her free Conſent: As ſoon as the Priſoner was withdrawn, ſhe burſt out into a Flood of Tears, and confeſſed that ſhe was married by Conſtraint. My Lord, there is but one Thing more I would anſwer, and that is the Licenſe which was given in Evidence to give Colour to this Marriage; but this plainly ſhews, that this whole Management was the Priſoner's contriving. The Licenſe bears date Three Weeks before the Time of the Marriage, which ſhews how long they had waited for an Opportunity to accompliſh this Deſign. When the Priſoner took out this Licenſe, he ſwore her Age to be 25, and his to be 35.

My Lord, now we will examine ſome Witneſſes to theſe Facts, and ſo we'll have done. She was carried to Juſtice *Baber* to take a voluntary Oath. If your Lordſhip pleaſes he may again be called We will examine him upon Oath.

Juſtice Baber *called.*

Mr. *Sol. Gen.* Pray Sir, give an Account of the whole Matter.

J. *Baber.* They came to me about 8 or 9 a-Clock on *Friday* Night the 6th of this Month; and the Priſoner here told me the Purport of his coming, that it was a light and ſhort Buſineſs; and pointing to the Gentlewoman, ſaid, that ſhe came to take a voluntary Oath, that ſhe was married to him with her own Conſent; ſhe ſaid ſhe was married, and that with her Conſent. I told her, I had nothing to do with confirming Marriages. He told me, amongſt other Things, that he had a Certificate. You know that beſt I ſaid; a Marriage is a Marriage, and I have nothing to do with it.

Mr. *Sol. Gen.* But when ſhe told you that ſhe was married, what Condition was ſhe in?

J. *Baber.* She was in a very great Diſorder.

Another Witneſs.

Mr. *Sol. Gen.* Was you before the *Recorder?*

Witneſs. Yes, on *Saturday* the 7th of this *November.* While Mr. *Swendſen* held her by the Hand ſhe owned the Marriage; but when he was withdrawn ſhe threw her ſelf upon me, and deſired me to ſtand by her, or ſhe was undone.

Mr. *Sol. Gen.* What Account did ſhe give when Mr. *Swendſen* was withdrawn?

Anſw. She ſpoke much to the ſame Purpoſe as ſhe

ſhe has done here; and that what ſhe had done was all by Force, and out of Fear.

Mr. Taylor *call'd and Sworn.*

Mr. *Sol. Gen.* Do you know any Oath the Party took, in the taking of this Licenſe?

Mr. *Taylor.* Yes, my Lord.

Mr. *Sol. Gen.* How old did he ſay the Gentlewoman was?

Mr. *Taylor.* He ſaid that ſhe was 25, and that he was 35 Years old.

Mr. *Sol. Gen.* Are you ſure he took the Oath?

Mr. *Taylor.* Yes, my Lord, there is the Surrogate's Hand, and the Priſoner's own Hand to it.

Mr. *Sol. Gen.* Were you preſent?

Mr. *Taylor.* No, I was not, but my Clerk was.

Mr. Serj. *Darnel.* My Lord, there's his Hand to it, and we can prove his Hand.

Mr. *Sol. Gen.* My Lord it is an Act of the Court.

Coun. My Lord, I hope that may be of the ſame Force as a Depoſition in *Chancery.*

L. C. J. *Holt.* It cannot be read as Evidence. Mr. *Taylor*, did he ever take a Licenſe at any other Time?

Mr. *Taylor.* No, my Lord.

L. C. J. *Holt.* Was the Licenſe dated that Day he took it?

Mr. *Taylor.* It is always dated the ſame Day it is taken.

Mr. *Mountague.* My Lord, I deſire Mrs. *Busby* may be asked, whether ſhe talked at the Picture-Drawers about any Thing of Love, or no? Mrs. *Busby*, the Queſtion is, Whether or no you talked any Thing about Love at the Picture-Drawers?

Mrs. *Busby.* My Lord, Mrs. *Baynton* deſir'd me to go with her to the Picture-Drawers to ſee her Picture drawn; we were talking by the Fire-ſide that Mrs. *Rawlins* had ſpoke by way of Diſcouragement to Mr. *Pugh*; Mrs. *Baynton* ſaid that ſhe thought her Brother would make her a very good Huſband, and was able to make her a conſiderable Jointure here in *England.* My Lord, Mr. *Pugh* came, by the Conſent of Friends, on honourable Terms.

L. C. J. *Holt.* Gentlemen of the Jury, This Priſoner is indicted for Felony, in taking away by Force Mrs. *Pleaſant Rawlins*, and marrying of her; this is Felony by the Statute of the Third of *Henry* VII. which enacts, "That if any Perſon "ſhall take any Woman that hath any Subſtance "in Goods or Land, againſt her Conſent, and "marry or defile her, he and his Procurers and Re- "ceivers, ſhall be adjudged to be Felons.

Now it hath been proved to you, that this young Woman had a Perſonal Eſtate left her by her Father, to the Value of 2000 *l.* and had another Eſtate in Land, to the Value of 20 *l. per Annum.* If any one ſhall take her away by Force, and marry her, he is Guilty of Felony by that Statute. You have heard that ſhe was placed by her Guardian, under the Tuition of Mrs. *Busby*, who took a Lodging about 3 Years laſt paſt, at one Mrs. *Nightingale*'s, in *Stretton-Grounds*, *Weſtminſter*; and boarded with her, who took Boarders into her Houſe; and if any Friend of her Boarders came to Dinner there, ſhe received 12 *d per* Head: About 3 Weeks or a Month before *Michaelmas* laſt paſt, there came one Mrs. *St. John*, and recommended to her a Lodger of her Acquaintance, and deſired that ſhe might board with her as others did, and ſaid ſhe was a Widow that came out of the Country about a Suit of Law, and repreſented her to be a ſober Perſon. Mrs. *Nightingale* refuſed her at that Time, and heard no more of her till about 3 Weeks after; then ſhe, Mrs. *St. John*, returns and prevails with Mrs. *Nightingale*, to take her Acquaintance into her Houſe. Mrs. *Baynton* that is mentioned in the Indictment, was the Perſon deſigned by Mrs. *St. John*; and ſhe came to Mrs. *Nightingale*, and deſired to be with her as other Boarders were; ſhe pretended to be of very good Quality, ſo ſhe was taken into the Houſe; her Carriage and Demeanor there were very Civil, and ſhe pretended ſhe had a Brother, that would come to ſee her: The Priſoner at the Bar was the Perſon that came, and ſhe call'd him Brother, and owned him for ſuch; he dined there ſeveral Times with the reſt of the Boarders; he ſaid, He had an Intereſt in Shipping, and invited all the Family to go on Board a Ship. They accepted of his Invitation, and were very well entertained, but ſuſpected nothing; but at length it was obſerved there was too great a Familiarity between Mrs. *Baynton* and the Priſoner, more than was common betwixt ſo near Relations; *they afterwards perceived that Mrs.* Baynton *was inclinable to drink, which cauſed ſome Jealouſy of her in the Family*, and ſhe perceiving the Strangeneſs of the Family, gave Mrs. *Nightingale* notice that ſhe ſhould go in a ſhort Time, for that ſhe had finiſhed her Buſineſs at Law, and that the Town was chargeable, and ſhe intended to be gone at ſuch a Time. When that Time was expired, ſhe pretended to Mrs. *Nightingale* that there was another Thing had happen'd that would detain her a Week longer: She conſented that ſhe ſhou'd ſtay. Now you may obſerve by the Evidence, that it was uſual for Mrs. *Busby* and Mrs. *Rawlins* to go to *Oxenden* Chapel on *Fridays*; which Mrs. *Baynton* very well knew, and pretends that ſhe was to go in a Coach that way into *Golden-Square*, and invites them to go in her Coach, and promiſed to ſet them down by the Chapel: They accepting the Invitation, and being come near the Place, the Coach was ſtopped by ſeveral Men. *Hartwell* the Bayliff opened the Door, got into the Coach, ſaid it was an Arreſt. At which Mrs. *Buſby* was very much concerned, and thought this Arreſt was for Mrs. *Baynton*, and that ſhe and Mrs. *Rawlins* might go out, for they were not concerned in the Matter. At laſt they perceived it was of themſelves; and then Mrs. *Baynton* pretended to be concerned for them: And when the People in the Street aſked what was the Cauſe of the Diſorder; the Bayliffs ſaid, that they were Cheats and Trading-Women that owed People Money, and now they are Arreſted for it. Under this pretended Arreſt, they were carried to the *Star* and *Garter* Tavern in *Drury-Lane*, and put into a Back-Room. They were in a great Conſternation at their being Arreſted, being not conſcious to themſelves that they owed Money to any Perſon. One came to Mrs. *Buſby*, and ſaid, See that your Name be right, that you are rightly Arreſted. Another of the Bayliffs, by Force, carry'd away Mrs. *Rawlins*, ſaying, ſhe was his Priſoner; and it was pretended, that one Bayliff had a Proceſs to carry the one to *Newgate*, and another had another Proceſs to take the other to the *Marſhalſea.* Mrs. *Rawlins* was carried to *Hartwell*'s Houſe. When ſhe was there, Mrs. *Baynton* pretended that coming by accidentally, ſhe heard her Voice, and came in, and ſeem'd to pity her, and ſaid, Madam, will none of your Friends help you? She propoſes her Brother to be Bail, and *Holt* he was to be the other. Under that Pretence of being Bailed, they carry her to the *Vine* Tavern in *Holborn*, where *Hartwell* pre-

tended to be very willing to take his Bail, and ſaid he knew *Holt*, but queſtioned the Priſoner. It will appear to you from this Evidence, and that which follows, of this Force and Contrivance, that their Deſign was to bring about the Marriage; for when the Bail was pretended to be refuſed, Mrs. *Baynton* propoſes a Marriage between the Priſoner and Mrs. *Rawlins*, as the beſt way to make an end of this troubleſome Buſineſs: She would have the Ring from her Finger, to get a Wedding-Ring made by it. Says Mrs. *Rawlins*, I have no mind to be married: Says Mrs. *Baynton*, it's beſt for you to be marry'd; and threatned Mrs. *Rawlins*, that if ſhe did not marry, ſhe ſhould be committed to *Newgate*. There was a Parſon and Clerk ready, who were called to do the Office. The young Woman being under this Terror, the Office of Matrimony was performed; and ſhe was forthwith conveyed to one *Blake*'s, and by Conſtraint there was put to Bed in the Day-time. You muſt go to Bed, ſays Mrs. *Baynton:* I will not go, ſays the young Woman: And ſome Violence was uſed to force her Cloaths off, and ſhe was put to Bed, where ſhe lay about an Hour or Two, and thereby the Marriage was ſuppoſed to be conſummated.

The Priſoner, on the next Day, being diſcourſed with about this Matter, and aſked, whether he was Mrs. *Baynton*'s Brother? No indeed, ſays he; I made uſe of her as my Tool; ſhe hath done my Job for me; I'll make her Satisfaction for it, not To-morrow, being *Sunday*, but on *Monday* I will do it, and never ſee her Face more. After all this Evidence, the Priſoner doth inſiſt upon his Innocence, becauſe he was not preſent at the Arreſt; and hath produced ſeveral Witneſſes to prove, that this young Woman was very well ſatisfy'd with the Marriage; and that Reverend Divine the Parſon aſked her, whether ſhe was willing to be married to the Gentleman? And ſhe ſaid ſhe was willing. And then Mr. *Blake*'s Maid and Daughter ſaid, that ſhe deſired them to pluck off her Shoes and Stockings, undreſs her, and put her to Bed. And that very Night the Priſoner and Mrs. *Rawlins* went to Mr. *Baber*'s, a Juſtice of the Peace, at *York-Buildings*, to take a voluntary Oath before him, that ſhe married this Priſoner by her own free Conſent. Mr. *Baber* would not Adminiſter the Oath. And that afterward they Bedded together that Night, and the next Day they went abroad together in a Coach; and meeting his Barber, the Priſoner bids him come to him to ſhave him, and ſays to him, Here is my Wife; ſhe ſaid likewiſe, that he was her Huſband: he wiſhed her much Joy; ſhe reply'd, that ſhe did not queſtion it, ſeeing that what ſhe had done was by her free and full Conſent; and declared, ſhe was well ſatisfied with what was done. The next Proof is of their Return to *Blake*'s Houſe, where they firſt lodged; the Priſoner *Swendſen* orders his Wife to take Mr. *Blake* by the Hand, and aſk him how he did? Which ſhe did, and expreſſed to him how well ſhe was pleaſed with the Marriage, ſaying, This is my dear Huſband, and kiſſed him. His Witneſs tells you, on *Friday* Night a Conſtable comes with the *Recorder*'s Warrant, to apprehend the Perſons ſuppoſed to have committed this Force; and diſcourſing with her, ſhe expreſſed her ſelf very well ſatisfied with her Marriage, ſo that they deſiſted from ſerving the Warrant. Then he relies upon his Reputation, as being a Man of great Credit, and having had Goods conſigned to him, and paid Bills of *Exchange*; and produces Witneſſes to prove, that he was a Trader in *Norway*, where he lived, and in good Credit, remitted Money, drew and paid Bills of *Exchange*, freighted Ships, *&c.* and was in very good Eſteem by the chiefeſt in thoſe Parts. Then he called other Witneſſes, to let you know how the young Woman carried it at the *Recorder*'s; that there ſhe ſaid, that ſhe was married by her own free Conſent, *&c.* Gentlemen, this is the Sum of the Evidence that he hath given. To which it is reply'd, That as to what was ſaid before the *Recorder*, that is true; ſo long as he had her Hand in his, ſhe declared her Conſent to, and Satisfaction in the Marriage; but when he was withdrawn, and ſhe was examined by her ſelf, ſhe declared her Marriage was by Violence and Force, that ſhe did it out of Fear, *&c.* Then they tell you again, of a Licenſe that was taken out by him, and produced by him, but bore Date almoſt Three Weeks before this Marriage was accompliſh'd: It was obſerved alſo upon the Licenſe, that this Licenſe was to marry Mrs. *Rawlins* of the Pariſh of St. *Mary White-Chapel*, when ſhe lived not there.

This is the Sum of the Evidence on both Sides, and theſe Obſervations are to be made from it:

I. You are to know, that if ſhe be taken away by Force, and afterwards married, tho' by her Conſent, yet is he guilty of Felony: For it is the taking away by Force that makes the Crime, if there be a Marriage, tho' by her Conſent.

II. In the next place it is to be obſerved, That ſhe was taken away by Force, and a Stratagem was uſed to give an Opportunity thereunto, and the Arreſt was but a Colour.

III. You may conſider upon the Evidence, how far the Priſoner was concerned in the firſt Force: It is true, he was not at the Arreſt, and did not appear until ſhe was brought to *Hartwell*'s Houſe; and under that Pretence of Bailing her, ſhe was carried to the *Vine* Tavern, where there was a Parſon ready, and the Marriage was had in ſuch manner as you have heard. Now, conſidering theſe Matters, it is left to you to determine, whether the Marriage was not the End of the Arreſt? And if ſo, how it could be poſſible for ſuch a Force to be committed to effect the Priſoner's Deſign, and he not be privy to it?

IV. If it can be imagined, that he was not privy to the colourable Arreſt, yet ſhe was under a Force when he came to her at *Hartwell*'s Houſe; and from thence ſhe was carried by Force unto the *Vine* Tavern, where ſhe was married. That is a forcible taking by him at *Hartwell*'s Houſe; and tho' when ſhe was at the *Vine* Tavern ſhe did expreſs her Conſent to be married, yet it appears even then ſhe was under a Force, and had no Power to help her ſelf. Her Marriage was by Force, when ſhe was carried to *Blake*'s, and put to Bed; all this was Force: Nay, when ſhe was carry'd to the Juſtice of Peace, even then ſhe was under a Force; and all that ſhe ſaid was not freely, but out of Fear: Such a Force would avoid any Bond, for ſhe was under Impriſonment. But however, if the firſt taking was by Force, and ſhe had conſented to the Marriage, the Offence is the ſame, it is Felony.

And as to his Reputation, it is poſſible he might have been an honeſt Man: A Man is not born a Knave, there muſt be Time to make him ſo, nor is he preſently diſcovered after he becomes one. A Man may be reputed an able Man this Year, and yet be a Beggar the next: It is a Misfortune that happens to many Men, and his former Reputation will ſignify

ſy nothing to him upon this Occaſion. If you be ſatisfied upon the Evidence, that he is guilty of this Crime, you are to find him ſo; if not, you ought to acquit him.

Swendſen. I deſire, my Lord, that my Wife may be aſked, Whether ſhe did not, upon her Knees, ſwear, ſhe went away from me as good a Maid as ſhe came to me?

L. C. J. *Holt.* That is a Queſtion need not be aſk'd, ſince the Marriage is ſo plainly proved, which is ſufficient to bring you within the Statute.

The Jury deſire the Act may be read.

L. C. J. *Holt.* Let it be read. *It was ſo.*

The Jury aſk Mrs. *Rawlins*, how old ſhe is?

Mrs. *Rawlins.* Eighteen at *Candlemas*.

L. C. J. *Holt.* Would you aſk any Queſtions upon this Act?

Jury. No, my Lord.

Then the Jury went out, and after Three Hours Stay, brought him in Guilty.

The Tryal of SARAH BAYNTON, JOHN HARTWELL *and* JOHN SPUR, *On* Wedneſday, November *the* 25*th*, 1702. *in the Afternoon.*

A Motion was made by the Queen's Council, for putting off this Tryal to *Friday* Morning; but his Lordſhip would not grant it, but ordered it to begin preſently.

The Priſoners were call'd to the Bar, and a Proclamation made for all concern'd to attend.

The Jury were Sworn, whoſe Names are, *viz.*

Robert Lympany, Gent.	*Giles Ridle*, Gent.
John Outing, Gent.	*Robert Legg*, Gent.
Francis Parr, Gent.	*Thomas Elton*, Gent.
Richard Bealing, Gent.	*Charles Longland*, Gent.
Charles Murry, Gent.	*Simon Smith*, Gent.
John Cannon, Gent.	*Henry Lobb*, Gent.

Clerk of the Ar. SArah *Baynton*, *John Hartwell*, and *John Spur*, hold up your Hands. [*Which they did.*] Gentlemen of the Jury, look upon the Priſoners, and hear their Charge. *Then the Indictment was read as in the firſt Tryal: Upon which they were Arraigned, and plead Not Guilty.*

Mr. *Sol. Gen.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury; The Priſoners at the Bar, together with one *Swendſen*, ſtand Indicted before you for a very great Offence; *Swendſen* (for whoſe Sake this Felony was committed, for which the Priſoners are now to anſwer) has already had his Tryal: The Three Priſoners at the Bar were his Accomplices. The Law, to ſhow how odious ſuch Offences are, and to deter all Perſons whatſoever from committing them, has made no Diſtinction between the Principal and Acceſſories: The Abettors, Procurers, or Contrivers, are declared and enacted to be, and to be judged as Principal Felons. The Gentlewoman mentioned in the Indictment, Mrs. *Pleaſant Rawlins*, was the Daughter of Mr. *William Rawlins*, who left her a good Fortune: Her Grandfather likewiſe left her an Eſtate of Inheritance. Her Father being dead, her Guardian, Mr. *Buſby*, placed her under the Care of his Siſter, who boarded with her at one Mrs. *Nightingale*'s. Mrs. *Baynton* (one of the Priſoners at the Bar) and Mr. *Swendſen* lodged at Mr. *Blake*'s, where they projected what was afterwards put in Practice. Lodgings were to be taken for Mrs. *Baynton* at Mrs. *Nightingale*'s. In order thereunto, 'twas pretended, That ſhe was a Country Gentlewoman who came to Town about a Law-Suit, and being very tender of her Reputation, would board in a ſober Family. By theſe Inſinuations, Lodgings were taken for her at Mrs. *Nightingale*'s, where in a little Time ſhe got acquainted with the Family; and in Converſation, as often as 'twas poſſible, would take ſome Opportunity to diſcourſe of her own Affairs, particularly of her Relations, of her dear Brother *Swendſen*, who was never mentioned without many Commendations. Mr. *Swendſen*, tho' no ways related to her, often viſited her under that Character: But Mrs. *Baynton* having lived a very ſcandalous lewd Life in Town, could not long continue under the Diſguize ſhe came in to Mrs. *Nightingale*'s. Intimation was given to the Family of her true Character, and Notice thereof was ſoon given to her by her Maid. Whereupon ſhe reſolv'd to quit her Lodging; and being paſt all Hopes of betraying Mrs. *Rawlins*, and wheedling her into her Ruin with her Conſent, ſhe enters upon another Project, which was to bring about the Marriage by Force and Violence.

In this Contrivance, you will find every one of the Priſoners at the Bar had their ſeveral Parts to act; *Hartwell* was to get a Writ, Mrs. *Baynton*, who could not be concerned in the Execution of the Writ, was to contrive when and in what manner it might be executed: *Hartwell* ſues forth the Writ, and Mrs. *Baynton* appoints the Time. She knowing it to be the uſual Cuſtom for Mrs. *Buſby* and Mrs. *Rawlins* to go to Church on *Friday* Mornings, ſhe prepares a Coach, and proffers her Service to ſet them down at the Chapel, and prevail'd with them to come into the Coach. As they were going toward the Chapel, *Hartwell* the Bayliff ſtops the Coach, and gets into it; and *Spur* conducts the Coach to a Houſe that they had prepared for their Purpoſe. When *Hartwell* got into the Coach, Mrs. *Rawlins* and Mrs. *Buſby*, not imagining themſelves to be concerned, deſired him to let them go out; No, ſays *Hartwell* to Mrs. *Buſby*, it is you that I am concerned with; let you and I have a few Words together, and all Things will be ſet to rights. But Mrs. *Buſby* refuſing to have any Diſcourſe with him, away they were all carry'd (Mrs. *Buſby*, Mrs. *Rawlins*, and Mrs. *Baynton*) to the *Star* and *Garter* Tavern in *Drury-Lane*. While Mrs. *Buſby* and Mrs. *Rawlins* were kept together, they had no Hopes of making Mrs. *Rawlins* marry; and therefore *Hartwell* by Force takes away Mrs. *Rawlins*, and carries her to his own Houſe: *Spur*, who had no Proceſs whatſoever againſt Mrs. *Busby*, yet keeps her Priſoner at the *Star* and *Garter*. Mrs. *Baynton* ſeeing her Friends uſed in this manner, pretended a very great Concern, and out of Kindneſs went to find their Friends to Bail them. Mrs. *Rawlins* had not been long at *Hartwell*'s before Mrs. *Baynton* came into the Houſe to her, in a great Surprize to find her

there,

there, telling her ſhe fancied, as ſhe paſſed by *Hartwell*'s Houſe, ſhe heard Mrs. *Rawlins*'s Name mentioned: Immediately ſhe gave her a very melancholy Account, how ſhe had been in Search for her Friends; but none could be found, and to Goal ſhe muſt go, except Bail could be got. At laſt ſhe thought of her Brother, ſhe was ſure he would be her Bail; and having placed him hard by, ſhe brings him to *Hartwell*'s. When he comes there, all Three of them (*Hartwell*, Mrs. *Baynton* and Mr. *Swendſen*) under Pretence of ſetting Mrs. *Rawlins* at Liberty, take her to another Tavern, where ſhe was plainly told, ſhe muſt marry Mr. *Swendſen*, or go to *Newgate*, and undergo the Miſeries of a Goal: If ſhe married, then all ſhould be well. The Circumſtances of the Taking, Detaining, and Marrying this Gentlewoman at that Tavern, and of the ſeveral Facts I have mentioned, our Witneſſes will prove to you.

Mr. Busby *Sworn.*

Serj. *Darnel.* I pray give his Lordſhip an Account of this young Gentlewoman, Mrs. *Pleaſant Rawlins.*

Mr. *Busby.* My Lord, her Father, Mr. *William Rawlins*, was a Man of a very good Eſtate: He ordered his Eſtate to be ſold to pay his Debts and Legacies, and the Overplus was given to his Daughter this young Gentlewoman, which was about 2000 *l.* Her Grandfather likewiſe by Will left her an Eſtate of 20 *l. per Annum.*

Mrs. Nightingale *Sworn.*

Serj. *Darnel.* Mrs. *Nightingale*, pray give an Account to his Lordſhip, how long this Gentlewoman lived in your Houſe.

Mrs. *Nightingale.* My Lord, ſhe hath lived with me about Three Years; and ſince Mrs. *Buſby* and Mrs. *Rawlins* came to live with me, my Huſband died: I am likewiſe a Widow too; we all lived together. Mrs. *St. John*, about Nine Weeks before this Fact, came to me, and aſked me whether I took Boarders? I ſaid, No, I would take none without it were thoſe Ladies that boarded with me before. She told me, this was a Country-Gentlewoman that was coming to Town about a Suit of Law; ſhe was a very good Woman, and would be near a Church. She told me, that ſhe was a-kin to the Lady *Anne Baynton*, and a great deal more that I cannot remember: But I told her, I did not deſign to take Boarders. She came about Three Weeks after, and aſked me, whether I was in the ſame mind? She told me the Gentlewoman was come to Town: She told me ſhe was an extraordinary good Woman, and that her Huſband was acquainted with the Family, and gave her an extraordinary Character. She ſaid ſhe would not have parted with her herſelf, but that ſhe did not take in Boarders, and therefore thought it not worth her while to take her in.

L. C. J. *Holt.* Did ſhe ſay, ſhe was her Huſband's Acquaintance?

Mrs. *Nightingale.* She told me, That her Huſband was very well acquainted with the Family. She told me, Mrs. *Baynton* came to Town on *Saturday* Night, and was very weary with her Journey. She ſaid to me, Madam, if you pleaſe ſhe ſhall come to you, and recommend her ſelf. At length ſhe came, and repeated the ſame Things, That ſhe was a Country-Gentlewoman, and came up about a Suit of Law, *&c.* She ſaid, Madam, I underſtand you are very nice in taking of Boarders, which makes me the willinger to come to board with you. I took her to be a very ſober Woman; and ſeeing it was but for a little while, I agreed with her. She ſaid ſhe would come on *Wedneſday*: The Reaſon ſhe told me, that ſhe came to Town no ſooner, was, becauſe her Maid was ſick of a Fever. Mrs. *St. John* recommended to her a Neighbour's Child, which was a pretty civil Girl; ſhe hired her, which made me ſtill like her the better. On *Wedneſday*, Mrs. *Baynton* and her Servant came: We were all Widows, and became very familiar in a ſhort Time; for ſhe is a Perſon of a great deal of Senſe, if pleaſed God to give her Grace. She invited us on *Michaelmas-Day*, to go on Board of a *Norway* Ship; ſhe had a Friend there. One of my Friends aſked, whether ſhe had any Intereſt in it? She ſaid, Yes, ſhe had. She likewiſe ſaid ſhe had a dear Brother come to Town, an extraordinary Chriſtian, that had married her Siſter: They ſtrived, ſhe ſaid, who ſhould outdo one another in Affections; and when her Siſter was upon her Death-bed, ſhe recommended Mrs. *Baynton* to be both his Wife and Siſter. Mrs. *Baynton* ſaid, My dear Brother will come To-morrow to ſee me. Accordingly he came, with Two Gentlewomen with him, that we never ſaw before nor ſince: Then ſhe ſent for a Bottle of Claret, and deſired us to drink, which we did, with them. Then ſhe took Occaſion to praiſe the Family ſhe was in: She invited her Brother to live in the ſame Street near to her, ſeeing he had but a pingling Stomach; and ſaid, ſhe believed he would like their Victuals. He declined that, ſaying, it was out of the way for his Buſineſs, being obliged to be every Day at 'Change. Then ſhe aſked me, what I would have a Meal, if he ſhould come at any Time to ſee her? I told her 12 *d.* for a Dinner; for ſo I had of the young Ladies Friends that came to ſee them.

Serj. *Darn.* Pray, how did the Country-Gentlewoman behave her ſelf?

Mrs. *Nighting.* She ſeem'd to be very modeſt, but ſhow'd abundance of Love to her Brother.

Serj. *Darn.* In her Behaviour?

Mrs. *Nighting.* Very well, below Stairs; but the Maid ſaid ſhe would ſwear above.

Council. How oft did he dine there?

Mrs. *Nighting.* Nine or Ten times.

Council. You ſay he dined Nine or Ten times at your Houſe, did you diſcern that there was any thing of Love betwixt him and Mrs. *Rawlins*?

Mrs. *Nighting.* No Body in the Houſe diſcerned that there was.

Serj. *Darnel.* Were they obſerved at any Time to be alone?

Mrs. *Nighting.* No, Sir, they were never alone that I know of.

Serj. *Darnel.* Had you any Miſtruſt of Mrs. *Baynton*?

Mrs. *Nighting.* Yes, Sir; ſhe came twice home elevated with Drink, and we began to ſuſpect there was ſomething between her and her Brother that was not uſual. My Lord, her Servant took notice, that we carried it with Strangeneſs towards her Miſtreſs; inſomuch that ſhe ſaid to her Miſtreſs, Do not you diſcern the Family to be ſtrange? Ay, *Betty*, (ſaid ſhe) but I do not care; if they rouſe me, they'll find me like a Lion: Or to that Effect.

Mr. *Sol. Gen.* Did Mrs. *Baynton* diſcern that you knew that ſhe ſaid ſo?

Mrs. *Nighting.* No, Sir.

Mr. *Sol. Gen.* Did you expreſs any Diſlike of her?

Mrs. *Nighting.* No, Sir, not to her; tho' I diſcovered my Diſlike of her to ſeveral of the Family, telling them, I deſigned to give her Warning when her Month was up. But before that, ſhe came to me

and

and paid me, as her Cuſtom was, for a Week. She told me ſhe had received a Letter from her Friends, That the Truſtees had made up the Buſineſs; and the City being chargeable, ſhe deſigned to return into the Country. I went to my Mother in another Room, and expreſſed to her, with a great deal of Joy, the Warning ſhe had given me. When her Time was expired, ſhe came to me again, and ſaid, There was a Fellow would cheat her in Town, and that ſhe muſt take out a Statute of Bankrupt againſt him, which would detain her a Week longer; and upon her Deſire, becauſe I would part friendly, I conſented to her ſtaying a Week longer.

L. C. J. *Holt. Speaking to the Priſoner* Baynton, *ſaid*, She might aſk Queſtions.

Mrs. *Baynton.* Yes, my Lord. Mrs. *Nightingale*, when I went into your Houſe there was no ſuch Character of me, as you ſpeak of; but you invited me; and I ſaid, That if I ſhould be troubleſome, I would not come.

L. C. J. *Holt.* She liked you well by the Character that was given you by Mrs. *St. John*, but afterwards ſhe had no ſuch good Thoughts of you.

Mrs. *Baynton.* If they did not like me, my Lord, they might have given me Warning; but inſtead of that, when I gave her Warning, ſhe ſeemed to be ſorry.

L. C. J. *Holt.* She was glad of the Opportunity of your giving her Warning.

Mrs. *Baynton.* You were pleas'd, Mrs. *Nightingale*, to ſpeak of going aboard of Ship, it was after Mr. *Swendſen* had been there a ſecond time: When he came to your Houſe, you ſaid you loved Punch entirely; and I ſaid, If you pleaſe, Madam, Mr. *Swendſen* ſhall make a Bowl; and this was before our going on Board.

L. C. J. *Holt.* Was Mr. *Swendſen* aboard the Ship?

Mrs. *Nightingale.* Yes, he was; but I knew not of his being there.

Mrs. Busby *Sworn.*

Serj *Darn.* Come Mrs. *Busby*, give an Account to my Lord and the Gentlemen of the Jury what you know of this Matter.

Busby. My Lord, I know Mrs. *Nightingale* told me that Mrs. St. *John* came to take Lodgings for Mrs. *Baynton*, according as Mrs. *Nightingale* expreſſed her ſelf; and I was a little curious in Enquiring what ſhe was, and begged her Pardon for asking ſo many Queſtions about her.

Serj. *Darn.* After ſhe had been there, how did ſhe carry her ſelf?

Mrs. *Busby.* At *Michaelmas* Day, at Night, ſhe came up very brisk, and ſaid ſhe had heard from her Dear Brother, and fell a praiſing him, and ſaid how happy ſhe was in him; and that her Siſter, upon her Death-bed, ſaid that ſhe ſhould be both Wife and Siſter to him: She ſaid likewiſe, that ſhe had been a Widow 4 Years, and that ſhe would never Marry for the Love ſhe had to her Brother.

Serj. *Darn.* Pray give an Account, Mrs. *Busby*, whether there was any Talk in the Family of this Woman's leaving the Family?

Mrs. *Busby*, Sir, as to her leaving the Houſe, we were informed that ſhe was not what we took her to be; and Mrs. *Nightingale* and I were very uneaſy; at which Mrs. *Nightingale* deſign'd to warn her away.

Coun. Mrs. *Busby*, Pray give an Account of your going in the Coach with her.

Mrs. *Busby.* On *Friday* Morning, the 6th of this Month, Mrs. *Baynton* ſaid ſhe was going to have her Lac'd-Head waſhed; ſhe ſent her Maid for a Coach, and ſaid ſhe would ſet us down near the Chapel. After ſhe had invited me, and I ſaw the Coach, I did not know how to evade it well, but accepted of her Civility. She bid the Coach ſtop at *Hedge-Lane*, and ſaid we ſhould be as near to the Chapel, as ſhe went to the Place whither ſhe was going. When we came to the Old Buildings, I was looking out at them, and on the contrary ſide I heard a Buſtle, Mrs. *Baynton* called to the Coach to go on, and preſently *Hartwell* was in the Coach, with his Arm about Mrs. *Rawlins*'s Waſte. I did think Mrs. *Baynton* was Arreſted, I cry'd out for God's ſake let us alone, we are not concern'd. *Hartwell* pull'd up the Glaſs, and ſaid we were the Perſons concerned. She (*pointing to* Hartwell *at the Bar*) ſaid, This is the Man, and he himſelf own'd it before the *Recorder*, that he told me 'twas the Young Lady and I was concerned; ſays he, Let me have a few Words with you, and all will be well. I ſaid, To be ſure I will not ſay any thing to you except my Friends were near. This Lady, Mrs. *Baynton* ſaid, No Madam, be ſure do not; ſhe adviſed me not to be frightned, for ſuch a Caſe once happen'd to her with her Niece. I asked *Hartwell* what he would do with us? He ſaid he would carry us to a Place where we might ſend for our Friends, and make up the Buſineſs. Mrs. *Baynton* ſeemed to take my Part, and ſaid ſhe would go to my Friends; and ſuch Diſcourſe as this held till we came to the *Star* and *Garter* Tavern.

Coun. Mrs. She pretended to be your Friend?

Mrs. *Busby.* Yes, Sir, ſhe argued with the Bailiff and ſaid, May I not go where I will? And ſeemed to be very angry with him. Mr. *Hartwell* alſo ſeemed to be very angry with her, and call'd her Mrs. *Pert*, ſaying; if ſhe were Civil, ſhe ſhould have the more Reſpect.

Coun. Whom did he call Mrs. *Pert*?

Mrs. *Busby.* He called Mrs. *Baynton* ſo. Then they carry'd us to *Drury-Lane*, and ſhe adviſed us to put on our Masks upon our Faces: I thought to do it, but afterwards recalling my ſelf, and thinking I had done nothing amiſs, I would not. They conducted us to the Tavern and put us into a back Room, and Mrs. *Baynton* haſt'ned out of the Room as if ſhe would go for ſome of my Friends, as ſhe ſaid ſhe would: I directed her to Mr. *Thornton* and another; which ſhe ſaid ſhe went to. The Room where we were was very dark, ſo we preſſed into a forward one; we were in a very great Fright, inſomuch, that I ſaid to Mrs. *Rawlins*, We'll live and die together, and then ſhe took me hold by my Arm. *Hartwell* ſeeing that, took her from me by Force, and ſaid ſhe muſt go with him. I underſtood ſhe was Arreſted in one Court, and I in another; She muſt go to the *Marſhalſea*, and I to *Newgate*. Then they hurried her down Stairs out at a back Door into a Coach: I cry'd out *Murder* out of the Window, and ſaid, For God's ſake take care of the young Woman, for I know not where they are carrying her. After this, Mr. *Spur* ſaid to me, What have you got by Bawling? we are better known here than you. My Fright was very great, and I was very much ſurprized: There was a Man left with me, I made my Complaint for Friends to be ſent for. Says I to him: Is it Treaſon or Felony? He told me he did not know, he was only hired for a Crown to keep me: I deſired that the Gentlewoman of the Houſe might come up to me; it was about 12 a Clock, and at laſt ſhe did. And Mr. *Wakeman* came up, and ſaid, Madam, Why do you

not

not Eat and Drink? He ſaid the young Gentlewoman was well, and did both. Said the Woman of the Houſe to me, Do not you owe Money? I ſaid, No. Nor the young Lady neither? I anſwered, None that we ſhould be Arreſted for. When this Mr. *Wakeman* was here, ſaid the Gentlewoman of the Houſe to me, Why do you not enquire into the Cauſe of Action? *Wakeman* told me, that there was a Writ againſt *Sabina Busby*, at the Suit of *William Jones*, and that *William Jones* Arreſted me. Says the Woman of the Houſe, it may be your Name is not right, and ſo you may be falſly Arreſted. I asked whether I might not ſend for Bail, it being an Action of Debt. It being an Action of Debt, ſays he, you may; and I will go for you as cheap, and as ſoon as a Porter. But I ſaw him no more till Night.

Coun. How long did they keep you?

Mrs. *Busby.* It was betwixt 10 and 11 when they carried me there firſt, and it was till not near Night that I ſaw him again.

Serj. *Darn.* Did he make you give Bail for your Diſcharge in the Afternoon?

Mrs. *Busby.* There was a Lad in the Room ſaid, Madam, I will go to ſome of your Friends for you. I directed him to ſome of them, and when he came again, he ſaid, they were not at home. There was a Poor Man, a Labourer, at work in the Chimney, he gave me a private Wink, and ſaid he would go for me, for he knew Mr. *Uncles*; he went, and Mr. *Uncles* came. I likewiſe ſent for Mr. *Thornton* and another; they all came, and met together. Mr. *Thornton* demanded on what Account they kept me there? They ſaid they had a Writ againſt me of 200 *l.* Then they ſaid they would Bail me. They asked them, Where the young Lady was? They told him ſhe was with her Friends. Then, my Lord, after this, the Bailiffs ſhifted off, and I knew nothing more of it, but went away to get a Warrant to take care of the young Lady.

Coun. Had you any manner of Dealings with Mr. *Jones*?

Mrs. *Busby.* No manner of Dealings with him in all my Life.

Mr. *Mountague.* When you came into the Fore-Room, was *Hartwell* then with you in the Room?

Mrs. *Busby.* She and I was in a great Fright; ſeveral was there, and *Hartwell* was one of them.

L. C. J. *Holt.* Was Mrs. *Baynton* there?

Mrs. *Busby.* Yes, my Lord.

L. C. J. *Holt.* How long did ſhe ſtay?

Mrs. *Busby.* She went out preſently; ſhe told me ſhe would go to ſome of my Friends; and away ſhe went.

L. C. J. *Holt.* Did ſhe come again?

Mrs. *Busby.* No, my Lord.

L. C. J. *Holt.* Did you ſee *Hartwell* there?

Mrs. *Busby.* My Lord, he was there, and forced the young Lady from me; and *Spur*, when I put my Head out of the Window, and cried after her, ſaid to me, What have you got by your Bawling? We are better known here than you.

Mr. Juſtice *Gould.* Pray, when was the firſt time you took notice of *Spur*?

Mrs. *Busby.* Sir, the firſt time I took particular notice of him, was, when I put my Head out of the Window; but it ſeems he rid behind the Coach; he was left with me when Mrs. *Rawlins* was taken away, and was in the Room when my Friends came; and Mr. *Wakeman* was there too.

Mr. Juſtice *Powell.* I ask you, did your Friends offer Bail?

Mrs. *Busby.* Yes, Sir, they did.

Mr. Juſtice *Powell.* Did any of them require Bail?

Mrs. *Busby.* My Friend, Mr. *Thornton*, asked on what Account they kept me? And they ſaid they had an Action of 200 *l.* againſt me.

Hartwell. Was I there then? Did I ever come back after you were there?

Mrs. *Busby.* I believe you were, but I cannot be poſitive; but you were in the Coach, and you were the Man that carried away Mrs. *Rawlins* from me.

Mr. Wakeman *Called.*

Mr. *Sol. Gen.* Give an Account to my Lord and the Councel, of what you are concerned in this Matter.

Mr. *Wakeman.* If it ſhall pleaſe your Honour, my Lord, Mr. *Hartwell* came on *Wedneſday*, (before this thing happen'd) to my Houſe, and left Word there, that there was a Writ to be Executed, if I would Execute it: I was not then at Home, but when I came Home, which was late at Night, my Daughter told me of it. I went to him on *Thurſday* Morning. He ſaid to me, Mr. *Wakeman*, I have a Writ to be Executed, will you do it? I ſaid I would. Then he carried me to *Weſtminſter* to the *Mitre-Tavern*, and made no ſtop nor ſtay; then he called for a Quart of Ale, and a Quart of White-Wine, and a Toaſt and Cheeſe; and when we had Eat one Toaſt, we had another. The Man of the Tavern came in, whoſe Name was *Holt*. Mr. *Hartwell* ſaid to me, We muſt not do the Buſineſs this Morning; it cannot be done, ſaid he: But he appointed me to come on *Friday* Morning. He ordered me, if I came firſt, to call for Wine, and the ſame as we had before. I came firſt, and called for Wine, Ale, a Toaſt and Cheeſe; in the mean time Mr. *Hartwell* came in, and Eat ſome with me.

L. C. J. *Holt*, Who was the Writ againſt?

Mr. *Wakeman.* It was againſt Madam *Rawlins*. Mr. *Holt* went out, and called Mr. *Hartwell*, and ſaid, the Buſineſs would be done that Morning. Then we followed him to *Stretton-Ground*. Mr. *Holt* ſaid to *Spur* and my ſelf, we had beſt ſtand near the Place: He took Mr. *Hartwell* with him to the Top of the Street, the People gazed at us, and I was aſhamed, and went into an Ale-Houſe; a Man came back, and ſaid, The Coach is at the Door; and Mr. *Hartwell* came and ſaid, the Coach would come by preſently; Mr. *Hartwell* and *Spur* went before, and bid me follow the Coach; and coming near the Park, in *Weſtminſter*, I was behind; Mr. *Spur* ſtopped the Coach. Mr. *Spur* ſtopping the Coach I made up to it; but before I came to it Mr. *Hartwell* was in the Coach, and what he ſaid to them I do not know.

L. C. J. *Holt.* Who ſtopped the Coach?

Mr. *Wakeman.* Mr. *Spur* ſtopped the Coach, and ſerved the Writ; it was my Writ. Mr. *Hartwell* ordered the Coach to drive to the *Star* and *Garter* Tavern in *Drury-Lane*; we went all along with it; and when we came there, they led us to a little Room, and the Gentlewomen did not like it, but went into a forward Room, and this Gentlewoman (*pointing to Mrs.* Baynton) with her Band-box, was with them.

Coun. Who was it?

Mr. *Wakeman.* (*pointing to Mrs.* Baynton *at the Bar, ſaid 'twas ſhe*) I did not know but ſhe was this Lady's Friend; I never ſaw any of them before in all my Life. Mr. *Hartwel* went down, and Mrs. *Baynton*; and I thought ſhe went to fetch Madam *Rawlins*'s Friends. Mr. *Hartwell* came to the young Lady,

Lady, and ſaid, You muſt go to my Houſe. The young Gentlewoman ſaid, O Lord, don't part us. But he did ſo, and put her into a Coach. I ſaw the Gentlewoman going, but did not go with her my ſelf, for I was ſtopped by a Gentleman of my Acquaintance; but when I came to Mr. *Hartwell*'s Houſe, I ſaid, Mr. *Hartwell*, Where is the young Gentlewoman? He told me ſhe was below Stairs. I told him that I had ſomething of Buſineſs elſewhere. I asked him, and he gave me Leave to go. I went, and when I returned back to Mr. *Hartwell*'s Houſe, I asked for him, but his Wife told me he was not within. I asked where the young Gentlewoman was? She anſwered, that ſhe was gone with her Husband to the *Vine-Tavern* in *Holborn*. I went and asked for Mr. *Hartwell*; they told me he was above Stairs. I went up, and found him with Mr. *Spur*, and a *Tallow-Chandler*. I ſhould have told you, that when I went from Mr. *Hartwell*'s Houſe about my Errand, I ſaw Mr. *Holt* ſtanding near the Back-Door of the *Five-Bell* Tavern in *Wich-ſtreet*, and he asked me where Mr. *Hartwell* was? I told him he was at Home. Then *Holt* asked for the Woman, I ſaid ſhe was at *Hartwell*'s---- Afterwards I ſaw Mr. *Swendſen* at the *Five-Bells* with *Holt*, and he gave me a full Glaſs of *Claret*; I drank it off, and away I went. When I went to the *Vine* Tavern, Mr. *Hartwell*, Mr. *Spur*, and a *Tallow-Chandler* were in a Room by themſelves. I ſaw that Gentleman (looking out of a Window) that was with *Holt*; he looked at me, and I at him. Mr. *Hartwell* asked me if I had dined? I told him, No. He ſaid there were ſome Stakes. I dined there; then the Gentlewoman, *viz. Baynton*, at laſt came out of Door and called Mr. *Hartwell* to her. When Mr. *Hartwell* came from her, he told me that the Matter was made up, and the Priſoner was diſcharged.

L. C. J. *Holt*. Who was the Writ againſt?

Mr. *Wakeman*. Mrs *Rawlins*.

L. C. J. *Holt*. When the Priſoner was diſcharged they gave you the Writ again?

Mr. *Wakeman*. Yes.

L. C. J. *Holt*. Had you a Writ againſt Mrs. *Busby*?

Mr. *Wakeman*. I had none againſt her.

Coun. How far is it from *Hartwell*'s Houſe to the *Star* and *Garter* Tavern?

Mr. *Wakeman*. It is about a Furlong.

Coun. What was your Writ for?

Mr. *Wakeman*. But 20 *l*.

L. C. J. *Holt*. And you ſaid you had an Action of 200 *l*.

Mr. *Wakeman*. My Lord, Mr. *Hartwell* ſaid ſo. I do not know the Woman, but ſhe will be ſhewed us.

L. C. J. *Holt*. Look at the Priſoner at the Bar. Was ſhe in the Coach when Mrs. *Rawlins* was Arreſted?

Mr. *Wakeman*. Yes, Yes. I had no ill Deſign in what I did.

L. C. J. *Holt*. Did you go behind the Coach?

Mr. *Wakeman*. Yes, my Lord, I did.

The Writ produced and read in Court.

Mr. Juſtice *Gould*. Were you there at the *Star* and *Garter* when Mrs. *Busby*'s Friends came to Bail her?

Mr. *Wakeman*. When I came to the *Star* and *Garter* Tavern, the Gentleman came and asked me, whether I knew where Mrs. *Busby* was? I told him I left her at the *Vine* Tavern, and believed that there they might find her.

L. C. J. *Holt*. Was *Spur* at the *Vine* Tavern any Time?

Mr. *Wakeman*. My Lord, I left *Spur*, *Hartwell*, and the *Tallow-Chandler* at the *Vine* Tavern.

Mr. Serj. *Darnel*. Was it Mr. *Hartwell* or *Spur* that asked you to eat Stakes?

Mr. *Wakeman*. It was *Spur*.

Mrs. *Baynton*. Mr. *Wakeman*, Did you ever ſee me before the Arreſt?

Mr. *Wakeman*. No, I never ſaw you before then.

Mrs. Berkley *Sworn*.

Mr. Serj. *Darnel*. Pray look upon this Priſoner Mrs. *Baynton*, Do you know her?

Mrs. *Berkley*. Yes, Sir, I do know her.

Mr. Serj. *Darnel*. How came you to know her?

Mrs. *Berkley*. By her Lodging in Mrs. *Nightingale*'s Houſe, and no otherwiſe.

Mr. Serj. *Darnel*. Did you ever hear her ſpeak of a Brother that ſhe had?

Mrs. *Berkley*. Yes, Sir, ſhe ſaid this Mr. *Swendſen* was her Brother.

Mr. Serj. *Darnel*. Mrs. *Rawlins*, Are you Sworn?

Mrs. *Rawlins*. Yes, Sir.

Mr. Serj. *Darnel*. Stand forward a little. Do you give my Lord an Account of the whole Matter.

Mrs. *Baynton*. Mrs. *Rawlins*, ſpeak the Truth, I deſire nothing but Juſtice.

L. C. J. *Holt*. You are upon your Oath remember, and therefore ſpeak nothing but the Truth.

Coun. Give an Account of your Proceedings in the whole Matter.

Mr. Serj. *Darnel*. Do you know any of the Priſoners at the Bar?

Mrs. *Rawlins*. Yes, I know them all, Mrs. *Baynton*, Mr. *Hartwell*, and Mr. *Spur*.

L. C. J. *Holt*. Do you know them?

Mrs. *Rawlins*. Yes, my Lord.

L. C. J. *Holt*. How came you to be acquainted with Mrs. *Baynton*?

Mrs. *Rawlins*. My Lord, I came to be acquainted with her by her taking Lodgings at our Houſe. She came and took Lodgings at Mrs. *Nightingale*'s for a Month or Six Weeks. When her Month was out, ſhe ſaid her Buſineſs was done, and ſhe muſt go into the Country.

Mr. Serj. *Darnel*. Give an Account of what happen'd to you on *Friday* the 6th of *November*.

Mrs. *Rawlins*. We were going to *Oxenden* Chappel, Mrs. *Busby* and I. Mrs. *Baynton* told us, ſhe was going that Way, and invited us into her Coach; ſhe ſaid ſhe would ſet us down near the Chapel; we accepted of her Invitation, and went with her. When we were at the Broad Way in *Dartmouth-Ground*, there was *Hartwell*, and Two more Bailiffs; they ſtopped the Coach, and Mr. *Hartwell* got in. Said Mrs. *Busby* to him, For Chriſt's Sake let us go out, we owe no Man any Thing. He ſaid the Matter concerned Mrs. *Busby* and me, and he ordered the Coach to be driven to the *Star* and *Garter* Tavern in *Drury Lane*.

Mr. Serj. *Darnel*. Did any Body come into the Coach?

Mrs. *Rawlins*. Yes, Sir, Mr. *Hartwell*.

Mr. Serj. *Darnel*. Did he do any Thing to the People in the Coach?

Mrs. *Rawlins*. No, Sir, but ordered the Coach to go to the *Star* and *Garter* Tavern. When we came there we went up Stairs, and did not ſtay above a Dozen Minutes in one of the Rooms, but removed from thence to a Room forward: Mrs. *Baynton* was gone, and *Hartwell* ſent up *Spur*.

Mr. Serj. *Darnel*. Mrs. Pray look, Do you ſee the Man that came up to you?

Mrs. *Rawlins*. I ſuppoſe it was the Man that is next to Mrs. *Baynton*; if I be not miſtaken it is him; I cannot be poſitive.

Mr. Serj. *Darnel.* Some of them came up to you and ſaid, they muſt have the young Lady down Stairs?

Mrs. *Rawlins.* Yes, Sir; and Mrs. *Baynton* ſaid, Nay. They after that forced me away.

Mr. Serj. *Darnel.* Who was it that did that?

Mrs. *Rawlins.* It was Mr. *Hartwell* that did it.

Hartwell. Who is Mr. *Hartwell*?

Mrs. *Rawlins.* Your ſelf, Mr. *Hartwell*, took me about the Middle, and drove me down Stairs. I cried out Murder, and deſired ſome good Body to go with me; he ſaid, if I did not hold my Tongue he would ſend me to *Newgate* that Minute.

Mr. Serj. *Darnel.* Where did he carry you?

Mrs. *Rawlins.* He carried me from the *Star* and *Garter* Tavern to his own Houſe.

Mr. Serj. *Darnel.* Where is his Houſe?

Mrs. *Rawlins.* In *Witch-Street.*

Mr. Serj. *Darn.* How long did he keep you there?

Mrs. *Rawlins.* I do not know juſtly, but I think it was about an Hour.

Mr. Serj. *Darn.* What did they do with you there?

Mrs. *Rawlins.* They put me into a Back Room, there was no Body with me; but at laſt Mrs. *Baynton* came in and pretended ſhe was going by and heard my Name, and therefore came in. I was very much frighted. She ſaid ſhe had been at ſeveral of my Friends but could get no Body to come. She told me ſhe would ſend for her Brother, and he ſhould be Bail for me.

L. C. J. *Holt.* You ſay ſhe would ſend for her Brother to be your Bail?

Mrs. *Rawlins.* Yes, My Lord.

L. C. J. *Holt.* What followed then?

Mrs. *Rawlins.* She went for her Brother to come to be my Bail, and it was hardly half a Quarter of an Hour before ſhe came in again with her Brother.

Coun. What is her Brother's Name?

Mrs. *Rawlins. Swendſen.* Mr. *Hartwell* came into the Room where I was, and ſaid, Is Mrs. *Rawlins*'s Friend come yet? Mrs. *Baynton* anſwered, Yes. They had a Coach prepared at the Door, and in that they carried me to the Tavern in *Holborn*; there was in the Coach, Mrs. *Baynton*, her Brother, Mr. *Hartwell*, and I.

Mr. *Mountague.* Where did they carry you?

Mrs. *Rawlins.* To the *Vine* Tavern in *Holborn.*

Mr. *Mountague.* What did they do with you then?

Mrs. *Rawlins.* They carried me up Stairs, put me into a Room, I cannot tell exactly how long I was there.

Mr. *Mountague.* What did they do then?

Mrs. *Rawlins.* Then *Holt* was there to be the other Bail; they were very willing to take his Bail, but were very ſcrupulous in taking Mr. *Swendſen*'s Bail. They told me in ſhort that I muſt marry Mr. *Swendſen*, and that would put an End to it, or elſe I muſt go to *Newgate.*

L. C. J. *Holt.* Who ſaid ſo?

Mrs. *Rawlins.* Mrs. *Baynton* ſaid, If I did not marry her Brother, I muſt go to *Newgate.* I replied, that I would not marry without my Friends Advice; but I was not ſo much afraid of going to *Newgate*, as I was of being murdered, or ſent away ſomewhere into the Country, where I might never ſee or hear of my Friends.

Coun. How did they behave themſelves in the Room?

Mrs. *Rawlins.* They importun'd me to marry Mr. *Swendſen*, and for that End Mrs. *Baynton* would have my Ring from my Finger; I would not let her have it, but ſhe forced it away from me. I aſked her what ſhe would do with it? She told me, ſhe would go and get a Wedding Ring made by it. She went and bought a Wedding Ring, and gave me my own again: Then the Miniſter and Clerk was brought into the Room; the Miniſter and Clerk came in and married Mr. *Swendſen* and me.

Mr. Serj. *Darnel.* How long did you ſtay in the Room after you were married?

Mrs. *Rawlins.* Not a Quarter of an Hour.

L. C. J. *Holt.* Where was *Hartwell*?

Mrs. *Rawlins.* They were in the Room over-againſt us.

L. C. J. *Holt.* Who brought the Parſon into the Room?

Mrs. *Rawlins. Holt* brought them in.

L. C. J. *Holt.* Where did they carry you then?

Mrs. *Rawlins.* To Mr. *Blake*'s Houſe in *Holborn.*

L. C. J. *Holt.* Who went with you?

Mrs. *Rawlins.* No body but Mr. *Swendſen* Mrs. *Baynton*, and my ſelf.

L. C. J. *Holt.* What did they do then?

Mrs. *Rawlins.* They order'd the ſheeting of a Bed, and put me to Bed.

Coun. Was there any Compulſion in going to Bed, or did you go voluntarily?

Mrs. *Rawlins.* I did not go freely, but was forced to Bed; Mrs. *Baynton* aſked me to go to Bed; after which ſhe aſked me the Reaſon why I would not go to Bed? Says I, my Reaſon is, becauſe I don't care to go to Bed ſo ſoon.

Mr. Serj. *Darnel.* Who undreſſed you?

Mrs. *Rawlins.* Mrs. *Baynton* and Mr. *Blake*'s Daughter.

Mr. Serj. *Darnel.* How long was you in Bed?

Mrs. *Rawlins.* About an Hour or Two.

Mr. *Mountague.* When you went out, had you any Expectation to go any where elſe but to Church?

Mrs. *Rawlins.* No where but to Church, upon my Word.

Mr. *Mountague.* Did you go voluntarily to the Tavern in *Drury-Lane*, or againſt your Will?

Mrs. *Rawlins.* To be ſure it was againſt my Will.

Hartwell. Did you ſee me, Madam, at the *Vine* Tavern the Time that you were confined there?

L. C. J. *Holt.* Did you ſee *Hartwell* at the *Vine* Tavern before you were married?

Mrs. *Rawlins.* Yes, Mr. *Hartwel*, you may remember that you were once in the Room where I was: I will give you an Inſtance of it; you were ſmoaking a Pipe of Tobacco; Mrs. *Baynton* ſaid to you, What would you have with her? You ſaid, I was the Priſoner.

L. C. J. *Holt.* Did they take the Bail that was offered?

Mrs. *Rawlins.* Mr. *Hartwell* ſaid, he would conſider it with Mrs. *Baynton*; and they all went out and left me alone by my ſelf. Mrs. *Baynton*, after they had conſulted together, came in and told me that they refuſed the Bail.

Mrs. *Baynton.* When you were left by your ſelf, Mrs. *Rawlins*, if you had not a mind to marry Mr. *Swendſen*, why did not you make your Eſcape.

L. C. J. *Holt.* Did ſhe come there by her Conſent?

Mrs. *Baynton.*

Mrs. *Baynton.* No, my Lord, but when ſhe was left to her ſelf, ſhe might have eaſily got away.

L. C. J. *Holt.* Mrs. *Rawlins*, You were left alone in the Room, Was there any Propoſal of your Marriage to Mr. *Swendſen* made before that?

Mrs. *Baynton.* My Lord, if I may have leave to ſpeak, they contracted Friendſhip almoſt a Month before.

L. C. J. *Holt.* Mrs. ſtay your Time. (To Mrs. *Rawlins*,) Conſider the Queſtion.

Mrs. *Baynton.* My Lord, the Ring was bought before ſhe was left alone, ſhe knows it very well, and was looking upon it when I came into the Room again.

L. C. J. *Holt*, To Mrs. *Rawlins.* Had you the Ring before that?

Mrs. *Rawlins.* Not as I know of, my Lord.

Mrs. *Baynton.* You had the Ring upon your Finger, and ſaid, it was a very handſome one; but I had bought it a little too wide for you.

Mrs. *Rawlins.* It is very ridiculous; I ſaid no ſuch Thing.

L. C. J. *Holt.* She was left in the Room alone, when you both went out; but it ſeems it was upon her Deſire to be Bailed, and therefore ſhe would not eſcape.

Mr. Serj. *Darnel.* Yes, yes, it was with the Intent to be Bailed that ſhe did this.

L. C. J. *Holt.* Mrs. *Baynton*, it is now Time for you to make your Defence.

Mrs. *Baynton.* My Lord, I will. Mrs. *Busby*, when Mr. *Swendſen* came to her Houſe firſt, called him her dearly beloved Likeneſs; Did not ſhe ſay ſo Mrs. *Rawlins?*

L. C. J. *Holt.* Did you ever hear Mrs. *Busby* call Mr. *Swendſen* her dearly beloved Likeneſs?

Mrs. *Rawlins.* My Lord, I deſire ſhe may anſwer for her ſelf.

Mrs. *Baynton.* Pray, My Lord, let her ſtand by her ſelf a little, that no body may ſpeak to her.

L. C. J. *Holt.* Did you ever hear her ſpeak of Mr. *Swendſen*, that he was her dearly beloved Likeneſs?

Mrs. *Rawlins.* Yes, my Lord; I do not know but ſhe might ſay ſo.

L. C. J. *Holt.* What, when Mr. *Swendſen* was by?

Mrs. *Rawlins.* No, my Lord.

L. C. J. *Holt.* Do you remember that you ever heard Mrs. *Busby* call him ſo?

Mrs. *Rawlins.* Once, my Lord, to Mrs. *Baynton.*

L. C. J. *Holt.* What ſay you Mrs. *Busby*, did you call him ſo?

Mrs. *Busby.* My Lord, I thought him very much like my Husband in one Part of his Face, and Mrs. *Baynton* her ſelf called him my beloved Likeneſs.

Mrs. *Baynton.* My Lord, How could I call him hear beloved Likeneſs, and never ſaw her Huſband with my Eyes?

L. C. J. *Holt.* Well, what Queſtions will you ask?

Mrs. *Baynton.* My Lord, I will ask Mrs. *Rawlins* ſeveral Queſtions. The Second *Sunday* when I was at their Houſe, Mrs. *Rawlins*, you know you ſtaid at home, and I did ſo too; Did not you ſay then, that you wiſhed Mr. *Swendſen* was there, when they were all at Church, did not you ſay ſo? Remember you are upon your Oath.

L. C. J. *Holt.* Upon your Oath, do you remember any ſuch Thing?

Mrs. *Rawlins.* No, my Lord; and I would not for all the World ſay any Thing but the Truth.

L. C. J. *Holt.* Did you, or did you not?

Mrs. *Rawlins.* Indeed, my Lord, I do not remember that ever I ſaid any ſuch Word.

Mrs. *Baynton.* Mrs. *Rawlins*, did you not come to my Bed-ſide often, and kiſs and hug me, and would be talking with Pleaſure of Mr. *Swendſen?*

L. C. J. *Holt.* Do you remember that you ſat at her Bed-ſide, and ſpake of Mr. *Swendſen*, and kiſſed and hugged her?

Mrs. *Rawlins.* My Lord, indeed Mrs. *Baynton* did much talk of her Brother.

L. C. J. *Holt.* But did you talk of her Brother?

Mrs. *Rawlins.* My Lord, if I did ſay any Thing, I did not ſpeak with a Deſign to have him; it may be I might do ſo.

Mrs. *Baynton.* Mrs. *Rawlins*, did not you bid me to tell him, that there was a good Lady, that had her Fortune in her own Hands, and at her own Diſpoſal, that would make him a very good Wife? Did not you tell me this?

Mrs. *Rawlins.* I did not ſay ſo; but ſaid there was a very good Lady that would make a very good Wife whenever ſhe married; but did not ſay, that ſhe would make him a good Wife.

Mrs. *Baynton.* Mrs. *Rawlins*, Have not you been the moſt uneaſy Woman in the Word, when he did not come to Dine at Mrs. *Nightingale*'s?

L. C. J. *Holt.* Speak out.

Mrs. *Baynton.* My Lord, Mr. *Swendſen* had a Cold, and ſhe told me, ſhe could not be eaſy till he was cured of it.

Mrs. *Rawlins.* I never ſaid ſuch a Thing. Can you ſay ſo Mrs. *Baynton?*

Mrs. *Baynton* My Life is upon it, and I will not for my Life ſay any Thing but the Truth.

L. C. J. *Holt.* Did you expreſs any ſuch Thing to Mrs. *Baynton*, of your Uneaſineſs till Mr. *Swendſen* had got rid of his Cold?

Mrs. *Rawlins.* No, my Lord.

Mrs. *Baynton.* But, Madam, Did not you ſeek to tell me theſe Things by your ſelf? You told me, you had a great deal of ill Uſage; and told me, you lived more like a Servant than any Thing elſe: You ſaid, that when there was another Lodger there, becauſe you went to ſee her in her Room, you were chid ſeverely for it, and charged never to go near her.

Mrs. *Rawlins.* I do not know but that I might do it.

L. C. J. *Holt.* But why did you do it?

Mrs. *Rawlins.* My Lord, I can give you no Account.

L. C. J. *Holt.* Did you bid her tell him, that you knew a Gentlewoman, at her own Diſpoſal, that would make him a very good Wife?

Mrs. *Rawlins.* My Lord, I do not know but that I ſaid to Mrs. *Baynton* I wiſhed her Brother a very good Wife.

L. C. J. *Holt.* But did you ſay, that you knew a Gentlewoman, at her own Diſpoſal, and a Fortune, that would make him a very good Wife?

Mrs. *Rawlins.* My Lord, I did not ſpeak with a deſign to marry her Brother, but was reſolved to take the Advice of my Friends.

Mrs. *Baynton.* Did not you ſay, that you wiſh'd your ſelf Mr. *Swendſen's* Wife, ſeveral Times?

L. C. J. *Holt.* Did you ever tell her, that you wiſhed your ſelf *Swendſen*'s Wife?

Mrs. *Rawlins.* My Lord, I don't know whether I did or no.

L. C. J. *Holt.* How came you to have ſuch a good Opinion of Mr. *Swendſen?*

Mrs. *Rawlins.* Mrs. *Baynton* told me he was a very good temper'd Gentleman, and never out of Humour.

L. C. J. *Holt.* Would you marry a Man for his good Humour only?

Mrs. *Rawlins.* I never had married, if there had not been a Force put upon me.

L. C. J. *Holt.* Did you tell Mrs. *Baynton*, that you would never marry, but by the Conſent of your Friends?

Mrs. *Rawlins.* Yes, I did.

Mrs. *Baynton.* My Lord, I never heard her ſay ſo in all my Life.

L. C. J. *Holt.* Did you tell her, notwithſtanding what you ſaid of Mr. *Swendſen*, that you would never marry without the Conſent of your Friends?

Mrs. *Rawlins.* My Lord, I did often ſay, that I would never marry without their Conſent.

Mrs. *Baynton.* Mrs. *Rawlins*, did not you, when you were acquainted with Mr. *Swendſen*, ſlight Mr. *Pugh?*

L. C. J. *Holt.* Did you ſhew any diſlike of Mr. *Pugh*, upon *Swendſen*'s Account?

Mrs. *Rawlins.* My Lord, I cannot tell; if I did ſhew any Ill-will to Mr. *Pugh*, it was not with a Deſign to have Mr. *Swendſen.*

L. C. J. *Holt.* Hath there been any Courtſhip carry'd on betwixt Mr. *Swendſen* and you?

Mrs. *Rawlins.* My Lord, no more Courtſhip to me than to all the Family; my Lord, I did not perceive that Mr. *Swendſen* ſhewed me more Favour than any in the reſt of the Family.

L. C. J. *Holt.* Have you any more Queſtions, Mrs. *Baynton?*

Mrs. *Baynton.* When Mr. *Swendſen* was walking in the Garden, did not you ſay, that you would go and walk with him, but that they would take notice of it? But pray, ſaid I, do not, you may make them angry by it. Did not you ſay that you would go up, and look out of the Window, with Expectation to have been called down by me? Did not you walk with Mr. *Swendſen*, and diſcourſe with him about the Things of Love, and he ſaid, he would have no body but you, and you likewiſe ſaid, that you would have no body but him?

L. C. J. *Holt.* Were you alone with Mr. *Swendſen*, at that Time, in the Garden?

Mrs. *Rawlins.* I think I was with him in the Garden at that Time, but not alone.

Mrs. *Baynton.* My Lord, ſhe was alone with Mr. *Swendſen* in the Garden ſeveral Times.

Mrs. *Rawlins.* I can ſpeak it upon my Oath, that I was never in the Garden with Mr. *Swendſen*, but that Time.

Mrs *Baynton.* Did not you ſay that you would have no body but Mr. *Swendſen?*

Mrs. *Rawlins.* No, I never ſaid any ſuch Thing.

Mrs. *Baynton.* What made you go up Stairs, and cry for an Hour together; and ſaid to my Servant, that you would have your Belly full of crying, before you went away: *Betty* can teſtify this, ſhe is in the Court, but muſt not be heard.

L. C. J. *Holt.* She may be called, if you will.

Mrs. *Baynton.* Pray Mrs. *Rawlins*, did you not once come up to me, and ſaid you had been twice there, and wiſhed that you could ſee Mr. *Swendſen*, and that you could not be eaſy without his Company?

Mrs. *Rawlins.* As I am upon my Oath, I never ſaid ſuch a Thing.

Mrs. *Baynton.* Mrs. *Rawlins*, did not you ſay a Hundred Times, that you loved Mr. *Swendſen*, above any Man in the World?

Mrs. *Rawlins.* I never ſaid any ſuch Thing in my Life.

Mrs. *Baynton.* Did not you peel Walnuts for Mr. *Swendſen*, and deſire me to carry them to him?

Mrs. *Rawlins.* I never did ſo.

Mrs. *Baynton.* My Lord, I would have her asked, whether ſhe conſented to be taken away, directly, or indirectly?

L. C. J. *Holt.* What ſay you to that Mrs. *Rawlins?*

Mrs. *Rawlins.* My Lord, It was all againſt my Knowledge and Will, I never conſented to it.

Mrs. *Baynton.* Mrs. *Rawlins*, is not this true, that you pulled your Ring from your Finger, and gave it me to have a Wedding Ring made by it, which diſcovered your free Conſent to the Marriage.

Mrs. *Rawlins.* No, Mrs. *Baynton*, do you think that I would have given any Manner of Conſent to be married to him, without the Advice of my Friends, if I had not been forced to it.

Mrs. *Baynton.* Did not you ſend all Mr. *Pugh*'s Letters back again, and deſired him in your Letter to come no more at you; and that you would have nothing to ſay to him, and that if he came he would put you in ſuch a Fright, that you would not be capable of ſeeing him.

L. C. J. *Holt.* Did you tell her ſo?

Mrs. *Rawlins.* I do not remember that I told her any ſuch Thing.

L. C. J. *Holt.* Did you ſend back Mr. *Pugh*'s Letters?

Mrs. *Rawlins.* I do not remember that I ſpake any Thing to Mrs. *Baynton*, tho' I did ſend back the Letters.

L. C. J. *Holt.* Why did you ſo?

Mrs. *Rawlins.* It was not upon Mr. *Swendſen*'s Account that I did ſo.

L. C. J. *Holt.* Do you remember that you repeated to her any of the Contents of a Letter that you had written to Mr. *Pugh*, about ſending back his Letters.

Mrs. *Rawlins.* No, my Lord, I did not.

Mrs. *Baynton.* My Lord, I had it from her own Mouth, elſe how could I have known of it? I did not know it, till ſhe told me. Mrs. *Rawlins*, how can you ſay you told me not theſe Things?

Mrs. *Rawlins.* No, Mrs. *Baynton*, I did not.

Mrs. *Baynton.* Mrs. *Rawlins*, you do not ſay true. I never knew nothing but what I had from her own Mouth.

L. C. J. *Holt.* You ſent his Letters back again, pray upon what Account did you do ſo?

Mrs. *Rawlins.* It was upon Things that we heard of Mr. *Pugh*, that was not very handſome. Mrs. *Busby* can tell the ſame.

L. C. J. *Holt.* Did the Courtſhip break off?

Mrs. *Rawlins.* My Lord, it was but the Day before this Thing happen'd.

Serj. *Darnel.* Mrs. *Busby*, did you know of the ſending back the Letters? And who was it that put Mrs. *Rawlins* upon ſending of them back?

Mrs. *Buſby.* Yes, Sir, it was by our Advice.

Serj. *Darnel.*

Serj. *Darnel.* Whoſe Hand was it that wrote the Letter?

Mrs. *Busby.* Mrs. *Berkley.*

Serj. *Darnel.* Was it by her Inclination and Conſultation of her Friends?

Mrs. *Baynton.* Had not you a Miſtruſt, that there was Love betwixt Mr. *Swendſen* and Mrs. *Rawlins*?

Mrs. *Busby.* I had no Miſtruſt of any ſuch Thing.

Mrs. *Baynton.* Why did you tax me with it then?

L. C. J. *Holt.* When was this?

Mrs. *Baynton.* My Lord, it was at the Limner's; I heard ſomething as if Mrs. *Rawlins* ſhould ſpeak Words of Diſcouragement to Mr. *Pugh.* Mrs. *Buſby*, when I told her of it, ſhe denied it, and ſaid, Mrs. *Baynton*, I do not know this. But here is Mrs. *Rawlins* her ſelf, and ſhe ſhall anſwer for her ſelf, if ſuch a Thing is: She thought, if there was any Strangeneſs between Mrs. *Rawlins* and Mr. *Pugh*, it was occaſion'd by Mrs. *Rawlins*'s Love to Mr. *Swendſen.* When they aſked my Advice of the Thing, Mrs. *Rawlins* and Mrs. *Buſby* told me, that Mr. *Pugh* had Three or Four Thouſand Pound Stock: I ſaid, if Mr. Mr. *Pugh* had ſuch a Love for Mrs. *Rawlins* as he pretended to, that he wou'd do well to have drawn out One Thouſand Pound, and given it to the young Woman.

L. C. J. *Holt.* Mrs. *Baynton*, have you any thing to aſk?

Mrs. *Baynton.* Perhaps I may have more to ſay, but I am in Confuſion, my Lord: Mrs. *Busby*, as well as Mrs. *Rawlins*, was never eaſy, but when Mr. *Swendſen* was there.

L. C. J. *Holt.* Mrs. *Rawlins*, upon the Oath that you have taken, did you conſent to your being taken away after the manner as you were, or gave any Encouragement to Mr. *Swendſen*?

Mrs. *Rawlins.* No, my Lord, I do not know that I gave him any manner of Encouragement.

Mrs. *Baynton.* My Lord, ſhe gave him all the Encouragement imaginable.

L. C. J. *Holt.* I pray, Mrs. *Baynton*, do not put your ſelf into a Paſſion: I ſpeak in Favour to you; you will not deliver your ſelf ſo well in Paſſion, as without.

Mrs. *Baynton.* She lay baiting of me Night and Day, and always ſpeaking to me of her Love to Mr. *Swendſen*; and to hear her ſpeak the quite contrary, really it moves me, my Lord.

Betty, *Mrs.* Baynton's *Maid, called.*

Mrs. *Baynton. Betty*, have not you told me, that Mrs. *Rawlins* ſaid ſhe would fill her Belly with Crying before ſhe went, and that ſhe would enquire for Mr. *Swendſen*?

Betty. No, I ſaid no ſuch thing.

L. C. J. *Holt.* Speak the Truth, without being biaſs'd by one ſide or other. Did you hear that ever Mrs. *Rawlins* went into the Chamber to cry, or enquire for Mr. *Swendſen*?

Betty. No, my Lord, I never heard it.

Mrs. *Baynton.* My Lord, I never was the Woman that aſked this Maid any Queſtion any way, but ſhe frankly told me all this; and ſhe often ſaid, that ſhe was ſure Mrs. *Rawlins* had a very great Kindneſs for Mr. *Swendſen*: And one Day ſhe hearing of ſuch a Noiſe of Laughing, and the Doors flinging, that ſhe went down Stairs to ſee what was the Matter; Mr. *Swendſen* was there then, and Mr. *Pugh.* Mr. *Pugh* was ſo offended at Mrs. *Rawlins*'s Mirth, that he went away in a great Diſtaſte; and ſhe ſaid, that Mrs. *Rawlins* was never eaſy, but when ſhe was talking of Mr. *Swendſen.*

Mrs. *Baynton. Betty*, did not you ſay, that ſhe aſked you ſeveral times of Mr. *Swendſen*, and wiſhed he would come and dine with them?

Betty. I never heard her but once.

Mr. Swendſen's *Jury return to give in their Verdict all Twelve.*

Gentlemen, are you agreed in your Verdict?

Anſ. Yes.

Who ſhall ſay for you?

Anſ. The Foreman.

Eraſmus Johnſon, *a* Dane, *and one of the Jury, ſaid*, He was not ſatisfied.

Johnſon. If it ſhall pleaſe you, my Lord, I am not ſatisfied; I do not find, from any of the Evidence that hath been given, that he was privy to the Arreſt; my Conſcience will not let me comply with the reſt, that he is Guilty.

L. C. J. *Holt.* What Kind of a Conſcience have you? Do you not believe what the Witneſſes have ſaid? Have you any Evidence that Mrs. *Rawlins* went away with her own Conſent?

Johnſon. I do not find, my Lord, that it was done by him.

L. C. J. *Holt.* Did not he go to *Hartwell*'s Houſe, and from thence, while ſhe was under the Force, went with her to the *Vine* Tavern, where he married her? Which was a forcible taking by him.

Johnſon. But, my Lord, it was with her Conſent; elſe how could he marry her?

L. C. J. *Holt.* Tho' ſhe did conſent to the Marriage; yet if ſhe was taken by Force, it is the ſame Offence.

Foreman. My Lord, he did agree that this was a Point of Law, and would leave it with your Lordſhip; he believes ſhe was forced, but he thinks he was not privy to the Woman's Actions that he employed.

Johnſon. My Lord, I do not ſee there were any Evidence againſt him.

L. C. J. *Holt.* When the Bayliffs were employed to take her, it appears by the Sequel, that it was with an Intent that he might marry her: What can be plainer? Govern your ſelf by Reaſon.

Johnſon. I believe that there was a Force by the Bayliffs.

L. C. J. *Holt.* Did not he take the Advantage of the Force? And was that to any other Purpoſe, but for him to marry her? There was no Cauſe of Action either againſt her or Mrs. *Busby.*

Johnſon. It proved ſo, my Lord.

Foreman. My Lord, he would know whether he were in that Statute, in Point of Law, if this Maid did conſent to it?

Judge *Powel.* He was guilty of the Thing; he was conſenting to it afterward.

Johnſon. They were in Streets and Houſes before they married; and ſo, if ſhe had not conſented, ſhe might have cried out.

Judge *Powel.* Did not he go to *Hartwell*'s Houſe, and to the *Vine* Tavern?

Johnſon. I cannot believe him Guilty, as I would anſwer it before God and the World.

L. C. J. *Holt.* Pray conſider, do not give a Verdict contrary to plain Evidence.

Johnſon. By all the Circumſtances, ſhe was as willing as he: All that I can ſay to it, my Lord, is, that he had ſomething of Connivance with this Woman.

Foreman. He believed that all along.

Johnſon. I ſay, Mr. *Foreman*, at the Beginning there was ſuch a Thing, as was done by Mrs *Baynton*, without his Knowledge.

Foreman. He did conſent before to take your Lordſhip's Judgment; that if your Lordſhip be of Opinion that he was concern'd in the firſt Force, then that will carry it.

Johnſon. I do not know that ſhe complain'd to any body, my Lord: I do not ſpeak for any Favour or Affection, my Lord; but 'tis merely out of a tender Conſcience.

Foreman. He agreed, that if the firſt Force was within the Statute, then he would comply; and that we came away upon, to have your Lordſhip's Opinion. He believed, Mr. *Swendſen* did employ the Woman.

L. C. J. *Holt.* Do you agree?

Johnſon. I cannot, but I leave it to your Lordſhip's Pleaſure.

Mountague. The Fact he does agree to; he does agree that ſhe was taken away by Force.

L. C. J. *Holt.* Was ſhe taken away by Force?

Johnſon. She was by the Bayliffs.

L. C. J. *Holt.* Did not he take the Advantage of this?

Johnſon. She was under the Force before.

L. C. J. *Holt.* Beſides, Did not you perceive that ſhe conſented for fear ſhe ſhould go to *Newgate*? The Law of *England* ſays, that is a void Conſent, which is obtained out of Fear.

Mr. *Johnſon.* My Lord, I don't know there was any Violence us'd by him either in Word or Deed.

L. C. J. *Holt.* Was not he preſent when Violence was uſed?

Mr. *Johnſon.* Yes, my Lord.

L. C. J. *Holt.* Then was Violence uſed by him.

Mr. *Johnſon.* But ſhe was very well ſatisfy'd both before and after ſhe was Married.

L. C. J. *Holt.* She was under Force, before ſhe was Married; and indeed, all that Night, and afterwards.

Mr. *Johnſon.* She was not hindred to ſend Letters.

Coun. Who would you have carried them, the Bayliffs, or Mrs. *Baynton*?

Mr. *Johnſon.* No, my Lord; but ſomebody for Half a Crown, or a Crown.

L. C. J. *Holt.* It appears very evident, if you will believe Witneſſes, that ſhe was under a Force, before ſhe was Married, when ſhe was Married, all Night after, and the next Day when ſhe was at the *Recorder*'s. If you are not ſatisfy'd, I'll ſay no more, not one Word more.

Foreman. We muſt go my Lord, and have been Faſting all Day, He is prepared for Faſting, if it be for a Day, or two or three.

Judge Powel. The Queſtion is now, Whether you do not believe, upon all this Evidence you have heard, whether this Lady was not under an Arreſt, and taken by theſe Bayliffs?

Mr. *Johnſon.* Yes, I do believe that; but I do not believe Mr. *Swendſen* employed them; all that I ſpeak upon is this, that ſhe had her free Liberty.

Foreman. My Lord, he was reſolved to ſtand by what your Lordſhip ſhould ſay.

Judge Powel. If he did not ſet them to work, yet his Act afterwards made it as bad as if he had actually employ'd the Bayliffs.

Mr. *Johnſon.* I can ſay no more, I muſt agree with the reſt.

Gentlemen, Are you agreed?

Foreman. Yes, my Lord, we are all agreed now.

Then, Is he guilty, or not Guilty?

Foreman. He is guilty, -----And ſo you ſay all. Yes.

What Goods or Chattels, *&c.*?

Foreman. We know of none.

L. C. J. *Holt.* Mrs. *Baynton*, Will you go on?

Mrs. *Baynton.* I hope your Lordſhip will take Notice that my Servant own'd it once.

L. C. J. *Holt.* What was it?

Mr. *Mountague.* Only whether he was to Dine there.

Mrs. *Baynton.* That which I ſaid, my Lord, ſhe ſaid to me.

Mrs. *Baynton.* Mrs. *Rawlins*, Will you be pleaſed to anſwer me to ſome Queſtions?

Mrs. *Rawlins.* I will.

Mrs. *Baynton.* Did not you ſit down in the great Chair in the Dining-Room, and you ſaid, now I muſt go to Bed? Did not you pluck off your Things, and gave them to me, and I gave them to Mr. *Blake*'s Daughter?

Mrs. *Rawlins.* I conſider Mrs. *Baynton*, that you undreſſed me.

Mrs. *Baynton.* You ſat in the Chair, and undreſſed your ſelf, How can you deny it?

Mrs. *Rawlins.* Mrs. *Baynton*, I can deny it, for I did not.

Mrs. *Baynton.* Nay, more than that, when you were in Bed, Did not you call to Mr. *Swendſen*, My dear Huſband, Why do not you come to Bed?

Mrs. *Rawlins.* I ſaid no ſuch thing.

L. C. J. *Holt.* Where was this?

Mrs. *Baynton.* My Lord, it was at Mr. *Blake*'s.

Mrs. *Baynton.* Did not you ſay, Come to Bed my dear Huſband, you muſt love no Body in the World but me?

Mrs. *Rawlins.* No, Mrs. *Baynton*, I did not; I have taken an Oath this Day, and I ſaid no ſuch thing.

Mrs. *Baynton.* Did not you ſay, that you loved him above all the Men in the World?

Mrs. *Rawlins.* No, Mrs. *Baynton*, I did not tell you any ſuch thing.

Mrs. *Baynton.* Did not you ſay theſe Things?

Mrs. *Rawlins.* No, Mrs. *Baynton.*

Coun. Speaking to Mrs. *Baynton*, ſaid, Do you know that ever Mrs. *Rawlins* writ any Letters to Mr. *Swendſen*?

Mrs. *Baynton.* She wou'd; but I would not let her.

L. C. J. *Holt.* Why would you not let her?

Mrs. *Baynton.* I told her I would not carry any Letters to him, but if ſhe deſir'd me to tell him any thing by word of Mouth, I would do it; and, my Lord, when Mrs. *Rawlins* was Arreſted, I going down *Witchſtreet*, the Coach that ſhe was in coming along then, and I ſeeing her in it, that was the only Reaſon that I went into the Bailiff's Houſe. When I came there, ſhe hung about me, kiſſed me, and ſaid ſhe deſir'd me to ſtand by her; when your Lordſhip hears, you will believe me no other than a Friend to her. She begged me not to leave her. I offered Bail to Mr. *Hartwell*, but he would not take it; but ſaid I behav'd my ſelf ſawcily. And when Mr. *Swendſen* came in, ſhe ſaid, now ſhe was happy. Beſides, my Lord, when he was there, he did not deſire her to go out of the Houſe.

L. C. J. *Holt.* If you had no Deſign but for her Good, How came you to Mrs. *Nightingale*'s upon

on ſuch a Deſign, with Pretence that you had a Law-Suit, *&c.*? And why did you carry her out in the Coach, in order to be Arreſted?

Mrs. *Baynton.* My Lord, it was not the firſt Time that they went with me in a Coach; they deſired me ſeveral Times to ſet them down, and I did ſo.

L. C. J. *Holt.* Why did you this? You pretended that you had a Law-Suit, and that you came to Town about it, and it appears not that you had any?

Mrs. *Baynton.* No, my Lord, I did not.

Nightingale. My Lord, it was Mrs *St. John* that recommended Mrs. *Baynton* to me.

L. C. J. *Holt.* We know that.

Mrs. *Baynton.* If I were ſuch a Woman as they repreſent me to be, Why did they not warn me out of their Houſe. Mrs. *Rawlins*, ſay the whole Truth, and remember that you are upon your Oath, I deſire not Favour or Affection. Did not you ſay to Mr. *Swendſen*, This is my own dear Huſband, and this is the Ring that Married us? Did not he begin to ſpeak, and you ſaid to him, hold your Tongue, and let me ſpeak?

Mrs. *Rawlins.* Mrs. *Baynton*, you know I was very much intoxicated, I hardly knew I had a Head.

Mrs. *Baynton*, Mrs. *Rawlins*, you can drink your Glaſs of Wine as well as any Body elſe. Mr. *Swendſen* was often there at Cards, and ſhe was the moſt uneaſieſt Creature in the World when he was not her Partner. Did you not deſire me to let you ſit by him in particular?

Mrs. *Rawlins.* No, I did not.

Mrs. *Baynton.* Mrs. *Rawlins* had ſaid this ſeveral Times to Mr. *Swendſen* to deſire him to ſit by her. We play'd at Cards, and ſav'd the Winnings till it ſhould come to 20*s.* and deſign'd it for a Treat. Did not you ſay you would treat Mr. *Swendſen*, and would ſend for Walnuts and Apples? But I ſaid, No, you ſhall not.

Mrs. *Rawlins.* I did ſend for Walnuts and Apples; but it was not with a Deſign to pleaſure Mr. *Swendſen*?

L. C. J. *Holt.* Mrs. *Baynton*, Why did you ſay Mr. *Swendſen* was your Brother?

Mrs. *Baynton.* I never ſaid he was my own Brother.

L. C. J. *Holt.* You ſaid it.

Mrs. *Baynton.* No, my Lord, I ſaid he was my Siſter-in-Law's Huſband.

L. C. J. *Holt.* How was ſhe your Siſter-in-Law.

Mrs. *Baynton.* By Adoption, my Lord.

L. C. J. *Holt.* By Adoption, What do you mean by that?

Mrs. *Baynton.* Mrs. *Rawlins*, if you had no Mind to him, Why did you give him ſuch Encouragement, as to kiſs him, and go betwixt his Legs and kiſs him?

Mrs. *Rawlins.* I take it upon my Oath, that I never did ſo in all my Life.

Mrs. *Baynton.* Did you not love him?

Mrs. *Rawlins.* No, not well enough for to make him my Huſband.

Mrs. *Baynton.* My Lord, it is very hard that all theſe Things that I have ſaid to her, are all true, and ſhe hath made a Reſolution to ſay nothing but No.

L. C. J. *Holt.* Mrs. *Rawlins*, Did you deſign to have Mr. *Swendſen* for your Huſband?

Mrs. *Rawlins.* My Lord, I was threatned to be ſent to *Newgate*, if I did not Marry him. You know, Mrs. *Baynton*, that you ſaid, that if I did not Marry your Brother, they would carry me to *Newgate*.

Mrs. *Baynton.* I never in my Life ſaid any ſuch thing.

L. C. J. *Holt.* Pray Mrs. *Baynton*, give an Account how you have lived?

Mrs. *Baynton.* I never run in any Bodies Debt.

L. C. J. *Holt.* Had you a Huſband?

Mrs. *Baynton.* Yes, my Lord.

L. C. J. *Holt.* How long hath he been dead?

Mrs. *Baynton.* Eight Years To-morrow.

L. C. J. *Holt.* But you have had a Child lately, within this Four Months; Are you Married now?

Mrs. *Baynton.* Yes, my Lord, I am Married.

L. C. J. *Holt.* How do you prove that?

Mrs. *Baynton.* I could give your Lordſhip an Account; but it is not proper now, before the whole Court.

L. C. J. *Holt.* Is it not proper now?

Mrs. *Baynton.* No, my Lord, for ſome Reaſons.

L. C. J. *Holt.* I think it is very proper. Pray give an Account how you have liv'd?

Mrs. *Baynton.* I have a Siſter at *Barbadoes*, that hath been very kind to me.

L. C. J. *Holt.* Was you Married to Mr. *Baynton*?

Mrs. *Baynton.* Yes, my Lord.

L. C. J. *Holt.* Mr. *Hartwell*, Who directed you to take out this Writ againſt Mrs. *Rawlins*, at the Suit of one *Jones*?

Mr. *Hartwell.* My Lord, I was ſent for to the *Star* and *Garter* Tavern in *Drury-Lane*, by Mr. *Holt*.

L. C. J. *Holt.* Where is he?

Mr. *Hartwell.* He is not yet taken. He ſent for me twice before I went. When I came to him, I received Money for a Writ againſt that Lady; on which I ſent my Aſſiſtant for a Writ.

L. C. J. *Holt.* Who was your Aſſiſtant?

Mr. *Hartwell.* (*Pointing to* Spur, *ſaid he was his Aſſiſtant.*) I ſent the Writ to Mr. *Wakeman*, to get him to ſerve it. He was not at home, and I went to him the next Morning. I aſked him whether he would ſerve the Writ, he told me he would; and I told him the ſame that Mr. *Holt* told me, that it could not be done till *Friday* Morning. On *Friday* Morning Mr. *Holt* went with me, and theſe Officers, *Wakeman* and *Spur*. He bid us be ready, and ſaid the Coach was coming. So we ſerved the Writ as we were order'd, and went to the *Star* and *Garter* Tavern in *Drury-Lane*; from thence I carried her to my Houſe. If I had had any Miſtruſt of any bad Deſign, I would have carry'd her back again. But I came forward with her to my Houſe. In a little Time after ſhe had been there, came Mrs. *Baynton*, and one that is gone now, (meaning Mr. *Swendſen*) was ſent for, by ſome Stratagem that I knew not of. They being together, told me, that every thing was agreed of and made eaſy.

L. C. J. *Holt.* What was made eaſy?

Mr. *Hartwell.* The Debt, as I thought, my Lord. When I carried the young Gentlewoman firſt to my Houſe, I left her with my Wife and a young Woman. When I came home again, I found Mr. *Swendſen* and this Gentlewoman there, who told me, that every thing was made eaſy. On which they deſired to go to any Tavern, I knew not where; but they agreed to go to the *Vine* Tavern in *Holborn*.

L. C. J.

L. C. J. *Holt.* Why did you take her from her Friend Mrs. *Buſby?*

Mr. *Hartwell.* It is uſual for Officers to do with Priſoners as they pleaſe.

L. C. J. *Holt.* That is a barbarous Thing to ſeparate them one from another, when you could apprehend there was no Danger of being reſcued.

Mr. *Hartwell.* My Lord, I beg your Lordſhip's Pardon, I have no Counſel but my ſelf; I may ſpeak Things in Point of Law that may prejudice my Life; but as to the Purpoſe I'll ſpeak the Truth.

L. C. J. *Holt.* You made her put on her Maſk; you forc'd her to it.

Mr. *Hartwell.* Mrs. *Rawlins*, Did I force you to put on your Maſk?

Mrs. *Rawlins.* Yes, he forced me, but I would not at firſt; but he forced me. When I cry'd out Murder, he ſaid, Put on your Maſk, and hold your Tongue, or you ſhall go to *Newgate*.

L. C. J. *Holt.* What Writ had you againſt Mrs. *Buſby?*

Mr. *Hartwell.* There was no ſuch thing, my Lord.

L. C. J. *Holt.* You ſaid you had a Writ againſt Mrs. *Buſby*, and another againſt Mrs. *Rawlins*.

Mr. *Hartwell.* My Lord, as to the Writ againſt the young Lady, there was one; I know of no other poſitively.

L. C. J. *Holt.* Why did you refuſe *Holt*'s and *Swendſen*'s Bail.

Mr. *Hartwell.* It was no ſuch thing, my Lord; I cannot help what the People ſwear; I hope to prove to the contrary, both from the beginning to the end.

L. C. J. *Holt.* Why did you part with your Priſoner at the *Vine* Tavern without Bail?

Mr. *Hartwell.* My Lord, I no ſooner came into the *Vine* Tavern, but the Perſon that employ'd me, gave me the Money; which was this Woman, *pointing to Mrs.* Baynton.

Mrs. *Baynton.* You ſaid *Holt* employ'd you. I gave him no Money, my Lord; and he declared, that he never ſaw me before in his Life.

Mr. Parker *called.*

L. C. J. *Holt.* Where do you live?

Parker. I lived at the *Star* and *Garter* then, and Mr. *Holt* was there, who ſent me for Mr. *Hartwell.*

Mr. *Hartwell.* My Lord, when I came there, Mr. *Holt* was drinking, and it was all out but a Glaſs. He aſked me to drink; which I did. Then we went from the *Star* and *Garter* down to the *Mitre* in *Weſtminſter*, which was *Holt*'s Houſe. Being there, and I ſmoaking a Pipe, in came this Lady, *(pointing to Mrs.* Baynton) and gave me Money for a Writ. I ſent my Aſſiſtant for the Writ, and the firſt Perſon I lit of, which was Mr. *Wakeman*, I made uſe of to aſſiſt me in it. When I ſerv'd it at the *Star* and *Garter* Tavern, this Gentlewoman (*pointing to Mrs.* Baynton) aſked me where I liv'd? I ſaid in *Witchſtreet*. Said ſhe, take care of her, (Mrs. *Rawlins*) and take her along with you to your Houſe, or you will loſe your Money. So I carried her to my Houſe, and having Buſineſs elſewhere, I left her with my Wife, and a young Woman to keep her Company. When I came again, I found Mr. *Swendſen* and this Gentlewoman there drinking a Pint of Sack. They told me if I would go to any Tavern, the Buſineſs ſhould be made up. We took Coach and went to the *Vine* Tavern, and there the Matter was made an end of. They told me, that they would ſatisfy me for my Trouble on *Monday* Night, if I would meet them at Mr. *Holt*'s. Away I went, and was taken ill to that degree that I thought I ſhould have died.

L. C. J. *Holt.* How can you prove that ſhe employ'd you.

Mr. *Hartwell.* I believe I ſhall have ſomebody to prove that. But, my Lord, the main Witneſs of mine is not come in, and that is Mr. *Holt*.

L. C. J. *Holt.* He is fled.

Mr. *Hartwell.* But, my Lord, I ſuppoſe his Wife is here. My Lord, I hope you will allow Mr. *Wakeman* to come into the Court, that I may aſk him ſome Queſtions.

J. *Powel.* A Woman cannot be a Witneſs for or againſt her Huſband, Then for what Reaſon ſhould ſhe be called?

Mr. *Hartwell.* What can be more material than my going to *Holt*'s? I have no other Perſons to appear for me?

L. C. J. *Holt.* Did *Holt* firſt employ you?

Mr. *Hartwell.* He firſt ſent for me, my Lord.

L. C. J. *Holt.* Have you any other Witneſſes?

Mr. *Hartwell.* My Lord, I thought they call'd for Mr. *Wakeman.*

Mr. Wakeman *call'd.*

L. C. J. *Holt.* Aſk him what Queſtions you will.

Mr. *Hartwell.* Mr. *Wakeman*, Who was it employ'd me?

Mr. *Wakeman.* He never told me who employ'd him till he came to the *Recorder*'s, and then he told me that this Woman *(pointing to Mrs.* Baynton) employ'd him. The *Recorder* aſk'd me who it was employ'd me? *Hartwell* made Anſwer, and ſaid, I employ'd him; and ſaid likewiſe, that the Woman brought him Money for the Writ.

Mrs. *Baynton.* I never gave *Hartwell* Money, nor employ'd him, nor confeſſed to the *Recorder.*

Mr. *Wakeman* call'd a Witneſs, who ſaid for *Hartwell*, that 'twas Mrs. *Baynton* confeſſed before the *Recorder* upon her Examination, that ſhe gave Money to, and employ'd *Hartwell* to ſue out a Writ againſt Mrs. *Rawlins*, at the Suit of *Wi. Jones* for 20*l.* and gave for Reaſon on further Examination, that the ſaid *Jones* owed Mrs. *Baynton* 20*l.* And he wrote to Mrs. *Baynton* to get Arreſted Mrs. *Rawlins* for 20*l.* due from her to *Jones*; and that on ſuch Arreſt, Mrs. *Rawlins* would pay the Money to Mrs. *Baynton.*

L. C. J. *Holt.* Have you any thing more to ſay?

Mr. *Hartwell.* My Lord, I never ſaw Mr. *Swendſen* before he came to my Houſe with Mrs. *Baynton*, when the young Gentlewoman was there. When I came in, they were drinking a Pint of Sack together. The young Lady was very free to go to the *Vine* Tavern. Madam, Were you not free to go?

Mrs. *Rawlins.* I do not deny but I was free to go.

Mr. *Hartwell.* Did we offer any Rudeneſs to you at that Place?

Mrs. *Rawlins.* No, not then.

L. C. J. *Holt.* That is the thing you are to Anſwer to, your taking her away by Force.

Mr. *Hartwell.* My Lord, I know nothing of it; I cannot help it, my Lord, there is nothing in it.

Mr. *Hartwell.* Mr. *Wakeman*, Did I know any thing of your being with Mr. *Holt* and Mr. *Swendſen* at the *Five-Bell* Tavern?

Mr. *Wakeman.* I don't know that you did.

Mr. *Hartwell.* No, my Lord, I knew nothing of it till laſt *Thurſday* he told me of it.

L. C. J. *Holt.* Who ſent for Mr. *Swendſen?*

Mrs. *Rawlins.* Mrs. *Baynton.*

Mr. *Hartwell.* Mrs. *Rawlins*, Was I in the Houſe at that Time?

Mrs. *Rawlins.* No, I did not ſee you there then.

Mr. *Hartwell.* My Lord, with Submiſſion to your Lordſhip, I underſtand by ſomething I have heard, ſince I have been in Cuſtody, that this Gentlewoman, Mrs. *Baynton*, ſaid to Mrs. *Rawlins*, Shall I ſend for my Brother?

L. C. J. *Holt.* Do you keep a Publick Houſe?

Mr. *Hartwell.* No, my Lord, only a Priſon-Room, but ſell no Drink: This Gentlewoman was in the Parlour all the while.

L. C. J. *Holt.* Have you any thing more to ſay?

Mr. *Hartwell.* Nothing at all, my Lord; I was rul'd by the Perſon that employ'd me.

J. *Powel.* What did you apprehend by this?

Mr. *Hartwell.* She told me there was one gone for; and ſhe ſaid ſhe would bring a Gentleman to pay me the Money.

L. C. J. *Holt.* Mr. *Spur*, What ſay you?

Mr. *Spur.* I know nothing more of the matter, than Mr. *Hartwell* s giving me Money for taking out the *Marſhal* - Court Writ, and I was employ'd by him.

L. C. J. *Holt.* When Mrs. *Busby* cry'd out, did you not ſay, What have you got by your Bawling?

No Anſwer made.

Mr. *Mountague.* We have a few Words to reply, if the Priſoners have done. The Gentlewoman at the Bar inſiſts upon it, that Mrs. *Rawlins* was conſenting to the Matter, was in Love with Mr. *Swendſen*: We think, not only by the Evidence given, but by what they ſay themſelves, that ſhe was carry'd away by Force. Indeed when ſhe was taken into *Hartwell*'s Houſe, there was no body by at that Time, but thoſe ſhe was not afraid of. To conclude; if there was any Conſent by Mrs. *Rawlins*, it was only to have her Bail'd; it was that only that ſhe deſign'd. *Hartwell* ſays, he was only employ'd as a Bayliff by *Holt*: He carry'd them from his Houſe to the *Vine* Tavern: Now, what Occaſion had he to carry them to the Tavern for Bail? We ſhall prove further, that when they came to the *Vine*, *Hartwell* himſelf was ſaid to be the Bail for the Action.

Anne Cotchet *called, and Sworn.*

Mr. *Mountague.* Miſtreſs, pray will you give an Account how *Hartwell* brought the Priſoner there?

Cotchet. Mr. *Hartwell*, when the Coach came, ordered a Pint of Wine for the Coachman. The Drawer ſaid, We draw, and draw, but don't know who will pay for it. Mr. *Hartwell* came to me, and ſaid, it was an Arreſt for 120*l.* that he would ſee us paid.

L. C. J. *Holt.* Was it the Woman in the White Gown that was Arreſted for 120*l.*

Cotchet. Yes, my Lord.

Mr. *Hartwell.* Did you ſee me in Company with the Parſon?

Cotchet. You came down Stairs, and ordered a Pint of Wine for the Parſon, and half a Pint beſides; and told me the Parſon was the Bail.

Mr. *Hartwell.* I did not know that the Parſon was in the Houſe, till I had juſt done my Buſineſs, and was going away. Did you ſee me with the Parſon, Madam *Rawlins?*

Mrs. *Rawlins.* I do not tell you ſo.

Mr. *Mountague.* All that is to be prov'd in this Indictment is, that ſhe was taken away againſt her Will, and afterwards compell'd to marry.

Cotchet. I did not ſee Mr. *Hartwell* after that.

L. C. J. *Holt.* Gentlemen of the Jury, theſe Three Priſoners are Indicted for Felony, upon the Statute made in the Third Year of King *Henry* the Seventh; That they with *Haagen Swendſen* now convicted, and *Thomas Holt* that is fled, did violently and feloniouſly aſſault one *Pleaſant Rawlins*, being ſeized of an Eſtate of Inheritance about 20*l. per Ann.* and poſſeſſed of a Perſonal Eſtate of the Value of 2000*l.* and took her away by Force againſt her Will; and that he, *Swendſen*, did marry her. Now the Queſtion is, Whether the Priſoners at the Bar are guilty of this Crime? Firſt, As to Mrs. *Baynton*, you have heard what an Account is given of her: She was a Perſon that came to lodge at Mrs. *Nightingale*'s Houſe in *Stretton* Grounds in *Weſtminſter*: She went for a Widow, by the Name of *Sarah Baynton.* It ſeems, Mrs. *Busby* and Mrs. *Rawlins* did lodge about Three Years in Mrs *Nightingale*'s Houſe. They being all ſingle, were very well ſatisfy'd one with another. Mrs. *Rawlins* was placed by her Guardian under the Care of Mrs. *Busby*; and has a Perſonal Eſtate of 2000*l.* and 20*l.* a Year. About three Weeks before *Michaelmas* laſt, you hear of one Mrs. *St. John* that was an Acquaintance of one Mrs. *Nightingale*'s, came to her and told her of Mrs. *Baynton*, a well-diſpoſed Gentlewoman, that was come to Town about a Suit of Law, and thought ſhe ſhould ſtay about a Month, and thought that her Houſe was a proper Place for her Lodging, and gave her a very good Character, that ſhe was a Civil Religious Woman, of a good Converſation, and deſired to be near the Church. After ſome Time, Mrs. *Baynton* came her ſelf. She ſaid, as Mrs. *St. John* had done before, that ſhe came to Town about a Law Buſineſs, was a Widow in the *Weſt.* Mrs. *Nightingale*, by reaſon of the Character that was given her, received her into her Houſe. When ſhe was there, ſhe behaved her ſelf very civily for ſome time; ſo that Mrs. *Nightingale* and Mrs. *Busby* were well pleaſed with her, and thought her to be a Gentlewoman of very ingenious Converſation. She tells them ſhe had a Brother that had Intereſt in Shipping; and ſo there was an Invitation of Mrs. *Busby*, Mrs. *Rawlins*, and Mrs. *Baynton*, to go on Shipboard, where they were treated by Mr. *Swendſen.* Mr. *Swendſen* uſed to viſit Mrs. *Baynton*; and ſhe uſed to call him Brother: While ſhe was there, *Swendſen* dined 9 or 10 Times. She had not been there long, before they began to have different Apprehenſions of her from what they had at firſt, and were very uneaſy at her Continuance. Mrs. *Baynton* did apprehend there was ſome appearance of Uneaſineſs; and came to Mrs. *Nightingale* and told her, ſhe had made an end of her Suit of Law, and had no occaſion to ſtay in Town, but would return into the Country. It ſeems Mrs. *Nightingale* and Mrs. *Busby* were well pleaſed with Mrs. *Baynton*'s Warning. Before ſhe went away, ſhe underſtood that Mrs. *Busby* and Mrs. *Rawlins* uſed to go to *Oxendon* Chapel; ſhe came to them and ſaid, ſhe had occaſion to go that way with a Band-Box to her Milliner's; told them ſhe went in a Coach, and if they pleaſed they might go with her, and ſhe would ſet them down at a Place near the Chapel. They accepted her Civility, thinking nothing of any Deſign; and as the Coach was driving along, it was ſtopped by Bailiffs, and all on a ſudden *Hartwell* opens the Coach, and thruſts himſelf into it. Mrs. *Busby* and Mrs. *Rawlins* were not conſcious of any Cauſe of an Arreſt, thought the Arreſt was upon Mrs. *Baynton*, they began to be concern'd for her; but it appeared that 'twas upon them; and then Mrs. *Baynton* ſeemed as much concern'd for them when they were both to be carry'd away; but asked *Hartwell* what it was for? He told them it was no great Matter; but if you and I talk together a little, all will be well.

Mrs. *Baynton* expreſs'd her ſelf to be much concern'd for Mrs. *Busby*; ſhe adviſed her not to talk any Thing with him, without her Friends were nigh. And when they were in the Coach, it was directed to be drove away. Mrs. *Busby* deſired to be carried to *Fleetſtreet* to her Friends; but *Hartwell* would carry her to the *Star* and *Garter* Tavern in *Drury Lane*. Mrs. *Baynton* continued in the Coach until they came thither, and then pretended to go for Mrs. *Busby*'s Friends; and when they were at the *Star* and *Garter* Tavern they were carry'd into a Back-Room. Mrs. *Busby* forced her ſelf with the young Woman into a Fore-Room; then *Hartwell* laid Hands upon Mrs. *Rawlins*, and ſaid ſhe was his Priſoner, and carries her away by Violence, forces her down Stairs, and ſwears at her to put on her Mask, otherwiſe he would carry her to *Newgate*. Mrs. *Busby*, the Priſoner above Stairs, was to go to *Newgate*, as was pretended; but Mrs. *Rawlins* was to go to the *Marſhalſea*. Away ſhe was carried to the Houſe of Mr. *Hartwell*; but Mrs. *Baynton* who pretended, that as ſhe was going by chance that way heard Mrs. *Rawlins* named; thereupon ſhe goes in, and very luckily finds her there, and pretends to pity her Condition, and ſaid ſhe had been with ſeveral of her Friends to be her Bail, but could procure none of them to come. Then ſhe ſaid ſhe would go for her Brother *Swendſen*, who ſhe was ſure would be her Bail. Upon that Meſſage he came, and then Mrs. *Rawlins* was to be carry'd to the *Vine* Tavern. Mrs. *Baynton* went with her thither, as they pretended, to make up the Buſineſs. Then it was propoſed that *Holt* and *Swendſen* ſhould be Bail. *Hartwell* refuſed them as inſufficient: Upon which ſhe was told ſhe was in danger of going to *Newgate*, and Bail could not be taken; and the only way was, that ſhe muſt be marry'd to *Swendſen*; and if ſhe did not marry, ſhe ſhould go to *Newgate*. Mrs. *Baynton* took the Ring from off her Finger, in order to get a Wedding-Ring to be made by it; which being procured, there was a Parſon in the Houſe ready provided with a Clark to do the Office, who came into the Room where the Marriage was made, and ſo ended that Arreſt. From the *Vine* Tavern ſhe is carry'd with Mr. *Swendſen* and Mrs. *Baynton* to *Blake*'s Houſe, and there ſhe was forc'd to Bed: Within an Hour and Half they ariſe again at Seven a Clock at Night; and thus the Marriage was Conſummated. As for Mrs. *Baynton* there is this further Proof upon her, that ſhe did pay *Hartwell* for this very Arreſt, which is prov'd upon her by her own Confeſſion, before the *Recorder*. Then, as to *Hartwell*, he is affected by theſe Circumſtances. Firſt, there was no Proceſs againſt Mrs. *Busby*, but yet ſhe was Arreſted and carry'd to the *Garter* Tavern, where ſhe was kept in Cuſtody until the Evening, and could not procure any Friends to be called to her; and during the time of her being there, Mrs. *Rawlins* was Married to Mr. *Swendſen* at the *Vine* Tavern. And it is further prov'd againſt him, that when the Parſon was come, he told the Mrs. at the *Vine* Tavern, that the Parſon was to be one of the Bail. It is alſo prov'd, that he inſiſted upon very good Bail; for he told the Woman of the Houſe the Arreſt was for 120 *l.* when as it appear'd it was but for 20 *l.* Now you are to conſider what hath been ſaid in their Defence. Mrs. *Baynton* ſays, that Mrs. *Rawlins* was in Love with Mr. *Swendſen*, and did complain of her Confinement and hard Uſage; and that ſhe told her ſhe could help Mr. *Swendſen* to a young Lady at her own Diſpoſal; and that there was one Mr. *Pugh* that made Application to Mrs. *Rawlins*; but ſhe return'd his Letters that ſhe had receiv'd from him: That Mrs. *Rawlins* did ſay, that ſhe could help Mr. *Swendſen* to a Lady that had a Fortune at her own Diſpoſal, which is own'd by Mrs. *Rawlins*; and that by that Lady ſhe did mean her ſelf; but that ſhe had any familiar Diſcourſe with him in the Garden, or that ſhe was Sick for him, and went up and Cried for him, that ſhe denies upon her Oath. And further ſays, that ſhe never intended to do any Thing againſt the Advice of her Friends, or that ſhe had ſet her Love upon him. Then Mrs. *Baynton* charges Mrs. *Busby*, that ſhe had a Kindneſs for her Brother *Swendſen*, becauſe ſhe ſaid he was her beloved Likeneſs. Mrs. *Busby* owns, that he was ſomething like her Husband, and on that Account might innocently call him ſo. As for *Hartwell*, he relies on his being a Baily, and in the Execution of his Office, being employ'd by Mr. *Holt* and Mrs. *Baynton*, and that ſhe paid him for the Writ. Mr. *Holt* ſent for him, and he knew nothing but of Arreſt, and was not privy to any other Deſign. It is prov'd indeed, that Mr. *Holt* did ſend for him. This is the Sum and Subſtance of his Defence. I muſt tell you, that if *Hartwell* was employ'd in this Deſign, in order to take her into Cuſtody to carry on this Marriage, and was privy to it, then he is equally Guilty; but if he did only act as a Baily, and did not know the Deſign, then he is not Guilty. But his Arreſting Mrs. *Busby* againſt whom he had no Proceſs, and taking Mrs. *Rawlins* from Mrs. *Busby* to his own Houſe, and from thence carrying her to the *Vine* Tavern; his pretending that the Warrant was for 120 *l.* when as in Truth it was but for 20 *l.* and his pretending that the Parſon was to be the Bail, though he was not preſent in the Room where the Marriage was, but hard by; yet he was in the ſame Houſe, which is all one, if he knew what Deſign was a-Foot: Theſe are the Things you are to conſider of. As for Mrs. *Baynton*, ſhe pretended ſhe was a Widow, and you hear how ſhe proves it; and when ſhe is taxed with having a Child, then ſhe ſays ſhe hath a Husband. And when ſhe is asked about him, ſhe will give no Account, nor how ſhe ſupports her ſelf. She ſaid indeed ſhe paid every Body their own, and that ſhe has no Difference with any Body whatſoever. She pretended ſhe was Mrs. *Rawlins*'s Friend in what ſhe did; but it is plain by what ſhe owns her ſelf, that ſhe employ'd *Hartwell*, and paid him for the Writ. And her pretending to ſet them down at *Oxenden* Chapel, there it was her Deſign to bring them under that Force to effect this Marriage. I muſt leave it to you to conſider, whether from the beginning to the end ſhe was not an Actreſs and a Manager of this whole Buſineſs. She hath been asked how Mr. *Swendſen* came to be her Brother. Firſt ſhe ſays, he was her deceaſed Siſter's Husband. Then being asked who was that Siſter? She ſaid he was an Adopted Siſter's Husband. It was very extraordinary for her to go to Mr. *Hartwell*'s Houſe to the young Gentlewoman, and pretend that ſhe came by chance, and heard her Name. I muſt leave it to you Gentlemen of the Jury to conſider of the whole Matter: And as for *Spur*, he was an Under-Officer, a Bailiff's Follower, and might be ignorant of the Buſineſs. You have not Evidence enough to make it appear that he was privy to this Deſign, and therefore you are to acquit him; but as to Mrs. *Baynton* and *Hartwell*, if they were privy to this Deſign of a Forceably taking away of Mrs. *Rawlins*, with an Intent to Marry her to Mr. *Swendſen*, as it is plain that he was an Actor, and ſhe an Abetter in the Force; then Gentlemen you are to find them Guilty: If you are not ſatisfied, you are to

acquit them. The Jury went out for half an Hour, and brought in the following Verdicts.

Mrs. Baynton, *Guilty.*
Mr. Hartwell, *Not Guilty.*
Mr. Spur, *Not Guilty.*

L. C. J. *Holt ſaid to* Hartwell, *You have had a very Merciful Jury, let it be a Warning to you for the Future.*

Mrs. *Baynton.* My Lord, I am with Child.

L. C. J. *Holt.* That will be conſidered on *Saturday.*

Saturday, November the 28th.

The Priſoners were called to the Bar to receive Sentence of Death.

Mr. *Sol. Gen.* I pray your Lordſhip's Judgment againſt the Priſoners at the Bar.

Cl. of Arr. Haagen Swendſen hold up thy Hand. Thou haſt been convicted of Felony done by them, and committed on Mrs. *Pleaſant Rawlins*, and the Jury hath found thee Guilty; What have you to ſay for your ſelf, why you ſhould not receive Sentence of Death according to Law?

Mr. *Swendſen.* I could ſay a great deal, but I ſhall ſay but a very little. I do not doubt but the honourable Court obſerv'd how various ſhe was in her Evidence. What ſhe deny'd in my Tryal, ſhe confeſs'd in Mrs. *Baynton*'s; and ſo I leave it to the Court, if there may be an Arreſt of Judgment till the next Term.

L. C. J. *Holt.* Unleſs you can ſhew us ſome Cauſe for it, it will not be granted.

Mr. *Swendſen.* My Lord, She ſaid thoſe Things in her Tryal which ſhe deny'd in mine.

L. C. J. *Holt.* Some Things ſhe mentioned in your Tryal, that ſhe had no occaſion for in hers.

Mr. *Swendſen.* The ſame Things that were in my Tryal were in hers.

L. C. J. *Holt.* There were ſome Things in her Tryal that was not in yours.

Cl. of Arr. Sarah Baynton hold up thy Hand. Thou haſt been Indicted for Felony, and found Guilty. What haſt thou to ſay for thy ſelf, why you ſhou'd not receive Sentence of Death according to Law?

Mrs. *Baynton.* My Lord, I am with Child.

L. C. J. *Holt.* That is no Plea againſt Judgment.

Mrs. *Baynton.* My Lord, I deſire that it may be taken into Conſideration, how that ſhe contradicted her ſelf in her Evidence; that ſhe ſpoke thoſe Things in Mr. *Swendſen*'s Tryal, that ſhe contradicted in mine. I think I have a great deal of Injuſtice; I am as innocent as any Perſon in the Court.

L. C. J. *Holt.* That you did this Thing is moſt apparent; that you deluded this young Perſon, and pretend your ſelf to be a Perſon of Quality, a Religious Woman, and one that come out of the Country about a Law-Suit; that you pretended that this Mr. *Swendſen*, the Priſoner at the Bar, was your Brother, your Siſter's Husband; and all this Falſe Dealing was to bring him in to delude this Woman. It is plain, you had no Suit of Law, as you pretended. It is plain, you took out this Proceſs againſt the young Gentlewoman. It is plain, that you pretended you would ſet them down at a Chapel.

Mrs. *Baynton.* It is not the firſt time, my Lord, that I ſet them down.

L. C. J. *Holt.* But you made uſe of this Stratagem to accompliſh the Arreſt. You have deluded the World by theſe Things; and indeed it is very hard againſt you.

Mrs. *Baynton.* My Lord, they deſired me to ſet them down.

L. C. J. *Holt.* The Licenſe was taken out before the 6th of *November* a conſiderable time.

Mrs. *Baynton.* My Lord, She cannot deny but ſhe ſpoke for it to me. She her ſelf ordered it to be done. My Lord, when I was upon my Tryal, abundance of People prompted her to ſpeak thoſe Things ſhe knew nothing of; Mrs. *Busby* in particular; though I do not queſtion but ſhe her ſelf would have Married Mr. *Swendſen*, for ſhe expreſſed Love for him in calling of him her Beloved Likeneſs.

L. C. J. *Holt.* She ſaid he was like her Husband, and therefore on that Account ſhe might ſay ſo.

Cryer, *Make an O Yes.*

Mr. *Swendſen.* My Lord, my Tryal has already made a great Noiſe in the World; and I do not know but that by this time it may be come to the Queen's Ear, therefore I deſire that your Lordſhip would be pleaſed to make a favourable Conſtruction of it to her.

L. C. J. *Holt.* Well, I do not queſtion but Her Majeſty hath heard of it.

Cryer, *Make an O Yes, while Judgment is given.*

Mr. Juſtice *Powell.* You that are the Priſoners at the Bar, *Haagen Swendſen* and *Sarah Baynton*, you have been both Tryed and Convicted of a very great Offence, for which you are brought to receive that Judgment that the Law requires. You have had a very ſolemn Tryal, and have both been Convicted upon very plain and full Evidence. Your Offence is of a very high Nature; and I am glad that you have had ſuch a ſolemn Tryal, that all People may know how great a Crime this of Fortune-ſtealing is (which is Death by the Law) and may take Warning by you; it may be a great many People do not know how penal this Offence may be, but I hope your Tryal may be a Means to deter others from making uſe of ſuch wicked Practices. Your Offence hath been in a Nation where Property is better preſerv'd than in any other Government in the World. Here it is Death for a Man to take away any Thing, though never ſo ſmall, by way of Robbery: How much worſe is it for you to take away the Child of a Man, and with her all that he hath gotten by his Induſtry all his Life-time, at once? This is moſt certainly a very great Offence againſt the Publick, being ſo great a Violation of Property; and the Injury you have done to this Woman is very great too, and cannot be repaired: All the Satisfaction that can be given, is by taking away the Lives of thoſe Perſons that were the Contrivers of it. You *Haagen Swendſen* have had the Privilege (the Law allows to Foreigners) of a Party-Jury; and I believe, had there been any room for a Jury to bring you in not Guilty, you had not been found Guilty; but the Fact was prov'd ſo plain upon you that they could not poſſibly avoid it. It is true, you inſiſted upon it that you were not preſent at her firſt taking, and that ſhe gave her Conſent to the Marriage. It is true, that you were not preſent when ſhe was firſt taken, but there were ſtrong Preſumptions to conclude that you were privy and conſenting to it, which will render you equally culpable as if you had been preſent. For when ſhe was taken in Cuſtody, ſhe was brought to an Houſe where *Holt* and you were ſeen together; *Holt* being the Man that ſet the Coach, and gave Directions to the Bailiffs when to ſeize her; and beſides, you had a Licenſe prepar'd for your Marriage to her. Theſe are very great Circumſtances of your being privy to the firſt taking. But admitting you were not privy to the firſt

taking, you were privy to her being in Cuſtody under an Arreſt, when you was brought to Bail this Woman; and Word was brought in that they were contented to take your Bail, but excepted againſt *Holt*'s; and when ſhe was told by *Sarah Baynton* ſhe muſt go to *Newgate* unleſs ſhe Marry'd you, you were preſent at all this; and this being done and acted whilſt the firſt Force was continued upon her, is in Law a forcible taking: ſo that you are plainly guilty of a forcible taking. And then alſo if that were neceſſary of marrying of her by conſtraint, ſhe being under Menaces, that if ſhe would not marry you ſhe muſt go to *Newgate*; You your ſelf were conſcious, this was no ſuch Conſent as Marriage requires, ſince that Evening you made Application to a Juſtice of Peace to take an Affidavit from her that ſhe had given her Conſent. When you brought Witneſſes to give an Account of your former Life and Converſation, that ſome Years ſince you were an able Merchant in your Country, one in great Credit, an ingenious Man, and of good Intereſt and Acquaintance there; I confeſs I had great Commiſeration for you, and thought that this Misfortune befel you upon the Account of your Acquaintance with this ill Woman; the Acquaintance with ſuch a Woman will make a rich Merchant quickly poor, will ſoon reduce a wealthy Man to a Morſel of Bread. I am afraid that ſhe hath been a very great Inſtrument in your Ruin.

And you *Sarah Baynton*, when you were ask'd to give an Account of what kind of Life you liv'd, it appear'd to be but a very ſorry one indeed, ſo that I could not but conclude you to be a very lewd Woman. You had Wit and Parts enough which might have been of great Service to you, if you had lived honeſtly; but you made uſe of them to another End, and it is not fitting that you ſhould live longer that cannot live better. You contrived and carried on all this wicked Deſign from firſt to laſt; and that you might the better perform it, you went to a civil Houſe under the Character of a Gentlewoman, that came out of the Country about a Suit of Law. There you pretend to be a very good Woman, and ſeem to be much pleaſed with the Family, becauſe they were ſober People; but your Deſign was to entice and delude this young Woman. Whether your Deſign at the beginning was to commit this Fact, I cannot tell; but being not uſed to this Courſe of Life, you could not wear your Diſguiſe long without Diſcovery; you began to be ſuſpected and to be ſeen through; the Family was very willing to be rid of your Company; which you perceiving, you reſolved you would Atchieve your Deſign before you went. For that End you invite them into a Coach, promiſing to ſet them down where they were going; but inſtead of that, you employ Bailiffs to Arreſt them: for you with your own Hand paid the Bailiff that was to do it; and after they were taken, you pretended to pity them. And when Mrs. *Rawlins* was at Mr. *Hartwell*'s Houſe, you pretended that you accidently and providentially over-heard her Name mentioned in Mr. *Hartwell*'s Houſe, as you paſſed in the Street. You go into the Houſe, and pity her Condition, and propoſe your Brother for her Bail; but inſtead of that, all your Deſign was to bring about this Marriage; and for that end you forced her Ring from her to get another made by it. It was you that told her ſhe muſt go to *Newgate* unleſs ſhe Married your Brother; and afterwards that forced her to Bed. From the Beginning to the End you carried on this wicked Deſign to the Ruin of this young Woman; you have a great deal to anſwer for. I have ſtated this Matter, that you may be ſatisfied that this Fact hath been proved againſt you both very fully, and therefore you can expect no other than an Award of the Puniſhment the Law requires, that is, Death. I hope you will reflect upon thoſe evil Courſes that have brought you to this End. You have but a ſhort Time to live, and therefore it would be well for you to conſider your Future State: You may have better Inſtructions for that than I can give you; therefore I will now proceed to the Sentence, which is,

That you ſhall go hence to the Place from whence you came, and from thence to the Place of Execution, and that there you ſeverally hang by your Necks until you are dead; and ſo the Lord have mercy upon your Souls.

Mr. *Swendſen*. My Lord, now I am bound to do this Woman Juſtice. She hath not been the Contriver of it. It was all done by my Direction; and for her ſake I deſire the Queen may know of it.

L. C. J. *Holt*. Well, that will clear up the Doubt to ſome of your Countrymen, who did think that you were not the Contriver of it.

Mr. *Swendſen*. I deſire, my Lord, that the Matter may be repreſented to the Queen as favourable as you can.

Cl. of Arr. Sarah Baynton, Hold up thy Hand.

Mrs. *Baynton*. My Lord, I am with Child.

L. C. J. *Holt*. Let a Jury of Matrons be ſent for.

They are ſent for. Upon the hearing of her Sentence ſhe fell into Fits.

Cl. of Arr. You the Matrons of the Jury, ſhall view and diligently enquire, and a true Verdict give according to your Evidence, whether *Sarah Baynton* be with Child, quick with Child, or not. So help you God.

The Names of the Jury of Matrons are as follow:

Mrs. *Sarah Johnſon.*	Mrs. *Sarah Webb.*
Mrs. *Chriſtian Walker.*	Mrs. *Dorothy Mordit.*
Mrs. *Suſannah Goff.*	Mrs. *Eliz. Gurnella.*
Mrs. *Mary Herbert.*	Mrs. *Mary Rogers.*
Mrs. *Sarah Randol.*	Mrs. *Jane Smithſon.*
Mrs. *Mary Vere.*	Mrs. *Margaret Leach.*

L. C. J. *Holt*. You the Matrons are to conſider well the Oath you have taken, which is diligently to enquire whether this Woman be quick with Child: If ſhe be with Child, but not quick, you are to give your Verdict ſo; and if ſhe be not quick with Child, then ſhe is to undergo the Execution of the Sentence in convenient Time.

About half an hour after the Jury of Matrons came in.

L. C. J. *Holt*. Are you agreed in your Verdict?

Anſw. Yes.

L. C. J. *Holt*. Who ſhall ſay for you?

Anſw. The Fore-Woman.

L. C. J. *Holt*. Do you find the Priſoner to be with Child, with Quick Child, or not?

Mrs. *Johnſon*. Yes, my Lord, ſhe is quick with Child.

L. C. J. *Holt*. Is this your Verdict?

Mrs. *Johnſon*. Yes, Sir.

L. C. J. *Holt*. And ſo you ſay all?

Anſw. Yes, my Lord.

L. C. J. *Holt*. Hark ye, Mrs. *Baynton*! Theſe Women by their Verdict give you longer Time to prepare you for Death, and therefore I hope you will improve your Time, for the Judgment is paſt, and will be executed ſoon after your Delivery.

THE

The Tryal of RICHARD HATHAWAY, *upon an Information of being a Cheat and Impoſtor, at* Surry *Aſſizes,* March 24, 1702. *Publiſhed by Authority.*

Proclamation was made for all Perſons concerned to attend.

THE Priſoner being brought into Court, and acquainted what Liberty he had to challenge thoſe Gentlemen that were called; he making no Challenges, the Gentlemen that were ſworn on the Jury were,

Charles Bludworth, *Henry Tendall*, *Walter Kent*, *John Burchet*, *John Pettiward*, *Thomas Lowfield*, Eſqs; *William Draper*, *Richard Nicholas*, *Ceſar Bradſhaw*, Eſqs; *John Cater*, *Samuel Pearſon*, *Richard Hammond*, Gent.

The King againſt *Richard Hathaway*, for an Impoſtor.

Surry ſſ. *The King's Attorney-General has exhibited an Indictment againſt the Defendant, by the Name of* Richard Hathaway, *of* Southwark, *in the County of* Surry, *Labourer*; *and the Information ſets forth, That the ſaid* Richard Hathaway *being a Perſon of an evil Name and Fame, and an Impoſtor, and contriving and maliciouſly intending, one* Sarah Morduck, *the Wife of one* Edward Morduck *of* Southwark, *in the ſaid County, Waterman, who for the whole Courſe of her Life was an honeſt and pious Woman, and not a Witch, nor uſing Witchcraft, Inchantment, Charm or Sorcery, to bring into the Danger of loſing her Life, the* 11*th Day of* February, *in the* 12*th Year of the Reign of the King, at* Southwark, *in the ſaid County, in the Preſence and Hearing of divers Perſons, falſly, maliciouſly, deviliſhly, and knowingly, and as a falſe Impoſtor, did pretend and affirm himſelf, by the ſaid* Sarah, *to be bewitched, and by the Occaſion of that pretended Witchcraft, he could not eat, and by the Space of Ten Weeks to faſt, and was affected with divers Diſeaſes*; *and that he by drawing Blood from the ſaid* Sarah, *by ſcratching, ſhould be freed from the ſaid pretended Witchcraft that the ſaid* Richard Hathaway *did then, and there, with Force and Arms, ſcratch the ſaid* Sarah, *and did draw the Blood of her, the ſaid* Sarah, *by ſcratching*; *and thereupon, he, the ſaid* Richard Hathaway, *did then, and there, falſly, maliciouſly, and knowingly, by affirming himſelf to be freed from the ſaid Diſeaſes, by drawing the ſaid Blood, whereas in Fact and in Truth, the ſaid* Richard Hathaway *was never Bewitched, and had not faſted for the Time aforeſaid, nor for any great Time*; *and whereas in Truth and in Fact, the ſaid* Richard, *then, and there, well knew himſelf not to be bewitched by the ſaid* Sarah, *to the great Contempt of our Lord the King and his Laws, to the evil and wicked Example of all others in the like Caſe offending, and againſt the Peace of our ſaid Lord the King, his Crown and Dignity*, &c.

Mr. *Raymond*. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, the Information ſets forth, That the Defendant being a Perſon of an evil Fame, and an Impoſtor, and maliciouſly contriving to take away the Life of one *Sarah Morduck*, the Wife of *Edward Morduck*, who always was a good Woman, and not a Witch, nor uſing Witchcraft, the 11th Day of *February*, in the 12th Year of the Reign of the late King, at *Southwark*, in the Preſence and Hearing of divers Perſons, did falſly, deviliſhly, and knowingly, and as a falſe Impoſtor, pretend and affirm himſelf to be bewitched by the ſaid *Sarah*, and that by reaſon thereof he could not Eat, but had faſted for Ten Weeks, and was alſo affected with divers Diſeaſes and that by his drawing Blood from the ſaid *Sarah*, by ſcratching, he ſhould be freed from his ſaid pretended Bewitching: That the Defendant did thereupon ſcratch the ſaid *Sarah*, and did draw the Blood of the ſaid *Sarah* by ſuch his ſcratching, and thereupon he falſly affirmed, that by drawing the ſaid Blood he was freed from the ſaid Diſeaſes; whereas in Truth and Fact he was never bewitched, nor had he faſted as aforeſaid, and he knew himſelf not to be bewitched by the ſaid *Sarah*, in Contempt of the ſaid late King, and his Laws, and againſt the Peace of his Crown and Dignity.

Mr. *Conyers*. May it pleaſe your Lordſhip, and you Gentlemen of the Jury: This is an Information againſt *Richard Hathaway*, for a Cheat, for endeavouring to impoſe upon the People a Belief, that he had been bewitched by one *Sarah Morduck*, and that as an Effect of her pretended Witchery, he vomited up Nails and Pins, and that he could not ſpeak, nor open his Eyes, and that great Noiſes were heard in the Houſe where he lay, and there could be no Remedy for him, but by his ſcratching and fetching Blood of this *Sarah Morduck*; and by this Means the poor Woman has been very much abuſed by her Neighbours, reputed a Witch, and brought to a Tryal for her Life as ſuch; but that there was nothing but a malicious Deſign in it, will appear by the Evidence that will be produced. This *Richard Hathaway* was for ſome time an Apprentice with one *Welling*, a Blackſmith, in *Southwark*. About *September* laſt was Twelve-month, he gave out that he was bewitched, and he went to this Woman's Houſe and ſcratched her; and the Pretence was, that ſcratching and fetching Blood of her recovered him. The Miniſter of the Pariſh, Dr. *Martin*, hearing that it was noiſed about, that the Defendant had been relieved by ſcratching *Morduck*, came and viſited him. He could neither ſpeak nor ſee, as he pretended; but underſtood what was ſaid to him, and gave Aſſent to what was propoſed to him, by holding up of his Hands. Dr. *Martin* tells him, he heard this Woman had bewitched him, and that his ſcratching of her was the Means by which he was relieved; and

that

that he desired to see the Experiment himself, and therefore had brought *Sarah Morduck* there, and desired him to hold up his Hand, if he understood what he said; which he did. Dr. *Martin* had another Woman there at that Time (tho' that was concealed from *Hathaway*) and *Sarah Morduck*, by the Doctor's Direction, spoke to him, and came to his Bed-side, and the Defendant was by the Doctor bid to scratch her. When he came to scrath, the Doctor took the Hand of the other Person, and put it into the Defendant's Hand, and as soon as he had scratched the other Person his Eyes began to open, and he could speak; and immediately it was made known to himself and the Company, that the Person he had scratched was another Person, and not *Sarah Morduck*. But notwithstanding this, he was not satisfied, but still there was a Prosecution of *Sarah Morduck* for a Witch, and she was forc'd for some time to go and reside in *London*: And there the Rabble got about her and abused her; of which Complaint was made to a Magistrate in the City, and *Sarah Morduck* was had before him, and then *Hathaway* was sent for, and there again scratch'd her; and it was so far credited there, notwithstanding the Account given by Dr. *Martin* of the Experiment he made, that the poor Woman is committed for a Witch, and afterwards brought to a Tryal for her Life; and upon the Tryal it appeared plainly, that all this was a Contrivance, and there was no Evidence to charge her with the bewitching this Man; and after a long hearing, upon a full Evidence, the Jury acquitted her, and the Man was committed for a Cheat. But notwithstanding this Acquittal, he still goes on to persuade People, that he was bewitched; that he had fasted several Days together, and could not eat; and then for a further Conviction that he was an Impostor, and only endeavoured maliciously and falsly to impose this Belief on People, he is about the Beginning of last *November* committed to the Care of a Chyrurgeon, one Mr. *Kensey*, where for Two Days he did not eat; but afterwards his Stomach began to come to him, and when he could get any Victuals privately, he had a very good Stomach, and could Eat and Drink till he was drunk. And it was contrived, that Holes were made into the Room where he was, and the Maid that look'd after him was directed to give him Notice, that she would help him privately to Victuals; and from the second Day after he was there, till the Eleventh Day, he did constantly eat every Day, tho' he pretended he fasted all that Time, and had done so for Fourteen Weeks, and he was seen to eat through those Holes. All this, and much more, will be fully proved by the Witnesses. So that there has been a great Affront to the publick Justice of the Nation by this Proceeding, many having abetted it, and they have put up Bills in several Churches to pray for him against the Tryal, and gathered Money to support him in this false and malicious Pretence.

Mr. *Brodrick*. My Lord, the discovering and punishing such a Cheat as this, is highly necessary; and not only for the Vindicating the publick Justice of the Nation, but for the Sake of Religion it self, which suffers by nothing more, than by the countenancing of indirect Practices, made use of upon a Pretence of maintaining and supporting its Credit. Religion has in it self such Genuine and Native Truth, as must work Conviction upon the Understandings of all Persons, who allow themselves Leisure to consider it without Prejudice: But when Tricks and little Arts are carried on for a Time, and attain a general Credit, and appear afterwards to be what are called *Pious Frauds*, they do far more Mischief than all the Good proposed by such Practices can make amends for. For when Men who are Sceptically inclined, find that the Generality of Mankind run away with Stories of this Nature, and those Facts afterwards prove undeniably false; they carry their Doubts on much too far, and are apt to conclude, that they cannot securely rely upon the Relation of others, and general Consent of Mankind, for the Certainty of any Fact whatsoever. It is therefore the Duty of all Persons, that are concerned for Religion in general, to endeavour to detect such Practices which weaken one of its most solid Foundations.

And, my Lord, we conceive this Prosecution very necessary, in order to the vindicating the Justice of the Nation. Here was a Woman that underwent a solemn Tryal, and upon a full Hearing was acquitted; yet afterwards, notwithstanding the thorough Examination of the Fact, and such an Evidence given as convinced every unprejudiced Hearer of the Innocence of the Defendant, and the Malice and Hypocrisy of the Accuser, such a Spirit did reign, that it was represented that the Defendant had hird Measure; and not only the Jury, but the Court too, were reflected on: Nay, it went so far, that after the Innocence of the Woman appeared by her Acquittal, a Magistrate (whose Name the Witnesses will disclose in their Evidence) gave publick Countenance to this Impostor (for by that Name I will venture to call him) and so far gave Credit to him, that when the poor Woman was abused by the Rabble, and her Life being in Danger, she made Application to that Magistrate for Protection; who, instead of affording it to her, encouraged her Prosecutors, as if she had really been guilty of the Witchcraft laid to her Charge; and considerable Collections were made for this Man, to support his Spirits under the Disappointment he met with in her being acquitted.

This Prosecution was necessary too, upon the Account of the poor Woman, who, unless some Check be put to the unruly Proceedings of unthinking People, is not yet safe in her House, but in Danger to be torn in Pieces: And it was thought most proper, that this Matter should be throughly examined in this Place, where the Scene of his counterfeiting, for the most part, did lie; that prepossessed People might be Ear Witnesses of the Fairness of the Proceeding, and that all Persons might have an Opportunity, if they thought fit, of offering any thing fit to be offered in his Defence.

My Lord, we need not trouble the Court with Evidence tending to prove, that the accused Person is not guilty of Witchcraft: She is acquitted of that, and it ought not to be suffered to be made a Dispute. But our Evidence will go beyond that, not only that there was no Colour or Foundation for the Charge on her of being a Witch; but that the Defendant did maliciously, without any Ground, and contrary to his own Knowledge, charge her with the having bewitched him. And I think our Evidence, all through, will prove this Matter fully upon him, that he was not Bewitched, nay, that he did not believe himself to be so, yet charged and prosecuted her.

The first Part of his pretended Witchcraft shewed it self, by his vomiting Pins: How that Business was managed, and how he was detected in it, the Wit-

nesses

neſſes will declare. And though we are not obliged to endeavour the giving an Account of what it was that induced him firſt to undertake this Impoſture, I think it will appear by the Evidence, that he had ſome Aim and Proſpect of Gain to himſelf. For, upon his firſt pretending to vomit Pins, we ſhall prove he had prepared *a Narrative of his own being Bewitched*; and *he himſelf carried it to a Printer*, that ſo he might bring a Concourſe of People to him: But the Printer being a Man of ſome Underſtanding, look'd on him to be a Cheat, and would not meddle with the Copy. He practiſed his Trick of Vomiting Pins ſeveral times; but pretending to it once, before one who did not take every thing upon Truſt, but was curious enough to obſerve nicely, and ſearch him; *after ſome Reſiſtance, ſeveral Rows of Pins were found in his Pocket.*

The next Diſcovery of his Impoſture, was the Affair wherein Dr. *Martin* was concerned; who brought Two Women to him: The Particulars of which having been already opened, I'll not repeat them. The Doctor put an innocent Deceit upon him, but it was in order to diſcloſe a vile Impoſtor. When the Woman was brought to him to be ſcratch'd, being conſcious to himſelf, how little real Effect the barbarous Experiment would have upon him, the whole Company obſerved, that he felt three or four times from her Hand to her Elbow, before he ſcratch'd, that he might be ſure it was a Woman's Hand: And when he had ſcratch'd, and felt Blood, his Eyes were opened, tho' it was the wrong Woman.

Another Inſtance of his acting a Part, with Deſign to impoſe upon the World, was, when he was carried from the *King's-Bench* to Mr. *Kenſey*'s. It was neceſſarily to be imagined, that if he eat or drank nothing, nothing would come from him, either by Stool or Urine. He conſidered this, and for fear it ſhould be taken notice of, that he diſcharged himſelf after ſo long a Faſt as he pretended; having Occaſion to make Water, he found the Lid of a Box, and making Water in it, put it out of Sight, on the Bed's-Teſter; and the firſt Diſcovery of his Counterfeiting at Mr. *Kenſey*'s, was by the dropping of that Water on the Cloaths of the Bed. After he had been Two Days there, (during which Time he really did not eat) Mr. *Kenſey* not knowing but that his Complexion might incline him to ſuch a Sullenneſs, as to ſtarve himſelf, rather than directly confeſs his Cheat, having firſt examined his Mouth and Throat, and finding nothing there but as it was in all other Men, and that he had not only all other Organs, but that of Swallowing, without any Obſtruction, as other People had, thereupon he framed this Deſign: He took Occaſion to pretend a Quarrel with the Maid-ſervant who lived in his Houſe, within the hearing of the Defendant, and told her, ſhe was as very a Hypocrite as this Fellow; and after warm Words on both ſides, and a ſeeming Reſolution by her that ſhe would quit her Service, the Maſter went away, leaving the Maid and the Defendant together. She, to inſinuate her ſelf into the Defendant, ſaid, Her Maſter was an odd Kind of a Man, a dangerous Man, therefore ſhe would not have the Defendant take any thing from him; and ſaid, ſhe would take care to ſupply him whilſt he ſtaid in the Houſe. Then his Stomach came to him very readily, and he was ſo far from being unable to drink, that he drank Brandy and other Liquors to Exceſs, and this for ſeveral Days. But ſtill thoſe in the Houſe being wary, thought it might be pretended by People who were very willing to believe him, that this happened by the Charm's being diſſolved, and that he was unable to eat before; and therefore it was thought adviſeable to bring in ſeveral Perſons of Reputation, who ſhould obſerve him through a Hole fit for the Purpoſe: Who, after they had ſeen him eat, examined him how long he had been a Faſter? And he made Signs, *that he had faſted Twelve Weeks, and clung up his Belly as a Proof of his Emptineſs, according to his common Practice, though he had in their Sight, juſt before, eaten a plentiful Meal.* So that, Gentlemen, it is evident, that what he did was done maliciouſly, and with a Deſign to deceive and impoſe upon the World. After this, there being ſufficient Proof of the Impoſture, it was thought fit to bring him before a Court of Juſtice; thereupon this Information was exhibited againſt him: And if we prove it, I doubt not but that you, Gentlemen of the Jury, will do that Right to the Government, and to Religion, as to find him guilty of it, that he may be brought to the Puniſhment that ſuch a Crime deſerves.

Mr. *Phipps*. My Lord, I humbly pray your Lordſhip's Indulgence of the ſame Side; and beg Leave to obſerve, this Man was formerly troubled with Fits, and there was a Deſign laid by him and his Friends to create a Belief in People, that thoſe Fits were the Effect of Sorcery and Witchcraft; but whether to get Money, or take away the Life of the Woman, or both, I ſubmit to your Lordſhip's Judgment upon the Evidence. 'Tis certain, they proceeded ſo far as to bring her to a Tryal, and did what they could to take away her Life. And the better to carry on their Deſigns, and to prepare the World to believe the Impoſtor, we ſhall ſhew, that when he had theſe Fits, it was induſtriouſly publiſhed, that he was bewitch'd, and that it was by this Woman; and if he could but ſcratch her, he would be well. Dr. *Martin*, the Miniſter of the Pariſh, hearing of it, came to him; and to make an Experiment to diſcover the Impoſture, brought another Woman with the pretended Witch, and ſaid to *Hathaway*, If you think the ſcratching this Woman, meaning *Morduck* the pretended Witch, will do you any good, hold up your Hand: Which he did. Then the Doctor put the other Woman's Hand into his; and although at that Time he pretended to be Blind and Dumb, and he and his Friends would have had it thought, that he lay under the ſtrongeſt of the Old Woman's Charms; yet he was apprehenſive of what he did, and ſo jealous leſt he ſhould be impoſed upon, and thereby his Impoſture diſcovered, that he felt ſeveral times from the Wriſt to the Elbow, to diſcover whether it was the Arm of the pretended Witch or no, before he would begin ſcratching; and then believing it to be hers, (it being much about the ſame Size) fell to ſcratching, and being told he had fetched Blood, his Eyes were immediately opened, and his Speech reſtored.

The Doctor thinking every body was convinced of this Impoſtor, and believing the poor Woman would be quiet for the future, went away.

But notwithſtanding this Detection, the People were diſſatisfied; and *Welling*, the Maſter of *Hathaway*, and others, being angry at the Diſcovery, purſued the Woman with more Malice than before: Where-ever they found her, they cried out, *A Witch*, and uſed her ſo barbarouſly, ſhe was forced to leave *Southwark*, where ſhe had lived many Years, and alſo her Employment, which had been profitable to her, and to go live in *London*.

Their Malice purſued her thither; and there *Hathaway*, with Soldiers and others, in a riotous manner,

ner, got into the Houſe where ſhe lodged, and would have broke open the Door where ſhe was; but a Conſtable being called in, the Soldiers went off, and *Hathaway* was carried before an Alderman of the City; and the poor Woman and her Friends acquainted the Alderman of the riotous and illegal Proceedings, and prayed that Juſtice might be done upon them. But inſtead of puniſhing them, he was pleaſed to ſay, there was too great Provocation for what they had done; and giving Credit to the Accuſation of *Hathaway* againſt the Woman, ordered her to be carried up Stairs to be ſearched, to ſee if ſhe had any Teats, or other Signs of a Witch, and permitted her to be ſcratched by *Hathaway*, and then committed her for a Witch; refuſing 500*l.* Bail, and diſmiſſed *Hathaway*.

The Woman afterwards was brought to a Tryal at *Guilford* Aſſizes, and was acquitted, and he was committed for a Cheat. And to make more ample Diſcovery of the Impoſture, he was taken to the Houſe of Mr. *Kenſey* a Chyrurgeon, and there he was obſtinate, and would not eat for the firſt two Days; and a Quarrel was feign'd between Mr. *Kenſey* and his Maid, he ſaying ſhe was as bad an Hypocrite as *Rich. Hathaway*, and gave her Warning to be gone. The Maid ſeemed very angry with her Maſter, and ſaid to *Hathaway*, Whatever you do, do not eat any thing that is given you by my Maſter or his Brother, for they are your Enemies; and promiſed ſhe would help him privately to what he wanted. Whereupon he thinking ſhe had been his Friend, and that he was ſafe in her Hands, took Meat and Drink from her from Day to Day, and eat heartily, and drank ſo very plentifully of Strong Beer and Brandy, and was ſo merry, that he play'd on the Tongs, and Danced, and ſhew'd Tricks before the Maid; but when any body elſe offered him Meat or Drink, he refuſed it, making Signs that he could not ſwallow, and ſignify'd to them, that he had faſted all the Fourteen Days that he had been at *Kenſey*'s, and that he had faſted many Weeks before. And as to his vomiting Pins, it will appear to you, that he carried Papers of Pins in his Pocket, to make uſe of on Occaſion. But when he vomited in a Baſon, and his Hands were kept down, and he not permitted to carry them up to the Baſon, there was not one Pin in the Baſon.

I will not trouble your Lordſhip with a Detail of all the particular Inſtances of this Cheat, but will call our Witneſſes; and when we have proved the ſeveral Matters that have been opened, there will be no room to doubt but that the Defendant is an Impoſtor, and the greateſt this Age hath produced.

Mr. *Coniers*. We will firſt call Dr. *Martin*, (*who was ſworn*,) we will go on with our Evidence in the Courſe of Time. The firſt Time that Notice was taken in the Pariſh of this Buſineſs, was in *September* was Twelve-Month. Dr. *Martin*, pray give my Lord and the Jury an Account, Whether you know *Richard Hathaway*, and when was the firſt Diſcourſe of this Witchery.

Dr. *Martin*. *February* laſt was Twelve-Month, (the Ninth Day, to the beſt of my Remembrance) I came to Church in the Afternoon, and after the Curate was gone into the Deſk to read Prayers, I was going into the Pew; but hearing a great Hurly-burly in the Church, I ſent the Sexton to know what was the Occaſion of it. He brought Word that there was a Witch in the Church; ſo the Curate could not go on in reading Prayers; and the Sexton went and brought in one *Sarah Morduck* to me, and after her came a great many of the People into the Veſtry; ſo that tho' it be pretty large, it was preſently filled. And this *Sarah Morduck* came up to me, and told me what was the Occaſion of her being brought there. I aſk'd her how ſhe had behav'd her ſelf amongſt her Neighbours, that ſhould give ſuch Occaſion to deal thus with her. She began to cry, and ſaid, ſhe had given no Occaſion for it. I told her, I had nothing to do to enquire into the Buſineſs, but bid her continue in the Veſtry, the whole Congregation being ſo much diſturb'd, that they would go out of the Church if ſhe ſtaid in it. So I turned every body out of the Veſtry, and locked her in. And Sermon being ended, I came into the Veſtry, but found ſhe was gone; and upon Enquiry, I underſtood the Reaſon was this, The Sexton told me, that ſhe ſaid, if ſhe ſtaid till all the People went out, ſhe ſhould be torn in Pieces, and begg'd of him to let her out while the Pſalm was ſinging after Sermon, that ſhe might go away undiſcern'd, and accordingly ſhe went. Afterwards many of my Pariſhioners made Application to me to go to *Richard Hathaway*, who was ſuppoſed to be bewitched; and told me, that it was taken very ill that I had deferr'd it ſo long. Upon this I went to him the next Day; and meeting his Maſter below Stairs, I aſk'd him what Condition his Servant was in. He ſaid, he was Blind and Speechleſs, and was a very diſmal Object. I ſaid, I deſire to be excuſed, for I did not love to ſee any diſmal Sights. But he ſaid, he was very ſenſible, and knew every one by their Voice. And with that, I went into the Room, and his Maſter (ſpeaking to *Richard Hathaway*) ſaid, Mr. *Martin* is come to ſee you. Says I, *Richard*, I am come to ſee you, and if you know me, hold up your Hand: He did ſo, and took me by the Hand and kiſs'd it. I aſk'd him whether I ſhould pray with him in the Prayers of the Church, and if he deſir'd it, I bid him hold up his Hand: He did ſo, and I prayed with him, and he did ſeem to be affected with it, and lifted up his Hands ſeveral Times. Afterwards I took my Leave of him, and went down; and I diſcourſing with his Maſter for ſome Time, I aſk'd him what he thought was the Reaſon of it; he ſaid, an evil Tongue; and a bad Woman, *Sarah Morduck*, had bewitched him. But how do you know that? His Maſter then told me he had ſcratch'd her, and found Good by it; and ſaid, he was utterly undone by it, and if he did not ſpeak to the Church-wardens to take him off his Hands, he ſhould be ruin'd. And hearing of this Scratching, it came into my Head to try an Experiment too; ſo I went away, but without diſcovering my Intentions. And about Ten-a Clock at Night, to prevent Jealouſies, I went to the Houſe where *Sarah Morduck* lodged, and found ſhe was gone to Bed. I left Word that I deſired to ſpeak with her the next Day: But inſtead of her coming to me, her Brother, Mr. *Herne*, came to me, and thanked me for preſerving his Siſter from the Mob. I gave him the Reaſon why I did that, and I told him then what I intended to do. He anſwer'd me, I am afraid my Siſter will be ſo ſilly that it will fail in the Execution. I bid him leave that to me, I would give ſuch Directions in the Matter, that it was impoſſible for it to miſcarry: So he left me to my Liberty to do what I thought fit. Then, ſays I, when I ſend for her, do you come with her. I went to the Houſe where *Hathaway* lay, and went into the Room, where he lay with his Eyes faſt ſhut, and ſeemingly Speechleſs. I ſpoke to him, *I am informed you have received Benefit by ſcratching* Sarah Morduck *formerly, now if I can get this Woman for you to ſcratch her,*

her, Do you believe by ſcratching her you ſhall receive any Benefit? If you do, hold up your Hand: So he did; and by and by there came a Meſſage that Mr. *Hearne* and the Witch were come. I then deſired Mr. *Bateman*, whom I brought with me for that Purpoſe, to ſit by the Bed-ſide while I went down, leſt any might inform him what was ſaid, or he might over-hear any thing ſpoken below. So he ſate there, and I went down, and I bid them let in as many as would come in; and when the Room was full, the Door was lock'd. I had before met with a poor Woman, whom I order'd to follow me, who received Alms of the Pariſh, deſigning ſhe ſhou'd be the Perſon the Experiment ſhould be try'd on. I told them I deſign'd to try another Woman, and I will make him believe he ſcratches the Witch. The Anſwer was, This will ſignify nothing. *Wellings*'s Wife ſaid, he had ſcratch'd another Woman, and it ſignify'd nothing. Now this was, to the beſt of my Remembrance, one *Willoughby*, who is a very big Woman, and very much unlike *Sarah Morduck*: But I deſired the Satisfaction to ſee it done my ſelf; upon which it was conſented to. Then I aſk'd the Woman I brought about it; I told her I would give her a Shilling if ſhe would let this Man ſcratch her: She flew off, and ſaid ſhe would not ſuffer it for all the World. At laſt ſomebody ſaid, here is a Woman will ſuffer her ſelf to be ſcratch'd; and this was one *Johnſon*. I aſk'd her if ſhe would ſuffer her ſelf to be ſcratch'd; ſhe ſaid ſhe would, if there would come no Damage by it. Says I, whatever Damage you ſuſtain, I will make it good to you; and you being about the Size of *Sarah Morduck*, are a very fit Perſon. She did decline it for ſome time, but at laſt ſhe conſented; and after ſome Inſtructions given to her and *Morduck*, we went up together with many of the Neighbours. *Tho' you cannot ſee*, ſays I, *to* Richard Hathaway, *you can hear that there are many People in the Room; now, before all theſe People, Do you believe that* Sarah Morduck *has done you this Miſchief? If you do, hold up your Hand.* He did ſo. *Do you believe you ſhall be relieved by ſcratching her? If you do hold up your Hand.* He did hold up his Hand. Sarah Morduck, *do you ſpeak to him, that he may know you are the Perſon.* Says ſhe, *What is the matter with you? Do you believe this Woman*, ſaid I, *to be the Perſon that has bewitched you? If you do, hold up your Hand.* He held up his Hand. Then I aſk'd *Sarah Morduck*, Are you willing this Man ſhould ſcratch you? *Yes, with all my Heart, he ſhall have my Hearts Blood, if it will do him any good.* Then, ſays I, Pray give me your Hand. *Here it is.* And inſtead of taking her Hand, I took *Johnſon*'s, and clapt it into his; and I did obſerve, that two or three times he felt from her Wriſt to her Elbow; and I ſaid, I have ſomething elſe to do than to wait on you, (and I ſpoke to him ſomewhat eagerly) if you will not ſcratch, I will be gone. Then he ſcratch'd her, and ſhe whiſper'd me in the Ear, ſhe believ'd ſhe ſhould faint. I ſaw he had razed her Skin, and I ſaid, you have drawn Blood, and you may be ſatisfy'd. With that he left off, and turned on his Back in his Bed. I turn'd out *Johnſon* immediately, and I and *Morduck* ſtood together, and he lay ſtill for ſome time; but I ſaw nothing would do, if I did not work him up. Now, ſays I, I would fain ſee how his Eyes are now; come ſome of you, look, do not his Eyes twinkle? With that both his Eyes were as open as mine are now, and he caught hold of the Apron of *Sarah Morduck*, and look'd her in the Face. Then I told him his Miſtake; and *Johnſon* came in with her Arm bleeding. Says I this is the Woman you ſcratcht, you have not touch'd *Sarah Morduck*'s Arm, nor fetch'd one Drop of Blood from her. The Fellow upon this ſeem'd very much caſt down. Now, ſays I, give way to no Humours, and go about your Buſineſs, and ſerve God and your Maſter. Then I went down, and ſeveral People were ſatisfy'd. Well, ſays I to *Welling*, your Man's Eyes are open now. It's well, ſays he, if his Eyes continue open. He can ſpeak and ſee too now. I do not know, ſays he, it is ſtrange if he ſhould do well after this. Farewel, ſaid I; and I went into *London*. Upon my Return, about Five a-Clock, I enquired about him, and found *there was* a greater Mob in the Houſe than before; and I was accoſted at my firſt coming in by the Maſter and Miſtreſs of that Fellow: What have you done, you have ruined both me and my Family----

L. C. J. *Holt*. Who ſaid ſo?

Mr. *Martin*. The Maſter and Miſtreſs of this Fellow. Why, what Hurt have I done you? You have given it out to be a Cheat. Did you get any Money by it? No, I never did expect it. But pray go and look on him now, he is in a worſe Condition than he was before. Here have been two Doctors, and they will take their Oath that he is bewitched. So I went away; but as I went out, I was ſtopt by *Johnſon*. She cries out, What have you done? What is the matter, ſaid I, Does your Arm feſter? No; but this wicked Woman has ſpread abroad, that by ſcratching me he was relieved, and ſhe is not the Witch, but I am the Witch; and it had reach'd her Husband's Ear, and he was become ſo jealous of her, that he would not have any thing to do with her. I went away after this; and going home, met her Huſband, and gave him all the Satisfaction I could, that his Wife was no Witch. And I was informed the next Day, that *Sarah Morduck* had been dragg'd again to the Houſe, ſome time after I went away, and brought to *Hathaway*'s Bed-ſide, and he ſcratch'd her, and his Eyes were opened, and he eat and drank, and walk'd about. Upon this, I ſent one Evening to him to come to me; and I took him into my Study, and ſaid, What is the Meaning of it, that you make ſuch a Trouble in the Pariſh, to condemn this Woman for Witchery? I ſee no Reaſon for it. Says he, ſhe has done me a great deal of Hurt; ſaid *Hathaway*, ſhe has bewitch'd me. He ſaid, that was the Woman had done him all the Prejudice he laboured under. Then ſays I, you are a poor ſort of Fellow, you muſt get your Living by your Labour; now you had better go into the Country out of her Reach. No, Sir, ſays he, I am bound Apprentice to my Maſter; and if I go, I ſhall be as bad there as I am here: And ſeeing I was bound here, this Pariſh muſt keep me; and if I ſhould go into the Country, they will ſend me back again. Why will you not try? No, I will not. Do you not believe I am bewitch'd? No, I do not. Then, ſays he, I may as well not believe what you ſay in the Pulpit; I may ſay to you, as our Saviour ſaid to the *Jews*, *Tho' you ſee Miracles, you will not believe.* Whereupon, I turn'd him away, and did not think I ſhould have had any thing more to do with him. But about *Eaſter* laſt, Sir *Thomas Lane* ſent to me, to deſire me to come to him; the Witch being then got into *London* for Shelter.

I went accordingly, and when I came, I found *Hathaway*, his Maſter, and ſeveral others there. I found him looking briſkly, and eating heartily, and

I ask'd the Meaning of it. It was answered, That before Sir *Thomas Lane*, he had drawn Blood of *Sarah Morduck*, and that had brought him to himself. I sent in my Name to Sir *Thomas Lane*, and he sent for me in. There was Sir *Owen Buckingham*, and I think, Dr. *Hamilton*. There were several People examined while I was there, about this Person; and after all, Sir *Thomas Lane* desired me to tell what I knew in this Matter. I gave an Account of what I have done here. Says Sir *Thomas Lane*, *Richard Hathaway*, Do you know that Gentleman? Yes. How? I have seen him in the Pulpit. What, no where else? Did you not see him by your Bed-side? No. Was not I with you at your Bed-side? No. All this while he was eating Bread and Cheese; till Sir *Thomas Lane* spoke to him, Lay by your Bread and Cheese, and be not so unmannerly. Says I, this is very unaccountable, that he should not know me; and yet he had said, That after Mr. *Martin* was gone, I was a great deal worse than I was before. This is a very unaccountable Thing, and I desire to know how this is consistent; therefore I do desire that his Master may be called in. And his Master was sent for, and *Hathaway* was going out to call him. No, says I, I desire he may not go out, I will call his Master my self. When *Welling* came in, I ask'd him whether he did not tell me that *Hathaway* was sensible from the Time I came to him? Yes, he was. Now I desire to know how these Things are consistent? And to put this out of doubt, that this Man did see me, the Woman stood at the side of the Bed by me, near the Feet, and he took hold of her Apron readily. How can he come off in this Matter? Says Sir *Thomas Lane*, They tell you he had a most violent Fit after, and that made him forget what was done before. Another Question was ask'd Mr. *Welling*, You know you desired me to get this Servant of yours off your Hands, and that I would speak to the Church-wardens about it. Now I am inform'd, this Servant of yours was going to *Goodman's-fields*, and as he was going, the Press-masters met him, and he being a likely Fellow, they whipt him aboard. Is this true or no? Yes. And then you got a Letter, and went down and fetch'd him up. Yes. Then, says I, How came his Master to be so much concern'd to be rid of him as he pretended; and yet when he might have been rid of his Servant, would not take the Opportunity? To that Sir *Owen Buckingham* answer'd, It was only his Charity for him to fetch him from aboard; he could do no less, considering his Condition: So I came away. In a little Time after, I heard that this *Sarah Morduck* was bound over to the Assizes, and I was Subpœna'd to give my Evidence the last Assizes at *Guilford*.

Then the Indictment was read, upon which Sarah Morduck *was Tried and Acquitted of Bewitching* Richard Hathaway.

Mr. *Coniers*. Dr. *Martin*, pray go on.

Mr. *Martin*. I was Subpœna'd to go to the Assizes; but before the Assizes came on, there were Bills put up in several Churches, and particularly at *Christ-Church*, where I hapned to preach. I read the Bill, *A poor Man being afflicted by an evil Woman, now coming to her Trial, desires the Prayers of this Congregation.* I went down to *Guilford* to the Tryal; and when I came up, I thought all People would be satisfy'd with the Justice that was done. But when I came to Town, I was abused by many People, both openly and privately: *You have the Blood of that innocent Man to lie at your Door; The Woman had been hang'd, if you had not saved her; The Judgments of God will fall on you.* One Woman followed me to the Water-side, and said, I was the Occasion of the Ruin of that innocent Man; for she her self------

L. C. J. Who is this?

Mr. *Martin*. I do not know her, I only give Evidence of the Abuses I underwent.

Mr. *Coniers*. Do you know any thing after the Assizes, how he behaved himself?

Mr. *Martin*. No, Sir, I know nothing of that.

Mr. S. *Jenner*. What was done by other People, ought not to be given in Evidence.

Mr. *Broderick*. If this Man does prove an Impostor, it will aggravate his Crime, if the Consequence be mischievous, and the World be still abused with a Persuasion that he was Bewitched.

Mr. S. *Jenner*. What was done by other People signifies nothing to us.

Mr. *Broderick*. This is very material, for it is a Confirmation that there was a Design carried on----- *(being interrupted.)*

L. C. J. *Holt* to Serj. *Jenner*. What other People did, must not affect this Man. But hear what Answer can be given, you that are the Queen's Council?

Mr. *Broderick*. The Charge of the Information is, That he, as an Impostor, pretended himself to be bewitched by *Sarah Morduck*, to deceive the World, and prejudice the Woman. And what can be more proper Evidence of that Charge, than that altho' he really was not bewitched, yet he had so prevailed upon the Opinions of the People, that they still believe him bewitched, and affronted Dr. *Martin* for being instrumental in her Acquittal: 'Tis all of a Piece, a Continuance of the same Imposture.

L. C. J. *Holt*. This Evidence is proper. He is Indicted for a Cheat, for endeavouring to beget an Opinion in People by his fraudulent Practices that he is bewitched. Now, Dr. *Martin* says, the People were still possessed with such a Belief; and thereupon affronted him, because they thought he was instrumental in having the Woman acquitted. Now, Is not this an Evidence that his pretending himself to be bewitched, begat that Opinion in the People.

Mr. Serj. *Jenner*. What the Doctor has said all along, has been of what others have done.

L. C. J. *Holt*. No, it has been what he saw himself. You say this Man's Evidence is most of what others have said. Not so, He has by himself prayed with him, and tried an Experiment with him upon a wrong Woman.

Mr. Serj. *Jenner*. He tells you what *Welling* said, and others; How does this affect my Client, what another Man, or another Woman said?

L. C. J. *Holt*. He was insulted upon the Account that *Hathaway* pretended himself to be bewitched, blind, speechless, and not able to eat.

Mr. Serj. *Jenner*. My Lord, with Submission, other Peoples censuring the Doctor cannot be brought as Evidence against my Client, unless they make it appear that he had a Hand in it, unless he put them upon it.

L. C. J. *Holt*. What other People have said, abstractedly considered, ought not to affect *Richard Hathaway*; but if there be Evidence that *Hathaway* hath been guilty of Deceit, and a Design to deceive People, Will you not allow it to be given in Evidence, that the People have been deceiv'd? And how came they to be deceived, but by his feigning himself to be bewitched?

Jury-

Juryman. Mr. Serjeant, If you have any Thing to object, we desire to hear what you say, for you speak so low we cannot hear you.

Mr. Serj. *Jenner.* I object to what the Doctor says by hearsay only.

Juryman. I believe that will be little considered by the Jury.

L. C. J. *Holt.* The Information is for an Impostor and Cheat: Now what is that? A Cheat is a Design to impose on the Credulity of others, to induce them to believe a Thing that is not true. Now Dr. *Martin*'s Evidence is what *Hathaway* did, and that People did believe him to be bewitched; and they abused Mr. *Martin*, and told him he had done very ill in the Case of this Woman; and if it had not been for him she had been Condemned.

Mr. *Martin.* I have only one Thing more to say; it was reported that I had been bribed: I was told I had received several Guineas; that the Judge was Bribed and the Jury Bribed, and the Judge would not suffer the Woman to be searched, he being Bribed.

Mr. *Coniers.* Doctor have you done?

Mr. *Martin.* I have.

Mr. *Coniers.* We will next call Mrs. *Johnson* who was scratched.

Mr. *Broderick.* Sir, I think you mentioned a Gentleman that you sent for up? Where is he?

Mr. *Martin.* He is here.

Mr. *Broderick* What is his Name?

Mr. *Martin.* Mr. *Bateman.*

Mr. *Broderick.* We will call him to give an Account of that.

Mr. *Coniers.* We will first call this Woman. Mrs. *Johnson,* Were you at any time with Dr. *Martin* at such time as *Hathaway* pretended to be Bewitched?

Mrs. *Johnson.* Yes.

Mr. *Coniers.* Then pray give my Lord and the Jury an Account of what you know about it.

Mrs. *Johnson.* I went into the Room to see *Sarah Morduck.*

Mr. *Coniers.* What Room?

Mrs. *Johnson.* I was in the Room where Dr. *Martin* fetched her to be scratch'd; and Dr. *Martin* told me, he designed that he should scratch some other Woman; and he desired me to let him scratch me; but I denied him, and said, I was a Wife, and was not willing; at last I consented, and he told me I must not speak when I came into the Room where *Hathaway* was; and he brought me to the Fellow; and he said to him, If you think the Blood of this *Sarah Morduck* will do you any good, hold up your Hand. Which he did. Then he bid *Sarah Morduck* speak to him; which she did. Says he; Are you willing this Man should scratch you? She said, Yes: My Hearts Blood, if it will do him good. So with that he scratch'd me, and *Sarah Morduck* cry'd out. He had razed the Skin off my Arm, but no Blood came presently. Dr. *Martin* desired me not to speak, and I did not; the Blood came afterwards, but none then.

Mr. *Coniers.* Were you in the Room when the Doctor spoke to him?

Mrs. *Johnson.* I went into the other Room; Dr. *Martin* put me out before him.

Mr. *Coniers.* Was you not brought in again?

Mrs. *Johnson.* No. I went in of my own accord.

Mr. *Coniers.* In what Condition was he then?

Mrs. *Johnson.* He looked in this manner, his Eyes staring open.

L. C. J. *Holt.* Were his Eyes shut when you first came and was scratch'd, or open?

Mrs. *Johnson.* No, they were fast shut.

L. C. J. *Holt.* Did he speak then?

Mrs. *Johnson.* No, he said nothing when I came back, till his Eyes were open, and then he said, *O Christ Jesus,* or *O Lord Jesus!*

Mr. *Phipps.* But did he feel your Arm before he scratch'd you.

Mrs. *Johnson.* Yes, over and over.

Mr. *Coniers.* Call *William Bateman.* (*Who appeared and was sworn*) Pray give an Account what you know of this Defendant's vomiting Pins.

William Bateman. About a Twelvemonth ago I went to see *Richard Hathaway.*

Mr. *Coniers.* Were you desired to go to him by Dr. *Martin*?

William Bateman. I can't remember that.

L. C. J. *Holt.* Where do you live?

William Bateman. In *Pembrokeshire.*

Mr. *Coniers.* Then you do not remember any Thing that past then.

William Bateman. I do not say I do not remember any Thing, but I do not remember whether Dr. *Martin* desired me to go to him.

Mr. *Coniers.* Give an Account of what you know about his vomiting Pins.

William Bateman. About this time Twelvemonth, on a *Sunday* Night, a Woman came to Dr. *Martin*'s House to enquire for him. I went to the Door; and the Woman said, If Dr. *Martin* would but come now, he might see *Hathaway* vomit Pins. Can I see him, says I? Yes, says she. So I went immediately; and in the House there were little Chinks that I could see through; and I saw him walk about the House, and heard him talk to the People, and I stood some time to hear him. At last I knock'd, and he came and let me in; and seeing me, he seemed to be troubled, and feigned himself to be in some Pain.

Mr. *Raimond.* You say you look'd through the Chink, How was he then? Repeat that.

William Bateman. He seemed to be as well as he is now.

Mr. *Raimond.* What did you do then?

William Bateman. I knocked, and he let me in; and when I came where the Light was, he knew me; and I said to him, I hear you spew Pins. Yes, says he. Says I, Prithee let me see thee. So he sate on a low Seat, and they gave him something in a Cup, and by drinking this I was to see him vomit Pins; and he took some Drink, but as far as I could perceive he did not swallow any.

Mr. *Coniers.* What was the Effect of it?

William Bateman. He pretended then to be in an Agony, and vomited several times, and there were Pins on the Ground. I had the Room swept very clean, and gave him the same again. He vomited again, and there were abundance of Pins on the Ground again. I believe he vomited Fourteen or Fifteen Times, and I believe there were some Hundreds of Pins on the Ground; but I thought the Pins were dropt from one or other; and I took up some of them, and they were dry, and I took up two or three in a Chain; and I said, I believed those were the Pins that were shewn at our House. No, no, says his Master, these are not the same; and he did endeavour to satisfy me that he did vomit these Pins; so I desired he might have a Pot to vomit in; and I had a Pot brought and made very clean, and I searched his Mouth and found no Pins there; and I held the Pot to his Mouth close, and

he often endeavoured to put his Hand to the Pot, and I would not ſuffer him, for I perceived his Hands often moving to his Pocket. He vomited ſeveral Times, and there were ſome Pins ſcattered on the Ground, but none in the Chamber-Pot. Says I, theſe Pins do not come out of his Mouth; but the People were very preſſing on me to believe they did.

L. C. J. *Holt*. Who were they?

William Bateman. They were all Strangers to me. Upon this I told them I believed he had a Slight of Hand to convey them there, and I took hold of his Pocket. He ſtopt my Hand, and would not let me put my Hand into it. But after ſome time, ſays one, Let him, let him ſearch your Pocket. So I did, and took out ſeveral Things, and among the reſt ſeveral Parcels of Pins, and I believe theſe were they that he convey'd on the Ground.

L. C. J. *Holt*. Did you ſee him take them out of his Pocket?

William Bateman. No, but I took out ſeveral Hundred.

Juryman. What ſort of Shape were they of?

William Bateman. They were of a very odd kind of Shape.

L. C. J. *Holt*. Were they ſtraight, or crooked?

William Bateman. They were crooked in ſtrange Figures, like them on the Floor.

Mr. *Broderick*. And he made a great Difficulty of letting you meedle with his Pocket.

William Bateman. Yes.

Mr. *Phipps*. And when you would not let him put his Hand to the Pot, there were none in the Pot, but only on the Ground?

William Bateman. Yes, Sir.

Juryman. Did you ſee any Pins come out of his Mouth?

William Bateman. No, Sir.

Mr. Serj. *Jenner*. What became of the Pins you ſaw on the Ground; you ſay you ſaw abundance, what became of them?

William Bateman. They were ſwept away.

Mr. Serj. *Jenner*. Who ſwept them away?

William Bateman. Some of the Family.

Juryman. I think he ſays that ſeveral of the Pins were taken up dry, were any of the Pins that were on the Ground dry?

William Bateman; Yes, and I ſaid, theſe Pins did not come from him.

Mr. Serj. *Jenner*. When was this?

William Bateman. About a Twelve-month ago.

Mr. *Broderick*. Now, my Lord, we will ſhew your Lordſhip, that he drew up a Narrative for the Preſs, giving an Account of this Buſineſs. *Call* Richard Ball, (*who was ſworn.*) Mr. *Ball*, pray give an Account what you know of *Richard Hathaway*'s endeavouring to print a Story of his Vomiting of Pins.

Richard Ball. About a Twelve-month ago, in *December*, *Richard Hathaway* brought a Writing, and withal a Diſh-full of crooked Pins, and told us, thoſe Pins he had vomited, and that he had been afflicted by a Woman in *Southwark*, and I think he ſaid he had not eat any thing from my Lord-Mayor's Day.

Mr. *Broderick*. What did he deſire you to do?

R. Ball. To print his Paper. And after he had told this Story, he ſaid he had been with a Woman in *Goodmans-fields*. There was a Boy with him. And he deſired us to print his Paper. It related the Story of his Vomiting of Pins. He ſaid he had taken *Quickſilver*, and it wou'd not move him; and Madam *Goodwin* was mentioned ſeveral times in the Papers, that ſhe had cured him.

Mr. *Coniers*. How came it that you did not print his Paper?

R. Ball. My Maſter ſtood by; ſays he, You look very well; I will have nothing to do with it; I believe you are a Cheat. I believe no ſuch thing, ſays he; and upon that went away. But the next Day there was a Paper printed by ſomebody; and *Richard Hathaway* comes to us afterwards, and ſays, You have printed a Paper, tho' you would not have it of me: But it is not true, ſays he; I can give a better Account.

Mr. *Broderick*. Then he talked very freely to you, tho' he had not eat in Six Weeks before?

R. Ball. Yes, Sir.

Mr. *Broderick*. And he look'd very well?

R. Ball. Yes, Sir; and we wonder'd at it.

Mr. *Coniers*. Call Mr. *Hearne*, (*who was ſworn.*) Mr. *Hearne*, pray give my Lord, and the Jury, an Account what you know of this Matter.

Mr. *Hearne*. About *September* was Twelve-month, my Siſter was fall'n upon by this *Hathaway*, and Scratched and Abuſed in a barbarous Manner; and about Six Weeks after, ſhe was ſcratch'd again. After this we went before Juſtice *Riches*, and Juſtice *Riches* perſwaded them to be quiet, and not to trouble this Woman; and he perſwaded her to remove to ſome other Place. After this there was a Tumult made about her in *Newgate-ſtreet*.

Mr. *Coniers*. Were not you preſent when Dr. *Martin* was with the Defendant.

Mr. *Hearne*. Yes, Sir.

Mr. *Coniers*. Then give an Account of that.

Mr. *Hearne*. I went to Dr. *Martyn*; and Dr. *Martyn* told me that he would try a Stratagem, (to ſee whether he was bewitch'd,) by making him Scratch another Woman. I told him, I was afraid we ſhould be betray'd. Says he, Let me alone to manage it: So I ſaid no more. Says he, Do you go and fetch *Sarah Morduck* to me, and I will go before. So I came with my Siſter to *Welling*'s Houſe where Dr. *Martin* was, and there was a Houſe full of People; and then he ordered the Door to be ſhut; and then Dr. *Martyn* left me at the Bed-ſide, and he got a Woman that was willing to be ſcratch'd. She refuſed at firſt, but afterwards conſented. And then Dr. *Martyn* brought them into the Room where *Hathaway* was; and he ask'd him if he did believe that ſcratching of *Sarah Morduck* would do him any Good; if he did he ſhould hold up his Hand; and he held up both Hands. Says he then to *Sarah Morduck*, Are you willing to be Scratch'd? Yes, her Hearts Blood to do him good. Then give me your Hand, ſays he; but inſtead of hers he took Mrs. *Johnſon*'s Hand, and gave it into *Hathaway*'s Hand. And *Hathaway* took her by the Wriſt, and felt her ſeveral times. Then ſays Dr. *Martyn*, if you will ſcratch her ſcratch her, I cannot wait on you always. Then he fell to work, and Dr. *Martyn* ſaid, he will open his Eyes preſently, there is Blood enough; and he preſently opens his Eyes and catches *Sarah Morduck* by the Apron, and holds her as faſt as he could, and the Woman that was ſcratch'd was gone into the other Room; with all the Strength I had I cou'd hardly looſen his Hands from *Sarah Morduck*. Now, ſays Dr. *Martyn*, you are miſtaken, this is not the Woman you ſcratch'd; and then his Countenance chang'd, and he

he looked like a Fool, he was ſo ſurprized. Then ſays Dr. *Martyn*, Where is the Woman that he ſcratch'd? And I fetch'd *Johnſon* out of the other Room, and ſhow'd him her Arm, that ſhe was the Woman he had ſcratch'd. Says Dr. *Martyn*, I ſee what you are; go and mind your Buſineſs; or to that Effect; and then we went away. This was about Twelve or One a Clock the 11th of *February* And when we were gone, the ſame Day, as ſoon as it was Dark, they got half a Dozen luſty Fellows to go to *Sarah Morduck*'s Houſe, and there they abuſed her.

L. C. J. *Holt*. How do you know that? Did you ſee it?

Mr. *Hearne*. My Lord, I will tell you preſently. When ſhe had had this Miſchief ſhe ſent for me; and when I came, her Shift on her Back was as wet as Muck. She ſent for me, becauſe ſhe had none to aſſiſt her but me, and I found her that Night in that Pickle. They ſaid, as ſoon as we were gone, the Fellow was bad again, and they have put this Trick upon us; but we will have the right Witch to ſcratch her.

L. C. J. *Holt*. Who was at the Houſe that Night that you ſay ſhe was in an ill Condition.

Mr. *Hearne*. There were ſeveral at the Houſe then, Mrs. *Sarah Hays* the Landlady was there, and others.

L. C. J. *Holt*. You ſay they were in a Hubbub, and would have the right Woman ſcratch'd. Who was it that would have it ſo?

Mr. *Hearne*. I heard ſo. But when I came to her, I found her in a lamentable Condition. Then I went to Juſtice *Riches*, and deſired his Warrant to take ſome of them; and he granted it, and I took up one *Osburn*; and when I came with him to Juſtice *Riches*, we had no Body to ſwear that ſhe was lame a-Bed, and ſo he was diſcharged; and Juſtice *Riches* ſaid, if there be no other to prove it on the Tryal you will ſpend a great deal of Money to no Purpoſe, and therefore he let him go. So ſhe was removed to *Paul's-Wharf*, but a Company of Fellows follow'd her thither.

L. C. J. *Holt*. How do you prove that?

Mr. *Hearne*. I heard of it, and I deſired the Landlord to ſend for a Conſtable; he did ſo; and when we came there, all the People made their Eſcape, except *Hathaway* and another Perſon. So then ſhe was carried before Sir *Thomas Lane*; and they telling him that he had vomited Pins, and other Things, Sir *Thomas* was perſwaded to believe it. I told him, theſe Fellows had diſturbed this Woman's Peace, and very much abuſed her. Sir *Thomas*, Will you not let me know who this Man is?

L. C. J. *Holt*. What Man do you mean?

Mr. *Hearne*. *Jones*. I begg'd, Pray let me know this Fellow's Name. Says he, it is no Matter, there was Provocation enough. And then when we were talking of the Pins, Dr. *Hamilton* look'd in *Hathaway*'s Mouth, and found his Mouth very well; and he gave him Beer; and he, when he had taken it, ſtruggled with all his Might to keep it out; then he cry'd out. Let her be ſcratch'd, ſaid Sir *Thomas*. Dr. *Hamilton* ſaid, Forbear a little, let us ſee the Effect of this Beer, and ſo they forbore a little longer. Then they talked again of the Pins, and Dr. *Hamilton* would have her ſcratch'd again; ſo he ſpake to the Woman about it, but ſhe would not conſent, for ſhe ſaid ſhe had been abuſed, and would not be ſcratch'd, unleſs they would ſecure her for the future. But Sir *Thomas* would have her ſcratch'd; and ſo ſhe was; and then when ſhe was ſcratch'd, and he had drawn her Blood, the Fellow bruſtled about like a Cock-Sparrow; and then they call'd for Bread and Cheeſe; and ſo he that before pretended he could not ſwallow any Thing, ſhow'd like an Antick to the People, for he was very greedy. And when he had eaten that, he call'd for more; and *Welling* ſaid, Pray let him not have it, it will do him hurt, becauſe he has not eat ſo long. Then Sir *Thomas Lane* ordered her to be ſtript, and ſhe was ſtript above-Stairs, and then he would commit her to Priſon.

L. C. J. *Holt*. Why? Did any Body ſay ſhe had any Thing extraordinary about her?

Mr. *Hearne*. No. Dr. *Hamilton* ſaid ſhe had nothing about her; I offered a Hundred Pound Security for her; and Sir *Thomas Lane* would not take it. But when Dr. *Martyn* had been with him at Night, I Bail'd her out.

Mr. Bar. *Hatſell*. Was this *Hathaway* dumb when he was at Sir *Thomas Lane*'s?

Mr. *Hearne*. He ſpoke before, and when Sir *Thomas Lane* bound her over to the *Old-Baily*; and all that time he was as well as could be.

Mr. Serj. *Jenner*. Was you at the Aſſizes at *Guilford*?

Mr. *Hearne*. Yes, and gave Teſtimony for her there.

Mr. *Coniers*. My Lord, we have a great many others that were preſent with Dr. *Martyn*; but we have proved that Matter ſufficiently. Now we will ſhow how he behaved himſelf at Mr. *Kenſy*'s. Call Mr. *Kenſy* (*who appeared, and was ſworn.*) Mr. *Kenſy*, Do you know *Richard Hathaway*?

Mr. *Kenſy*. Yes.

Mr. *Coniers*. Was he not committed to your care?

Mr. *Kenſy*. Yes.

Mr. *Coniers*. When was it?

Mr. *Kenſy*. In *November* laſt.

Mr. *Coniers*. Now pray give my Lord and the Jury an Account of what you know of his Faſting.

Mr. *Kenſy*. He was brought to my Houſe the Firſt of *November* laſt about Noon. I went to ſee him at the *King's-Bench*, where about Nine in the Morning I found him in Bed. The Servants in the Priſon told me his Tongue was ſwell'd. At my Requeſt he put out his Tongue, which I found in a very good State and Colour, free from any Induration or Contraction. I obſerv'd the Glands under the Tongue, alſo his Throat, ſo far as I could ſee, free from any preternatural Accident or Impediment. He was brought to my Houſe about Twelve the ſame Day. I kept him in the Room where we dined, and offer'd him Meat and Drink ſeveral Times, which he refuſed. About Eight at Night we put him to Bed, and took his Cloaths out of his Chamber. The next Morning we offer'd him Meat again, and he refuſed to eat; and we brought him his Cloaths, and he was ſurly and would not riſe. At Night I offer'd him a Glaſs of Cordial, which he alſo refuſed. At the ſame time we found his Rug wet, which we diſcovered to be his Urine dropping through the Teſter of the Bed, he having hid his Urine upon it in the Cover of a large Box, through which it dreined. And I threatned to diſcover him, and ſaid, Pray diſcover who ſet you to work in this Matter: I look on you as a poor innocent Fellow, and that you are ſet on by others that have more Wit; but he would diſcover nothing. The next Morning I forced him to riſe, and I found him reſolute in his Humour of Faſting: I found Perſwaſions and Promiſes of a Pardon could not prevail,

prevail, nor Threatnings that I would ſtarve him if he would not confeſs; ſo I feigned a Quarrel with my Maid, and railed at her in his Preſence, ſaying ſhe was as very a Hypocrite as *Richard Hathaway*, and that I would be troubled no more with her. And I order'd her, ſo ſoon as my back was turn'd, to rail againſt me as bad as ſhe could, and charge him not to take any Thing from me or my Brother, for ſhe alone would take care to feed him. After this we took him up every Day, and contrived Places and Holes, whereby we diſcovered him to eat and drink heartily, ſometimes Three Times a Day, he thinking no body was Witneſs to it but the Servant. Particularly one Day I had Fiſh and Oyſters for Dinner, and I order'd the Maid to give him ſome, and to give him ſtrong Beer and Brandy too, and he eat and drank freely. And afterwards he brought up his Dinner, and I coming in, told him I was glad the Witch was found out at my Houſe, and I told him to morrow I would find out the Pins and Needles. He took the Poker, and raked the Aſhes over it, that it might not be ſeen what he had vomited.

L. C. J. *Holt*. But did he know that you ſaw him eat?

Mr. *Kenſy*. No, my Lord. The next Day I offer'd him ſomething to eat, to ſee if I could make him ſpeak. But he pretended to be ſo faint that he could not get off his Chair; this was after he had eat ſeveral Days. And he danced and play'd on the Tongs.

L. C. J. *Holt*. But did you not ſee him drink?

Mr. *Kenſy*. Yes, my Lord.

L. C. J. *Holt*. But did he know you ſaw him?

Mr. *Kenſy*. He thought no body ſaw him but the Maid; but I ſaw him drink.

Mr. *Broderick*. How did you ſee him?

Mr. *Kenſy*. I hid my ſelf in a dark Place in my own Buttery, and did ſee him eat and drink ſeveral Times. I did not ſee him eat every Day. But the Eighth Day he endeavour'd to make his Eſcape. My Brother and my Sons went into his Chamber with his Cloaths, and *Hathaway* having dreſs'd himſelf, watch'd his Opportunity, and jump'd out of the Room, and bolted them in. But they ſtaying ſo long, I ſent the Maid up, and ſhe met him ſtealing down Stairs, and then he went back again and let them out. On *Monday* the 10th I gave him his Cloaths, and I being alone, he had not Patience to dreſs himſelf, but immediately ſeized me; but ſtruggling with him, he pretended Feebleneſs, and fell on the Bed.

Mr. *Coniers*. Can you give Account of any thing afterwards?

Mr. *Kenſy*. Yes.

Mr. *Coniers*. What Diſcourſe had you with him then?

Mr. *Kenſy*. I will tell you. He was very ſurly. That was the firſt Day he ſpoke. I came to him, and told him he was a Fool; that his Friends were in Cuſtody, and had not been true to him, but had diſcovered the whole Matter; and adviſed him to make a Diſcovery himſelf; and if he would, I would go with him to my Lord Chief Juſtice. Upon that, he cried paſſionately, and ſaid he would tell the Lord Chief Juſtice the whole Truth. But my Lord not being at his Chamber, he in about an Hour recanted, and ſaid he was bewitch'd. When he cried, he ask'd if his Mother was ſafe.

Mr. *Coniers*. Did he at any Time tell you how long he had faſted?

Mr. *Kenſy*. Yes. He made Signs that he had faſted ſeveral Times when we had ſeen him eat, and he took his Cloaths and wrapt them over him. And I ſaid unto him, How long haſt thou faſted before you came to my Houſe? He made Signs that he had faſted Ten Weeks.

L. C. J. *Holt*. Did he pretend to be Dumb?

Mr. *Kenſy*. Yes. And I ask'd him how long he had faſted at my Houſe; and he pointed Two more.

Mr. *Coniers*. You ſay he made Signs that he had faſted Ten Weeks before he came to your Houſe, and Two Weeks while he was there. Now how often did you ſee him eat at your Houſe after the Two firſt Days?

Mr. *Kenſy*. I ſaw him eat ſeveral Times at Noon and Night. And after I had ſeen him eat, I would have perſwaded him to eat, and he made Signs ſtill as if he could not eat, and ſhook his Head.

Mr. Serj. *Jenner*. How did you know what he meant by ſhaking his Head?

L. C. J. *Holt*. How did you know what he meant by his counting? How did you know that he meant Weeks?

Mr. *Kenſy*. He counted upon his Fingers, my Lord. I ask'd him how many Weeks he had faſted before he came to my Houſe, and he counted Ten Fingers; and how long he had faſted at my Houſe, and he counted Two more. And I aſk'd him whether he had faſted Twelve Weeks then, and he made Signs of Twelve.

Mr. Serj. *Jenner*. You ſay he was dumb, and yet could hear.

Mr. *Kenſy*. Yes.

Mr. Serj. *Jenner*. How is that likely, that he ſhould hear, and yet was dumb?

L. C. J. *Holt*. Cannot a Man hear, tho' he be dumb?

Mr. *Coniers*. Call *Elizabeth Baker*. Where is ſhe? (*She was ſworn.*) Were you a Servant to Mr. *Kenſy* when this Man was at his Houſe?

Eliz. Baker. Yes, I was.

Mr. *Coniers*. Then pray tell my Lord and the Jury what you know of him.

E. Baker. *Richard Hathaway* came to my Maſter's Houſe about Twelve a-Clock on *Saturday*. When we went to Dinner at One a-Clock, my Maſter offer'd him Meat and Broth, and he refuſed it; he was aſk'd to eat ſeveral Times, but ſtill refuſed it. They aſk'd him again at Night, and he ſhook his Head, and would not eat. And when he went to Bed, we took his Cloaths, and lock'd him in. And the next Day he refuſed to riſe, and at Noon they went to ſee if he would eat any Thing, and offer'd him a Glaſs of Sack, and he refuſed it. And on *Monday* Morning he was aſk'd to riſe again, and he would not; but my Maſter would have him riſe, and would have him come down and ſit by the Fire; and when he was come down, aſk'd him to eat, but he would not. And at laſt he look'd in his Mouth, and ſaid he ſaw nothing but that he might eat and drink if he would. And my Maſter ſaid to me, When I am with him I will call you up, and take an Occaſion to fall out with you, and when I am gone, do you rail at me, and tell him he ſhould take nothing of me or my Brother. And ſo I did; I ſaid my Maſter call'd me Preſbyterian Jade, but I ſaid I did not know what Religion he was of; and that he was not more willing to have me go, than I was to be gone. And I told him

he

he ſhould take nothing of my Maſter or his Brother, I would look after him while I ſtay'd. So I went out of the Room, and fetch'd a Glaſs of Brandy, and gave it to him. But there was a Child with me, and he refuſed to drink it, with a Sign pointing to the Child; ſo I ſaid I would hide the Child, and I ſtood between him and the Child; and then he drank it. And the ſame Day I gave him ſome Pudding and Small Beer; and at Night I carried him a Pint of Ale and a Toaſt, but found he had not eat the Pudding: I ſaw him eat the Toaſt and drink the Ale; but I did not ſee him eat the Pudding, tho' I ſuppoſe he eat it afterwards, for I ſaw it no more.

Juryman. In what Manner did you convey this Proviſion to him?

E. Baker. My Maſter gave me the Key, and I went in and ſtaid while he eat and drank, and I made him believe I had got the Key by Stealth. And I gave him a Glaſs of Brandy on *Monday* Night, and he drank it. And the next Day he eat and drank; he drank ſome Broth, and eat boil'd Mutton at Noon; and at Night he eat a Chop of Mutton, Bread and Cheeſe, and drank Beer and Brandy. On *Wedneſday* we had a Shoulder of Mutton roaſted, and after they had dined, I gave him a Plate of Meat, and he eat it in the Kitchen with me, and drank freely. And ſo he did every Day after while he was at our Houſe.

Mr. *Coniers.* Did any ever ſee him eat, beſides your ſelf?

E. Baker. Yes. That Day that we had Fiſh, he was in the Kitchen; and being there, he went and waſh'd his Hands, and I gave him a Plate of Fiſh, and ſet it by him; and he took it, and eat it. And I gave him a Bottle of Stout, and told him it was my Birth-day, and he muſt drink my Health; and after he had drunk it, he pointed to his Forehead, ſignifying it was got into his Head; and about two Hours after, he was very merry, and danced about, and took the Tongs and play'd upon them. But after that he was mighty ſick, and vomited ſadly. And, ſays my Maſter's Brother, we ſhall ſee the Pins and Needles now. And to hide it, he falls a pulling the Fire over it.

Mr. *Coniers.* Did any of the Neighbours ſee him eat?

E Baker. The 11th Day of the ſame Month, we had a Shoulder of Veal for Dinner; and after Dinner, my Maſter bid me ſet by ſome for him, and he would have ſome Gentlemen to ſee him eat it. They were accordingly hid in the Buttery and Coal-hole; and *Richard Hathaway* was brought down, and he took his Bread and Meat, and eat heartily, and drank with it.

Mr. *Raymond.* Who were thoſe Gentlemen that ſaw him eat?

E. Baker. Mr. *Collet*, Mr. *Norbery*, Mr. *Page*, and Mr. *Stanton.*

Mr. *Coniers.* Theſe Perſons are here.

Mr. Serj. *Jenner.* My Lord, all this is of what was done after the Tryal, this Evidence ought not to be given; the Record bears Date the firſt Day of the Term, and all this is ſaid to be done in *November*; it is all after the Record.

L. C. J. *Holt.* It is to prove the Impoſture committed before now. What Mr. *Kenſy* ſays of his pretending to faſt twelve Weeks, tho' two or more be not within the Time of the Information, I hope they may give it as Evidence ſubſequent, to prove what was done before.

Mr. Serj. *Jenner.* But I oppoſe all this of eating at their Houſe.

L. C. J. *Holt.* It is an Evidence of his cheating ſince that Time, and that out of the Information; but it is an Evidence alſo to prove that his pretended Faſting before was a meer Deceit; for he then pretended to have faſted Ten Weeks before he came thither, and after pretends to continue faſting in the ſame manner; if that be proved to be a Fraud, it is ſtrongly to be inferred, that his pretended faſting before was ſo too.

Mr. Serj. *Jenner.* But then they may not give Evidence in Matter after.

L. C. J. *Holt.* Matter afterwards that proves a Thing done before; for if a Confeſſion be made ſubſequent to an Indictment for a Crime, Shall not that Confeſſion after be brought as Evidence of the Thing done before? Sure it may.

Mr. Serj. *Jenner.* And will that prove what was done before?

L. C. J. *Holt.* It is certainly ſo. The Thing is, Whether I can give in Evidence any Thing after to prove what was done before. If he pretends to faſt Twelve Weeks, Ten Weeks before he came there; and the Two Weeks after, he did not faſt but only pretended it: Whether what he did after be not Evidence of what he did before? Sure it is. For he that cannot hold out faſting Two Weeks, but was glad to eat, tho' he pretended to faſt, may ſtrongly be preſumed to have eaten during the Ten Weeks, tho' then he pretended to faſt.

Mr. *Coniers.* Call Mr. *Stanton*, (*who appear'd*) Was you at Mr. *Kenſey*'s Houſe to ſee *Richard Hathaway* eat?

Mr. *Stanton,* Yes. Mr. *Kenſey* came to me the 11th of *November*, and deſired me to come to his Houſe, to ſee whether he eat or drank or not; and I went, and was put into a dark Place, and I ſaw the Victuals before he was brought; there was five Slices of Meat, and Bread, and Beer. And he was brought where it was, and he looked about him earneſtly to ſee if any one ſaw him, and then he fell to, and eat as heartily as any Man could. And hearing a Noiſe whilſt he was eating, he run away with it, and ſet it on the Dreſſer. The Maid ſaid, there is no body coming; and then he went to it again, and eat it up, and drank the Drink, and ſate down by the Fire. And afterwards we went to him, and carried a Bottle of Drink with us, and drank to him; but he made Signs that he could not drink, and ſhow'd us that his Belly clung to his Back, which we thought was very ſtrange.

Mr. *Coniers.* Call *Matthew Shipps*, and -------- *Baxter. (They did not appear.) Jo. Hunt. (He was ſworn.)* My Lord, we call this Man to give you an Account of the ſtrange Noiſes that they pretended were heard in Mr. *Welling*'s Houſe; and we will make it appear how that Noiſe came. Mr. *Hunt*, pray give an Account what you know in this Matter.

Jo. Hunt. My Lord, an Acquaintance of mine, one *Kelpin*, told me that he had watch'd with *Richard Hathaway* one Night; and the next Day he came to me, and told me he fell aſleep, and had not watch'd him as he ought; and deſired me to ſit up with him, and to obſerve him as narrowly as I could, and ſee if I could find any Deceit in him. Accordingly I did ſo; and when I came into the Room, I ſate down on the Bed-ſide. There were two Gentlemen in the Room, Mr. *Pocock*, and Mr. *Butler*, and

Thomas

Thomas Welling. He lay as if he were almoſt Dead. In a little Time his Maſter, *Tho. Welling*, brought in ſome Pins in a Coffee-diſh, and ſaid he had brought them up that Day, and that he believed he would bring up more. And after this ſeeing of the Pins, I went to Mr. *Pocock*, and ſaid, I did imagine the Pins might lie in his Mouth, rather than in his Stomach; and therefore it was very proper to have his Mouth ſearch'd. And Mr. *Pocock* replied, Who will venture to do it? And I ſaid, If they would waſh the Fire Poker clean, and put it into his Mouth, to prevent his biting my Finger, I would do it. Immediately upon this *Hathaway* raiſed himſelf, and began to make a Reaching, as tho' he would Vomit; and then *Welling* and his Wife ſaid, now he is going to bring up Pins. Thereupon I kneeled down by the Bed-ſide with a Candle in my Hand to obſerve his Motions; and after he had ſtrain'd ſome times, he made a Motion with his Tongue at each ſide of his Mouth, but I could not perceive any thing come up his Throat, tho' his Mouth was wide open; and by and by he drew up his Mouth, and turned out two or three bright Pins, and preſently after two more, which I catch'd in my Hands, and ſhew'd them to the Company, ſaying, they are bright and new; and his Maſter ſaid he believed they came out of ſome Chandler's Shop. Afterwards *Hathaway* lay down very quiet, and ſo continued for ſome Time. And *Welling*'s Wife coming into the Room, ask'd why the Charms were not put on? I replied, I have been told the Charms have been aways taken off from him by the Witch; but was reſolved to watch ſo narrowly that Night, that they ſhould not be taken from him. Then *Welling* and his Wife offering to put on the Charms, *Hathaway* made a ſtruggling, as tho' he was unwilling to have them on; and *Welling* ſaid, you have always found Benefit by it, Why will you not? They are order'd by Mr. *Butler*.

L. C. J. *Holt*. What were thoſe Charms?

Jo. Hunt. Three little Things in black Bags, I did not know what they were. And they ask'd him whether he was willing they ſhould be put on; if he was, he ſhould hold up his Hand; but he was unwilling. But I ſaid I was minded to have them put on; ſo he lay ſtill, and Mrs. *Welling*, or ſome other Woman, ſew'd them to the Boſom of his Shirt. After the Charms were put on, I watch'd to ſee what would become of them; and perceiving *Hathaway* to make ſeveral Motions with his Hands about them, I ſtruck his Hands. I bid him either keep his Arms ſtraight in the Bed, or elſe put them out of the Bed, for that the Charms ſhould not be taken off that Night. Then I and the Company ſitting ſtill about the Bed, *Welling* ſaid, Hearken, you will not believe; hear what a Noiſe there is, the like is heard here almoſt every Night. Whereupon all were ſilent. At laſt I heard a ſmall ſcratching or rubbing at the Bed's-feet; and putting my Head cloſe to the Bed's-feet, liſtning, I heard ſomething ſcreek; and perceiving the Bed-cloaths ſtir, I took hold of the Fellow's Foot, and ſaid, I have caught the Witch that made the Noiſe. I thought it had been Mice at firſt; but ſeeing the Cloaths move, I catch'd his Foot. Thereupon *Hathaway* roſe up, and in a Paſſion made a Motion towards me with both his Hands; but I lifting up his Foot, he fell back upon his Pillow, and lay ſtill, and the Noiſe ceaſed; and about Five a-Clock in the Morning I left him, and the Charms upon him.

Mr. *Coniers*. Call *Elizabeth Brand* (*who appeared*). Pray give an Account what you know of any Collection of Money for *Richard Hathaway*.

Eliz. Brand. There was betwixt Six and Seven Pounds gathered.

L. C. J. *Holt*. How was it gathered?

Eliz. Brand. We went about to get Money for him to bear his Charges to *Guilford*, and we got betwixt Six and Seven Pounds.

Mr. *Broderick*. Do you know of any other Sums that were gathered for him?

Eliz. Brand. Yes; but I know not how much.

Mr. *Coniers*. Who employ'd you to do this?

Eliz. Brand. A great many of the Neighbours.

L. C. J. *Holt*. Who was the Money paid to?

Eliz. Brand. To Mrs. *Welling*.

Mr. *Coniers*. Do you know any thing of his ſcratching *Sarah Morduck*?

Eliz. Brand. I over-perſuaded her to let the Fellow ſcratch her.

L. C. J. *Holt*. Did ſhe conſent to it?

Eliz. Brand. Yes, my Lord. I call'd her, and ſaid to her, Let me perſuade you to let this Fellow ſcratch you; and ſhe bid me go and fetch him. And he came, and ſits him down on a low Seat. Says ſhe, Will you engage he ſhall not ſcratch my Eyes out? At laſt he ſcratches, and there came no Blood; and he ſcratches again, and then the Blood came; and he cry'd, O my Eyes, O my Eyes. And I ſaid, now the Blood comes, and he ſtared. Says I to him, Can you ſee me? Yes, ſays he, as well as ever I could.

Mr. *Coniers*. Mr. *Herne*, you was at *Guilford* Aſſizes, How long did this Fellow pretend he had faſted?

Mr. *Herne*. I cannot be poſitive what he ſaid at the Tryal as to that; but they ſaid he had faſted ſix Weeks, before Dr. *Martin* tried the Experiment with him.

Mr. *Coniers*. Call *Matth. Shipps (he was ſworn.)* Was *Richard Hathaway* under your Cuſtody?

M. Shipps. Yes. He was brought from *Guilford* Aſſizes upon the 31*ſt* of *July* laſt. He came home at Eleven a-Clock at Night, and they told me he was come a Priſoner from *Guilford* to the *Marſhalſea*, where he continued Four Days, and he was ordered to lie with me; and every Night that he lay there, he ſlept very well to my thinking: And ſeveral times I ask'd him how he did, he anſwer'd, he was pretty well; and every Day while he was there, he eat and drank with me, as the reſt of the Servants of the Houſe did, and was not in all that Time in any Fit as I could perceive, but went very well out of the Priſon.

L. C. J. *Holt*. What did he ſay at the Aſſizes about his Faſting?

M. Shipps. I was not at the Aſſizes.

Mr. *Coniers*. Then we muſt leave it here.

Mr. *Broderick*. My Lord, we have the Woman here that they pretended was the Witch; but it may be, they may think it not proper, and therefore we ſhall let her alone.

Mr. Serj. *Jenner*. My Lord, and you Gentlemen of the Jury, I am Council for the Defendant, *Richard Hathaway*, who is indicted for a Cheat and Impoſtor; and it is for pretending himſelf to be bewitched, and that he has uſed indirect Arts and Means to make People believe he was ſo bewitch'd; and that this *Sarah Morduck* was the Perſon that had bewitch'd him; and that this was contrived by him, in order to bring Miſchief and Damage on this *Sarah Morduck*, and to the evil Example of the Queen's

Queen's Subjects. You have heard the Evidence that has been given, and therefore I ſhall not repeat it, but only obſerve ſome good Things to you. The Doctor has taken a great deal of Pains in this Cauſe; but that which he does tell you by Hearſay, what other Perſons have told him, is not ſuch Evidence as you are to take any Notice of, that is, what *Johnſon* told him, and likewiſe what other Perſons told him concerning this Man; for what they have ſaid to him of this Man, tho' it may be true, is not to come under your Conſideration. There are ſeveral others that have given Evidence of what other Perſons have ſaid, and they have given it as their Opinions that what this Man did was the Cauſe of their Doings; of which you are to take no Notice. But, my Lord, that which ſeems to bear moſt hard upon us, is, That becauſe the Doctor, and ſeveral others have been abus'd, both before and after the Tryal, for what they endeavour'd to do; therefore they would inſinuate as if my Client had had a Hand in it. But if a Man be doing any thing, and another takes the Advantage of it, to do another a Miſchief, I hope that Miſchief ſhall not be laid to his Charge. My Lord, there is one Man that has given a great deal of Evidence as to his Vomiting of Pins, and ſays that he was by, and he ſwept the Ground, and after he had Vomitted, there were Pins upon the Ground; and when he had a Chamber-pot to vomit in, he could not find any Pins there; but there was ſome upon the Ground again. So likewiſe for his Faſting, you have had Evidence to prove that a Cheat. And this ſeems to affect him moſt, that all this Pretence to be Bewitch'd, and Vomiting of Pins, and Faſting, was a Cheat. This is the Matter that they accuſe him of. Of which if he be really Guilty, I come not here to defend him; but I am to defend him as far as Witneſs will do. And now, my Lord, if my Brief be true, we ſhall ſatisfy you that my Client was in a very lamentable Condition, ſuch as one would think no Man could be in and live; and I will lead you by theſe Steps. When he was thus diſabled, could neither ſpeak, nor take Suſtenance; his Maſter, after he had ſerved him Two Years, and he had lived very civilly, and behaved himſelf well in his Maſter's Service, till he fell thus ill: Then he was ſo ill, that after the Maſter had ſpent a great deal of Money with Doctors and Apothecaries, he could get no Cure for him; then he got him into the Hoſpital, and there he continued a long Time, and at laſt they gave it in that he was incurable, and they turn'd him out. But his Maſter made Intereſt, and got him in again, and he continued ſome Time there again; and there it was that he was firſt thought to be bewitched: For they had him twice, and could do no good with him, and the Tenders told him he muſt lie under ſome evil Tongue; and thereupon he was turn'd out as incurable, and with that Inſtruction that it was an incurable Diſeaſe. So he came home again, and his Maſter and Miſtreſs were acquainted with it; and they conſider what Perſon it ſhould be that ſhould have any evil Deſign againſt him. And at laſt they recollect, that his Maſter had taken a Room over the Head of this *Sarah Morduck*, and ſhe had gone to the Shop often, and had given them very ill Words, and ſhe ſhould be even with him one Time or other; and therefore they concluded this Woman was the Perſon. Upon this there were many Things contrived, what Courſe they ſhould take to do him good, and there was one Thing concluded upon in order to his Eaſe, (which I think none ſhould adviſe) that is, the Buſineſs of ſcratching. But this Woman, when ſhe was accuſed by them of bewitching him, ſhe offered herſelf to be ſcratch'd, and ſhe was ſcratch'd, and from thence this Man found Eaſe. But afterwards he fell ill again, and he went into *London*, and was examined at Sir *Thomas Lane*'s; and upon Examination they thought that this Man did lie under ſuch an Affliction. I cannot ſay it is an irreligious Thing to ſay there are Witches in the World; but this Man lay under ſuch a Diſtemper, that no Doctor could know what to do with it. And they could not imagine who ſhould do it but this Woman, and ſhe was there ſcratch'd by him, and he did find Relief by it. My Lord, this being the Matter of Fact, we ſhall call very ſubſtantial Witneſſes to prove it. As to his Faſting, we ſhall prove that he was put under the Care of very ſubſtantial Perſons, and that he did not eat or drink for Three Weeks or a Month; ſo that it will appear we had no Contrivance in the World, but only would get Eaſe if we could. We have Twenty Witneſſes to call.

L. C. J. *Holt*. Let them all be call'd. Call as many as you will.

Mr. Serj. *Jenner*. Call *Anne Eaton*. (*She appeared.*) Do you know *Richard Hathaway*?

Anne Eaton. Yes, Sir.

Mr. Serj. *Jenner*. How long have you known him?

Anne Eaton. Ever ſince he came to his Maſter.

Mr. Serj. *Jenner*. How long is that?

Anne Eaton. About Five or Six Years.

Mr. Serj. *Jenner*. Do you know what Condition he was in Two Years ago?

Anne Eaton. Yes.

Mr. Serj. *Jenner*. Then pray give my Lord and the Jury an Account of it.

Anne Eaton. I watch'd with him ſeveral Nights.

Mr. Serj. *Jenner*. Where did you watch with him?

Anne Eaton. At his Maſter's Houſe.

Mr. Serj. *Jenner*. In what Condition was he then?

Anne Eaton. He was in a very bad Condition, he was dumb and blind, and his Senſes were gone, and he ſeem'd as if he were dead; and when his Senſes have come to him, he has burn'd like a Flame of Fire.

L. C. J. *Holt*. How long did you watch with him?

Anne Eaton. About Nine Weeks.

L. C. J. *Holt*. Did he faſt all that Time?

Anne Eaton. Yes, my Lord.

L. C. J *Holt*. Might he not eat in that Time, and you not ſee him?

Anne Eaton. I was with him conſtantly at Nights, but not in the Day; I have been with him Four or Five Days and Nights together, and did not ſee him eat or drink.

L. C. J. *Holt*. What Time was this that you watch'd with him?

Anne Eaton. From the Time that he came from Madam *Davenport*'s, till your Lordſhip confined him.

L. C. J. *Holt*. Who put him to Madam *Davenport*'s?

Anne Eaton. I had nothing to do with that.

Mr. Serj. *Jenner*. Can you not tell what Month that was in?

Anne Eaton. I can't tell that.

Mr. *Raymond.* Did you obſerve him all that Time?

Anne Eaton. When I went out, I left one always in my Room.

L. C. J. *Holt.* You ſay you were with him Four or Five Days and Nights together.

Anne Eaton. Yes, my Lord.

L. C. J. *Holt.* Were you with him all Night and all Day?

Anne Eaton. My Lord, ſome Days I had Occaſion to go out, but then I left ſome Neighbours with him.

Mr. Serj. *Jenner.* Call *Gibſon.* (*Who appeared.*) Do you know this Man, *Richard Hathaway?*

Gibſon. I have ſeen him in a deplorable Condition.

Mr. Serj. *Jenner.* When was this that you ſaw him?

Gibſon. About Two Years ago. His Maſter ask'd me to go and ſee him, and when I came up I ſaw him foaming at Mouth; I thought he would not live till Morning. The next Day his Maſter deſired me to watch with him at Night; and I did, and he was ſo bad that I thought he would not live till Morning. Afterwards I ſaw him again, and he was blind and dumb, as it appeared to me. And he had a ſtrange Motion, he threw himſelf forward, and afterwards threw himſelf backward, as if his Head lay in the Reins of his Back; and I ſaid to this Woman then, I believe he has broke his Back. I believe this was after he came from Madam *Davenport*, about the Time that he appeared at the Bar at *Weſtminſter.*

L. C. J. *Holt.* The firſt Time that you ſpeak of, when you ſay he was blind and dumb, you ſay that was Two Years ago; was he blind and dumb when you ſaw him the Second Time?

Gibſon. Yes, the Second Time I ſaw him he was blind and dumb. I ſaw him in a deplorable Condition Three Times.

Juryman. We deſire to know the Circumſtances of his Condition.

L. C. J. *Holt.* The Jury deſire to be ſatisfied of the Circumſtances of his Condition. You ſay you ſaw him Two Years ago, and he was then in a deplorable Condition, and you ſaw him twice after; the Jury would have you deſcribe the Circumſtances of it as plain as you can.

Gibſon. His Maſter deſired me to go to him, and I was willing to oblige him; and when I came to him, he was both blind and dumb.

L. C. J. *Holt.* How long was this after you ſaw him the firſt Time?

Gibſon. About half a Year after.

L. C. J. *Holt.* Are you a Neighbour?

Gibſon. Yes, my Lord.

L. C. J. *Holt.* You ſay you ſaw him Two Years ago, and you ſay he then foamed at Mouth and Noſtrils; was he blind and dumb then?

Gibſon. No, my Lord; but he was when I ſaw him the ſecond Time.

L. C. J. *Holt.* When did you ſee him after?

Gibſon. It was about a Twelve-month after that I ſaw him.

L. C. J. *Holt.* And not before?

Gibſon. He was Seven Weeks in the Hoſpital.

Mr. *Broderick.* Then you did not ſee him in the Hoſpital.

Gibſon. I did; but he went almoſt double.

Mr. *Broderick.* Did you hear any Thing of Mrs. *Morduck* then?

Gibſon. No, Sir.

L. C. J. *Holt.* What Trade are you?

Gibſon. I am a Glazier.

Mr. *Coniers.* Have you no other Trade?

Gibſon. Sometimes I work at the *Cuſtom-houſe.* One *Sunday* we went to hear Dr. *Pead*, and R. *Hathaway* went with us. And when we were gone out a-Door, he could not ſpeak; and when we came upon the Bridge, his Face was drawn a-wry ſo ſtrangely that it aſtoniſhed me; he ſtagger'd the Length of this Table, and his Face was drawn back again, and he fetch'd a Reel; but in a Quarter of an Hour he ſpoke, and his Speech continued till he came to *Gracechurch-ſtreet*, and there we met Mr. *Fox*, and ſo he continued till we came to *Biſhopſgate*: But coming to *Hounſditch*, he made Motions that his Speech was gone again.

L. C. J. *Holt.* Did you hear him ſpeak at *Weſtminſter?*

Gibſon. No, my Lord.

Mr. Serj. *Jenner.* Call *Flummery*, (*who appeared.*) Do you know this Man?

Flummery. Yes, I am a Neighbour.

L. C. J. *Holt.* What is thy Name?

Flummery. Flummery. After *Guilford* Aſſizes I went to ſee him, and he was in a lamentable Condition; he was like a Stock or Stone, Blind and Dumb. I went to ſee him ----

L. C. J. *Holt.* Did you ever ſee him before?

Flummery. I ſaw him ſeveral times, but took no notice of it; but then his Eyes ſtood wide open.

L. C. J. *Holt.* And yet you ſay he was blind, How could that be?

Flummery. My Lord, I will tell you how; I tried him, I wagg'd the Hair of his Eye-Lids, and put the Candle to his Eyes, and he took no notice of it.

L. C. J. *Holt.* How could you know that he did not ſee?

Flummery. I tried him.

L. C. J. *Holt.* How did you try him?

Flummery. I tried them with my Fingers, and his Eyes would not wag.

L. C. J. *Holt.* Did he not look then as he looks now?

Flummery. No.

Mr. *Broderick.* Did you ſpeak to him then?

Flummery. Yes, but I could not make him Hear nor Anſwer me.

L. C. J. *Holt.* Could he ſpeak then?

Flummery. No, May it pleaſe your Lordſhip.

Anne Pearſe, Sworn.

Mr. Serj. *Jenner. Anne Pearſe*, Pray tell my Lord, what you know of this *Richard Hathaway.*

Anne Pearſe. I belong to the Hoſpital. When he came into the Hoſpital he was very bad.

L. C. J. *Holt.* Was he Blind and Dumb when he came in?

Anne Pearſe. After he was brought in he was put to Bed, and he was taken with a Fit, and I was call'd to him; and I came to him, and he did not ſtir much, and turn'd up his Eyes. And afterwards one of his Maſter's Journey-Men came to him, and he raiſed him out of his Bed; and one came to me and ſaid, Siſter, he is come to the Fire, but he is very bad ſtill. Says I, What did you raiſe him out of his Bed for? He went upon his Ankles almoſt; he went very Weakly, and continued ſo for ſome time.

Mr. Serj. *Jenner.* How long was he in the Hoſpital?

Anne Pearſe. About Five Months.

Mr. Serj. *Jenner.* Was he out, and came in again?

Anne Pearſe. Yes, he was. He complain'd he could not go to Stool; and the Doctor gave him *Quickſilver*;

Quickſilver; and when it came from him, I heard the Apothecary made him take it again, and ſwallow it again.

Mr. Serj. *Jenner*. When he came in the ſecond time, Was you there then?

Anne Pearſe. Yes.

Mr. Serj. *Jenner*. How long was he there the ſecond time?

Anne Pearſe. How long he was there the ſecond time, I cannot tell.

Mr. Serj. *Jenner*. Can you tell when he was put in the ſecond time?

Anne Pearſe. No.

Mr. Serj. *Jenner*. What was your Opinion of him?

Anne Pearſe. I apprehended him to be in a very ſtrange Condition; he lay Seven or Eight Days, and did not Eat or Drink; he had taken *Quickſilver*, and it did not come from him, and the Doctor wonder'd it ſhould lie ſo long in his Body.

Mr. *Broderick*. Did the Doctor or you apprehend any Thing of Witchcraft in the Caſe?

Anne Pearſe. No, Sir. But at this time his Eyes were ſet in his Head.

Mr. *Broderick*. When he was recovered out of thoſe Fits, did he pretend that he was bewitch'd?

Anne Pearſe. No.

L. C. J. *Holt*. Did you never hear him complain that he was bewitched?

Anne Pearſe. No, my Lord, I did not hear of that.

Mr. Serj. *Jenner*. Call *Jo. Smith (who appeared.)* Mr. *Smith*, Do you know this Perſon, *Richard Hathaway*?

Mr. *Smith*. Yes, Sir.

Mr. Serj. *Jenner*. How long have you known him?

Mr. *Smith*. About Five or Six Years.

Mr. Serj. *Jenner*. How far do you live from him?

Mr. *Smith*. I believe about two Stones throw.

Mr. Serj. *Jenner*. Were you well acquainted with his Condition two Years ago.

Mr. *Smith*. Yes, I have done Buſineſs for the Family ſeveral Years. About Five Years ago, I found him much afflicted with Convulſion Fits at his coming to his Maſter.

Mr. Serj. *Jenner*. How was he about two Years ago?

Mr. *Smith*. He was in a very ſtrange Condition; and I adviſed his Maſter to get rid of him, and to get him into the Hoſpital.

Mr. Serj. *Jenner*. What did he ail?

Mr. *Smith*. He lay in a very ſtrange Condition.

Mr. Serj. *Jenner*. How did he lie?

Mr. *Smith*. He lay ſtruggling and ſtriving often, and ſometimes like a Man that was dead; and once when he lay in that Condition I laid Cupping-Glaſſes to him, and that enliven'd him.

L. C. J. *Holt*. What did you imagine ailed him? Did you think he counterfeited or not?

Mr. *Smith*. Indeed, my Lord, I can't tell that.

Mr. Serj. *Jenner*. Why did you adviſe his Maſter to put him into the Hoſpital?

Mr. *Smith*. I can't tell.

Mr. *Phipps*. You ſay you have known him Five Years, and that he has been troubled with Fits. Did he ever talk of being bewitch'd till within this two Years?

Mr. *Smith*. No, not till within theſe two Years.

Mr. Bar. *Hatſell*. When he lay ſeemingly dead, you do not know whether he counterfeited or no.

Mr. *Smith*. No, my Lord.

Mr. Bar. *Hatſell*. Do you think a Man can be in ſuch a Condition as he ſeem'd to be, and yet only Counterfeit?

Mr. *Smith*. Indeed, my Lord, I know not. I examined him whether he was ſubject to thoſe Fits formerly; and he told me, he was very much troubled with them in the Country.

L. C. J. *Holt*. You do not anſwer the Queſtion. Cannot a Man counterfeit in ſuch a Caſe? What do you think of that?

Mr. *Smith*. Without doubt it may be counterfeited.

L. C. J. *Holt*. You ſay, when he was in thoſe Fits, you put Cupping-Glaſſes to him, and it enliven'd him; now if he were in a real Convulſion, do you think it would have enliven'd him?

Mr. *Smith*. Sometimes it may be ſo.

Mr. Serj. *Jenner*. Call *Elizabeth Willoughby (She appeared.)* Mrs. *Willoughby*, pray give my Lord an Account whether you know *Richard Hathaway*, and what you know of him.

E. Willoughby. Sir, I have ſeen him ſince the Aſſizes at *Guilford*.

Mr. Serj. *Jenner*. Did you never ſee him before?

E. Willoughby. Yes.

Mr. Serj *Jenner*. Then give an Account of what Condition you have ſeen him in.

E. Willoughby. I have ſeen him when the Breath came out of his Mouth like the Barking of a Dog. I had a Child that was troubled with Fits, and I was above Stairs, and I heard a great Noiſe; and I went out of the Door to ſee what was the Matter, and over the Hatch lay *Richard*. Lord bleſs me, ſays I, is it you makes this Noiſe? And I could not fancy any Thing, but that it was like the Barking of a Dog.

L. C. J. *Holt*. How thick was it? Was it not like other Folks?

E. Willoughby. No.

Mr. S. *Jenner*. What ailed him?

E. Willoughby. I cannot tell what ailed him.

L. C. J. *Holt*. Do you think he was bewitched?

E. Willoughby. I believe he was, my Lord.

L. C. J. *Holt*. I ſuppoſe you have ſome Skill in Witchcraft. Did you ever ſee any Body that was bewitched before?

E. Willoughby. My Lord, I have been under the ſame Circumſtances my ſelf when I was a Girl, in Sir *Edward Bromfield*'s Time.

L. C. J. *Holt*. How do you know you was bewitched?

E. Willoughby. There was a Woman taken up upon Suſpicion for it.

L. C. J. *Holt*. For bewitching thee?

E. Willoughby. Yes, my Lord.

L. C. J. *Holt*. Did you ſcratch her?

E. Willoughby. My Lord, I had no power to do any thing. I flew over them all.

L. C. J. *Holt*. You ſay you were in the ſame Condition with this Man, and you ſay you flew; Did you faſt too?

E. Willoughby. One held me by one Arm, another by the other, and another behind, and I flew ſheer over their Heads.

L. C. J. *Holt*. Woman, can you produce any of theſe Women that ſaw you fly?

E. Willoughby. It was when I was a Child; they are dead; it was in old Sir *Edward Bromfield*'s Time.

L. C. J. *Holt*. What became of that Woman that made thee to fly?

E. Willoughby. I cannot tell, I have been well ever ſince I was Married.

Mr. Serj. *Jenner*. How was you cured of that Witchery?

E. Willoughby. How do I know?

Mr. *Coniers*. Did you ſcratch her?

E. Willoughby. How ſhould I ſcratch her, when I had not power to ſee her?

Mr. *Coniers*. And yet you believe this Man was bewitched as well as you. What Condition was this Man in? How long did he lye in this Condition.

E. Willoughby. Night and Day he has lain over the Hatch, and over the Bed, and made a great Noiſe with his Breath.

Mr. Serj. *Jenner*. Who did you ſuſpect had done him this harm?

E. Willoughby. I know not that.

Mr. *Broderick*. Are you a Widow?

E. Willoughby. No, Sir.

Mr. Serj. *Jenner*. Call *Keeling*. *(he appeared.)* Do you know any Thing concerning this *Richard Hathaway*.

Keeling. I watcht with him 9 Nights.

Mr. Serj. *Jenner*. What did he Eat or Drink all that Time?

Keel. He did neither Eat nor Drink, nor had he any Stool all that Time.

L. C. J. *Holt*. Did you watch with him 9 Nights and Days?

Keel. There was another Man that watch'd with him in the Day; as I came out, he was let in; and as he came out, I was let in.

Mr. Serj. *Jenner*. How long was this before the Tryal?

Keel. Two or three Days before he came before Sir *Thomas Lane*.

Bridges *Sworn*.

Mr. Serj. *Jenner*. Did you watch with *Richard Hathaway*?

Bridges. Yes.

Mr. Serj. *Jenner*. How long?

Bridges. Nine Days.

Mr. Serj. *Jenner*. Did you watch with him the ſame Days that he watch'd with him in the Nights?

Bridges. Yes.

Mr. Serj. *Jenner*. Did you not ſtir from him till he came?

Bridges. No.

Mr. Serj. *Jenner*. Did you ſee him Eat or Drink all that Time?

Bridges. No.

Mr. Serj. *Jenner*. Where was it that you watch'd with him?

Bridges. In an old empty Houſe.

L. C. J. *Holt*. Where was this Houſe?

Bridges. By a Dock on the *Bank-ſide* in St. *Mary Overy*'s Pariſh.

L. C. J. *Holt*. How came you to put him into that Houſe?

Bridges. The Maſters of the Pariſh put him in it.

Mr. Webb *ſworn*.

Mr. Serj. *Jenner*. Mr. *Webb*, did you get a Houſe to put *Hathaway* in?

Mr. *Webb*. Yes.

L. C. J. *Holt*. How came you to do ſo?

Mr. *Webb*. His Maſter uſed to work for me, and he came to me, and ſaid, I cannot tell what to do with my Man, unleſs the Maſters of the Pariſh take ſome Care of him; and I did ſpeak with ſome of them about it; and they ſaid, we will not trouble the Pariſh about it, we will ſpend a Crown a-piece, and put theſe Men into the Houſe with him.

L. C. J. *Holt*. You took the Houſe then?

Mr. *Webb*. We borrowed the Houſe, it being empty, and put in theſe Two Men. There were four or five Neighbours more, and I ſaid to him, They ſay you vomit Pins, I will be ſatisfied whether it be true or no; and we ſtript him, and could find none about him; we ſearch'd his Shirt, his Stockings, his Breeches, and his Hat, but could find no Pins about him.

Mr. Serj. *Jenner*. Did he eat or drink all the Time you were there.

Mr. *Webb*. No, my Lord.

Mr. Serj. *Jenner*. Did he vomit?

Mr. *Webb*. Yes, I went to him on *Thurſday* Morning, and he had a husky Cough, and I thought he would have been choak'd; and at laſt he made a Crumb of Spittle out of his Mouth, and there were Three Pins came from him in the Spittle, as ruſty as if they had lain in a Ditch Seven Years. About *Saturday* following he had I believe Four Pins more came from him; I took them, and I think the Hands of Man could not join them as thoſe Pins were. On *Sabbath*-day in the Morning, a Gentleman came and deſired him to go to Church with him, and deſired him to drink a Pint of Ale, but he did not drink half; and about Five a-Clock in the Afternoon came Mr. *Sutton* the Apothecary, and I ſtay'd with him till Six on *Monday*, and heard not a Word from him.

Juryman. What People came in to ſee this Fellow while you watch'd him?

Keeling. No Man, Woman, or Child came to him the Time I was there, but only that *Sunday* Night that my Maſters were there, and I ſaid, you do not put him here to ſtarve him; and they bid me aſk him if he would eat any Thing; if he would eat any Thing, he might have it.

Mr. *Coniers*. Did you not uſe to carry him out ſometimes?

Keeling. We never carried him out.

Mr. *Coniers*. Juſt now you ſaid he was out on *Sabbath*-day.

Keeling. Yes, but never otherwiſe.

Mr. *Broderick*. Was he in a Ground-Room, or up Stairs?

Keeling. He was in a Ground-Room.

L. C. J. *Holt*. Were there any Windows in it?

Keeling. Yes.

L. C. J. *Holt*. Was there any Caſement?

Keeling. Yes, there was.

Juryman. We deſire to know of this Witneſs, whether he never was aſleep in that Time while he watch'd with him.

Keeling. No, I ſat juſt at his Head. I ſlept in the Day-Time.

L. C. J. *Holt*. You that watch'd with him in the Day, did you not ſleep all Day?

Bridges. No.

L. C. J. *Holt*. How came you to concern your ſelf in this Buſineſs? Are you one of the Maſters of the Pariſh?

Mr. *Webb*. No, I am not, but it was my Turn to be Overſeer, and his Maſter ſpoke to me to ſpeak to the Church-Wardens; and I did, and they ſaid they would not put the Pariſh to the Charge, but do it themſelves.

L. C. J. *Holt*. What Trade are you?

Mr. *Webb*. A Lighter-Man, my Lord.

Dell *ſworn*.

Mr. Serj. *Jenner*. Do you know this *Richard Hathaway*?

Dell. Yes.

Mr. Serj. *Jenner*. How long have you known him?

Dell.

Dell. Ever ſince he was an Apprentice.

Mr. Serj. *Jenner.* Did you know him Two Years ago?

Dell. Yes.

Mr. Serj. *Jenner.* What Condition was he in then?

Dell. I was at the Aſſizes at *Guildford* ——

Mr. Serj. *Jenner.* What did you know of him before that Time?

Dell. I took no notice of ſuch Things.

Mr. Serj. *Jenner.* Can you ſay any Thing of him?

Dell. I can ſay, that the Night before he was before Sir *Thomas Lane* I watch'd with him, and he went to Stool, and in his Excrements there was a Lump of Hair, looſe Pins, a Stump of a Nail, half a Nutſhell, and Two or Three Pieces of Stone.

Mr. Serj. *Jenner.* And this you ſaw.

Dell. I ſaw him in a very deplorable Condition.

L. C. J. *Holt.* How? In what Condition?

Dell. This is all I have to ſay.

Mr. Serj. *Jenner.* What do you call a deplorable Condition?

Dell. He lay in ſuch a Condition as if he were Dumb; and if he was not, I believe he is the greateſt Villain in the World.

L. C. J. *Holt.* How do you know thoſe Excrements came from him?

Dell. I was one of the Three Men that watch'd with him that Night. We had Two Chamber-Pots; theſe Things were in the firſt Stool, and when he had the ſecond Stool, he ſat on the Pot, and when he had done, we look'd, and there was nothing in it.

L. C. J. *Holt.* And were theſe Things in the firſt?

Dell. Yes, in the firſt; in the other there was none. And there were Twenty Neighbours more that ſaw them.

Mr. Serj. *Jenner.* Was *Benn* there?

Dell. Yes, he was there.

Mr. Serj. *Jenner.* Mr. *Benn*, was this ſo?

Benn. Yes.

Mr. Serj. *Jenner.* Did you help watch with him?

Benn. Yes.

Mr. Serj. *Jenner.* And are you ſure thoſe Excrements came from him?

Benn. Yes, I am ſure. I ſtood over him with a naked Sword.

Mr. Serj. *Jenner.* Why did you ſtand over him with a naked Sword?

Benn. Becauſe People ſaid he was bewitched.

L. C. J. *Holt.* Who employed you to watch with him?

Benn. I went into the Houſe, and I told his Maſter, if they would watch him in the Day, I would in the Night.

Powel *called.*

Mr. Serj. *Jenner.* What do you know of this Matter?

Powel. This Man and I went up one Night —

Mr. Serj. *Jenner.* When?

Powel. *February* was Twelve-month. We went up and look'd upon him, and he lay as one dead, and he did not wag his Eyes; and preſently he hook'd his Neck about in ſuch a manner that I thought he had broke it; and he foamed, and we took the Foam from his Mouth, and in it were Five Pins, the crookedeſt Rams-horneſt Things, that I believe no Man could do them ſo.

Mr. Serj. *Jenner.* That was one Night, did you ſee the ſame at any other Time?

Powel. Yes, Sir.

L. C. J. *Holt.* But you did not ſee them come from him?

Powel. I took it from his Mouth, and they were ruſty.

L. C. J. *Holt.* How ſhould they be ruſty?

Mr. Serj. *Jenner.* The Stomach will make them ruſty. Call Madam *Davenport.* (*She appeared.*) Madam, pray give my Lord and the Jury an Account what you know concerning *Richard Hathaway*, when he came to your Houſe, and how he was managed there.

Mrs. *Davenport.* My Lord, one *Saturday* I accidentally went to Dr. *Hamilton*'s to viſit his Wife, and I ſaw with the Doctor this Fellow's Maſter ſtanding there; and I perceived he was come to deſire the Doctor to perform a Promiſe he had made to him formerly ——

L. C. J. *Holt.* Was this before the Tryal, or after?

Mrs. *Davenport.* It was after the Tryal. I came accidentally to the Doctor's, and ſaw the Fellow's Maſter with the Doctor.

L. C. J. *Holt.* Was the Fellow there himſelf?

Mrs. *Davenport.* No, my Lord, I never ſaw him there. But ſtanding there, I perceived him expecting the Doctor to make good a Promiſe he had made him about this Fellow. I found the Doctor demurr'd upon it, not knowing where to put him. At laſt ſays he to me, Mrs. *Davenport*, will you let me have a Garret in your Houſe? Doctor, ſays I, you ſhall have my whole Houſe at your Service, if you have occaſion for it: I thought nothing of this Fellow, till the Doctor told me it was for him. And the Doctor told me he ſhould come that Night. Says the Fellow's Maſter, I will not ſend a Bed, that the Doctor may be ſatisfied there is no Cheat. And the Doctor, to prevent any Cheat, deſired me to go and buy an old Bed. So I went and got a Bed in *Long-Lane*; and at Night he was brought by his Maſter and ſome of his Neighbours. And truly I was ſurprized when I ſaw him, he ſeemed very weak.

Mr. Serj. *Jenner.* What did you do with him?

Mrs. *Davenport.* They ſaid he had Fits, and I found I muſt take other Meaſures with him than I thought of. His Maſter deſired he might be ſearch'd; and my Son and Two Men more ſearch'd him. So he went to Bed, and was watch'd with that Night, and in the Morning he was ſtruck blind.

L. C. J. *Holt.* At your Houſe?

Mrs. *Davenport.* Yes, my Lord.

Mr. Serj. *Jenner.* Did you appoint any Perſons to watch with him?

Mrs. *Davenport.* Yes.

Mr. Serj. *Jenner.* Did you watch with him your ſelf?

Mrs. *Davenport.* Yes, ſeveral Times.

L. C. J. *Holt.* How long at a Time did you watch with him?

Mrs. *Davenport.* But one Night at a Time my ſelf.

L. C. J. *Holt.* When you did watch with him, did you watch the whole Night?

Mrs. *Davenport.* Yes, ſeveral Nights; and this Gentlewoman or my ſelf took care of him always.

Mr. Serj. *Jenner.* What did he eat or drink while he was there?

Mrs. *Davenport.* Nothing. As for his Faſting, the Doctor gave me a great Charge, and ſaid he knew I would do it.

Mr. Serj. *Jenner.* All the Time you watch'd with him, you ſay he did neither Eat nor Drink.

L. C. J. *Holt*. How many Nights did you watch with him in the Seventeen?

Mrs. *Davenport*. But Two.

L. C. J. *Holt*. How many Days?

Mrs. *Davenport*. Every Day.

L. C. J. *Holt*. Did you watch with him every Day your ſelf?

Mrs. *Davenport*. Either my ſelf, or this Woman, or the Servant, or my Son *Davenport*. He is now gone to Sea. My Lord, I do not tell you I kept him in the Garret all this time.

Mr. Serj. *Jenner*. When you left him, who relieved you?

Mrs. *Davenport*. This Gentlewoman, or my Servant.

Mr. Serj. *Jenner*. What is that Gentlewoman's Name?

Mrs. *Walker*. *Walker*.

She was Sworn.

Mr. Serj. *Jenner*. Mrs. *Walker*, Did you watch with him in this Place?

Mrs. *Walker*. Yes.

Mr. Serj. *Jenner*. Did he Eat or Drink while he was there?

Mrs. *Walker*. He did neither Eat nor Drink.

Mr. *Coniers*. How often was it that you watched with him?

Mrs. *Walker*. I cannot tell whether one or two Nights.

L. C. J. *Holt*. I would be ſatisfied in ſome Things. Is that *Davenport* you ſpeak off your Son?

Mrs. *Davenport*. Yes, my Lord. He is now gone to Sea.

L. C. J. *Holt*. How long has he been gone to Sea?

Mrs. *Davenport*. But a Week.

Mrs. Dorman *Sworn.*

Mr. Serj. *Jenner*. Mrs. *Dorman*, Did you watch with this Man at Mrs. *Davenport*'s?

Mrs. *Dorman*. Yes.

Mr. Serj. *Jenner*. Within the 17 Days that he was there, did he Eat or Drink?

Mrs. *Dormer*. No.

Mr. *Phipps*. How many Nights or Days did you watch with him?

Mr. Serj. *Jenner*. Give an account of the Time when you watch'd with him, and no longer.

Mrs. *Dorman*. Two Nights, and every Day.

L. C. J. *Holt*. He might have Eat, and you not ſee him, might he not?

Mrs. *Dorman*. But the time I ſaw him, he did neither Eat nor Drink. And he made Water, and I believe five times more came from him than he took.

Mrs. Dean *Sworn.*

Mr. Serj. *Jenner*. Mrs. *Dean*, Do you know *Richard Hathaway*?

Mrs. *Dean*. Yes.

Mr. Serj. *Jenner*. How long have you known him?

Mrs. *Dean*. Not till he was at Madam *Davenport*'s.

Mr. Serj. *Jenner*. Was you there all the Seventeen Days?

Mrs. *Dean*. Not all the Time. I ſate up with him two Nights.

Mr. Serj. *Jenner*. Who ſate up with you?

Mrs. *Dean*. Madam *Davenport*.

Mr. Serj. *Jenner*. While you were there, did he Eat or Drink?

Mrs. *Dean*. No.

Mr. Serj. *Jenner*. Call Dr. *Hamilton*. (*He was Sworn.*) Doctor, pray give an Account of what you know concerning this *Richard Hathaway*.

Dr. *Hamilton*. My Lord, I have very little to ſay upon my own Perſonal Knowledge. But happening to be at Sir *Thomas Lane*'s when he was brought before him, I heard what paſt, and I deſired Sir *Thomas* to let me try his Throat; and I did try it, and found nothing amiſs. But at laſt I found there was nothing to be depended upon, for there are abundance of Legerdemain Tricks, therefore his vomiting Pins, and other Actions were not to be truſted to; and therefore there was nothing to be depended on but his Faſting; and if you would diſcover whether he be an Impoſtor or no, he muſt be lock'd up in a Room for a Fortnight, and watch'd. And then I ſaid to the Fellow's Maſter, for my Curioſity, if you pleaſe, I will lock him up in a Room a Fortnight, and I ſhall find out whether he counterfeits or no. And he came to me afterwards, and ſaid, Dr. you promiſed you would make this Tryal of my Man. I did ſo, ſays I, and if I can I will. I had Thoughts of putting him in the Garret; but then I conſidered, if I ſhould put him in the Garret by himſelf, he might dye. But at the ſame time Mrs. *Davenport* happen'd to come to my Houſe; and I ſaid to her, I dare truſt you with an Experiment, for I believe he is an Impoſtor; and I deſired her to let me have her Garret to put him in, and ſhe conſented. And I deſired her either to go her ſelf, or ſend to *Long-Lane*, and buy Things for him; and that ſhe ſhould ſtrip him, and ſee that nothing may be about him to hide Bread or any Thing elſe in; and, ſaid I, let none come to him, and let one or two of your Family ſit up with him every Night. And ſhe promiſed me ſhe would. Accordingly ſhe bought a Bed for him, and other Things, and he was ſent to her; and the next Day they ſent me Word that he had ſtrange kind of Motions; but I ſaid, there is nothing to be depended on as to theſe Things; but I would fain know whether he faſts or no. I have heard of many that have faſted many Weeks, but they have taken Water, or ſome ſuch Thing, which, though they are very weak Things, yet may keep one Alive; but none can live without taking ſomething; and if he ſhould live to the End of the 17 Days without Eating or Drinking any Thing, I ſhould have ſomething to take hold of. They told me----

Mr. Serj. *Jenner*. That is no Matter what they told you. Did you ſee him afterwards?

Dr. *Hamilton*. I was mightily concerned for the poor Creature when I ſaw him at Sir *Thomas Lane*'s; and I was willing to try him.

Mr. Serj. *Jenner*. Did you ſee him after that?

Dr. *Hamilton*. Yes, when he was blind for ſeveral Days. And I ſent to Dr. *Martin*, and deſired the Favour of him to call upon me; and I ſaid ----.

Mr. Serj. *Jenner*. Did you ſee him after he had been at Madam *Davenport*'s?

Dr. *Hamilton*. Yes.

Mr. Serj. *Jenner*. Did you ſee him while he was there?

Dr. *Hamilton*. Yes. The Thing that I depended upon was purely his Faſting. I ſaw him my ſelf ſeveral times, and I could not believe but that he had eat, becauſe his Pulſe were ſtrong; that was one Reaſon that I thought he muſt eat.

Mr. Serj. *Jenner*. Did you ſee him the laſt Day of the Fortnight?

Dr. *Hamilton*. I was juſt going to Dinner when Dr. *Martin* came to me; and I ſaid to him, Dr. *Martin*,

Martin, let us try every Thing: Will you go along with me to him? Says he, if I go he will fall in a Paſſion. But after I had dined I went, and enquired about him, and they told me he had ſtrange Motions.

Mr. *Broderick*. You ſay you reject every Thing except that of his Faſting.

Dr. *Hamilton*. Yes.

L. C. J. *Holt*. Doctor, Do you think it is poſſible in Nature for a Man to faſt a Fortnight?

Dr. *Hamilton*. I think not, my Lord.

L. C. J. *Holt*. Can all the Devils in Hell help a Man to faſt ſo long?

Dr. *Hamilton*. No, my Lord, I think not; and that made me to ſuſpect him.

Mr. *Phipps*. Do you think the Pulſe of a Man can be ſtrong when he has faſted Eight Days?

Dr. *Hamilton*. I think not.

Sir Thomas Lane *Called and Sworn*.

Mr. Serj. *Jenner*. Sir *Thomas*, be pleaſed to tell my Lord and the Jury what you know of this Man.

Sir *Tho. Lane*. It was above a Twelve-month ago that his Maſter brought a Woman before me, upon ſuſpicion that ſhe was a Witch, and that ſhe had bewitched his Man: but there having been a Tryal I ſhall wave that. I enquired what kind of Life he had lived; and his Maſter ſaid he had behaved himſelf very civilly, and gave him a very good Character. He told me how grievouſly he had been afflicted, and that he had been Six or Seven Months in the Hoſpital, and had faſted a great while, above Eight Weeks, and had voided and vomited Pins; and two Witneſſes ſwore to Chains of Hundreds of Pins that came from him in his Excrements. And it ſeems they had a fancy that ſcratching *Sarah Morduck* would give him Relief, and they were earneſt with me that I would command this Woman to be ſcratch'd; and I appeal to them, whether I did not refuſe it. I ſaid, if I ſhould order this, it would be an Aſſault; but if ſhe will conſent, you may do it. Says ſhe, If I may be ſecured for the future, I will let him. Says I, if you do it, do it in your own Way: There are ſeveral here that know it was ſo. And ſhe did give her Conſent; and he ſcratched her, and I pull'd away her Arm from him. The Fellow had Bread and Cheeſe brought him; and as ſoon as he had ſcratch'd this Woman, he took the Bread and Cheeſe and eat prodigiouſly; and he had about a Quart of Drink, and he drank it up at a Gulp. I ask'd Mrs. *Morduck*, and her Friends, whether they did ever know that this Fellow had got any Money by theſe Tricks? No, they could not tell of any; ſo that there appeared to be neither Profit nor Revenge in the Caſe; and I thought he could not be ſuch a Fool to pretend all this for no End, and run the hazard of being whipp'd.

L. C. J. *Holt*. The Queſtion is not whether he ſhall be puniſhed for a Fool, but whether he be a Knave; whatever Puniſhment he may ſuffer, if convicted, does not belong to you to determine.

Sir *Thomas Lane*. I ſent for Mr. *Martin*, and I ſent for him, and I ſent for the Woman, and I examined them both; and Mr. *Martin* told me he ſuſpected the Fellow might be an Impoſtor, for he had got a Woman to be ſcratch'd for *Sarah Morduck*. And he ask'd the Woman that Mr. *Martyn* had hired, and ſhe ſaid in her Opinion he could ſee no more than a Poſt.

L. C. J. *Holt*. Call *Johnſon* again. This Man ſcratch'd you. When he had done it, did you ſee him afterwards?

Mrs. *Johnſon*. Yes.

L. C. J. *Holt*. Were his Eyes open?

Mrs. *Johnſon*. Yes.

L. C. J. *Holt*. But could he ſee?

Mrs. *Johnſon*. No. When he ſcratch'd me they were ſhut.

L. C. J. *Holt*. Every Body can ſee when their Eyes are open.

Sir *Thomas Lane*. This Woman ſaid, ſhe believed he could neither ſee nor hear, any more than a Poſt.

Mr. *Martin*. It was after I was gone, I heard nothing of it.

Sir *Thomas Lane*. I ſent for him after the Examination; all the Evidence that was before was of his Faſting.

L. C. J. *Holt*. *Anne Eaton*, How long did you watch with him?

Anne Eaton. Nine Weeks.

L. C. J. *Holt*. Was he dumb and blind ſo long?

Anne Eaton. No, my Lord.

L. C. J. *Holt*. How long did he faſt?

Anne Eaton. Thirteen Weeks in all.

Mr. Serj. *Jenner*. Did you watch with him all the Time?

Anne Eaton. Sometimes by Night, but not by Day.

Heycock *Sworn*.

Mr. Serj. *Jenner*. What do you know of this Man?

Heycock. I ſaw this Man in a very dreadful Condition ſince the laſt Aſſizes.

Mr. Serj. *Jenner*. Where did you ſee him?

Heycock. At Mr. *Welling*'s. I ſaw him Blind and Dumb, and his Eyes were ready to ſtart out of his Head.

Mr. Serj. *Jenner*. How long ſince was it that you ſaw him thus?

Heycock. I ſaw him ſeveral times in that Condition. And I was once in Company, when there were Four or Five to hold him in his Bed, whereas at another time he had not half the Strength of a Man.

L. C. J. *Holt*. When was this?

Heycock. Since the Aſſizes.

Spurling *Sworn*.

Mr. Serj. *Jenner*. What did you ſee of this Perſon?

Spurling. I ſaw him at Madam *Davenport*'s.

Mr. Serj. *Jenner*. How often did you ſee him?

Spurling. Three Times.

Mr. Serj. *Jenner*. Did you watch with him there?

Spurling. I went to ſee him, becauſe I heard he was under a ſupernatural Power.

L. C. J. *Holt*. What do you think that was, was it an Infernal Power?

Spurling. A Diabolical Spirit.

L. C. J. *Holt*. Did you ever hear the Power of a Diabolical Spirit deſcribed?

Spurling. But I ſuppoſe thoſe that are under Witchcraft are under ſuch a Spirit.

L. C. J. *Holt*. But can a Diabolical Spirit enable a Man to faſt Forty Days?

Spurling. I can't tell that. I was acquainted with one that was under a ſupernatural Power, that was in ſuch a Condition as this Man was.

L. C. J. *Holt*. Did he faſt too?

Spurling. I know not that.

L. C. J. *Holt*. I never heard that the Devil ever made ſuch a bold Attempt.

Spurling. That Perſon, the Devil, acted him ſo ſubtilly, that it was impoſſible to proſecute him.

L. C. J. *Holt.* How could you know that?

Spurling. Becauſe when his Eyes were ſhut, he could tell any Man's Name that was coming up.

L. C. J. *Holt.* Was not he very well pleaſed to be bewitch'd?

Spurling. No, he was actually poſſeſs'd.

L. C. J. *Holt.* Was he ſick, or out of Order?

Spurling. No, my Lord; but he had crooked Pins came from him.

L. C. J. *Holt.* Did he accuſe any body of bewitching him?

Spurling. Yes.

L. C. J. *Holt.* What is become of that Perſon he accuſed?

Spurling. He accuſed ſeveral.

L. C. J. *Holt.* How many did he accuſe?

Spurling. Five Women; eſpecially one.

L. C. J. *Holt.* Where is that Woman?

Spurling. She is deceaſed.

L. C. J. *Holt.* Gentlemen of the Jury, you have heard a very long and tedious Evidence. The Information is againſt this *Richard Hathaway*, for that he with an evil Deſign to take away the Life of *Sarah Morduck*, pretended to be bewitch'd, and to have faſted for a conſiderable Time, being not able to take any Suſtenance for divers Days; nay, for ſeveral Weeks, which he pretended to faſt. And his faſting was imputed to this Woman's bewitching him; that he did pretend to faſt a conſiderable Time; that he did procure this Woman to be committed for being a Witch; that ſhe was Indicted, Tried and Acquitted, is plainly proved to you, without all manner of Queſtion. The only Queſtion that you are now to try, is, whether this Man did do this by reaſon of any Diſability of his Mind, or Deluſion that was upon him; or did counterfeit (what was the Reaſon to induce him to counterfeit, does not appear; whether to get Money, or what elſe, will not be material); but if this Man was under a Delirium of his Mind, and did fancy himſelf to be bewitch'd, then there will be no Reaſon to convict him.

Now it is urged, that he did this maliciouſly, and with a Deſign to take away the Woman's Life. Firſt they tell you, that this Man had been a Servant to one *Welling* a Blackſmith: He came to him about Four or Five Years ago; then he had Fits, and was put into the Hoſpital; and being there, he pretends he could not eat. After that, he was dumb; and after that, he began to be blind; and being blind and dumb, and faſting, theſe were look'd upon to be the Three Tokens that he was bewitch'd. Then the Man had a Fancy that he was bewitch'd by this Woman, but for what Reaſons does not appear; but his Fancy appear'd to be very ſtrong, that ſhe brought him into theſe Miſchiefs. Therefore he muſt go and ſcratch her; which he did, and preſently he could ſee and eat. This was look'd on as very ſtrange, and People concluded that this Woman was the Cauſe of theſe Maladies that were upon this Man. It ſeems that this Scratching was thought to be ſo effectual, that he was well for about ſix Weeks; after which he appeared to be ill again, and his Sight and his Stomach were gone again, and then it was propoſed he ſhould ſcratch her again. It ſeems that before that, Dr. *Martin* was deſired to come to him, and pray with him, and he did; and to try whether he was ſenſible or not, he took him by the Hand, and by the Signs he made, found he was ſenſible; and therefore he did pity his Condition, but could not tell what to make of it. But *Welling* his Maſter told the Doctor he had received great Benefit by ſcratching the Woman before; and thereupon deſired ſhe might be ſcratch'd again. But he ſuſpecting this might be a mere Counterfeit, and that it could not have that Effect, he thereupon gets the Woman ſeemingly to conſent to be ſcratch'd, being reſolved to try whether this was an Impoſture or no. And *Hathaway* pretending himſelf to be blind, gave him an Opportunity to make that Experiment; for he procured another Woman to repreſent *Sarah Morduck*, and ſhe conſented to be ſcratch'd in her ſtead; *Hathaway* was laid up in a Bed, and *Sarah Morduck* was in the Room, and ſpake to him. It was obſerved, when this other Woman, whoſe Name was *Johnſon*, was brought to repreſent this *Morduck* to *Hathaway*, ſhe put her Hand into his, and then he examin'd it, and her Wriſt, and her Arm.; ſo it ſeems he had ſome Apprehenſions of a Deſign to impoſe upon him. And then he proceeds to ſcratch that other Woman, who takes it patiently, till the Blood was ready to come; and then ſhe was ſuddenly taken away; and ſome of the Company ſaid the Blood is come, and preſently his Eyes opened, and he laid hold on *Sarah Morduck*, and ſeizes her, and did not only appear to ſee, but to ſpeak. This is proved to you by other Evidence beſides Dr. *Martin*. Upon this, ſays Dr. *Martin*, you are miſtaken; you have deceived the World, you have not ſcratch'd *Sarah Morduck*, but another Woman. When he underſtood that, he was very much concern'd, and ſeemed to begin to be ill again; and *Welling* ſaid, he will not be well till he had ſcratch'd the right Woman; ſo to Appearance he fell ill again. You have heard how the Matter had been carry'd on afterwards; for many looked on this Blindneſs and Faſting as an errant Impoſture. *Welling* and his Wife complained to Dr. *Martin*, ſaying, you have undone us all, and our Family too. What ſhould be the Meaning of that? What, becauſe he had diſcovered a Cheat, therefore they were undone. It ſeemed likely, that if it were a Cheat, and *Welling* not conſcious to himſelf of carrying it on, he need not have been concern'd at it. But they reſt not here, the Woman, *Sarah Morduck*, muſt be ſcratched again; which was perform'd with Violence, againſt her Conſent; and the Woman being purſued by the Rabble, not able to live quietly in *Southwark*, was forced to go on the other ſide of the Water, and take a Lodging there for her Security; where ſhe was again purſued, and aſſaulted by *Hathaway* and others, in a riotous manner, in order to ſcratch her again; and tho' Complaint on her behalf was made of this Violence to Sir *Thomas Lane*, he did not think fit to give her any Relief, being (as it ſeems upon ſome Evidence) poſſeſs'd with an Opinion that there might be ſome Grounds for purſuing this Woman in that manner. She was carried before him, and he being informed that this Fellow could not eat nor drink, thereupon it was thought convenient by Sir *Thomas*, in order to make a full Diſcovery, that ſhe ſhould be ſcratched again; and accordingly ſhe was perſwaded to ſubmit to be ſcratched, and preſently after the Scratching, *Hathaway* did eat, and drank very greedily, and thereupon this Woman was committed to Priſon. This was thought a great Evidence of this Man's being bewitched by this Woman, *Sarah Morduck*. What Rule they have for it either in Philoſophy or Divinity, I cannot tell. There was a Tryal, and the Woman was acquitted,

and

and upon full Evidence. He then pretended to have faſted for a long Time. That of our Saviour's Faſting Forty Days, is mention'd in Scripture as miraculous, and an Effect of Divine Power, being one Evidence of the Truth of the Chriſtian Religion. Who can imagine, that without ſuch Aſſiſtance, a Man can faſt Forty Days, or above, and yet continue in Health? It is not within the Compaſs of my Underſtanding to conceive it; I muſt leave you to conſult your own, and to conſider with your ſelves, whether you have any Evidence to induce you to believe it to be in the Power of all the Witches in the World, or all the Devils in Hell, to enable a Man to faſt beyond the uſual Time that Nature will allow; they cannot invert the Order of Nature: And if the Thing be impoſſible, and he endeavour all this while to make the World believe he has faſted ſo long a Time, it is moſt evident he is a Cheat; for he muſt contrive to have ſome Victuals ſome way or other ſecretly conveyed to him; of which the Impoſſibility of his being able to faſt ſo long is a Demonſtration. But notwithſtanding this Tryal, and that this Woman was acquitted, yet this Matter muſt be carried on ſtill. He was bailed out, and then returns to his Fits again; and tho' then he was not blind, or pretended to be ſo, yet he ſeemed to faſt, and to be dumb again for a long Time. This made a great Hubbub about the Town, and the People clamour'd that the Man had Injuſtice done him in the Trial at the Aſſizes; and Reports were ſpread, that the Woman was acquitted by Favour or Corruption both of Judge and Jury. Upon this Account, the Woman was purſued by a Rabble, and came to be in imminent Danger of her Life. Wherefore it was thought highly neceſſary that the Proſecution againſt this Man, and others concern'd with him, ſhould be ſpeedy; and thereupon he was apprehended, and bound to appear in the *King's Bench*, and there he pretended ſtill to be dumb. His Bail deliver'd him up, and he was ſent to the *Marſhalſea*. There he lay without eating or ſpeaking for ſome ſhort time, till it was conſider'd that if he was under any real Affliction, it was proper he ſhould be under the Care of ſome proper Perſon: Therefore he was put to the Houſe of Mr. *Kenſey* a Chyrurgeon in *Fetter-Lane*, who was order'd to take care of him, and uſe him well; alſo to watch him, and endeavour to make a Diſcovery of the Truth of his Condition. He was deliver'd into his Hands the Firſt of *November* laſt. The People of the Houſe took care of him, and he faſted from *Saturday* till *Monday*; and Mr. *Kenſey* aſk'd him how many Weeks he had faſted, he counted on his Fingers Twelve: But Mr. *Kenſey* thought he did not deal truly, but had a mind to impoſe upon the World, and therefore he locks him up. He eat nothing all *Saturday* and *Sunday*; but Mr. *Kenſey* found he had made Water, for he diſcover'd the Rug or Counterpane of the Bed to be wet; and that it appear'd to come from the Teſter of the Bed: He made Water it ſeems in an old Box, and ſet it over the Bed. Drink was offered him, but he refuſed it. After this Mr. *Kenſey* makes uſe of this Stratagem: He pretends to quarrel with his Maid, and gives her reproachful Language, in the Hearing of *Hathaway*; calling her Hypocrite, like unto him. At which the Maid ſeemed to be provoked; and out of Revenge, to prevent her Maſter's Deſign in making a Diſcovery, ſhe takes an Opportunity and ſays to him, Take heed of my Maſter, he will betray you. And ſhe had inſinuated her ſelf ſo far into him, that he began to truſt her. She gave him on the *Monday* a Glaſs of Brandy, which he drank, and a Piece of Pudding, which he received and put into his Pocket; and afterwards a Toaſt and Beer, which he eat and drank, and afterwards he entirely truſted this Woman. And Day by Day he did eat plentifully for ſeveral Days together in her Preſence, from *Tueſday* to *Friday* Se'ennight following, thinking Mr. *Kenſey* did not ſee him; but he being in a ſecret Place, undiſcover'd by *Hathaway*, did ſee him eat and drink ſeveral Days; ſometimes he drank ſo much, that he was perfectly drunk; and all this while he pretended to faſt, tho' divers others beſides Mr. *Kenſey* and the Maid were Witneſſes to his eating and drinking. Then it was thought to be time to diſcover this to the World; and he was told plainly by Mr. *Kenſey*, that he was diſcover'd, and if he would tell the Truth, he ſhould be pardon'd, ſeeing he could carry it on no longer. Now it is plain this Man had counterfeited during the Time he was at Mr. *Kenſey*'s; tho' that particular Time be not laid in the Information, yet it is a Continuance of that Time which is laid therein. And if he was an Impoſtor by pretending to have faſted while he was at Mr. *Kenſey*'s Houſe, I leave you to conſider whether he was not ſo all the while before. You hear what Management there has been, how he was at *Welling*'s Home, how Pins were pretended to come from him, how they were made uſe of, and Charms ſewed to him. You hear how ſome time ago one Mr. *Bateman* came to him, hearing at the Beginning of this Buſineſs, he vomited Pins: He ſaw ſome on the Ground; when he vomited a conſiderable Number, they were linked up together; for it is hard to manage ſo many looſe Pins; but when they are linked together, they are the eaſier to manage in the Mouth. Here he pretended to vomit Pins, and would be ſtill putting his Hands to his Pocket, and Mr. *Bateman* fancied he pulled them out from thence. Therefore he took the Chamber-pot, and would not let his Hands come near it; then he vomited no Pins there; and he ſearch'd his Pockets, and there were great Quantities of Pins found therein; neither did he at any time ſeem to vomit any Pins, until he had drank a Draught of Ale. But notwithſtanding all this, there are People that come and tell you that he was ſick; he was diſturb'd, and had theſe Fits. One Woman tells you ſhe has watched with him ſeveral times; ſometimes by Night: Another Woman tells you that ſhe watched with him, when the other did not, and ſometimes by Day; and that he did not eat, but was ſick, and out of Order. And another tells you, he ſaw him; that he was in great Diſorder, threw himſelf backward and forward, and would turn his Face round towards his Back; and that he was blind, tho' his Eyes were open. But how could he tell that he was blind? Said he, when I pulled him by his Eye-lids, his Eyes did not ſtir; and therefore he infers, that he was blind. And then they give you an Account that he was at the Hoſpital Five Months; and that he was weak, and went upon his Ankles, and had Quickſilver given him; and that he lay ſeven or eight Days, and did not eat; but then there was no Apprehenſion of Witchcraft. And one Mr. *Smith* an Apothecary, a Witneſs, called on his part, and a Neighbour, ſaid, he knew him four or five Years ago; and that *Hathaway* was then with his Maſter, and had Fits, and would fall down, and ſeem to be dead; whether he was really ſick, or counterfeited, he cannot tell; he applied his Cupping-glaſſes to him, and preſently brought him to himſelf. This is one of his own

Witneſſes. And then there is Mrs. *Willoughby*; ſhe ſaw him in his Maſter's Houſe, and ſhe ſaid his Breath made a Noiſe like the Barking of a Dog, and ſhe believed he was bewitched, for ſhe herſelf had been bewitched, and was made to fly, and ſhe fancies he was bewitched becauſe of his breathing in that Manner. And then they tell you what care was taken of him, and he was put into an empty Houſe about Nine or Ten Days, and one Man watch'd with him by Day, and another by Night, and how they came to do that; and they ſwear they never ſaw him eat or drink all that Time; but they ſay he did ſeveral Times vomit Pins in that Time; but it ſeems he was put there merely out of Charity, the Pariſh would not be charged with him: Then they tell you there were People appointed to watch with him, there were Two Chamber-pots; and in one there were Excrements, and there were Pins in it, and Hair, and a Piece of a Nail, but after he ſat on the Second Pot, there was nothing found therein; but they conclude him bewitched. Then there are others that ſay he lay as dead, and that they took out of his Mouth ſeveral Pins, and then you have an Account after the Tryal, what happened at Mrs. *Davenport*'s, where he was ſent by Dr. *Hamilton* to be tryed whether he was an Impoſtor or not. She ſays ſhe watched with him herſelf ſometimes, another Woman at other Times, and another at other Times, and that they could never perceive that he eat any Thing. But there is one Mr. *Davenport* that was with him ſome other Times, but he is gone to Sea, and could not appear. Then comes in at laſt Dr. *Hamilton*, and he tells you he was by, when this Matter was brought before Sir *Thomas Lane*, and he could not tell what to think of his Faſting, but as to his Fits and the Pins, he ſays thoſe may be eaſily conterfeited by Legerdemain Tricks, but, ſays he, faſting for ſo long as ſome People did believe he did, is more than Nature can bear; no body can think the Devil has ſuch a Power to enable a Man to undergo it. Tricks the Devil may play, but not work a Miracle, it is not to be thought that God ſhould let him looſe ſo far. This is the Sum of the Matter, his pretending to be dumb and blind, and to faſt, and to be reſtored to his Speech, his Sight, and Stomach, by ſcratching this Woman, is fully proved. You are to conſider whether he did labour under theſe Infirmities, or counterfeited them, and whether ſcratching and drawing Blood of the old Woman, could be effectual to cure him of them, if they had been real? If not, then it is a ſtrong Argument that theſe Infirmities were counterfeited. His ſcratching and drawing Blood of a ſtrange Woman, inſtead of *Sarah Morduck*, did ſeem to avail him, as much as if he had ſcratch'd her, until he underſtood he was impoſed upon; then he ſeemed to relapſe to his former Condition. You will remember what paſſed at Mr. *Kenſey*'s, and the Manner of vomiting of Pins as was pretended. You are to conſider whether this Man was *non compos mentis*, or under a Deluſion; therefore I ſhall ſpare the troubling you with more Words, but leave it wholly to you. If you do believe, upon the whole Matter, that this Man has impoſed upon the Magiſtrate and on the World, or endeavoured by counterfeiting theſe Infirmities, to perſwade People to believe that this Woman was a Witch, and had bewitched him, then there is all the Reaſon that can be, to find him Guilty. But if you believe he did not counterfeit, or that he was *non compos mentis*, or under any kind of Deluſions, you muſt acquit him.

The Jury conſulted, and without going from the Bar, brought him in Guilty.

A Short Account of the Tryal held at *Surrey* Aſſizes, in the Borough of *Southwark*, *March* 26. 1702.

In an Information, againſt Richard Hathaway, Thomas Wellyn *and* Elizabeth *his Wife, and* Elizabeth Willoughby, *Wife of* Walter Willoughby, *upon an Information for a Riot and Aſſault*, &c.

THE Information ſets forth, that the Defendants, with divers other Perſons, the 25th of *September*, in the Twelfth Year of King *William*, at *Southwark*, in a Riotous and unlawful manner aſſembled themſelves, and made a great Affray and Riot; and upon one *Sarah Morduck*, the Wife of *Edward Morduck*, being an honeſt Woman, and not a Witch, nor ever uſing Witchcraft, Inchantment, Charm or Sorcery, did make an Aſſault, and under a wicked Colour, againſt the Law, to try whether the ſaid *Sarah* was then a Witch (the Defendant *Hathaway* then falſly and malicioufly affirming himſelf to be bewitched by her the ſaid *Sarah*, though in truth he was never bewitched, and well knew himſelf not to be ſo), her the ſaid *Sarah* did then, and there Scratch, Wound, &c. againſt the Peace, &c.

The Information further ſets forth, That the ſaid Defendants, the 11th of *February*, in the Twelfth Year of King *William*, at *Southwark* aforeſaid, aſſembling themſelves together riotouſly and unlawfully, did then and there make a great Affray and Riot, and alſo Aſſaulted the ſaid *Sarah*, and Beat, Scratch'd, and Wounded her, in Contempt of the King, and againſt the Peace, &c.

The Information further ſets forth, That the ſaid Defendants, the ſaid 11th of *February*, did Aſſault the ſaid *Sarah*, and wounded her the ſaid *Sarah*, againſt the Peace, &c.

The Defendants pleaded Not Guilty, and Iſſue was taken thereupon. The Council for the King opened the Caſe to this Effect: That the Defendants Caſe was the ſame in the other Information. *Hathaway* pretended himſelf bewitch'd, and the Contrivance was carryed on by the other Defendants and divers others; but whether for the hopes of getting Money by it, or out of Malice to take away the poor Woman's Life, or what the Deſign was, was

was not then known; but it was certain that ſeveral Riots and Aſſemblies were made, and great Numbers of People came together in a Body at ſeveral times to *Morduck*'s Houſe, and in a violent manner enter'd the ſame, and by Force took her out and carried her away to the Defendant *Wellyn*'s Houſe, where the Defendant *Hathaway* ſcratched her; and the other Defendants alſo in a very barbarous manner beat her, pulled out her Teeth, tore her Face, Hair and Cloaths, threw her on the Ground, ſtamp'd upon her Belly, and threw her into the Street, where ſhe lay as Murdered, until taken into a Neighbour's Houſe; which the Defendants and others in a riotous manner beſet, and threatned to pull it down, unleſs *Morduck* (the pretended Witch) was again delivered to them. Theſe Riots and Aſſaults happened to be encouraged by an Accident, which fell out as *Morduck* was going through *Newgate-market*, where the People crying out, A Witch, the Rabble ſeized her, and threatned to throw her into a Horſe-Pond; that one of theſe Rioters being taken away, was carry'd before a Magiſtrate in the City, but he was ſo far from taking notice thereof, that he declared that there was Cauſe enough for it; and being deſired to ask the Perſon's Name, refuſed it; but the ſame Magiſtrate afterwards ordered the Defendant *Hathaway* to ſcratch *Morduck* in his Preſence, where were alſo preſent ſome of the Aldermen of *London*. Theſe Matters being acted by Publick Authority, gave the Licentious Mob ſuch a Confidence, that even after the Woman was Tryed and Acquitted, and the Defendant *Hathaway* committed for an Impoſtor, yet he with the other Defendants, did again in a riotous manner Aſſault, Scratch, and Wound the ſaid *Morduck*, and purſued her after a cruel manner from Day to Day, till they were taken into Cuſtody, in order to be puniſhed for the ſame. For which ſeveral barbarous Facts the Defendants were then to be Tryed.

Then the Council for the King called their Evidence to prove the ſeveral Branches of the Information.

Sarah Morduck being called and Sworn, depoſed to this Effect: That in *September* laſt *Richard Hathaway* came to this Informant in *Surry*, as ſhe was opening her Window, and being behind ſcratch'd her Face in a very cruel manner, and forced out one of her Teeth, and carried away her Cloaths. And upon the 11th of *February* laſt, *Thomas Osborn*, *Thomas Hatton*, with Four other Perſons unknown, all in Diſguiſe, came to this Informant's Houſe in *Surry*, and forced her out of her Houſe, and carried her to the Houſe of *Thomas Wellyn*, who is Maſter to the ſaid *Richard Hathaway*; and there the ſaid *Hathaway*, by the Encouragement of the ſaid *Osborn* and *Hatton*, and the reſt of the Company, did again ſcratch this Informant in a moſt barbarous manner; and afterwards *Elizabeth*, Wife to the ſaid *Thomas Wellyn*, fell upon her and ſcratch'd her in a moſt cruel manner; and tore her Face, and tore off her Head-cloaths and Hair; and then the ſaid *Thomas Wellyn* gave this Informant two or three Kicks on her Belly, and threw her on the Ground and ſtampt upon her, and ſo much bruiſed her that ſhe was forced to keep her Bed for about a Fortnight. And this Informant further depoſeth, That in *September* laſt one *Elizabeth Willoughby*, the Wife of *Walter Willoughby*, came to this Informant's Houſe in *Surry*, and brought a great many Perſons unknown to this Informant with her; and the ſaid *Elizabeth* gave this Informant ſeveral Blows with her Fiſt, and would have pulled her out of her Houſe, for him the aforeſaid *Richard Hathaway* to have ſcratch'd her, he ſtanding at a Corner hard by; but was prevented by Mrs. *Sarah Hall*. And further ſaith, That in the Month of *September* laſt ſhe having occaſion to go into *Newgate-market*, a Boy, his Name is *John Hopkins*, called out, ſaying, *There goes the Old Witch*; whereupon a great Company of People in a riotous manner, flock'd about her, and threatned to throw her into a Horſe-Pond; and this Informant being got into an Ale-houſe by the Aſſiſtance of ſome Women, avoided the Fury of the Rabble, otherwiſe ſhe had been Murdered, as ſhe verily believes; and afterwards Mr. *Burrel* her Landlord, with others his Aſſiſtants came and conveyed her home.

Sarah Hall was the next Witneſs, who ſaid, That in *September* 1700, about 8 in the Forenoon, the Defendant *Willoughby* came with *Hathaway* and others, pretending to buy Fruit of *Morduck*, and told *Morduck* ſhe came to have her out, that *Hathaway* might ſcratch her; and *Willoughby* ſtruck *Morduck* ſeveral Blows, and forced her out of Doors, before *Hall* could come to her Aſſiſtance, who with difficulty got *Morduck* into her Houſe again; upon which the Defendants *Willoughby* and *Hathaway*, and others, beſet her Houſe, and threatned to pull it down, unleſs they had *Morduck* delivered to them; but *Hall* calling up her Husband, who was a-Bed, the Perſon went away.

Robert Adams, and *John Bowrer*, both Watermen, declared, That plying for their Fare at *Maſon*'s Stairs, they ſaw the Defendant *Hathaway* come behind *Morduck* as ſhe was opening her Window, and took her about the Neck with one Arm, and pulled her almoſt to the Ground, and ſcratch'd her Face in ſeveral Places till the Blood came, and tore her Mouth, and tore her Hood and Head-cloaths from her Head; and being taken off, *Morduck* got into a Neighbour's Houſe, whom *Hathaway* would have purſued in at a Window, had not *Adams* ſtopt him.

To prove the Riot and Aſſault in *February* 1700.

Sarah Morduck declared, That the 11th of *February*, 1700. *Thomas Osbourn*, *Thomas Hatton*, with four others unknown, all diſguiſed, came to and forced her out of her Houſe, and carried her to the Houſe of the Defendant *Wellyn*, *Hathaway*'s Maſter; where *Hathaway*, by the Encouragement of the Company, ſcratch'd her barbarouſly; and after that, *Wellyn*'s Wife ſcratch'd her, and tore her Hair, and Face, and pulled off her Head-cloaths; then *Wellyn* kick'd her two or three Times on the Belly, and threw her on the Ground, and ſtamp'd on her, and bruiſed her ſo much, that ſhe was forced to keep her Bed for a Fortnight.

Mrs. *Hall* ſaid, That in *February* 1700. in the Evening, ſeveral Perſons unknown came to her Houſe, and forced *Morduck* from thence, and carried her to *Wellyn*'s (as ſhe was told:) That about half an Hour after, *Morduck* was caſt into the Street, and being received into a Neighbour's Houſe, *Hall* went to her, and found her Face much torn, in a moſt barbarous Manner, and her Legs, Arms, and Body cruelly bruiſed and black.

Then the Council called Witneſſes to prove the Third Part of the Information.

Samuel Burrel being ſworn, depoſed, that *Edmund Jones*, in Company with Two more, came

to his Houſe, and deſired to ſpeak with *Morduck*, who lodged there, who being called to *Jones*, he aſk'd her to go over the Water to be ſcratch'd by *Hathaway*, who declared he was bewitch'd by her; but ſhe refuſing to go, *Jones* ſaid, if ſhe walked *London* he would have her ſcratch'd; and further, that about *Eaſter* or *Whitſon* Week laſt, the ſaid *Jones* came to his Houſe with about Fourteen Strangers, among whom was *Hathaway*, and would have forced into *Morduck*'s Chamber; but a Conſtable coming, they all but *Jones* diſpers'd, whom the Conſtable took, and carried before Sir *Thomas Lane*; but Sir *Thomas* would take no Notice of it.

Thomas Knowlton being ſworn, depoſed, That in *Eaſter* Week laſt, *Jones* and *Hathaway*, and ſeveral others, went into *Burrel*'s Houſe, and aſked for *Sarah Morduck*, who was called down to them, when *Burrel* deſired them to go up Stairs into the common Drinking-room, and deſired *Knowlton* to ſee *Morduck* had no Harm done her. That ſoon after came in about fourteen Perſons, one of which ſaid, they came to give *Hathaway* Eaſe, and that they would do it before they went; upon which *Morduck*, at *Knowlton*'s Deſire, retired into her Chamber.

Thomas Noon being ſworn, declared, That all the Time aforeſaid he ſaw Three or Four Perſons, who were of *Jones*'s Company, endeavouring to get into *Morduck*'s Chamber; and upon *Noon*'s aſking them their Buſineſs, they cry'd they would ſpeak with *Morduck*, but upon his threatning them they went into the Room below Stairs from whence they came.

Henry Armſtrong declared, That in *September* was Twelve-month he ſaw a great Number of People following *Morduck*, calling her Witch; and going home afterwards, he ſaw a Crowd of People at an Alehouſe Door, near St. *Paul*'s Churchyard, who declared *Morduck* a Witch; and that he aſſiſted *Burrell* in ſecuring *Morduck* from the Rabble.

James Hearne being called, depoſed, that in *Eaſter* or *Whitſon* Week laſt, one *Jones* was apprehended for a Riot by him and others committed in *Burrell*'s Houſe, and carried before Sir *Thomas Lane*, who diſcharged *Jones*, ſaying there was Cauſe enough for the Riot; and tho' often intreated by *Hearne*, yet Sir *Thomas* refuſed to let him know *Jones*'s Name. And the ſaid *Hearne* further declared, That the Day after *Jones* was carried before Sir *Thomas*, he and *Burrell*, by Sir *Thomas*'s Directions, carried *Morduck* before him, where were preſent Sir *Owen Buckingham* and Dr. *Hamilton*, and the Defendant *Hathaway*. That Sir *Thomas* would have had *Morduck* ſcratch'd by *Hathaway*, which ſhe refuſed, unleſs ſhe might be at Peace for the future: And after Dr. *Hamilton* had given *Hathaway* ſome Beer, Sir *Thomas* would have had *Morduck* ſcratch'd; but the Doctor ſaid, Let her alone a little, to ſee what Effect the Drink would have on *Hathaway*; and ſaid, if ſhe was ſcratch'd it would be ſaid, that the ſcratching, and not the Drink, made the Alteration. And when Sir *Thomas* had heard ſome more Diſcourſe of *Hathaway*'s vomiting Pins, *&c.* Sir *Thomas* ſaid again, let her be ſcratch'd; but *Hearne* oppoſed it, ſaying, ſhe had been too much abuſed already; notwithſtanding which, Sir *Thomas* ordered *Hathaway* to ſcratch her, and ordered her to be ſtript and ſearch'd by ſome Women in his own Houſe. That *Hearne* ſeeing Sir *Thomas*'s Reſolution, bid him ſatisfy himſelf. After which Sir *Thomas* committed *Morduck* to *Woodſtreet-Compter*, and refuſed 500 *l.* Bail for her Appearance: But upon Application made to him by Dr. *Barton* and Dr. *Martyn*, Sir *Thomas* accepted *Hearne*'s and his Brother's Bail for *Morduck*.

The Witneſſes for the Defendants being called and heard, and the Right Honourable Lord Chief Juſtice Holt *having ſpoken to the Jury, they withdrew, and ſoon after brought them all in Guilty.*

The Arraignment and Confeſſion of JAMES BOUCHER, *Gent. at the* Queen's-Bench *Bar*, February 28. 170$\frac{3}{4}$.

THE Court being ſet, the Priſoner was called, and the Clerk of Arraignments ordered Proclamation to be made, for the Under Sheriff of *Suſſex* to return the Precept, and the Keeper of *Newgate* to bring into Court the Body of *James Boucher*. Accordingly the Precept was return'd, and the Priſoner ſet to the Bar.

Clerk of Arr. James Boucher hold up thy Hand. *(Which he did.)*

Then the Grand Jury of Suſſex's *Preſentments were read.*

Suſſex ſſ. "THE Jurors for Our Lady the "Queen, upon their Oaths do "preſent, That *James Boucher*, late of *London*, "Gent. who was a Subject of the late King *William* "the Third, and now Subject of Queen *Anne*, "after the 11th Day of *December* 1688, *viz.* the "Firſt Day of *Auguſt* 1689, was in the Kingdom "of *Ireland*, and after and before the Third Day "of *December* 1697, *viz.* the Firſt Day of *December* 1694. the ſaid *James Boucher* did voluntarily "go into the Kingdom of *France*, without Licenſe "from the late King *William* the Third, or from "the late Queen *Mary*: And that the ſaid *James* "*Boucher*, on the ſaid Third Day of *December* 1697. "was not within the Dominions of the late King "*William* the Third: And that he the ſaid *James* "*Boucher*, not having the Fear of God in his "Heart, nor weighing the Duty of his Allegiance "towards Our ſaid Lady the Queen that now is, "his Supreme, True, Legitimate, Lawful and undoubted

" doubted Lady; and as a falſe Traytor againſt our " ſaid Lady *Anne*, the Queen that now is, after the " 14th Day of *January* 1697, *viz.* the Tenth Day " of *December*, in the Second Year of the Reign " of our Lady *Anne*, the Queen that now is; did " Traiterouſly return and come into the Kingdom " of *England*, *viz.* at *Eaſt Bourne* in the County " of *Suſſex*, without Licenſe from the late King " *William* under his Privy Seal, or from our ſaid " Lady the Queen under her Privy Seal, obtained; " againſt the Duty of his Allegiance, and againſt " the Form of the Statute in this Caſe provided, " and againſt the Peace of our ſaid Lady the " Queen, her Crown and Dignity, *&c.*

Clerk of Arr. What ſayeſt thou, Art thou guilty of the ſaid Treaſon whereof thou art indicted, or Not Guilty?

J. Boucher. Guilty.

L. C. J. *Holt.* What ſay you? Speak out.

J. Boucher. Guilty.

Clerk of Arr. *James Boucher* hold up thy Hand, *(which he did.)*

Then the Second Preſentment was read.

Suſſex ſs. " THE Jurors of our Lady the Queen, " upon their Oaths, preſent, That " *James Boucher*, late of *London*, Gent. who was " a Subject of the late King *William* the Third, " and now a Subject of her preſent Majeſty; " after the 13th Day of *February* 1688, and be- " fore the Third of *February* 1697, (*viz.*) the Firſt " Day of *Auguſt* 1689, was in Arms in the Ser- " vice of the late King *James* in *Europe*, *viz.* in " the Kingdom of *Ireland*; and that the ſaid *James* " *Boucher*, afterwards and before the ſaid Third " Day of *December* 1697, (*viz*) the Firſt Day of " *December* 1694, did voluntarily go into the King- " dom of *France*, and the Third Day of *Decem-* " *ber* 1697, was not within the Dominions of the " late King *William*. That the ſaid *James Boucher*, " not having the Fear of God in his Heart, and " not regarding the Duty of his Allegiance to " our Lady the Queen, his Supreme, True, Law- " ful and undoubted Lady, and as a falſe Traytor " againſt the ſaid Lady the Queen, after the 14th " Day of *January* 1697, *viz.* the 10th Day of " *December*, in the Second Year of the Reign of " Our ſaid Lady the Queen, did traiterouſly re- " turn and come into this Kingdom of *England*, " *viz.* at *Eaſt Bourne* in the County of *Suſſex*, " without Licenſe from the late King *William* " under his Privy Seal, or from our ſaid Lady " the Queen under her Privy Seal obtained; againſt " the Duty of his Allegiance, and againſt the Form " of the Statute in this Caſe made and provided, " and againſt the Peace of our ſaid Lady the " Queen, her Crown and Dignity, *&c.*

Clerk of Arr. How ſayeſt thou, art thou Guilty of the ſaid Treaſon whereof thou art indicted, or not Guilty?

J. Boucher. Guilty.

J. Boucher. My Lord, I humbly beg that I may have leave to ſpeak Two or Three Words.

L. C. J. *Holt.* What would you ſay?

J. Boucher. My Lord, I humbly beg leave to ſpeak Two or Three Words.

L. C. J. *Holt.* Ay, let us hear what you have to ſay.

J. Boucher. My Lord, it is very well known, that I have ſollicited this Two Years for Leave to come over into *England*. And while I have been in *France*, I have done all that I could to ſubſiſt the *Engliſh* that were brought Priſoners to the *French* Camp, and have to my Power aſſiſted them with Money, and other Neceſſaries, eſpecially one Troop of Horſe. I applied my ſelf to Collonel *Lumly*, and he promiſed to lay my Caſe before the Queen. But not hearing from him, I went to his Son, and he told me he had no Opportunity to acquaint the Queen with it. Afterwards I was taken going for *Holland*, and then I ſent to Colonel *Lumly*, and he promiſed to remember me. And I continued ſtill to ſollicite the Service of Her Majeſty's Subjects, and have procured their Horſes that have been taken from them, to be reſtored to them. I ſpoke to Colonel *Godfry*, and he promiſed to ſpeak to —— who promiſed to make it their Intereſt to procure my Return. And after the Camp was over, I came over into *England* at Noon-Day, with my Children, and ſent up a Letter to my Lord *Nottingham* to acquaint him where I was. It's true, I followed King *James* into *Ireland*, but had no Commiſſion, only ſerved the Duke of *Berwick* as *Aid du Camp*. And afterwards I went into *France*, but never ſerved there with any Commiſſion, but as Maſter of the Horſe to the Duke of *Berwick*. And I did hope that the Articles of *Limerick* would take off a great Part of my Offence. My Lord, I hope you will repreſent my Caſe favourably to the Queen.

Dr. *Sandys.* My Lord, I beg leave to ſpeak a Word or two on behalf of the Priſoner. My Lord, I ſollicited ——

L. C. J. *Holt.* What you can ſay to us will ſignify nothing; but if you have any Thing to ſay for the Priſoner, you muſt apply your ſelf elſewhere.

Mr. *Attor. Gen.* My Lord, as it is my Duty, I demand Judgment againſt the Priſoner, upon his Confeſſion of the Two Indictments.

Clerk of Arr. *James Boucher*, thou haſt been indicted on Two Indictments, and confeſſed thy ſelf Guilty of both. What haſt thou to ſay why Sentence of Death ſhould not be pronounced againſt thee?

J. Boucher. I hope your Lordſhip will be pleaſed to intercede for me to the Queen.

Clerk of Arr. My Lords the Queen's Juſtices do ſtrictly command all Perſons to keep Silence while Judgment is giving, on Pain of Impriſonment.

L. C. J. *Holt.* Mr. *Boucher*, You are, by your own Confeſſion, convicted of High Treaſon, for which, Judgment of Death is to be pronounced upon you, and which you are to ſuffer under thoſe Circumſtances which the Law hath appointed.

The Fact of which you were Accuſed, and have now Confeſſed, is, That ſince the Eleventh Day of *December*, 1688. you went into *France* without Licenſe either from the late King or Queen, and have returned ſince the Fourteenth of *Jan.* 1697. without any Licenſe under the Privy-Seal, either from the late King, or Her Majeſty that now is; which Fact is made High Treaſon by the Statute of the Ninth Year of the late King.

The Wiſdom and Juſtice in making that Law, will be very evident to any one that will but reflect upon the Poſture of our Affairs at that Time: For in the Year preceeding to that of the making thereof, there was an horrid Conſpiracy formed from

from among that Party of Men who had ſo left the Kingdom, to aſſaſſinate the late King; to introduce a *Popiſh* and *French* Power, for the Subverſion of the *Proteſtant* Religion, and the Liberties and Properties of the People of *England*; which was managed with that Privacy, carried on with that Secreſy, that it was not diſcovered, nay, not ſo much as ſuſpected, until it arrived to that Maturity, that it was come to the very Point of being put in Execution.

The Truth of which is very clear, as well as by the Proofs produced at the Tryals of ſeveral of the Malefactors, as even by their own Confeſſion.

In the following Year the Peace of *Reſwick* was made, whereby the Intercourſe was reſtored between *England* and *France*. From thence it was evident, that divers of that Party of Men would return into the Realm, and thereby have an Opportunity to revive and carry on that horrid Deſign, in the Succeſs whereof they had been ſo diſappointed; for which, no doubt, they were not a little enraged, and it could not be otherwiſe expected but they would make uſe of it: For thoſe of the ſame Principles will be guilty of the ſame Practices.

Therefore it was neceſſary to make a Returning into *England* by any of thoſe who were under theſe Circumſtances, to be ſo very penal, unleſs they ſhould firſt give Satisfaction to the Government, either of their Innocence or Repentance, and obtain a Licenſe and Approbation for their Return, under the Privy-Seal; for their returning in any other Manner, is a Danger to the Queen's Perſon, and Her Kingdom.

This Treaſon, tho' it ſeems, and is new in the Form, yet it is compounded of an old Treaſon, known in the ancient Law of the Kingdom, which is, that of adhering to the King's Enemies. For what can be thought of thoſe who, in Time of War, ſhall abandon their own Country, be harboured and protected in any Enemies Country; for being of an Intereſt inconſiſtent with, even repugnant to, that of their own?

What your Deſign might be in returning in this Manner, whether to revive and purſue thoſe wicked Practices, your own Conſcience is your Witneſs, and will be your Judge; and if that ſhall acquit you, it will be for your Advantage in the World to come. But you are an Offender againſt the Law of the Land, which hath made this your Offence to be High Treaſon, and therefore that Judgment appointed for one guilty thereof muſt be pronounced; the Court therefore doth award, *That you be conveyed from hence to* Newgate, *the Priſon from whence you came, and from thence you are to be drawn upon a Hurdle to* Tyburn; *where you are to be hanged by the Neck, and while you are alive to be cut down, your privy Members to be cut off, and your Bowels to be cut out of your Body, and burnt in your View; your Head is to be cut off, and your Body is to be divided into Four Parts, and your Head and your Quarters are to be diſpoſed as her Majeſty ſhall appoint.* And the Lord have Mercy upon your Soul.

Clerk of Arr. Goaler; look to your Priſoner.

J. Boucher. My Lord, I beg that my Friends may have Leave to come to me.

L. C. J. *Holt.* You ſhall have ſuch as is uſual, and as is fitting.

Clerk of Arr. Take away the Priſoner.

The Tryal of DAVID LINDSAY, *on* Wedneſday *the* 19*th of* April, 1704.

THE Court being ſet, Proclamation was made.

Clerk of Arr. David Lindſay hold up your Hand, (*which he did.*) *Thou ſtandeſt Indicted by the Name of* David Lindſay *of* London, *Gent. for that thou being a Subject of the late King* William, *and now a Subject of her preſent Majeſty, after the Eleventh Day of* December 1688, viz. *the 26th Day of* March 1689. *was in the Kingdom of* England, viz. *at the Pariſh of St.* Martins *in the Fields, in the County of* Middleſex; *and afterwards and before the Third Day of* December 1697, viz. *the Firſt Day of* October 1696. *Thou the ſaid* David Lindſay *did voluntarily go into* France *without Licenſe from the late King* William *or the late Queen* Mary; *and that thou the ſaid* David Lindſay *on the ſaid Third Day of* December 1697. *was not within the Dominions of the late King* William; *and that thou the ſaid* David Lindſay *not having the Fear of God in thy Heart, nor weighing the Duty of thy Allegiance towards our Lady the Queen that now is, thy Supreme, True, Legitimate, Lawful and undoubted Lady; and as a falſe Traytor againſt our ſaid Lady* Anne, *the Queen that now is, after the* 14*th Day of* January, 1697. viz. *the* 10*th of* December, *in the Second Year of the Reign of our Lady the Queen, did traiterouſly return and come into the Kingdom of* England, *viz. at the Pariſh of St.* Martins *in the Fields, in the County of* Middleſex, *without Licenſe from the late King* William *under his Privy Seal, or from our ſaid Lady the Queen, under her Privy Seal obtained; againſt the Duty of thy Allegiance, and againſt the Form of the Statute, and againſt the Peace of our Lady the Queen, her Crown and Dignity,* &c.

Mr. *Lindſay,* (*Taking a Paper out of his Pocket read it to the Court.*) My Lord, I am very ſorry I am ſo unfortunate as to fall under the Diſpleaſure of the Government; and being willing to ſave the Court all unneceſſary Trouble upon my Tryal, I have therefore reſolved to confeſs moſt of the Facts charged upon me in the Indictment, *viz.* As to my being in *France*, and coming into *England* without Licenſe. But I am adviſed that there is ſomething ſo ſingular for my Benefit in this Caſe, that I beg your Lordſhip to hear me by Council

Council before my Arraignment; the Council I desire, are Mr. *Williams* and Mr. *Raymond*.

Sir *Edw. Northey.* Mr. *Att. Gen.* My Lord, he might have had Council assigned him before, if he had desired it.

L. C. J. *Trevor.* You shall have these Council assigned you which you desire.

Mr. *Soll. Gen.* My Lord, I suppose this is not desired now, with any Design to delay the Tryal; the Prisoner must first plead to his Indictment.

L. C. J. *Trevor.* If his Council be here, we are willing to hear what they have to say.

Clerk of Arr. Call Mr. *Williams* and Mr. *Raymond. (Who came into Court.)*

L. C. J. *Trevor.* Mr. *Raymond* and Mr. *Williams*, the Prisoner here desires you may be of Council for him, and the Court have assigned you to be of Council for him accordingly.

Mr. *Att. Gen.* He has heard the Indictment read to him, but he has not yet pleaded to it.

Mr. *Lindsay.* My Lord, I desire to be heard by my Council first.

Mr. *Raymond.* My Lord, I apprehend Mr. *Lindsay*'s Intention is, to give the Court as little Trouble as may be, and therefore the Facts, of which he is Guilty, and that are charged upon him in this Indictment he will confess. But, my Lord, he has been advised by his Friends, and other Council, that his Case has something particular in it, which he hopes will be for his Advantage, and desires to have the Benefit of what can be pleaded, besides Guilty or Not Guilty.

L. C. J. *Trevor.* Is there any other Plea, that he can plead specially?

Mr. *Williams.* My Lord, not any that we know of; I desired him to advise with some other Persons about it, I hope he has done so. As to the Prisoner's Confessing, or Pleading Not Guilty to the Indictment, it's a Matter of Prudence and not of Law.

L. C. J. *Trevor.* Let him plead then.

Clerk of Arr. David Lindsay, Art thou Guilty of this High Treason whereof thou art indicted, or Not Guilty?

David Lindsay. Not Guilty.

Clerk of Arr. Culprit, How wilt thou be tried?

David Lindsay. By God and my Country.

Clerk of Arr. God send thee a good Deliverance.

Mr. *Lindsay.* My Lord, I have one Favour to beg, that my Wife and Children may come to me.

L. C. J. *Trevor.* I think he may have that Liberty, in the Presence of the Keeper, if you have nothing to object against it.

Mr. *Att. Gen.* My Lord, we are willing they should come to him, in the Presence of the Keeper; we will not abridge any Man of what he can reasonably and justly desire.

L. C. J. *Trevor.* Have you pitch'd upon any Time to appoint for the Tryal?

Mr. *Att. Gen.* Yes my Lord, on *Monday* next, if it suit the Court. He shall have a Copy of the Pannel, and all other Things that are fit for him. I suppose my Lord, the Prisoner is now committed to the Sheriff as is usual on these Occasions.

L. C. J. *Trevor.* Yes, he is committed to the care of the Sheriff.

Clerk of Arr. Where is the Keeper of *Newgate? He appeared, and took Charge of the Prisoner. And then the Court adjourned till* Monday *Nine of the Clock.*

April 4. 1704.

THE Court being set, and the Pannel called over, as usual, the Prisoner making no Exceptions; the following Gentlemen were sworn upon the Jury.

Timothy Lenoy, Esq;	*Tho. Ellis*, Esq;
Richard Brown, Esq;	*Nich. Goodwin*, Esq;
Joseph Jorey, Esq;	*Tho. Blackmore*, Jun. Esq;
Tanner Arnold, Esq;	*Will. Snelling*, Esq;
Arthur Bayly, Esq;	*Peter Lekeux*, Esq;
George Ford, Esq;	*Jo. Pack*, Esq;

L. C. J. *Holt.* You Gentlemen that are sworn, go within the Bar.

Clerk of Arr. David Lindsay, hold up thy Hand. *(Which he did.)* Gentlemen of the Jury, look upon the Prisoner, and hearken to the Charge. He stands indicted by the Name of *David Lindsay*, of the City of *London*, Gentleman, *&c.* as before in the Indictment. Upon which Indictment he hath been arraigned, and hath pleaded *Not Guilty*. Your Charge is to enquire whether he be guilty of the said Treason, whereof he stands indicted. If you find him Guilty, you are to enquire what Goods and Chattels he had at that Time, or if he fled for it. But if you find him not guilty, you are to say so, and no more. And stand together, and hear your Evidence.

Mr. *Morley.* May it please your Lordship, and you Gentlemen of the Jury, This is an Indictment preferred against *David Lindsay*, the Prisoner at the Bar, for High Treason, for that he being a Subject of the late King *William*, and now a Subject of her present Majesty, after the Eleventh Day of *December* 1688, *viz.* the 26th Day of *March* 1689, was in this Kingdom of *England*, *viz.* in St. *Martins* in the Fields, in the County of *Middlesex*, and afterwards, and before the Third Day of *December* 1697, *viz.* the First Day of *October* 1696. the Prisoner did voluntarily go into *France* without License either from the late King *William*, or the late Queen *Mary*: And that the Prisoner on the Third Day of *December*, 1697. was not within the Dominions of the late King *William*. But the Prisoner, not weighing the Duty of his Allegiance towards our Sovereign Lady the Queen, did, as a false Traytor, after the 14th Day of *January* 1697, *viz.* the 10th Day of *December*, in the Second Year of the Reign of her now Majesty, traiterously return and come into this Kingdom of *England*, *viz.* in the Parish of St. *Martins* in the Fields, in the County of *Middlesex*, without License either from the late King *William* under his Privy-Seal, or from her now Majesty under her Privy Seal; and this he hath done against the Duty of his Allegiance, and against the Form of the Statute in this Case made and provided. To this Charge he hath pleaded *Not Guilty*.

If we prove him Guilty I doubt not but you will find him so.

Mr. *D. Lindsay.* I shall give your Lordships, and the Court, as little Trouble as may be. I shall only beg leave to state my Case truly before you, and then I shall submit to your Judgment.

L. C. J. *Holt.* Mr. *Lindsay*, if you had a mind to confess, you should have done it before, now the Jury are to enquire whether you are Guilty or not.

Mr. *Lindsay.*

Mr. *Lindſay*. My Lord, I only deſire to be heard as to the Fact.

L. C. J. *Holt*. You muſt ſtay till the Queen's Evidence is heard, and then you may ſay what you can.

Mr. *Williams*. My Lord, his Intentions may be as to ſome Things to ſave the Time of the Court; and perhaps to eaſe the Queen's Council of ſome Trouble.

L. C. J. *Holt*. Let the Queen's Council ſtate the Evidence firſt, and then it may be proper for him to ſay what he will.

Sir *T. Powis*, [the Queen's Serjeant.] You muſt either confeſs the Treaſon wherewith you are charged, or elſe we muſt proceed to prove it.

L. C. J. *Holt*. If you open the Evidence, then it may be he will confeſs; but it muſt be firſt opened.

Sir *T. Powis*. My Lord, there is nothing meant by us to reſtrain him in any Thing that he has to ſay; all that we deſign, is to put him into a proper Method. It is proper that he ſhould underſtand the Caſe. He has pleaded *Not Guilty*, and we are under a Neceſſity to ſhow what Evidence we have to prove him Guilty. My Lord, this Indictment is founded on an Act of Parliament made in the Ninth Year of the late King *William*. And it is grounded on very good Reaſons; for, as it is taken notice of in this Act, there had been a former Act made in the Third and Fourth Years of the Reign of the late King *William* and Queen *Mary*, by which it was made High Treaſon for any to repair into *France* without Licenſe; that any one that did ſo, ſhould fall under the Guilt of High Treaſon. But that Act was calculated only for the Time the War laſted, and was of no longer Continuance; and there being a Peace concluded, the Preamble of this Act takes notice, that thereby it would become neceſſary for the carrying on of Trade and Commerce between *England* and *France*, that there ſhould be a Freedom of going and coming out of, and into the ſaid Kingdoms reſpectively. And therefore the Act farther ſays, that whereas ſeveral Perſons who had been in Arms, or had been engaged in treaſonable Practices againſt the King and Government, and other diſaffected Perſons (as all that reſorted into *France* without Licenſe, during the War, were ſuppoſed to have ſufficiently ſhewed themſelves diſaffected to the Government) therefore the Act goes on, and provides againſt the Miſchiefs that might enſue; and ſays, If any of his Majeſty's Subjects who had voluntarily, ſince the 11th of *December*, 1688, gone into *France* without Licenſe, and ſhould at any Time, after the 14th of *January*, 1697. return into *England* without Licenſe, that ſuch Perſon, ſo doing, ſhould fall under the Guilt and Penalty of High Treaſon. This is the Subſtance of the Act upon which the Indictment is formed. Now, that which we have to charge and prove upon the Priſoner, is, That he was here in *England* after the 11th of *December*, 1688. We are ready to prove that he was here in the beginning of *March*, 1689; that he went into *France* in *October*, 1696; that he afterwards returned into *England* in *December* laſt. We ſay, He went into *France* without Licenſe, and return'd without Licenſe; and it will be his Part, if he can, to make it appear otherwiſe. If he does not admit theſe Facts, we ſhall call our Witneſſes to prove them upon him. If they are Facts that he admits, then he may regularly proceed.

Mr. *Lindſay*. My Lord, May I ſpeak now?

L. C. J. *Holt*. Yes, you may.

Mr. *Lindſay*. My Lord, I do confeſs, that being a Native of *Scotland*, and never having had any Office in *England*, I did go into *France* without his late Majeſty's Licenſe, after the Time mentioned in the Act; and I did continue beyond Sea, till I was informed that her Majeſty did, according to her uſual Clemency, by her gracious Proclamation in 170½, give a general Pardon to all her Subjects; and being deſirous to take the Advantage of it, and to return to my Native Country, I came into *Scotland*, where I preſented my ſelf before the Government, and had the Benefit of the Queen's Proclamation allowed me. Whereupon my Lord, being adviſed by ſome eminent Council there, that I was as free to come into *England*, as any other Subject; and having my Wife and Children here, I came to *London* by the Way of *Berwick*. Therefore, my Lord, humbly conceiving, in theſe Circumſtances, that I am not guilty of Treaſon within the Intent of this Act, I deſire to be heard by my Council.

L. C. J. *Holt*. You own you went into *France* ſince the 11th of *December*, 1688.

Mr. *Lindſay*. Yes, my Lord.

L. C. J. *Holt*. From what Place did you go into *France*, from *England*, or from *Scotland*?

Mr. *Lindſay*. From *England*.

L. C. J. *Holt*. Then he confeſſes the whole Fact.

Mr. *Soll. Gen.* But, my Lord, he was there before 1697.

L. C. J. *Holt*. You muſt agree on the Fact. He ſays he did go into *Scotland* within the Time mentioned in that Proclamation. And being in *Scotland*, he ſays, he did adviſe with ſome learned Council, and they told him he might ſafely come into *England*. Now do you admit that he did go into *Scotland* on that Occaſion of the Queen's Proclamation?

Mr. *Att. Gen.* My Lord, as to that Fact, we cannot admit it. There was no Licenſe mentioned in it, the Proclamation gives no Licenſe to come into *England*, only a general Pardon. What his Council will make of it, I cannot tell.

L. C. J. *Holt*. Do you expect it ſhould be proved?

Mr. *Att. Gen.* If he will ſhew us the Proclamation, if it be the ſame that I have, I will allow it.

L. C. J. *Holt*. Produce that Proclamation, look upon it, it may be you will admit it without any further Proof.

Then the Proclamation was produced, and Mr. Attorney General *looked on it.*

Sir *T. Powis*. Will they have it read?

Mr. *Att. Gen.* It may be read if they deſire it.

Mr. *Williams*. My Lord, We deſire it may be read.

Sir *T. Powis*. My Lord, We would not have it look'd on as a Thing of Right to be read, without further Proof.

L. C. J. *Holt*. No, that is of Grace, it is a voluntary Offer of yours.

Mr. *Att. Gen.* Then I ſhall not oppoſe the reading of it.

L. C. J. *Holt*. Then you do admit that to be the Queen's Proclamation for *Scotland*.

Mr. *Att. Gen.* Yes, my Lord.

Mr. *Williams*.

Mr. *Williams*. I desire to know, whether they admit the Prisoner to be a Native of *Scotland*?

Mr. *Att. Gen.* We do not know that.

L. C. J. *Holt*. Then you must prove it, if you think it material.

Sir *T. Powis*. My Lord, he went from *England* into *France*, and returned from *France* into *England* again.

L. C. J. *Holt*. He must be taken for a Native of *England*, unless he can prove the contrary.

Mr. *Williams*. My Lord, Shall we first read the Proclamation, or prove him a Native of *Scotland*?

L. C. J. *Holt*. Read the Proclamation first.

[*Then the Clerk read the Proclamation.*]

A Proclamation of Indemnity.

ANNE R.

"ANNE by the Grace of God, Queen of "*Scotland*, *England*, *France* and *Ireland*, "Defender of the Faith, &c. To all and sundry our good Subjects, to whom these Presents "do or may concern, greeting. Forasmuch as it "has been, and is our constant Resolution and "Design, to establish the Peace, and promote the "Welfare of our People; not only by procuring "the equal and impartial Administration of Justice, but also by such a Mixture of the Benign "Influences of our Goodness and Clemency, as "may best compose all Distempers, and give a just "Assurance against all Fears and Jealousies: And "for that Effect, we being desirous to compleat "the Indulgence that hitherto we have shewed, "and to reclaim even such Offenders as might "justly have expected the deserved Effects of our "Displeasure. And that for Time to come, we "may by a gracious Pardon and Act of Oblivion, establish firm Peace and Concord amongst "all our Subjects. Therefore we, of certain "Knowledge, and by Virtue of our Sovereign "Power and Authority, Pardon, Remit, Indemnify, and for ever Acquit, all and every one "of our Subjects, of all Crimes of Perduellion, "Rebellion, *Treason*, Concealing of Treason, Harbouring, Receipt, Supplying, *Corresponding* and "Intercommuning *with Rebels*, *and Declared* "*Enemies*, the impugning the Dignity and the "Authority of the Estates of Parliament, and all "other Kinds of Treason or Lese Majesty, whether Common or Statutory, and of all Crimes "of Lesing-making, whether to us or our Subjects, or to our Subjects of us, Depraving or "Misconstruing our Laws, or of any of our Proceedings, or Misrepresenting or Slandering us "or our Proceedings in any Sort; and all Breaches "or Abuses of, or Malversations in Publick Trusts, "with *all other Crimes*, *Delinquences or Transgressions of whatsoever Nature or Quality*, *committed*, acted or done by any of Her Subjects "by Word or Writ, *or incurred by any other* "*Act either by Commission or Omission*, preceeding the Date of these Presents, *and which* directly or indirectly *are*, *or may import the* "*Contravention of any Law or Act of Parliament*, Custom or Constitution of that our "ancient Kingdom; *and that in so far as the* "*same may infer any Pain or Punishment against* "*any of our Subjects*, *either in their Lives*, *Fortunes*, *Estates*, Fame or Reputation. All which, "we by virtue of our Royal Power and Authority aforesaid, Will, Declare and Ordain to be "hereby Pardoned, Acquitted and Indemnified, "and put in perpetual Oblivion; *and that this* "*General Pardon and Indemnity shall be as valid* "*and effectual to all our Subjects for their Exoneration and Discharge of all Pains and Punishments*, *as if every* particular Crime, Offence, "Delinquency or Misdemeanor *were here set* "*down*, *and as if Remissions*, *under our Great Seal* "*were past and granted for the same*, *wherewith* "*we for our Selves and Successors dispense for* "*ever*. Like as we hereby Prohibit and Discharge any of our Ministers or Judges to call "in Question, or proceed against any of Her said "Subjects for the said Crimes, and their Crimes "and Punishments in any Time coming; *declaring and Ordaining this our General Pardon and* "*Indemnity to be interpret and understood in the* "*most Benign*, *Favourable and Comprehensive* "*Sense the same can admit*, *for the Security of* "*our Subjects*. Excepting always forth and from this "General Pardon and Indemnity, all *Fore-faulters*, "and Sentences, and Dooms thereof, and all pecunial Fines and Unlaws already paid or transacted; and but prejudice to us, or these commissioned by us, to call all Collectors and other "Intromitters with publick Money, to give Account of their Intermissions, and to make Payment of what shall be found due by their "Intermissions. And farther excepting, all Manslaughters, Murders, Assassinations, Witchcrafts, "Fire, Raisings, Depredations, Robberies, Rapts, "Spulzies, Thefts, House-breakings, Mutilations, "Adulteries, Blasphemies, and Delinquences of "Immorality. All which Crimes, and those guilty thereof, are no ways to be comprehended "in, or have any Benefit by this our Pardon and "Indemnity as the said Crimes excepted. And "lastly to the end all our good Subjects may "have Notice of our Royal Will and Pleasure, "we do hereby command our Lion King of "Arms, and his Brethren, Heraulds, Pursivants, "and Messengers at Arms, to make due Publication hereof at the Market Cross of *Edinburgh*; "for all which these Presents shall be a sufficient Warrant. *Given at Our Court at St.* James's, March 16th, 170$\frac{3}{4}$, *and of our Reign the Second Year.*

By Her Majesty's Command.

Queensberry,

GOD save the QUEEN.

Mr. *Raymond*. Look on the Backside.

Mr. *Att. Gen.* What is that?

Mr. *Raymond*. A Certificate from the Duke of *Queensberry*, Secretary of State of *Scotland*, that it is a true Copy.

Mr. *Att. Gen.* We admit it.

Mr. *Williams*. Then, my Lord, it is insisted on that we should prove the Prisoner a Native of *Scotland*.

Mr. *Att. Gen.* If you think it material, you may prove it.

L. C. J. *Holt*. They did think it material, and therefore made it part of their Case

Mr. *Williams*. Call *James Grey*, Esq; (*who appeared and was sworn.*) Sir, do you know the Prisoner at the Bar?

J. Grey. Yes.

Mr. *Williams*. What Country-man is he?

J. Grey. Always reputed of *Scotland*, I have known him this 20 Years, and he was always reputed so.

L. C. J. *Holt*. Have you known him Twenty Years in *England*?

J. Grey. Yes, my Lord, in *England*, not in *Scotland*.

Mr. *Soll. Gen*. Have you had any Correſpondence with him?

J. Grey. No, Sir, no great Correſpondence. In King *James*'s Time he was Secretary to the Lord *Melfort*.

Mr. *Williams*. What Country-man was he reputed then?

J. Grey. A *Scotchman*.

L. C. J. *Holt*. Did you know his Family?

J. Grey. No, I have been always in *England*, I did not know his Family.

Mr. *Williams*. We have another Evidence.

L. C. J. *Holt*. You muſt bring better Proof than this, or elſe it will not do.

Mr. *Williams*. Call Mr. *Trumbal*, (*who appeared, and was Sworn.*) Mr. *Trumbal*, do you know the Priſoner at the Bar?

Mr. *Trumbal*. Yes.

Mr. *Williams*. How long have you known him?

Mr. *Trumbal*. I have known him this Twenty Years.

Mr. *Williams*. What Country-man did you always reckon him?

Mr. *Trumbal*. A *Scotchman*.

L. C. J. *Holt*. How do you know that?

Mr. *Trumbal*. He has been always reputed ſo. He dealt in Wine with one that I knew, and ſo I came to know him.

Mr. *Williams*. Did you know him in *Scotland*?

Mr. *Trumbal*. No.

Mr. *Att. Gen*. Have you known him any where but in *England*?

Mr *Trumbal*. No, but he has been reputed a *Scotchman*, that dealt in Wine. He had always the Repute of an honeſt Man.

Mr. *Williams*. Call *Charles Canair*, (*who appeared.*)

Mr. *Att. Gen*. You ſhould bring your Witneſſes into the Court. What is your Name Sir?

Mr. *Canair*. *Charles Canair*.

Mr. *Williams*. How long have you known the Priſoner?

Mr. *Canair*. Ever ſince I was a Child.

Mr. *Williams*. Where did you know him?

Mr. *Canair*. In *Scotland*. I remember him from a Child.

L. C. J. *Holt*. And you knew him to be a Native of *Scotland*?

Mr. *Canair*. Yes, my Lord, of *Dundee* in *Scotland*.

L. C. J. *Holt*. Did you know any of his Relations?

Mr. *Canair*. Yes, my Lord, his Father was of *Dundee* in *Scotland*.

Mr. *Williams*. My Lord, we have ſomething farther to prove.

L. C. J. *Holt*. What is it?

Mr. *Williams*. That the Priſoner was allowed the Benefit of this Proclamation in *Scotland*; and we beg leave to ſay, this Fact which is now charged againſt him is already pardoned.

Mr. *Att. Gen*. That Pardon has Influence in *Scotland*, not in *England*.

Mr. *Williams*. Then you admit alſo that the Priſoner had the Benefit of this Proclamation allowed him in *Scotland*.

Mr. *Att. Gen*. I know nothing of that.

L. C. J. *Holt*. Now go on and ſtate your Caſe.

Mr. *Williams*. My Lord, Mr. *Attorney General* is not pleaſed to admit we had the Benefit of the Proclamation allowed us in *Scotland*.

Mr. *Att. Gen*. They inſiſt on what I know nothing of; if they think they can have any Benefit by it, they may prove it.

Mr. *Raymond*. We have done our Endeavour to have the Secretary of State of *Scotland* appear here, but I don't know whether he has done us the Favour. We have the Certificate under his Hand.

L. C. J. *Holt*. Is it the ſame Hand?

Mr. *Att. Gen*. My Lord, he aſſerts that Certificate, but we know not whether it be true.

L. C. J. *Holt*. Then that muſt be proved.

Mr. *Raymond*. Call *Tho. Bruce*, Eſq; (*who appeared, and was ſworn.*) Mr. *Bruce*, do you know the Priſoner, and whether he had Benefit of the Pardon in *Scotland*.

Mr. *Bruce*. I know very little of him. I know he was at *Edinburgh* laſt Summer, and was under Confinement there, and under Examination ſeveral Times; but after ſome Days he was at Liberty again. That's all that I know.

Mr. *Raymond*. Was he not at Liberty by leave of the Government?

Mr. *Bruce*. It was ſo believed.

Mr. *Att. Gen*. Can you tell when he came back to *Scotland*?

Mr. *Bruce*. No, Sir. He was in Cuſtody about *July* laſt.

Mr. *Att. Gen*. Can you be particular to the Time? Was it in *June* or *July*?

Mr. *Bruce*. I can't be poſitive, it was in the Time when the Parliament ſate. I never was in his Company.

Mr. *Raymond*. Call Mr. *Southerland*.

Mr *Att. Gen*. I know not why we ſhould trouble the Court with this. What ſignifies the Pardon?

L. C. J. *Holt*. Let them make what uſe they can of it.

Mr. *Att. Gen*. Sir, what is your Name?

Mr. *Southerland*. *Southerland*.

Mr. *Raymond*. Do you know any Thing of the Priſoner's having any Benefit allowed him of the *Scotch* Pardon?

Mr. *Southerland*. I heard he had ſurrendred to the Government.

Mr. *Raymond*. Was he diſcharged by the Government?

Mr. *Southerland*. Yes, It was generally reported ſo.

Mr. *Att. Gen*. What Time was that, Sir?

Mr. *Southerland*. In *June* or *July* laſt Summer.

Mr. *Att. Gen*. Was he there the 27th of *July*, or before?

Mr. *Southerland*. I cannot be poſitive.

Mr. *Raymond*. Call Dr. *Hutton*, (*who appear'd.*) Doctor. What do you know of the Priſoner's having the Benefit of the *Scotch* Pardon, and its being allowed him by the Government?

Dr. *Hutton*. I was in *September* at *Edinburgh*, and there I ſaw Mr. *Lindſay* at the *Queen's-Head*, with the *Attorney General*. He had been examined about ſome Letters (as I heard ſay) that had been directed to him. And there I heard Sir *John Stuart* tell him, the Council had

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ſet him Free. And I met him afterwards at Liberty, and it was done upon the Proclamation of Indemnity.

Mr. *Williams.* What Religion is he reputed of?

Dr. *Hutton.* I know not that. But I have known him Six and Twenty Years, and I heard him tell Sir *James Stuart* (who asked him why he came away from *France*,) becauſe he would not be a Papiſt, and he ſaid, he had rather go to the Gallows, than return again.

Mr. *Williams.* What is his Temper? Is he a quiet Man in relation to the Government; or of a turbulent Temper?

Dr. *Hutton.* I have always known him a fair, peaceable, friendly Man.

Mr. *Raymond.* Doctor, I would ask you one Queſtion, whether you have any Law in *Scotland* that prohibits going into *France*?

Dr. *Hutton.* I do not know. I know ſeveral Perſons that came from *France* to *Scotland*.

Mr. *Att. Gen.* Dr, you give him a fair Character. Can you tell in whoſe Service he was in *France*?

Dr. *Hutton.* No, Sir; I cannot.

Mr. *Att. Gen.* What was his Affection towards the Government?

Dr. *Hutton.* I know nothing of that.

Mr. *Soll. Gen.* When did he return into *Scotland*; was it before or after the 27th of *July*?

Dr. *Hutton.* I do not know.

Mr. *Raymond.* He came into *England* in *September* laſt, after he had his Pardon. We ſay he came through *Northumberland*, and other Places hither, and in this County he was taken.

Mr. *Lindſay.* I was taken no where, but ſurrendred my ſelf to Sir *Charles Hedges*.

Mr. *Williams.* The Fact is, that he came from *Scotland* through *Northumberland*, &c. and ſo into *Middleſex*, and ſurrendred himſelf; ſo that *Northumberland* was the firſt County of *England* that the Priſoner came into, after his leaving *Scotland*; and ſo that the Treaſon, if any, was committed there, and we inſiſt that the Arraignment and Tryal ought to be there.

L. C. J. *Holt.* If you inſiſt upon it, that the Treaſon committed was in *Northumberland*, then you muſt prove it.

Mr. *Williams.* My Lord, with ſubmiſſion, tho' the Fact being that *Northumberland* was the firſt County of *England*, that we came into, yet it may be difficult to us to prove it; but, with Submiſſion, it may not be abſolutely neceſſary for us to prove, that *Northumberland* was the firſt County, in regard that your Lordſhip will take notice that *Middleſex* cannot be the firſt County, it being impoſſible to come from *Scotland* into *Middleſex*, without being in other Counties before; and the Indictment ought to have been in the firſt County of *England* he came into.

Mr. *Att. Gen.* My Lord, we indict him where we find him.

Mr. *Raymond*, We can prove that he came firſt to *Berwick*, then through *Northumberland*, before he came into *Middleſex*.

L. C. J. *Holt.* If you can, do.

Mr. *Raymond.* Dr. *Hutton*, do you know, where he came firſt into *England*, and which way he came hither?

Dr. *Hutton*, No, indeed; I have heard that he came through *Northumberland*, &c.

Mr. *Raymond.* Did you lend him your Horſe?

Dr. *Hutton.* No Sir, but a Friend of mine did lend him his Horſe.

Mr. *Raymond.* Where does your Friend live?

Dr. *Hutton.* At *Edinburgh*.

Mr. *Raymond.* Did he come hither on that Horſe?

Dr. *Hutton.* That I know not. He was left there by a Friend of mine, to be ſent into *England* with the firſt Opportunity, and ſo he ſent him by Mr. *Lindſay*.

Mr. *Raymond.* Did he make uſe of that Horſe all the Way?

Dr. *Hutton.* I know not that.

Mr. *Williams.* My Lord, I am, by your Lordſhip's Permiſſion, of Council for the Priſoner: And I hope this free and ingenuous Confeſſion which he has now made at the Bar, being the very ſame which he before made at his Arraignment; and being the very ſame Confeſſion which he made before the Secretary of State, and others, before whom the Priſoner was examined; will be taken, and weigh with the Court as a good Argument of the Sincerity of this unfortunate Gentleman; and that he deſigns in his Tryal to put your Lordſhip to as little Trouble as poſſible. My Lord, It has been proved that he is a Native of *Scotland*, and he always has been of the *Proteſtant* Religion. He has been indeed in *France* but finding he could not enjoy his Religion there, he was reſolved by the firſt Opportunity to endeavour to gain a Licenſe from the Goverment for his Return into his own Country. In the mean Time comes out her Majeſty's Gracious Proclamation of Indemnity. That Proclamation was proclaimed in a publick Manner, by all Her Majeſty's Heralds, at the Market-Croſs at *Edinburgh*, and it has very extenſive Words in it, pardoning all Treaſons, Felonies, *&c.* all Crimes and Miſdemeanors whatſoever. My Lord, in Confidence of this Her Majeſty's Royal Proclamation, we came from *France* to *Scotland*, and there claimed, and were allowed by that Government, the Benefit of the Queen's Mercy. Afterwards having been adviſed by the moſt eminent Advocates and Council of *Scotland*, that by this Proclamation we were rendred in every reſpect as a free Subject, and might with Safety come from thence to *England*; we accordingly came from thence hither; but all this while we paid all the due Submiſſion and Regard that cou'd be, as well to the Law as to the Government; for we came from *France* unto the *Hague*, and we there attended upon Her Majeſty's Envoy, Mr. *Stanhope*, and acquainted him with our Intentions of returning Home. Immediately upon our Return into *Scotland*, we voluntarily came before the Chief Commiſſioner and Magiſtrates there; who, upon our Claim, were pleaſed, at length, to allow us the Benefit of Her Majeſty's Royal Proclamation and Pardon. And when we were in *England*, on the firſt Notice of a Warrant out againſt us, we, of our own Accord, waited on the Secretary of State, Sir *Charles Hedges*; and he happening not to be then at Leiſure, we voluntarily attended upon him a Second and Third Time; and upon our Third Attendance we were committed. And now, my Lord, we ſtand indicted before your Lordſhip for the greateſt of Crimes, *High-Treaſon*. My Lord, as to the Statute upon which we were indicted, tho' ſome Part of it, without doubt, was not only very reaſonable, but abſolutely neceſſary, I mean that Part of it which was for the Preſervation of his late Majeſty's Perſon and Government; but as to that Part

of it upon which we are indicted, it ſeems, with great Submiſſion, a ſevere Law. That the bare returning into our Native Country, when we before were convicted of no Crime, or guilty, at moſt, but of a bare Contempt in going out of the Queen's Dominions without Licenſe, that this ſhould be made High-Treaſon, this, with Submiſſion, is ſomewhat ſevere: So that in reſpect of the Severity of this Law, beſides the common Argument of its being a Penal Law, your Lordſhip will be the rather induc'd to admit of the moſt favourable and merciful Conſtruction to every Part and Clauſe of this Act, that it will bear. My Lord, we do humbly inſiſt on the Words of the Proclamation; and we take it, that thoſe Words do amount to a Licenſe to us to come into *Scotland*: And if ſo, then we are not guilty within this Act of Parliament, of coming to the Queen's Dominions without Licenſe. And we likewiſe further inſiſt, that one that has the Queen's Licenſe to come into *Scotland*, may, without any further Licenſe, come into *England*. —— I beg your Lordſhip's Leave to read that Part of the Proclamation, which we chiefly inſiſt on. The Proclamation pardons all Treaſons, and all correſponding and intercommuning with Rebels, or declared Enemies of the Queen. My Lord, it pardons all other Crimes, of what Nature ſoever. It pardons any Act, that may infer any Pain or Puniſhment, on the Lives or Eſtates of Her Majeſty's Subjects. And it is declared to be as available to all Subjects, to pardon them all Crimes, as if the particular Crime were named, and as if Remiſſions under the Great Seal were paſs'd. And then Her Majeſty declares, That this ſhall be taken in the moſt favourable and comprehenſive Senſe that may be, for the Security of the Subject. Now, my Lord, taking this Proclamation in the moſt favourable and extenſive Senſe, in Favour of the Priſoner; which Her Majeſty has been pleaſed expreſly to direct it ſhould; with Submiſſion, I take it, it will amount to a Licenſe from Her Majeſty, to return from *France* to *Scotland*: And we humbly take it, that if the Priſoner did by Licenſe come from *France* to *Scotland*, that he afterwards coming from *Scotland* into *England*, is not within the Act.

My Lord, I wou'd beg Leave to conſider what it was that hinder'd the Priſoner from returning from *France* to *Scotland*: Sure it was his going to *France* without Licenſe. Then when Her Majeſty is graciouſly pleaſed to pardon this Offence, we take it, that Her Majeſty, by removing the Obſtacle, does by neceſſary Implication give Leave to the Priſoner to return to *Scotland* again. Her Majeſty is pleaſed, with Submiſſion, plainly to give him this Leave, by taking off that that hindred his coming. That Parliament plainly did take it, and have been pleaſed to declare it an Offence, to go into *France* without Licenſe; and have therefore been pleaſed to puniſh that Offence with a Temporary Baniſhment: But when that Offence is pardon'd, when that Baniſhment is remitted, then the Priſoner ſeems at Liberty to return Home: And that Liberty being given by the Queen's Proclation; this, with Submiſſion, amounts to a Licenſe from the Queen, for the Priſoner's returning home. My Lord, there are many Inſtances, wherein the King or Queen's Grants or Pardons ſhall have a double Operation, for the Benefit of the Perſons upon whom they are beſtowed. But theſe Caſes, as I humbly conceive, not immediately relating to this Point now before your Lordſhip, I ſhall not trouble your Lordſhip with citing them. My Lord, if we, when in *France*, had been guilty of more than what is charged upon us in the Indictment; I mean, had we correſponded, or adher'd to the Queen's declar'd Enemies; ſtill the expreſs Words of the Proclamation ſeem plainly to extend to us, when it pardons all correſponding and intercommuning with the Queen's declared Enemies; which the *French* then were, and now are. My Lord, If this Proclamation could in any Part of it bear Two Conſtructions, (the one making for the Priſoner, the other againſt him) the Queen has been pleaſed to determine in what Senſe it ſhall be taken; in the moſt beneficial manner for the offending Subject. But, with humble Submiſſion, would this be obſerving of Her Majeſty's Gracious Directions; inſtead of allowing to the Priſoner the Benefit of this Proclamation, to make his very coming to *Scotland*, to claim the Benefit of it, and humbly to lay hold of her Majeſty's Mercy; to make this very Act to amount to a Crime; to make it the greateſt of Crimes, High Treaſon? This ſurely would be the very Reverſe of Her Majeſty's moſt Gracious Intentions: And yet this, with Submiſſion, would be the Conſequence, if the Priſoner's coming from *France* into *Scotland* ſhould be conſtru'd to be Treaſon. My Lord, I admit the Words of this Act are, If any return into *England*, or any other of Her Majeſty's Dominions, without a Licenſe under the Privy Seal, it ſhall be High Treaſon.

Sir *T. Powis.* But this is not a Licenſe under the Privy Seal.

Mr. *Attorney General.* The Great Seal of *Scotland* will not vacate an *Engliſh* Act.

Mr. *Williams.* Now we humbly take it, if the Queen is pleaſed to beſtow her Licenſe by any Act, or in any manner equally notorious with her Privy Seal; 'tis ſufficient, and within the Meaning and Equity of the Statute. And this Proclamation made by all the Heralds at Arms, at the moſt publick Place in *Edinburgh*, is as notorious, nay, much more notorious and publick, than a Licenſe under the Privy Seal only; and therefore within the Meaning of this Act. Beſides, the very Words of the Proclamation are, That it ſhall be in every reſpect as valid and effectual, as if it were under the Great Seal: And if under the Great Seal, ſurely it muſt be at leaſt as ſtrong, as if under the Privy Seal. Beſides, the Statute does not ſay, that the Licenſe muſt be under the Privy Seal of *England*. The Words of the Act are, If any return into *England*, or any other of Her Majeſty's Dominions, without Licenſe under the Privy Seal, without ſaying of what Kingdom. Now, with Submiſſion, it not being ſaid what Privy Seal, or of what Kingdom; it muſt be intended according to the Subject-Matter, the Seal of that Kingdom or Dominion where the Licenſe is granted; and that being *Scotland*, the Licenſe under the Great Seal of *Scotland* is ſufficient: For it ſeems improper, that the Seal of one Kingdom ſhould be made uſe of, to Licenſe an Act in another Kingdom. Now, if a Licenſe under the Great Seal of *Scotland* be ſufficient, this Proclamation declares, that it ſhall be as valid as if 'twere under the Great Seal: And it can't be deny'd, as I have ſaid, but a Licenſe under the Great Seal, muſt be equivalent with a Licenſe under the Privy Seal. Beſides, the Queen's Proclamation does not mention what Great Seal, or of what Kingdom; and ſo it may be intended,

tended, that Great Seal that would be moſt beneficial to the Priſoner; taking it in its moſt favourable Senſe, as Her Majeſty is pleas'd to direct it ſhould be.

But 'twill be ſaid, That taking this to be a Licenſe, this is only a Licenſe to come into *Scotland*; but the Priſoner is indicted for coming into *England* without Licenſe. But we take it, If we had a Licenſe to come into any one of the Queen's Dominions, and we firſt came into that Dominion with this Licenſe; we can't then be guilty of Treaſon within this Act. The Words of the Act make it Treaſon to come into *England*, or any other of the Queen's Dominions, without Licenſe; ſo 'tis the ſame Thing as if it ſaid, that it ſhould be Treaſon to come into the Queen's Dominions without Licenſe. Then if one comes into *Scotland* with Licenſe; *Scotland* being one of the Queen's Dominions, the Priſoner can't be ſaid to come into the Queen's Dominions without Licenſe; ſo that by this Licenſe the Priſoner is wholly out of the Act. This Act, with Submiſſion, muſt operate, and take its Effect, upon the firſt Step made from *France* into any of the Queen's Dominions; ſo that if the Priſoner be guilty of Treaſon within the Act, it muſt be when he made his firſt Step from *France* into *Scotland*: But that being made lawful, by the Proclamation, amounting (as we ſay) to a Licenſe; it can't be afterwards Treaſon, for the Priſoner to come into *England*. Take it, that the Priſoner had had Her Majeſty's Licenſe to come from *France* into *England*; and accordingly, the Priſoner comes into *England*, and afterwards goes into *Scotland*; had this been Treaſon? Surely not. Take it, that a Man within this Act returns from *France* into *England* without Licenſe, and is pardon'd, and he afterwards goes into *Scotland*; would this have been a new Treaſon, for which the Man that was before pardon'd muſt loſe his Life? We humbly take it, that it would not.

Beſides, with Submiſſion, this Proclamation amounts to a Pardon of the Treaſon, tho' it be before the Priſoner return'd to any of the Queen's Dominions. And if it appears to your Lordſhip, that the Priſoner is pardon'd; tho' we have not pleaded it, your Lordſhip will not be pleas'd to ſuffer the greateſt Puniſhments to be inflicted on any that your Lordſhip perceives are entitled to Her Majeſty's Mercy, or on any that are ſo much as within Her Majeſty's Intentions of being pardon'd. Beſides, another Conſequence of the Priſoner's being pardon'd, is, That then if he be pardon'd, he is a free Subject, and has Liberty to go any where, and into any of the Queen's Dominions. My Lord, as to this Point, whether the Treaſon be pardon'd, 'tis neceſſary, with humble Submiſſion, to conſider what makes this Treaſon. 'Tis the going into *France* without Licenſe, and returning home without Licenſe: 'Tis both join'd together make the Treaſon; and the one without the other does not make the Treaſon. Had not the Priſoner gone into *France* without Licenſe, his returning without Licenſe would not have amounted to Treaſon: So that the going into *France*, is the Foundation of the Treaſon. And I humbly take it, that this Act of Parliament has made the bare going into *France* without Licenſe, an Offence; and has puniſh'd it as ſuch, by Baniſhment during the Queen's Pleaſure: So that the Priſoner, from the Time he went into *France* without Licenſe, was an Offender, and conſequently capable of a Pardon. So, with Submiſſion, 'tis plain, there was ſome Things on which the Pardon might operate; tho' the Pardon was before the Priſoner's landing in *Scotland*; then taking it, that the Priſoner's going into *France* without Licenſe was an Offence, and the original Foundation of the Treaſon: This original Offence is, with Submiſſion, pardon'd by the Proclamation, by the Pardon of all Crimes and Miſdemeanors, of what Nature ſoever. And if the original Offence be pardon'd, all the Conſequences, all the Dependencies upon that Offence, all that enſues upon that Offence, are, with Submiſſion, at the ſame Time pardon'd. This, my Lord, ſeems to be prov'd by *Cole*'s Caſe, *Plowd.* 401. where, after one had felonioufly wounded another, then comes a Pardon of all Crimes and Miſdemeanors; and afterwards the Party wounded dies. The original Miſdemeanor being pardon'd, all that enſues upon it is pardon'd; and conſequently the Murder is pardon'd, by the Pardon only of all Miſdemeanors. Now in our Caſe 'tis plain, the original Offence is going into *France* without Licenſe; and that being pardon'd, all that enſues that Offence, all the Dependencies upon that Offence, according to the expreſs Words of that Caſe, are pardon'd alſo: And therefore, the returning into the Queen's Dominions without Licenſe, being only a Conſequent and a Dependent upon the going into *France* without Licenſe, is pardon'd alſo. Beſides, my Lord, ſo favourable a Conſtruction does the Law make upon Acts of Mercy, that when the Crown pardons any Crime, the Pardon reſtores the Man in ſuch a manner, as if the Offence had never been committed. And conſequently, after this Pardon, 'tis the ſame Thing as if the Priſoner had never gone into *France* without Licenſe: And if the Priſoner had never gone into *France* without Licenſe, 'tis plain his coming home without Licenſe would not have been Treaſon.

In *Hob.* 81. *Cuddington v. Wilkins*, If a Man commits a Theft, and is pardon'd; if afterwards he is called ſo by one that had no Notice of the Pardon; for that after the Pardon, 'tis as if he had never been guilty of Theft. There is likewiſe another Caſe put there, which ſeems much ſtronger than the Priſoner's Caſe; which is this: If an Appeal of Felony be brought againſt a Man, and the Defendant prays Trial by Battel; the Plaintiff counterpleads the Battel, by ſaying, that the Defendant, when committed to Priſon for his Felony, broke the Priſon, and ſo eſcaped, (which is a Preſumption of Guilt) and ſo takes off the Trial by Battel; yet 'tis adjudged, that when the King pardons the Breach of Priſon, this reſtores the Defendant to his Trial by Battel, and 'tis then as if the Defendant had not broken the Priſon at all. Yet in this Caſe it might have been objected, That tho' the King has pardon'd the Breach of Priſon, tho' the Proſecution or Puniſhment for Breach of Priſon is pardon'd; yet the Collateral Effect of it, which is the Preſumption of Guilt upon the Party's Flight, might remain; eſpecially as to the Appellant, whoſe Suit (according to the General Rule) the King's Pardon can't influence. Yet here 'tis adjudged, that even as to the Appellant, the King's Pardon of the Breach of Priſon, makes it as if the Party had never been guilty of it. Now this is ſtronger than the Priſoner's Caſe: For in the Priſoner's Caſe, the Queen's Pardon is only made uſe of, to prevent her own Proſecution, and not the

the Suit of any Appellant. Therefore, in the preſent Caſe, the Proclamation pardoning all Miſdemeanors, pardons the Offence of going into *France* without Licenſe: And that being pardon'd, 'tis as if the Priſoner had never gone into *France* without Licenſe; and without this, the bare Return without Licenſe will not amount to Treaſon. So that, with Submiſſion, we take this Proclamation to be a Licenſe to the Priſoner to return into the Queen's Dominions. Nay, we take it to be a Pardon even of the Treaſon of which he ſtands indicted.

Beſides, I would humbly beg Leave to offer to your Lordſhip's Conſideration, whether a *Scotchman*, that was not in *England* at the Time of the making of this Act of Parliament, be within the Meaning of this Act. The Act ſays, If any of his Majeſty's Subjects ſhall go into *France* without Licenſe, if he return without Licenſe, 'tis Treaſon. I don't pretend to call in queſtion *Calvin*'s Caſe, which was (at that Time at leaſt) a very convenient Reſolution. I don't deny, but a Natural-born Subject of *Scotland* is, as to many Purpoſes, a Natural-born Subject of *England*. But whether (upon the Conſtruction of ſo very Penal a Law as this is) a *Scotchman* is within the Meaning of this Law, is the only Queſtion. Now, with Submiſſion, when the Act ſays, If any of His Majeſty's Subjects ſhall go into *France* without Licenſe, this (according to a reaſonable Conſtruction) ſhall be intended only of *Engliſh* Subjects, ſtrictly ſpeaking, that is, thoſe of *England*; it muſt be intended only of ſuch of His Majeſty's Subjects, who were repreſented by the Parliament that made this Law, and who are preſumed to conſent to the making of this Law; 'tis theſe Subjects only that may reaſonably be ſuppoſed to have Notice of this Law, and therefore 'tis reaſonable that they only ſhould be bound by it; eſpecially in the Caſe of ſo ſevere a Law, where a Man's Life, Eſtate, and all that is dear to a Man is at Stake. There may be a great deal of Difference betwixt an Act of Parliament that puniſhes a Fact that was before *Malum in ſe*, and an Act which makes that an Offence which was before lawful: Every one of any Nation is, at his Peril, to abſtain from committing any Act that is *Malum in ſe*; and if he commits ſuch an Act in any Country, he ſeems ſubject to be puniſhed according to the Laws of that Country where the Fact was committed. But going into *France*, or any Place beyond Sea, without Licenſe, ſeems only *Malum Prohibitum* by this Statute: And therefore when the Act ſays, If any of His Majeſty's Subjects who went into *France* without Licenſe, ſhall return without Licenſe, ſhall be deem'd guilty of Treaſon; it ſhall be intended only of thoſe of *England*; ſuch Subjects as either by themſelves, or their Repreſentatives, were conſenting to the making of this Law. Therefore I humbly beg Leave to put the Caſe; That if one of Her Majeſty's Subjects of her remote Plantations, (as *Barbadoes*, or *Antegoa*) that was reſident there at the Time of the making this Law, ſhould have ſince the Year 1688. gone into *France* on any private or particular Account, without Licenſe; and afterwards ſhould come into *England*; would this Subject (who, in all Probability, knew nothing of the making of this Law) be guilty of High Treaſon, for coming into *England*? Surely this would be exceſſively hard. Then if one reſident at *Barbadoes*, or *Antegoa*, at the Time of the making of this Act, ſhould not be within this Law; much leſs ſhall a *Scotchman* be within it, in regard *Scotland* is a ſeparate Kingdom, that can't be bound by our Acts of Parliament; whereas any of the Foreign Plantations are plainly liable to be bound by *Engliſh* Acts of Parliament.

Beſides, there is another Reaſon from the very Words of the Act, why a *Scotchman* that was not reſident in *England* at the Time of the making this Law, can't be intended within the Meaning of the Act; and that is, not only becauſe the Act mentions nothing of *Scotland*; but becauſe the Words of the Act are, If any of His Majeſty's Subjects who went into *France* without Licenſe, ſhall return into *England*, or any other of His Majeſty's Dominions, without Licenſe, 'tis Treaſon. Now the Word (Return) muſt plainly have Relation only to that Country where the Party was reſident at the making of the Law, or to the Country that he left at the Time of his going towards *France*. But it does not appear that the Priſoner, who is a *Scotchman*, was in *England* at the making the Act; and he having been prov'd to be a Native of *Scotland*, muſt be intended to be then in *Scotland*, unleſs prov'd to be elſewhere: And therefore the Priſoner's coming into *England*, can never be within the Meaning of the word Returning into *England*, any more than a Man can be ſaid to return to a Place where he was not before.

There is another Objection, (becauſe I will give Mr. *Attorney* only one Trouble) and that is, That this Indictment (or Tryal) can't in this Caſe be in *Middleſex*, but muſt be in that County where the Priſoner firſt came after his leaving *France*; which really was *Northumberland*, as he came from *Scotland*; or at leaſt your Lordſhip will take notice, that it can't be *Middleſex*. 'Tis a known Rule, that all Indictments, and Tryals for Treaſons and all other Crimes, muſt be in the County where the Treaſon was committed: And 'tis clear, (taking the Proclamation out of the Caſe) that the Treaſon was committed in that County which the Priſoner firſt came into, after leaving *France*. The Treaſon (taking the Pardon out of the Caſe) was compleated by the firſt Step made into *England*. Nay, if the Priſoner, immediately after his making his firſt Step into *England*, had returned, ſtill it had been a compleat Treaſon; and the Party had returned with his Guilt upon him. And, my Lord, I do not take it, that the Party commits a new Treaſon, by his going into another County. 'Tis true, 'tis ſaid, if I ſteal Goods in one County, and carry them into another, this is Felony (tho' not Robbery) in every County where I carry them: But even in this Caſe, the Law (as I take it) is ſaid to be otherwiſe, in *Fitz. Abr. Tit. Coron. Par.* 194. and that the Tryal muſt be in the County where the Goods were firſt taken. But taking this to be Law, That the Felon may be tried in any of the Counties, where he carries the Goods he ſtole; as I muſt needs own, the Law is now allowed to be ſo; yet this depends upon a different Reaſon, no way affecting the principal Caſe. For the Reaſon given of this Caſe, in *Dyer* 40. and 7. *Coke* 2. and *Bulwer*'s *Caſe* is, That the Robbery or Felony does not alter the Property of the Goods; and therefore, into whatever County the Felon carries the Goods, 'tis a new Felony. But there 'tis not that ſpecial Reaſon in the principal Caſe, and therefore the Law is not the ſame. Suppoſing the Priſoner had been pardon'd the Treaſon, in coming into the firſt County of *Northumberland* without Licenſe; could he afterwards have been puniſh'd for Treaſon, for coming into

into the next adjacent County; this would be a pretty ſtrange Conſtruction of multiplying Treaſons. And if coming into every County would make a freſh Treaſon, a Man at that Rate may be brought to ſuffer as a Traytor, tho' with many Pardons about him. No ſurely, my Lord, 'tis the original Act the Law regards, and the coming into a Second County does not make it a Second Treaſon; and therefore we take it that the Indictment or Tryal in this Caſe can't be in *Middleſex*, but muſt be in *Northumberland* or ſuch other County, which was the firſt County of *England* that the Priſoner came into. Upon the whole Matter, we with great Submiſſion, inſiſt, First, That Her Majeſty's Proclamation amounts in Law to a Licenſe for the Priſoner to come from *France* into *Scotland*; nay, that it amounts to a Pardon to him, even of his Treaſon that he is now indicted for. But if that be againſt us, we in the next Place take it that a *Scotchman* not reſident in *England* at the Time of the making this Act, is not within the Meaning of this Act. But if that alſo be againſt us, yet in the next Place we humbly inſiſt, that he can't be Indicted for this Treaſon in *Middleſex*, but muſt be indicted in the County where we firſt enter'd *England*. And 'tis ſufficient if any one of theſe Points are for us; and therefore we humbly hope the Priſoner ſhall be acquitted.

Mr. *Raymond*. My Lord, if your Lordſhip pleaſe, I'd beg the liberty to offer a Word or Two on the ſame ſide for the Priſoner at the Bar.

I humbly apprehend, your Lordſhip expects no Apology from us, for appearing as Council in a Cauſe of this Nature, ſince 'tis by your Lordſhip's Permiſſion granted us in Purſuance of an Act of Parliament, that we have this Liberty; and I can't forget what your Lordſhip has ſaid formerly in this Place on the like Occaſion, That it is as lawful for the Gentlemen of the Bar to be Council in ſuch a Caſe, and that they are as much oblig'd to do their Duty for their Client in it, as in any other Caſe, wherein by Law they are allowed to plead.

I ſhall therefore, the Fact being agreed on by both Sides, ſtate it as a Caſe, and ſubmit the Obſervations I ſhall make upon it to your Lordſhip's Opinion.

The Fact is no more but this.

Mr. *Lindſay*, being a Native of *Scotland*, came into *England*, and reſided ſome Time here; from thence he went into *France*, where he continued a conſiderable Time; after he was gone into *France*, and whilſt he was there, the Act of Parliament, upon which he now ſtands indicted, was made. Afterwards the Queen granted a general Pardon and Indemnity to her Subjects in *Scotland* for all Treaſons, *&c.* Depending upon which, Mr. *Lindſay* returned into *Scotland*, and having had the Allowance of the Benefit of it there, he returned into *England*, coming by the way of *Berwick* and *Northumberland* to *London*.

My Lord, I ſhall humbly inſiſt upon it in behalf of the Priſoner at the Bar:

Firſt, That he is not comprehended within the Words of this Act.

Secondly, That if he ſhould be within the Words, yet that he is not within the Meaning of the Act.

My Lord, I ſhall by no means preſume to arraign the Wiſdom or Juſtice of the Law-makers in making this Act, which doubtleſs was founded on great Reaſon, and was very neceſſary for the Preſervation of his late Majeſty's Perſon and Government. But let it be never ſo wiſe, never ſo juſt, or never ſo neceſſary, yet, with great Submiſſion, 'tis a very penal Law; partly, becauſe it has a Retroſpect and makes that Fact an Offence, which was none at the Time when it was done, (for before this Act, it was lawful for any one to have gone into *France*, between the 11th of *December* 1688. and the Time of the proclaiming War with *France*.) But principally becauſe it makes the Offender againſt it a Traytor, therefore it muſt be expounded according to thoſe ſtrict Rules of Conſtruction, the Law has appointed for other Penal Statutes, and muſt never be extended by Equity beyond the Letter.

My Lord, As to the Penning of this Act, I muſt obſerve there is not one Word in it of *Scotland*, or the Subjects of *Scotland*, in expreſs Terms.

The Queſtion then will be, what other Words in it can extend to Mr. *Lindſay*'s being a Native of *Scotland*? The moſt comprehenſive Words ſeem to be theſe at the beginning of the enacting Part, *If any of Her Majeſty's Subjects, who have*, &c.

I muſt beg leave to inſiſt upon it, that Mr. *Lindſay* can't be called one of His late Majeſty's Subjects within this Act. I do agree he was the late King's Subject, as King of *Scotland*, but not as King of *England*; but this Act being made in *England*, by the *Engliſh* Parliament, and uſing the Word, Subjects, muſt mean ſuch Subjects as that Parliament were able to oblige, which are only the Subjects of *England*, or the Dominions depending on the Crown of *England*; but not the Subjects of *Scotland*, which is a diſtinct Dominion from *England*.

The King of *England* has a double politick Capacity in him, one as King of *England*, the other as King of *Scotland*; the Two Nations are abſolutely diſtinct, and ſo are the Laws by which they are reſpectively govern'd: If therefore the King, as King of theſe Two Kingdoms, has Two ſeveral Politick Capacities in him; if the Nations and the Laws are diſtinct, with Submiſſion, the Subjects of neceſſity muſt be conſidered ſo too.

I am very ſenſible, My Lord, with what Solemnity *Calvin*'s Caſe in 7. *Rep.* is ſaid by my Lord *Coke* to have been adjudged; it ſhall be therefore, with a great deal of Submiſſion to your Lordſhip's Opinion, and Deference to the Authority of that Caſe, if I ſhall ſay any Thing that may ſeem to claſh with that Reſolution.

I confeſs that Caſe has determined, that Allegiance is a Quality of the Mind, and can't be circumſcribed by Place; that 'tis due to the Perſon of the King; and becauſe his natural Perſon can't be divided, the Allegiance owing to him is inſeparable and indiviſible, and therefore that there is an Union of Allegiance of both Kingdoms; and that a Man can't be conſider'd as a Liegeman or Subject, which is all one to the King, as King of *Scotland*, and not as King of *England*, and ſo *Vice Verſa*.

I'll beg leave to conſider my Lord *Coke*'s Foundation, upon which this Reſolution is built, and ſubmit it entirely to your Lordſhip whether that is able to ſupport it.

According to my Lord *Coke* himſelf in *Calvin*'s Caſe, Legiance is a true and faithful Obedience

of the Subject due to the Sovereign, for which the Sovereign is obliged to protect his Subjects. *Protectio trahit Subjectionem, Subjectio protectionem*, 7 *Co.* 5.

I ſuppoſe it will not be pretended that this Obedience due from the Subject to the Sovereign is an abſolute blind Obedience to every arbitrary Command of the Sovereign; but is only ſuch an Obedience as the Law of the Kingdom, or Principality, or Dominion, has reſpectively preſcribed for the Subject to pay to his Sovereign; and the ſame holds as to the Sovereign's Part in Point of Protection. If therefore this Obedience or Legiance (which is the ſame) is altogether preſcribed and governed by the Law of the Place where 'tis due, it muſt neceſſarily follow, that where the Laws are different, the Legiance or Rule of Obedience and Subjection muſt be different alſo, and conſequently the Legiance due to the King as King of *England*, and the Legiance due to him as King of *Scotland*, (ſince the Laws of both Nations are diſtinct) muſt be ſeparate and diſtinguiſhable: Were it not ſo, the ſame Act, if ſo in one, muſt in both Kingdoms be the Performance of the Subjects Legiance; and the ſame Act, if ſo in either, muſt in both Kingdoms be the Breach of it. But that that is otherwiſe, is eaſily to be proved; as for Inſtance, according to my Lord *Coke* in *Calvin*'s Caſe, 7 *Co.* 7, 6. The King of *England* may command any Subject of *England* to attend him in his Wars beyond Sea; but ſuppoſe by the Law of *Scotland* a Subject of *Scotland* is not oblig'd to go with the King out of the Kingdom, the King commands a Native of *Scotland* to wait on him out of *Scotland* beyond Sea, and he refuſes; now by the Law of *England* he has broke his Legiance to the King, and yet in *Scotland* he is as good a Liege Subject (notwithſtanding this Refuſal) as any Subject the King has there. — In this very Caſe of Mr. *Lindſay*, By his Return into *Scotland* from *France* (if your Lordſhip takes the Word Dominions in the Act in as large a Senſe as I ſuppoſe the Queen's Council would have the word Subjects took, that is, to all the Places in Subjection to the King, tho' not dependant on the Crown of *England*) he was become a Traytor to the Queen as Queen of *England*, which is the higheſt Breach of Allegiance that can be; and yet at the ſame Time (laying the Pardon out of the Caſe, and ſuppoſing there was no Law in *Scotland* to prohibit his coming thither) he was a very good Subject of the Queen's in *Scotland*, and not guilty of any Breach of Allegiance due to her there. Then certainly theſe Two Allegiances are not the ſame, but diſtinguiſhable; one owing to the King as King of *Scotland*, the other owing to the King as King of *England*; and if the Allegiances may be conſidered ſeparately, ſo may the Subject (who owes thoſe Allegiances, and by owing of which he becomes a Subject) be ſeparately conſidered as ſuch in reſpect of them; and conſequently, that Mr. *Lindſay* being a Native of *Scotland*, muſt be regarded as a Subject of the King as King of *Scotland*, and not a Subject of the King as King of *England*, and ſo not within the Words of the Act, for the Reaſons offer'd to your Lordſhips before.

The Second Thing I begg'd your Lordſhip's Leave to inſiſt upon was, That taking it, that Mr. *Lindſay*, tho' a Native of *Scotland*, ſhould be comprehended within the Words, *any of his Majeſty's Subjects*, yet that this Act did not deſign to extend to any Native of *Scotland*, and conſequently not to him. With great Submiſſion to your Lordſhip, there are many Caſes in the Books where Statutes have receiv'd a Conſtruction contrary to the Words, to comply with their Intent. The State of *Gloceſter*, *Cap.* 1. enacts, that the Diſſeiſin ſhall recover Damage, in a Writ of Entry, founded upon the Diſſeiſin, againſt him who is found Tenant; upon which *Litt. Sect.* 685. puts this Caſe, That if the Diſſeiſor makes a Feoffment of the Land to *B. C.* and *D.* and Livery of Seiſin is made to *B.* and *C.*; but *D.* was abſent, and never would agree to this Feoffment, nor take the Profits; *B.* and *C.* die, the Diſſeiſee brings a Writ of Diſſeiſin in the *Per* againſt *D.* who pleads this Matter; tho' he is Tenant of the Freehold of this Land, yet no Damages ſhall be recover'd againſt him. So in this Caſe, tho' the Words of the Act in their utmoſt Extent would comprize the Priſoner at the Bar; yet if the Parliament did not deſign they ſhould, a Conſtruction ſhall be made accordingly.

That the Parliament did not intend to concern themſelves with *Scotland*, or the Natives thereof, appears, with Submiſſion, by the Preamble (which is, as my Lord *Coke* terms it, *Co. Litt.* 79. a Key to find out the meaning of the Lawmakers.)

The Words of the Preamble are, That upon the Concluſion of the Peace between his Majeſty and the *French* King, it was become neceſſary for the carrying on a Trade between *England* and *France*, That the Subjects of each Kingdom ſhould have, *&c.* — I ſuppoſe it will not be pretended that *Scotland* can be comprehended under the Word, of *England*; nor *Scotchmen* under the Word, the Subjects of each Kingdom, that is, of *England* and *France*. — For if a *Scotchman* ſhould be took to be a Subject of the King of *England*, yet I humbly conceive he was never took to be a Subject of the Kingdom of *England*; the Word Kingdom is the ſame as Realm, and is uſually apply'd to the Land of *England*, and not to the Dominions dependant on the Crown of *England*; as on the 35 *Hen.* 8. *c.* 2. a Treaſon committed in *Ireland* was adjudged to be a Treaſon committed out of the Realm of *England*, and triable as a Foreign Treaſon, *Orurke*'s Caſe, *Ander.* 262. *Pl.* 269. But if Kingdom or Realms ſhould be taken to have the ſame Signification as Dominion, that Caſe could not be Law, becauſe *Ireland* was never held to be out of the Dominion of the Crown of *England*; ſo that with great Submiſſion to your Lordſhip, nothing in the Preamble affects the Priſoner at the Bar.

The next thing to be conſider'd, is, what the Parliament meant by the Words, If any of his Majeſty's Subjects, *&c.* And I humbly hope your Lordſhip will think it reaſonable to let that Expreſſion be explain'd by the Word Subjects uſed in the Preamble, and ſo interpret them his Majeſty's Subjects of the Kingdom of *England*, which this Priſoner is not; and the rather, becauſe to conſtrue them to extend to *Scotchmen*, will be an Interpretation that will make the *Engliſh* Parliament make an Offence a Treaſon, which will not be in the Power of the *Engliſh* Government to puniſh, unleſs by Accident: For if a *Scotchman* returning out of *France* into *Scotland*,

Scotland, contrary to this Act, ſhould be a Traytor; yet he could not be puniſh'd here, unleſs he accidentally came hither afterwards, becauſe the *Engliſh* Government has no Coercive Means to fetch him from *Scotland* hither to be puniſh'd.---- But 'tis otherwiſe in reſpect of the Dominions depending on the Crown of *England*, as *Ireland*, &c. for a Man may be tranſmitted from *England* to *Ireland*, or *Vice Verſa*, to be try'd; as Colonel *Lundy* was 2 *Ventr.* 314. but *England* can't compel the Government of *Scotland* to ſend a Man hither from thence to be try'd. Then I humbly conceive that it can't be imagin'd, that the Parliament deſign'd to make an Offence a Treaſon, which can't be puniſh'd but by Accident here, ſince 'tis below the Dignity of a Government to have Offenders againſt their Laws, in Crimes of ſo high a Nature, out of their Power to puniſh—— But of an *Engliſh* Subject it would be otherwiſe, tho' he was in *Scotland*, or any Foreign Prince's Dominion, becauſe they might proceed againſt ſuch a Perſon to Outlawry, and upon Attainder confiſcate his Eſtate.

Another Thing I muſt beg leave to offer to your Lordſhip, as a Proof that this Parliament did not intend in this Act to include *Scotland*, or the Natives of *Scotland*, is, that the Paragraph which makes the taking of a Charter or Grant from the late King *James* to be Treaſon, is ſo far from relating to *Scotland*, or the *Scotch*, that it does not make it penal for any *Engliſhman* to take a Grant of Honour or Eſtate in *Scotland* from the late King *James*; the Words of the Act being, to be had or enjoy'd in the Kingdom of *England* or *Ireland*: So that the Parliament ſeemed induſtriouſly not to concern themſelves with any thing relating to *Scotland*; and yet doubtleſs they might have made it Treaſon for any *Engliſhman* to have took ſuch a Grant; and there had been as great Reaſon ſo to have done, if they had thought fit to have meddled with any thing relating to *Scotland*, ſince the taking of ſuch a Grant in *Scotland* by an *Engliſhman* from the late King *James*, had been as great a Derogation to the Liegance owing to the King, as if it had been of any thing in *England*; the Acceptance of ſuch a Grant amounting to an Acknowledgment of another Power beſides the King's---- So that for theſe Reaſons I humbly inſiſt upon it, that the Parliament did not intend to include any *Scotchman* within this Act.

But, my Lord, taking it that Mr. *Lindſay*, tho' a Native of *Scotland*, ſhould be within both the Words and Meaning of this Act; yet I muſt ſubmit it to your Lordſhip's Judgments, whether this Act could bind him, he being beyond Sea, *viz.* in *France*, at the Time when it was made. I do agree, that if any of the *Scots* have Lands, *&c.* in *England*, they ſhall be liable to pay all Duties impoſed by Act of Parliament on thoſe Lands. I do alſo agree, that every *Scotchman* reſident here, is bound by all the Laws of the Land; and ſo are all Foreigners whatſoever, (be they *Danes* or *Swedes*, or of whatſoever other Nation they be) who live here under the King's Protection: But as ſoon as they are gone out of the Kingdom, their Allegiance, which was but local, ceaſes, and they are no longer obliged by the Laws of *England*. It muſt be agreed, that no *Engliſh* Act of Parliament can bind *Scotland*, nor, as I humbly apprehend, the *Scotch*, whilſt out of *England*; if ſo, then how could this Priſoner be bound by this Act, being a *Scotchman*, and out of this Kingdom, at the Time when the Act was made? With great Submiſſion, his coming into *England* alone could not ſubject him to this Law; for there ſeems to be a great Difference between this Act, and other general Acts or Laws of this Place: For, as I ſaid before, if a *Scotchman* comes into *England*, and inhabits here, he is liable to all the Laws then in Force, and ſhall be puniſhed for the Breach of any of them; becauſe he was before protected by thoſe Laws, and therefore muſt be obedient to them. But in this Caſe, the Subjection to the Law, and the Offence, began at the ſame Inſtant; for before his Landing in *England*, this Law had no Power over him, and the very Act of Landing made the Offence in this Indictment; 'twill be therefore ſomething ſevere to conſtrue that Act, which only makes the Priſoner liable to the Law, to be a Breach of it. As to this Matter, there will be no Difference between a *Scotchman* or a *Dane*: Both, when here, are bound by the Laws; neither, when abſent. Suppoſe it ſhould be enacted, That if a *Dane* ſhould land in *England* without Licenſe from the King, he ſhould be a Traytor; and a *Dane* notwithſtanding ſuch Act ſhould come into *England* without ſuch Licenſe, would he be a Traytor? With humble Submiſſion, Not. Such Act might amount to a Prohibition of his coming, and make him be uſed as an Alien Enemy, 7 *Co.* 6 *B.* as *Perkin Warbeck* was in *Henry* the VIIth's Time; but could not make him a Traytor, becauſe he owed no Allegiance to the King, nor Subjection to the Law, at the Time when the Act was made. As to the Priſoner's having been in *England*, and having reſided here before; that, I humbly think, will make no Difference, becauſe his Subjection to the *Engliſh* Law ceaſed, as ſoon as he ſtept off from the *Engliſh* Shoar.

What I ſhall beg Leave further to inſiſt upon for the Priſoner, (ſuppoſing your Lordſhip ſhould be of Opinion againſt him on the former Points) is, That this Evidence don't maintain the Indictment. The Indictment is for returning without Licenſe from *France* into *England*: The Evidence is, That he returned out of *France* into *Scotland*, and from thence into *England*. The Act of Parliament is, *That if any of his Majeſty's Subjects*, &c. *return into this Kingdom of* England, *or other his Majeſty's Dominions*: The Meaning of which, we for the Priſoner humbly take to be, That the firſt coming of any ſuch Perſon, as is within the Act, into any of his Majeſty's Dominions, ſhall be the Treaſon; and that the Act did not intend to make every ſeveral Coming into every diſtinct Dominion a new Treaſon; as if ſuch Perſon ſhould come out of *France* firſt into *Scotland*, then into *Ireland*, thence into *Jerſey*, and ſo into *England*, the Act, with Submiſſion, did not deſign to make this Perſon liable to be indicted for Four Treaſons; but that into what Dominion he firſt came, for that he was a Traytor and puniſhable: And that Conſtruction ſufficiently prevents the Miſchief and Danger the Act deſign'd to arm againſt. For if a Man ſhould come without Licenſe into any one Dominion, and is look'd on as a dangerous Perſon, the taking away his Life will prevent any future Miſchiefs from him: If he has a Licenſe to come into one, 'tis to be believed, with a great deal of Reaſon, he may be truſted in any other of his Majeſty's Dominions, or elſe his Majeſty would never have granted him a Licenſe to return into any of his Dominions, where he would be equally capable of putting in Execution any dangerous Practices againſt the Government. If that ſhould be the Meaning of the Act, then, with Submiſſion, this Indictment ought to have been for coming into *Scotland*, which was the Place he firſt came into, for there was the Treaſon, and not for

coming into *England*. Beſides, if the coming into *Scotland* was the firſt and only Treaſon puniſhable by this Act, then we muſt offer the general Pardon of *Scotland* in the Priſoner's Excuſe: Not, my Lord, that I can pretend, that a Pardon in *Scotland* can pardon a Treaſon in *England*; but we muſt beg Leave to inſiſt upon it, as amounting to a Licenſe to return into *Scotland*. I do expect that it will be objected, that the Licenſe which this Act appoints, muſt be under the Privy-Seal of *England*, which this *Scotch* Pardon can't be pretended to be. I confeſs, my Lord, the Words are, without Licenſe from his Majeſty under his Privy-Seal. But 'tis not ſaid Privy Seal of *England*. And tho' generally ſpeaking, when an *Engliſh* Act mentions the Great Seal or Privy Seal, it muſt be took to be the Great Seal or Privy Seal of *England*; yet in this *Engliſh* Act, if your Lordſhip will conſtrue the Words, *His Majeſty's Subjects*, not only to be his Subjects as King of *England*, but as King of *Scotland*, or any other Nation; if your Lordſhip will conſtrue the Word, Dominions, to be not only the Dominions dependant on the Crown of *England*, but alſo all other Dominions of which his Majeſty was King, as *Scotland*; by Parity, the Words, Privy Seal, ought to be extended to all the Privy Seals the King has, as King of *England*, or King of *Scotland*. And if ſo, then ſince the Queen has in Her Proclamation, declared that Her Pardon ſhall be took as beneficially as if it had been under the Great Seal; but the Great Seal includes the Privy Seal, and is of greater Efficacy: We humbly hope, that it will be as beneficial to the Priſoner, as if it had been under the Privy Seal; nay, rather more, becauſe as to *Scotland* it pardons the Offence; for tho' the Return is after the Pardon, yet it pardons the going into *France*, which is the Foundation of the Crime, and without which the returning into *Scotland*, or any of his Majeſty's Dominions, was no Offence. This is the Uſe the Priſoner would make of this Pardon. I can't preſs it as a Pardon of an *Engliſh* Crime; tho' with great Submiſſion to your Lordſhip, it ſeems ſomething ſtrange, that Mr. *Lindſay*, ſhould by virtue of this Pardon be a very good Subject of the Queen's in *Scotland*, and have all the ſame Liberties other of his Countrymen have there, and yet that he ſhould be a Traytor againſt the Queen here in *England*; that he ſhould be within the Queen's Protection there, and out of her Protection here; and yet at the ſame Time that his Allegiance to her can't be ſevered, nor he conſidered as a Subject to Her, as Queen of *Scotland*, and not as Queen of *England*.

But admitting the Pardon will not avail the Priſoner in any reſpect, and that your Lordſhip ſhould be of Opinion that his coming to *England* is a Treaſon, notwithſtanding he returned from *France* into *Scotland* firſt; then I muſt inſiſt upon what Mr. *Williams* has before mentioned, that this Indictment is ill, and that he ought to have been indicted in the County which he firſt came into, which was impoſſible to be *Middleſex*; and I muſt ground it on the general Rule, that all Crimes are Local, and Inquirable by the Grand Jury of the County where they are committed. Even in Batteries, which are Tranſitory in Actions; yet, with Submiſſion, Indictments are Local, and muſt be enquired of by the Grand Jury of the County where they are committed. My Lord, I ſhall treſpaſs no longer upon your Lordſhip's Patience, only juſt beg leave to ſay, that upon the whole Matter, for the Priſoner at the Bar, I humbly inſiſt upon it, That he being a Native of *Scotland*, is not within the Words of this Act: For if he ſhould be within the Words, yet he is not within the meaning of the Act. But if both thoſe Points are againſt me, That, as this Caſe is, he is not obliged by it. If I ſhould fail in all theſe, then I muſt have recourſe to the Conſtruction of the Act, that it intended only to make the firſt Entry into any of the Queen's Dominions, Treaſon, and conſequently that this Treaſon was upon his Return to *Scotland*, and ought in the Indictment to have been laid as ſuch: For which Reaſon I humbly conceive that the Indictment is not only ill, but the Pardon will amount to a Licenſe. But if your Lordſhip ſhould be of Opinion he is indictable for coming into *England*, that then the Indictment ought to have been laid in that County where he firſt came into. If any of which Points hold, with Submiſſion, the Priſoner can't be found guilty on this Indictment; but your Lordſhip will be pleaſed to direct the Gentlemen of the Jury to aquit him, which I humbly pray in his Behalf.

Sir *Tho. Powis*. My Lord, I have obſerv'd theſe Gentlemen in the Method they have gone, and will follow them in the ſame Manner to give them an Anſwer. What we have to ſay, will be nothing but with reſpect to the Law, as it now ſtands upon the Act of Parliament: Whether the Caſe deſerves Mercy or no, is not the Queſtion here, that will be conſider'd in another Place. Our Part is to maintain the Law as it ſtands, with reference to this Indictment; it muſt be owned that a great deal of that which has been ſaid might have carried weight with it, if it had been pleaded in *Scotland*, where the Proclamation was made; but to make uſe of it here in *England*, as having any Force in this Caſe, is not agreeable to Law or Reaſon. Firſt, no Man can ſay, a Pardon, if it had been under the Great Seal of *Scotland*, could pardon a Crime committed here in *England*; but it is not ſo, for it is not under any Seal at all. But ſuppoſing it were to be taken in the Extent they would have it, yet it would not be a ſufficient Pardon in this Caſe. For theſe Two Things muſt be conſider'd. Firſt, It is a Pardon only of Crimes committed in that Kingdom. Secondly, It cannot be a Pardon of a Crime committed ſince that Pardon granted; for we muſt mind the Date of that Pardon, and the Crime he is tryed for. The *Scotch* Pardon is dated in *March*, 170$\frac{3}{4}$. that was *March* was Twelvemonth. No Man can ſay a Proclamation in that Kingdom can pardon a Crime that was committed afterwards. Now this Crime was committed in *December* laſt, for then it was he returned into *England*; therefore that Pardon can never extend to this Caſe. So that theſe Two Things if conſidered, will be ſufficient to anſwer all that has been inſiſted on, by way of Pardon. Firſt, It is a Pardon of another Kingdom for Offences committed againſt the Crown of *Scotland*; whereas this Indictment is for an Offence committed againſt the Crown of *England*. And Secondly, It was granted at a Time precedent to the Time of this Offence committed: But next, they ſay the Pardon in *Scotland* will amount to a Licenſe from the Queen to go into *Scotland*, and that then by Conſequence he was free to come into *England*; with Submiſſion,

miſſion, we think they cannot make ſuch an Inference, for the Queen's Pardon cannot extend to ſuch a double Purpoſe. Suppoſe the Queen had expreſly pardoned his going into *France* and returning into *Scotland*, that would not have amounted to a Licenſe to come into *England*. So that we deny their Inference, that the Pardon in *Scotland* amounts to a Licenſe to come into *England*. But in the Second Place, if the Queen had expreſly given him a Licenſe to go into *Scotland*, (tho' I do not admit that to be the Caſe) yet I deny that that would have been a Licenſe to come into *England*. If the Queen under the Privy Seal of *Scotland* ſhould have admitted him to come into *Scotland*, yet that would not have been a Licenſe for him to come into *England*; for it would have been a Special Licenſe to go to one Place, which can never be reckon'd, in ſuch a Caſe as this is, a Licenſe to go to another Place in another Kingdom. For the King or Queen might perhaps think fit to licenſe one to come into *Scotland*, and yet not think it convenient to licenſe him to come ſo near their Royal Perſon, as he would be here in *England*. So that there is no ſuch Licenſe in that Pardon, as is inſiſted on; and if there had been, yet it would not have had that Operation to licenſe him to come to *England*, The next Thing they ſpeak moſt fully to (and which is very conſiderable, if they make it out) is, that the Words of this Act of Parliament, upon which the Indictment is founded, or at leaſt the Meaning of them, cannot be extended to a Native of *Scotland*. As for the Words of the Act we need do no more than read them, to make it appear to be otherwiſe. It is obſerv'd by them very truly, that *Scotland* is no Part of the Kingdom of *England*; but they muſt admit it is a Part of the Dominions of the Queen of *England*, tho' not Part of the Kingdom of *England*. They would do little Service to the Subjects of *Scotland*, if they ſhould endeavour to overthrow *Calvin*'s Caſe, which was ſo ſolemnly determined near a Hundred Years ago, which enables them of *Scotland* to come into *England*, and enjoy the ſame Privileges here, as the Subjects of *England* do. Certainly, as they are let into all theſe Benefits by the Reſolution of that Caſe, ſo they are at the ſame Time the Subjects of the King or Queen of *England*. That the Words therefore of the Act are againſt them, nothing can be plainer; If any of His Majeſty's Subjects, who ſince the 11th of *December*, 1688. have gone into *France*. —— This leaves them no room for Diſpute; it ſays not, if any of the Subjects of the Kingdom of *England*, but if any of His Majeſty's Subjects; ſo that whoever was a Subject of the late King is within the Act. The Words are without any Reſtriction whatever, If any of his Majeſty's Subjects; and they will not deny but that a *Scotchman* was a Subject of His late Majeſty. But then they ſay, if the Words ſhould extend to it, the Meaning of the Act cannot. With Submiſſion, we think the Caſe before you is within the Words and Meaning of the Act, and within the Miſchief which the Act provides againſt. For at the Time this Act was made, it being taken notice of, that upon the Peace concluded there would be a Door opened for a Communication between *England* and *France*, and that many Perſons who had reſorted thither, who had been actually in Arms there, and other diſaffected Perſons, might take Advantage, and be encouraged from thence to form and carry on treaſonable Deſigns and Practices againſt his Majeſty's Perſon and Government; Therefore, to obviate that Miſchief, this Act was made in ſuch general Words, That if any of His Majeſty's Subjects who had gone voluntarily into *France*, ſince the Time mentioned in the Act, without Licenſe, let them be born where they would, whether they were of the one Kingdom or the other, the Miſchief of their returning without Licenſe was equal. And by conſequence, it was the Meaning of the Act to exclude one as well as the other; for the Deſign of the Act was to prevent the Danger that might ariſe by ſuch Perſons coming over. But as to this preſent Caſe, if what the Witneſſes have ſaid be true, it would be very miſchievous indeed, if a Perſon that had been reſident here for near Twenty Years, as the Priſoner was, by his own Witneſſes, and afterwards went into *France* without a Licenſe, if he may be allowed to return back again without a Licenſe, becauſe not originally a Native of *England*. By the ſame Rule all thoſe Perſons that have done the like both of *Scotland* and *Ireland* would be at Liberty to return alſo, becauſe not Natives of *England*; which was not ſurely the Meaning of the Act of Parliament, nor ought the Conſtruction of the Words to be ſo taken. It's true, we can't here by an Act bind them in *Scotland*, but we are not now putting in Execution this Act in *Scotland*, but putting it in Execution here in *England* on a *Scotchman* that had been long an Inhabitant here before. My Lord, the next Thing that was inſiſted on, is, that if he be ſuch a Subject as may be conſtrued within this Act, and if the Pardon ſhould not have the Effect they contend for, yet they ſay this Indictment is laid in the wrong Place, it ought to have been laid in the County where he firſt arrived. There need little to be ſaid to this, becauſe the Proſecution is made where the Party was apprehended. The Objection they make, is that which would render it impracticable to proſecute any for this Offence. For how is it poſſible to know where a Man firſt privately arrived? That which is enough to charge him, is, that he was firſt found in ſuch a Place in *England*; for 'tis not ſaid in the Act, that they ſhall not return to this or that County, but not to *England*. And then where-ever he is found in *England*, there the Indictment may be laid againſt him. And the Caſe of the Felony comes home to this Point; the Man that ſteals Goods in one County, may be indicted in any other County where he carries them. So he that returns into *England* contrary to the Act, whereever he is apprehended he carries the Crime with him. And it does not appear, but that this is the firſt Place where he was found. They ſay it is impoſſible to come from *Scotland* into *Middleſex* without firſt coming into ſome other County; but it is agreed that this is the Place where he was firſt apprehended. Therefore upon the whole Matter, the Fact being confeſſed, we inſiſt that he is within the Words and the Meaning of the Act, and within the miſchievous Conſequences which are intended to be prevented by it.

Mr. *Att. Gen.* My Lord, I would not ſpeak any Thing to aggravate Matters againſt the Priſoner;

but there have been ſome Things ſaid by his Council, which I think fit to be taken notice of.----They have given him a Character for his Faithfulneſs to the Queen, and called ſome Witneſſes to it: And Mr. *Williams* was pleaſed to ſay, His owning the Facts charged againſt him in the Indictment, (whereby he ſaved the Court and the Queen's Council a great deal of Trouble) was an Argument of his Sincerity.----I only ſay, I believe he had a better Opportunity by other Methods to have ſhewn it. My Lord, Every one knows from whence he came, (*viz.* from *France*) and how long he ſtay'd there, and in whoſe Service. And it would have been a better Argument of his Sincerity, if he had given an Account of his Knowledge of what paſs'd in *France* while he was there; and probably would have been of more Advantage to him, than ſaving the Trouble of proving what (he knew) we were ready and able to prove.

What has been ſaid as to the Act in general, is ſomething ſurprizing to me; to hear any *Engliſhman* complain of the Hardſhip of this Law, on which the Priſoner is indicted, which was made for the Preſervation of the King's Perſon and the Government, and by the Wiſdom of the Nation thought neceſſary. But as to the Matters of Law the Priſoner's Council have inſiſted on, they are reducible to Two Heads.

Firſt, That the Queen's Proclamation in *Scotland*, pardoning Her Subjects of *Scotland* of all Treaſons, *&c.* amounts to a Licenſe to return to *Scotland*, by pardoning the Offence in going to *France*; and every Subject of *Scotland* may lawfully come thence into *England*.

Secondly, That the Priſoner ought to have been indicted in the firſt County, into which he firſt returned; which is impoſſible to be *Middleſex*.

As to the firſt Matter, it has been ſaid, That a Native of *Scotland* is not bound, nor can be puniſh'd by a Law made in *England*. And the Council, tho' they have not deny'd the Authority of *Calvin*'s Caſe, yet they do ſeem to diſlike the Reſolution of it. Now he is (according to *Calvin*'s Caſe) a Subject of *England*. That Caſe was more beneficial to the Subjects of *Scotland* than to the Subjects of *England*; and it has been always allow'd to be Law ever ſince. But, my Lord, we are not to conſider this Gentleman in this Caſe as a *Scotchman* abſolutely, but as a *Scotchman* here in *England*. How far an Act made in *England* would affect a *Scotchman* that ſhould return into *Scotland*, I need not meddle with. But the Queſtion here is, Whether an Act of Parliament made in *England*, will not bind every Perſon that is reſident here in *England*? Now the Priſoner was reſident here in *England* with his Family, and went hence to *France*: And by the Law, every *Scotchman* reſiding in *England*, is an *Engliſhman*, and hath Right to enjoy the Privileges of an *Engliſhman*. This is the Reſolution of *Calvin*'s Caſe. I will give but one Inſtance of this. The Act of Navigation made 12. of *Car.* II. requires, in many Caſes of Goods imported, that the Maſter, and Three Fourth Parts of the Mariners, ſhall be *Engliſh*. The Act of 14. *Car.* II. *Chap.* 11. of Frauds, declares, That any of Her Majeſty's Subjects of *England*, *Ireland*, and the Plantations, ſhall be accounted *Engliſh*, and no others.

Now the Natives of *Scotland* inhabiting in *England* or *Ireland*, have always been allow'd to be *Engliſh* or *Iriſh* within the Act of Frauds; and have enjoy'd the Privilege ever ſince of being Maſters of Ships: And the ſame hath been allow'd them on all Trials in the Court of *Exchequer*, that is according to *Calvin*'s Caſe; That to all Intents and Purpoſes, a *Scotchman* being in *England*, enjoys the Privileges of an *Engliſhman*, he is a Subject of the Crown of *England*.

But give me Leave, my Lord, to conſider how the Priſoner comes to be affected by this Act: Not as being Her Majeſty's Subject, living in *Scotland*; but he is bound by this Act, as he is a Subject reſiding here in *England*. For as to what they ſay, that his Offence is going into *France*; that is not the Matter he is charged with: That is the Deſcription of the Perſon that falls under the Diſability of the Act; [A Man under theſe Circumſtances:] But his Returning from *France* into *England* (being a Perſon deſcribed by the Act) is the Offence.

My Lord, His Returning is the Offence: Not his Returning to *Scotland*, but Returning to *England*, or any other Her Majeſty's Dominions, bound by the Acts of Parliament made in *England*. The Act is, If any of His Majeſty's Subjects return: And every *Scotchman* that reſides here, is a Subject of the Queen. Every Law that is made in *England*, will bind every *Scotchman* that reſides here; and this will bind him from returning into *England* without Licenſe; which is all that is in this Caſe.

It hath been objected, The Act cannot bind the *Scots* here, becauſe they have no Repreſentative in Parliament. But that is not ſo: They may be Freemen of Corporations, and are capable of being Freeholders; and as ſuch, may be repreſented in Parliament. The Penning of the Act ſhews, the Parliament intended to include all Subjects, that might in the utmoſt Latitude be called Subjects. The Words are, [If any of His Majeſty's Subjects, that have gone into *France*, ſhall return into *England*.] So that the Act ſays, They that were His Majeſty's Subjects, and went into *France*, and did return, ſhall be guilty. Therefore, what hath been ſaid of the Laws of *England* binding *Scotland*, is quite out of this Caſe.

The Council for the Priſoner have argued, That the Proclamation of Indemnity in *Scotland*, is a Licenſe to return into *Scotland*. I would fain know where they find that. If there were a Pardon under the Great Seal of *England* for all Offences committed, I would be glad to know whether that would be accounted a Licenſe to return into *Scotland*? No, certainly. They have ſaid, That the Matter that hinder'd the returning to *Scotland*, was the Offence of going to *France* without a Licenſe; which Offence is remitted by the Pardon. That is plainly a Miſtake: For the Act had not Regard to any Offence in going to *France*; referring to the 11th of *December*, 1688. when, and long after, it was not any Offence to go thither without a Licenſe: Every Man, till the War was declar'd, might have gone thither without Licenſe. And yet by this Act, thoſe that went between that Time and the War declared, as well as thoſe that went during the War, are prohibited to return without Licenſe. So that the Pardon which they rely on, cannot avail the Priſoner: For the Act did not regard Crimes committed; but, as the Preamble is, it was made to prevent an Inconvenience which might follow by diſaffected Perſons returning; who might form and carry on Traiterous

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Conſpiracies, againſt the late King and the Government. And the Parliament look'd on Perſons to be diſaffected, that left their Country, and went and ſtay'd in *France* after the late King went thither; and therefore judged it not reaſonable to have ſuch truſted here, without the Government ſhould licenſe their Return.

The Perſons mention'd in the Act are characteriz'd: So that as to the Matter of the Pardon, (if it were an *Engliſh* Pardon) it would not bring them from under the Act. Beſides, any Licenſe or Pardon in *Scotland*, cannot indemnify them from an Act made in *England*.—— The Law and the Seals of each Kingdom are diſtinct: And an expreſs Licenſe under the Seal of *Scotland* to return to *England*, nay, an Act of Parliament for that Purpoſe there, would not avail: For no Act of *Scotland* can take off a Diſability laid on by any Act made in *England*. For this Act is a baniſhing them from *England*, unleſs the Queen give a Licenſe to return.

My Lord, It is an extraordinary Thing which they argue from the Preamble of the Act, that mentions the carrying on the Trade between *England* and *France*; and *Scotland* being not named, the Act ſhall not extend to the *Scotchmen*. I do not ſee what can be gather'd from that.—— The *Scotchmen* reſiding here, are conſider'd as *Engliſh*; and being here, are bound by the *Engliſh* Laws; elſe the *Scots* would be in a better Condition here than the *Engliſh*. But, my Lord, that which we inſiſt on, is, That the *Scots* reſiding here, are to all Intents *Engliſhmen*; That they are ſubject to the Laws of *England*, and bound by them. The going firſt to *Scotland* will not avail the Priſoner: For the Offence is, Returning to the Place from whence he went, that is, *England*. Whether his Returning to *Scotland* be an Offence within this Act or not, is not material; nor whether an Act of Parliament made in *England*, can baniſh a *Scotchman* from *Scotland*: But it is, That an Act of Parliament in *England* may prohibit any *Scotchman*, or any other Perſon, from returning out of *France* into *England*.

My Lord, The next Matter, which they mightily inſiſt on, is, as to the Place of Trial: But if that Objection ſhould prevail, it would make the Act ridiculous and uſeleſs. For then it would lie on the Queen's Council to prove, Where a Perſon (who privately return'd, and got into the Kingdom) firſt landed. But the Act ſays, [If they ſhall return into *England*.] And whereever he is found, thither he is returned. There was an extraordinary Thing ſaid indeed: That if we can make it Treaſon whereever he is found, then he may be try'd in every County he comes into; altho' he be pardon'd, or tried, for returning into one County. Certainly that will not be ſo. For the Returning is but one Treaſon: And tho' he may go into ſeveral Places, yet when he is tried in one Place, and convicted, and pardon'd for that, it diſcharges him wholly. For the Returning is but one entire Offence, tho' having been in many Places: The Queen may proceed againſt him in any one of them. It is like the common Caſe of an Eſcape. An Eſcape is an Eſcape in every County, whereever the Party goes afterwards: And the Party eſcaped, or the Sheriff, may be proceeded againſt in any County whither the Party eſcaped goes, as well as in that whither he firſt eſcaped. And without this be ſo, the Act can never be put in Execution.

My Lord, I think this is the Subſtance of what they have ſaid; That an Act made in *England*, will not bind a Native of *Scotland*. We think an Act made in *England*, will bind ſuch a one reſiding in *England*. Now the Priſoner was reſiding in *England* for Twenty Years; and he is both within the direct Words, and within the Intent and Meaning of the Act. There are a great many of them that are in *France*: And I believe the Parliament never intended to leave the *Scots* free to return into *England*, any more than the *Engliſh*.

Mr. *Lindſay*. My Lord, I deſire to know, whether the Queen's Licenſe does not ſet us free, as well in *England* as in *Scotland*? And whether one that has a Licenſe to come into *Scotland*, may not come into *England* too?

Mr. *Att. Gen.* One may be brought to a Trial here, tho' he had a Licenſe in *Scotland*.

Mr. *Lindſay*. My Lord, Her Majeſty's Pardon extends further than a Licenſe: It reſtores to all the Privileges I had before.

L. C. J. *Holt*. If I take you right, you mean, This Pardon in *Scotland* ſecur'd to you all the Advantages you had at the Time of your Birth, or at any Time before your Departure out of *England*; ſo that you are not to be impeached, or convicted of any Crime you have committed againſt the Laws of *Scotland*; but you are thereby upon the ſame Foot, and have the ſame Rights and Privileges as any other *Scotchman* hath, that hath never offended: And every innocent *Scotchman* hath a Right and Liberty to come into *England* when he will. Which is very true, that the Pardon diſcharges all Diſabilities and Incapacities, that you have incurr'd by any Offence committed againſt the Laws of *Scotland*, but not any committed againſt the Laws of *England*. That is, ſuppoſing the Pardon had been ſubſequent to your Return into *Scotland*, and that your Return hither had been High-Treaſon by this Act.

Mr. *Lindſay*. My Lord, I think this Pardon reinſtates me in all the Privileges I enjoy'd before.

L. C. J. *Holt*. I tell you no: It only reſtores you to the Privileges that you had as a *Scotchman*; and which you would have loſt, if convicted of thoſe Offences by the Law of *Scotland*; but exempts you not from any Puniſhment, to which you were then obnoxious by the Law of *England*.

Mr. *Att. Gen.* My Lord, I would ſay but this only; That ſpeaking of the Pardon, as a Pardon, it cannot pardon a Crime before it is committed. If the Pardon granted in *Scotland*, would pardon a Crime committed in *England*; yet it would not pardon a Crime committed afterwards.

L. C. J. *Holt*. But obſerve what he ſays. Says he, I am by this Pardon made a Free *Scotchman*: (And it is to be admitted, that the Pardon of *Scotland* has that Effect;) And if, ſays he, this Pardon has made me as Free a *Scotchman* as I was before; *Ergo*, I may come into *England*, as well as any other *Scotchman* that was under no Diſability.

Mr. *Att. Gen.* My Lord, He is bound by the Laws of *England*, as he reſided here: It has been the conſtant Practice. He does not pretend that he had King *William*'s, or the preſent Queen's Licenſe to come into *England*; only that he had the Queen's Licenſe to come into *Scotland*.

L. C. J. *Holt*. You hear what he ſays.

Mr. *Soll. Gen.* My Lord, The ſeveral Facts alledged in the Indictment are admitted to be true; except

except that the Priſoner was a Subject to His Late Majeſty; and, That his Return into *England* ſince the 14th of *January*, 1697. was without Licenſe.

'Tis objected, He was not a Subject of His Late Majeſty within the Meaning of the Act, becauſe he was a *Scotchman*.

Whoever is born under the Legiance of the King of *England*, is a Subject of the King; and 'tis admitted Mr. *Lindſay* was ſo born.

It has been likewiſe objected, His Return was not without Licenſe.

'Tis not pretended he had ſuch a Licenſe as the Act of Parliament ſpecifies, and the Indictment mentions; a Licenſe under the Privy Seal, to return into *England*.

But 'tis inſiſted on, That the General Pardon in *Scotland* does, by Conſtruction of Law, amount to ſuch a Licenſe.

It can't ſurely, with any Colour of Reaſon, be urg'd, That ſuch a Pardon ſhould be conſtrued any farther than a Licenſe to return into *Scotland*; and ſuch a Licenſe would not excuſe the Priſoner.

My Lord, This Pardon in *Scotland* can have no Relation to the Offence in Queſtion. A Pardon in that Kingdom can't extend to any Crime, which by the Laws of *Scotland* can't be there puniſh'd. But had that Pardon, which paſs'd in *Scotland*, been under the Great Seal of *England*, it could have been of no Service to the Priſoner. As a Pardon it could not; becauſe 'tis precedent to the Offence, and it can't by any Implication amount to a Licenſe.

The Reaſon offer'd, why it ſhould be ſo conſtrued, is, That the Offence, whereof the Priſoner ſtands indicted, is of a complicated Nature: That it conſiſts of Two Parts; Going out of *England* into *France*; and, Returning out of *France* into *England*. That the firſt Part of this Offence (his Going to *France*) being pardon'd, he can't be proſecuted for his Return.

The Suppoſition whereupon this Argument is founded, is a Miſtake: For after the 11th of *December*, 1688. any Man might (before the War was proclaim'd) have, without any Offence, gone into *France*: And therefore, his going thither after the 11th of *December*, 1688. is no Part of the Crime; but a Deſcription of the Perſon, whoſe Return without Licenſe was enacted to be High Treaſon.

Mr. *Conyers*. My Lord, The Priſoner inſiſts on the Benefit of Her Majeſty's Proclamation of Pardon in *Scotland*; which (as has been already taken notice of) bears Date in *March*, 170$\frac{3}{4}$. and cannot extend to pardon a Treaſon ſince that Time. The Treaſon for which he ſtands charged, was not till *December* laſt; then he came into *England* without Licenſe of the Queen: He voluntarily went into *France* without Licenſe, ſince the 11th of *December*, 1688. He came back into *England* without Licenſe, in *December* laſt; and for that he ſtands charged with Treaſon, by Virtue of the Act of Parliament in the Ninth Year of the Late King. But the Inference he makes from this Pardon, by the Queen's Proclamation in *Scotland*, is, That he is thereby reſtored to all the Privileges of a *Scotch* Subject, and conſequently may freely come into the Kingdom of *England*, as any other of Her Majeſty's Native Subjects of that Kingdom may do. Now the Pardon in *Scotland* can only extend to exempt him from Puniſhment for any Crimes committed in that Kingdom; and he can have no Benefit of it for a Crime committed againſt the Laws and Statutes of *England*, which is a diſtinct Kingdom, and govern'd by diſtinct Laws. And ſuch Inference as he makes from this Pardon, is both againſt the very Words and Meaning of the Act of Parliament, upon which he ſtands indicted. The Words are very expreſs and plain: *Any of Her Majeſty's Subjects, who have at any Time ſince the 11th of* December, 1688. *voluntarily gone into* France *without Licenſe*, (as the Priſoner confeſſes he did) *and after the 14th Day of* January, 1697. *ſhall return into* England, *or any other Her Majeſty's Dominions, without Licenſe, - - - - ſhall be judged guilty of High Treaſon.* He was reſiding in *England* after the 11th of *December*, 1688. He went from *England* into *France*; and is returned into *England* without Licenſe, ſince the 14th of *January*, 1697. and ſo is within the expreſs Words of this Act. And the Intent of the Act will appear by the Preamble. The Miſchiefs and Inconveniencies apprehended at the making of this Act, were, That *the Freedom of Going and Coming out of* England *into* France, *and from* France *to* England, *by the reſpective Subjects of each Kingdom after the Peace, might be an Encouragement to ſuch of the King's Subjects, who had been engaged in Traiterous Deſigns and Conſpiracies againſt His Majeſty, and who might be encouraged to form and carry on Treaſonable Deſigns and Practices againſt the King and the Government, to come out of* France *into* England. The Perſons from whom thoſe Dangers were apprehended, were ſuch Perſons as are deſcribed in this Act; and therefore, for the Safety and Preſervation of His Majeſty's Perſon and Government, the Intent of this Law was to prohibit their Returning into *England*, without ſuch Licenſe from His Majeſty under His Privy Seal.

L. C. J. *Holt*. Have you any more to ſay? Or have you any Thing to reply?

Mr. *Williams*. My Lord, We would ſave your Lordſhip's Time as much as might be; but we humbly inſiſt, that our Objections are not anſwer'd: And it being upon a new Law, and in Caſe of Life, we pray that the Matter may be found Specially.

L. C. J. *Holt*. If we ſee any Reaſon to doubt it, it ſhall be found Specially. But what you have ſaid, overthrows *Calvin*'s Caſe: For you urge, That you are a Subject of *Scotland*, and ſo not within this Act of Parliament. But you ought to conſider, That as you are a Subject of *Scotland*, ſo alſo you are a Subject to the Crown of *England*, by being a Native of *Scotland* ſince the Acceſſion of *Scotland* to *England*, which is by the Law of *England*. And if the Caſe had been, that you had only departed from *Scotland* into *France*, and from thence returned into *Scotland*, and ſtay'd there without ever coming into *England*, the Caſe would have been much different: For it may be, the Law of *England* cannot oblige a *Scotchman*, for any Act by him done in his own Country; (tho' there is no Occaſion to give any Opinion of that;) but an Act of Parliament in *England*, may ſubject any *Scotchman* to any Penalty, for any Act that he ſhould do in *England*. Suppoſe a *Scotchman* going out of *Scotland* into *France*, ſince the 11th of *December*, 1688. that ſhall return into *England* ſince the 14th of *January*, 1697. he ſeems to be within the Words and Meaning of the Act. But there is no need of determining that Point now: The Priſoner being a *Scotchman* born, and having been in *England* for a long Time, and de-

parting from *England* into *France* within that Time, and returning into *England* afterward, is to all the Purpoſes within the Letter and Deſign of the Act: For, being a Reſident in *England* at that Time, you are to all Purpoſes a Subject of the Crown of *England*, as much as any Native of *England*; and your departing into *France*, and remaining there for ſo long Time, and returning without Licenſe, is the ſame Danger that the Act of Parliament intended to prevent.

Mr. *Williams*. My Lord, I would not preſume to ſay any Thing in Derogation of *Calvin*'s Caſe: But I ſay, that tho' a *Scotchman* may be as a Natural-born Subject of *England*, yet he may not be within the Meaning of this ſo Penal a Law.

L. C. J. *Holt*. Certainly within the Meaning, if within the Words and Reaſon. But there is another Point that you, his Council, have urged in his Behalf; which is, That this Pardon is a Licenſe to him to return into *Scotland*. Which in Truth is not; for it is to another Purpoſe; *viz.* To pardon and diſcharge all Treaſons and Crimes committed in *Scotland*; but not give a Licenſe to return into that Realm: But ſuppoſe it to be a Licenſe to go into *Scotland*, that will not be a Licenſe to return into *England*. The Treaſon is, to return into the Realm of *England*, or any other His Majeſty's Dominions. Another Matter that you have inſiſted upon, is, That ſuppoſing this to be a good Pardon under the Great Seal of *Scotland*, it hath pardon'd the Offence of going into *France*. The Return into *England* can't be High Treaſon; becauſe the Treaſon conſiſts of Two Facts, ſay you, which are, The Departing into *France*, and, The Returning into the Queen's Dominions. Like unto the Caſe, when one gives another a mortal Wound of which he languiſhes, and before he dies, the Stroke is pardon'd; and then the Party dies: Afterwards it will not be Murder; becauſe that Act, which ſhould make it ſo, is diſcharged by the Pardon. To this a plain Anſwer hath been before given by the Queen's Council; That Going into *France* ſince the 11th of *December*, 1688. is no Offence originally; but only the Return of ſuch Perſon is made High Treaſon, and from that Return doth the High Treaſon commence. Therefore ſuch a Pardon under the Great Seal of *England*, could not have diſcharged him from being guilty of High Treaſon, if he had returned afterwards.

But, ſays he for himſelf, (as I apprehend him) That this Pardon hath made him a Free *Scotchman*, to all Purpoſes, as if he had never offended. And tho' the Pardon can't have any Operation to diſcharge him of any Crime committed againſt the Law of *England*; yet it hath this Effect, by putting him in the ſame State of other *Scotchmen*, to enable him to come into *England*. It is true, this Pardon puts him in the ſame Condition, in which other *Scotchmen* are by the Law of *Scotland*; but it puts him not in the ſame Condition that other *Scotchmen* are by the Law of *England*. By the Law of *England*, *Scotchmen* may at any Time come into *England*: But the Law prohibits thoſe who are Subjects, and went into *France* without Licenſe, to return into *England*.

They who are born in *Scotland*, may inherit Lands in *England*: But if an Alien to *England* and *Scotland* be Naturaliz'd by Act of Parliament in *Scotland*; tho' he is to all Purpoſes a Natural-born Subject of *Scotland* by the Law of that Realm; yet not therefore Inheritable to Lands in *England*, becauſe he is not a Natural-born Subject by the Law of *England*.

There is another Queſtion hath been ſtirr'd; which is, That he ſhould have been indicted in the Firſt *Engliſh* County into which he came: For it appears, upon the Evidence, that he came from *Scotland*. Now *Middleſex* can't be the Firſt County; but it muſt be *Northumberland*: For upon his coming there, the Treaſon is compleat: And his proceeding further into other Counties, can't make it more Treaſons than it was before. As to the Caſe of Felony, ſtealing Goods in one County, and carrying them into another; it is Felony in every County they are carried into. A Priſoner eſcapes from a Gaol in one County, and then goes into ſeveral Counties; it is an Eſcape in every County into which he comes; which is a Caſe very appoſite to this in Queſtion. Suppoſe a Man committed for Felony has eſcaped out of *Newgate* into *Northumberland*; may he not be indicted in *Northumberland*? He came voluntarily into this County of *Middleſex*; and certainly may be indicted, and tried here. Indeed, if he had been taken in one County, and carried into another County, that would be another Caſe; becauſe he came there by Coercion.

Mr. *Williams*. Now, my Lord, in this Caſe, the Priſoner comes into this County of *Middleſex* to ſurrender himſelf; and coming into *Middleſex* with an Intention to ſurrender himſelf, when a Warrant is out againſt him, will not be Treaſon in *Middleſex*, tho' his firſt Coming into *England* were admitted to be Treaſon.

L. C. J. *Holt*. That does not appear: He ſays otherwiſe himſelf. He ſays, He heard there was a Warrant out againſt him; and then he ſurrender'd himſelf.

L. C. J. *Trevor*. I do not think, if he had come into this County to ſurrender himſelf, it would have alter'd the Caſe. If he had ſurrender'd himſelf in the firſt County he came into, he would have been within the Law.

Mr. *Williams*. My Lord, with humble Submiſſion, if he comes into *England*, he by that commits Treaſon. But if after his coming into *England*, and before he comes into *Middleſex*, he hears that in *Middleſex* there is a Warrant out againſt him; and, purely to ſurrender himſelf upon this Warrant, he comes into *Middleſex*, and ſurrenders himſelf in *Middleſex*; with humble Submiſſion, this Act of Surrendring himſelf, which the Priſoner does in Obedience, and in Juſtice to the Proceſs of Law, won't amount to make him guilty of High Treaſon in *Middleſex*.

L. C. J. *Holt*. This is not the Caſe. However, we are all of Opinion, that alters not the Caſe: (For I have conſulted my Lord and Brothers.) Have you any more to ſay for the Priſoner? Or has he any Thing more to ſay for himſelf?

Mr. *Lindſay*. My Lord, I have told you what was the Motive that brought me into *England*; That I was to come to my Wife and Children, believing that I might have done it without Treſpaſſing againſt the Law, becauſe I ſaw others did ſo before me. Now, if it be taken as a Fault in me, and not in others; that will be very hard, my Lord. If I have offended, it is out of Ignorance.

L. C. J. *Holt*. Ignorance of the Law is no Excuſe: But that may fall under another Conſideration, which doth not belong to us. Have you any more to ſay?

Mr. *Lind-*

Mr. *Lindſay.* If I have by my Ignorance offended in this Point, and if you think my Indemnity in *Scotland* will not avail me, I humbly beg your Lordſhip will intercede for me to Her Majeſty.

L. C. J. *Holt.* Gentlemen of the Jury, this Priſoner, *David Lindſay*, is indicted for High Treaſon upon the Statute that was made in the Ninth of King *William.* The Offence ſet forth in the Indictment is to this Effect, That he being a Subject of the late King, did, ſince the 11th of *December*, 1688. go out of this Realm into *France*, and that he has returned into *England*, without Licenſe under the Privy Seal, ſince the 14th of *January*, 1697; which returning, by that Act is made High Treaſon. This Act was made upon the concluding the Peace of *Reſwick*, becauſe, then (as the Act recites in the Preamble) the Seas would be open for Commerce between *England* and *France*, and that would give an Opportunity to thoſe Perſons to return to *England*, whom the Wiſdom of the Nation thought dangerous to the Government, that is, thoſe that had been in the Service of the *French* King, and others that by departing the Realm ſince the 11th of *December*, 1688. Therefore to prevent all Danger to the King and his Government, this Act was made, to make ſuch a Return to *England* by ſuch Perſons to be ſo Penal as to amount to High Treaſon.

Now, the Queſtion is, whether this Priſoner be guilty. It does appear that he is a Native of *Scotland*, and alſo that he was here in *England* for many Years (I think one of his own Witneſſes ſays about Twenty) and did depart ſince the 11th of *December*, 1688. and he returned into *Scotland* ſince *March* was Twelvemonth, and came into *England* afterwards about *December* laſt, which is alſo admitted. So that it appears he is in the Words of the Act, and had no Licenſe under the Privy Seal.

But that which he inſiſts upon by his Council, is, that he was a *Scotchman* by Birth, and had an Invitation to return into *Scotland*, and had the Queen's Pardon, whereby he was pardon'd all Manner of Offences. It's true, he admits he was at St. *Germains*, but returned into *Scotland* in order to take the Benefit of that Pardon. He was at firſt ſecured by the Government there, but he had the Benefit of the Pardon allowed him, and was diſcharged. And then he ſays, he did deſire to come into *England*, and would not continue longer in *France*, becauſe he would not be a Papiſt. That when he was in *Scotland*, he deſir'd to come into *England* too, which he thought he might upon the Account of his Pardon in *Scotland*; and he adviſed with Council, whether he might ſafely come into *England*, and they told him he might, as he ſays.

The Queſtion is, whether any of theſe Things will be to his Advantage. Firſt, It is a Law of *England*, that he is indicted upon; no Pardon under the Great Seal of *Scotland* can diſcharge any Crime committed againſt the Law of *England*, neither can a Pardon under the Great Seal of *England* diſcharge any Crime againſt the Law of *Scotland.* But ſuppoſe he had had a Pardon under the Great Seal of *England* before his Return, that would not have pardoned in this Caſe: For his Offence is not in going into *France*, and coming into *England* in Time of Peace; but that having ſo gone, he returns without Licenſe, that is the Fact that is made ſo Penal. Now a Pardon given before a Man commits any Offence, is ineffectual; the Queen cannot pardon a Crime before it is committed.

But, ſays he, I am by this Pardon made to all Purpoſes a Free *Scotchman*, I am reſtored to all my Capacities that I had loſt; therefore if I have all the Capacities that I had as a *Scotchman* before, I may come into *England.* Now that is a Miſtake. It's true, he is reſtored to all the Capacities of a *Scotchman*, which is to be had by the Laws of *Scotland*; but a Pardon in *Scotland* cannot give him thoſe Privileges he had by the Law of *England*, and therefore cannot diſcharge him from an Offence committed againſt the Law of *England.* Nay, if he had been in *Scotland*, having eſcaped after he had been here, that would not have been effectual to diſcharge him from his Offence againſt the Law of *England.* Gentlemen, the Matter is before you, he is a Subject of the Queen of *England*, he has departed from *England* ſince the 11th of *December*, 1688. and has returned hither without Licenſe under the Privy Seal. And if you do believe all this, then you are to find him guilty; but if you do not believe it, you are to acquit him.

Then the Jury withdrew, and in about half an Hour returned into Court.

Cl. of Arr. Gentlemen, are you agreed of your Verdict?

Jury. Yes.

Cl. of Arr. Who ſhall ſpeak for you?

Jury. Our Foreman.

Cl. of Arr. David Lindſay, hold up thy Hand *(which he did)* How ſay you? Is he guilty of the High-Treaſon, whereof he ſtands indicted, or not guilty?

Foreman. Guilty.

Cl. of Arr. What Goods or Chattels had he at the Time of this High Treaſon committed?

Foreman. None that we know of.

Then the Court adjourned till Five of the Clock.

About Five of the Clock the Court met, and the Priſoner being brought, the Court proceeded.

Mr. *Att. Gen.* My Lord, Mr. *Lindſay* the Priſoner hath been convicted of High Treaſon, and I pray the Judgment of the Court.

Cl. of Arr. David Lindſay, thou haſt been arraigned for High Treaſon, and thereof convicted, what haſt thou to ſay why Judgment ſhould not paſs againſt thee?

Mr. *Lindſay.* My Lord, I refer my ſelf to the Queen's Mercy.

L. C. J. *Holt.* Have you any Thing to plead for your ſelf, or by your Council?

Mr. *Williams.* My Lord, I did deſign to have inſiſted upon a Point in relation to this Statute, upon which the Indictment againſt the Priſoner is grounded; but underſtanding it has been already under the Conſideration of your Lordſhip, and the reſt of my Lords the Judges, and that it has receiv'd your Lordſhip's Determination, I ſhall chuſe to wave it; but this, with Submiſſion, I do inſiſt upon; That it is not ſhewn in this Indictment that the Priſoner was a Subject of King *William* at the Time of his going into *France*, or at the making this Act. Now as I humbly

humbly conceive, the very Words of the Act require, that the Party ſhould be a Subject at that Time. The Words are thus, If any of His Majeſty's Subjects, who have after the 11th of *December* gone into *France*, if they return without Licenſe they ſhall be guilty of High Treaſon. Now by the Words of the Act, it ſeems requiſite that he ſhould be a Subject at the Time of his going into *France*; or at leaſt at the Time of the making of the Act. So that, with Submiſſion, the Indictment does not agree with the Act of Parliament, unleſs it be ſhewn that the Priſoner was a Subject at the Time of his going to *France*; and no Indictment in any Caſe, much leſs an Indictment for High Treaſon ſhall be aided by Intendment. ----And in this Caſe, my Lord, there is the leſs room for an Intendment, that the Priſoner was then a Subject, becauſe it is not ſhewn that the Priſoner was a natural born Subject, or that his Treaſon was *contra naturalis allegiantiæ debitum*. And it not being ſhewn that he was a Natural Subject, it muſt be ſuppoſed he became a Subject by Naturalization, or by Denization, which might be ſince his going into *France*.---- My Lord, I muſt own, 'tis ſaid in the Indictment that he was a Subject of King *William*, but 'tis not ſaid when he was a Subject; ſo that it may be as well ſuppoſed he became ſo after he went into *France*, as before; and the rather in regard he is not ſhewn to be a Natural-Born Subject. And we take it, that by the Penning of this Law, which ſays, If any of his Majeſty's Subjects who have gone into *France*, &c. ---- it muſt be meant of a Subject at that Time, or at the Time of his going into *France*; and it not being ſhewn that he was a Subject at that Time, we humbly take it that the Indictment is inſufficient.

Mr. *Raymond*. My Lord, we ſay, with great Submiſſion, that this Indictment is not good, becauſe it does not ſhew that Mr. *Lindſay* was a Subject of the late King at the Time of the making the Act, nor any Time before. If this Perſon had become a Subject of the King after the making of the Act, as he might by Derivation, and had return'd into *England*, having been in *France* in the Time mentioned in the Act, he would not be within the Act. Therefore it was neceſſary to ſhew at what Time he was a Subject. It is not laid in the Indictment, that he was a Natural-Born Subject, nor do I pretend that it is neceſſary in an Indictment for Treaſon, becauſe one that owes Local Allegiance may be guilty of Treaſon. But they ought to have averr'd, either that he was a Natural-Born Subject, and that he ſhall be intended ſo always; or elſe, that he was a Subject at the Time of the making of the Act, otherwiſe he won't be within the Act; becauſe the Words of the Act ſeem to tie it up to Subjects at the Time of the making the Act, by the Words which follow, *viz.* Who have gone into *France*, &c.

Sir *T. Powis*. I have look'd both into the Indictment and the Act. One Part of the Objection is, that he is not a Natural Subject. That is not to be inſiſted on, for there is no ſuch Thing in the Act; for the Act ſays, If any of His Majeſty's Subjects; and there is no need of laying any more in the Indictment than the Act requires; and it was not intended to be confined to ſuch. The other Part of the Objection is, that it is not alledged that the Priſoner at the Bar was the Subject of King *William* at the Time when the Act was made. Now there is no need of alledging theſe Words in the Indictment; for the Act runs thus, Therefore be it enacted, that if any of His Majeſty's Subjects, who have at any Time, ſince the 11th of *December*, 1688. voluntarily gone into *France*, without Licenſe from His Majeſty King *William*, or from Queen *Mary*, ſhall return: And the Indictment does lay it, that this Priſoner was a Subject of the late King *William*, and that he is now a Subject to the preſent Queen; and that he, after the 11th of *December*, 1688, did go into *France*. Now ſure here is all alledged in this Indictment that the Act refers to; that is, that if any Subject, who went into *France* after the 11th of *December* 1688, ſhall return into *England*. And the Indictment ſays, he was a Subject of King *William*, and that he did go into *France* after that Time, and did return into *England* after the Time prohibited by the Act. Here is nothing required in the Act, but what is laid in the Indictment. And it is a very ſtrange Objection to ſay that we ſhould aver that he was a Subject when this Act was made; this ought to have been ſhewed on the other ſide, if it be otherwiſe. Here is that in the Indictment which is conformable to the Act, and there is no more neceſſary, than to deſcribe the Perſon according to the Act.

Mr. *Att. Gen.* My Lord, we have taken that Method in the Indictment that is proper, that is, to purſue the Act of Parliament; we have laid him as the Act deſcribes. Now they ſay, that it being not ſhewn that he was a Subject at the Time of his going into *France*, he is not within the Act. But when a Man is laid in the Indictment to be a Subject, it is a ſtrange Objection to fancy we muſt mention the Time of his beginning to be a Subject. We have ſhew'd he was a Subject before the making of the Act, and we have ſhew'd he was a Subject after; and he is preſumed to have always been a Subject, unleſs ſpecial Matter is ſhewn when he was not a Subject, as that he was an Alien, and at a particular Time naturalized or made a Denizon; which without Proof will not be preſumed; and this Objection ſhould have before ariſen from Evidence. It is laid likewiſe to be contrary to the Duty of his Allegiance, being a Subject of the late King *William*, and of the preſent Queen.

Mr. *Williams*. My Lord, this Exception againſt the Indictment ſeems, with great Submiſſion, not to be anſwer'd; I go upon the Words of the Act.

If any of his Majeſty's Subjects, who have ſince the 11th of *December*, 1688, gone into *France*. My Objection is, That it is not ſhewn, that at the Time of going into *France*, nor when the Act was made, that the Priſoner was a Subject; and it not being ſo ſhewn, to intend the Priſoner then a Subject, is helping the Indictment by Intendment, which cannot be. And I ſay there is the leſs room for this Intendment here, becauſe this Priſoner is not ſhewn to be a Natural Subject.

Mr. *Raymond*. My Lord, every Word of this Indictment would have been true if this Gentleman had been an Alien, and become a Subject after the Act was made, and before the late King died. And yet in ſuch a Caſe he would not have been within the Act: For if he had been a Stranger, and after the Act had been denizon'd, and then had returned into *England*, having before been in *France*, that would not have been within the Act, becauſe the

Act ſays, If any of the King's Subjects, who have gone into *France*, ſhall return: Which muſt be meant, that were ſo before the Act was made: And yet that is all this Indictment ſays.

L. C. J. *Holt*. That is a foreign Suppoſition. Can any Man ſuppoſe, that ſuch a Man that has been in *France*, that he ſhould be Naturaliz'd or Indenizon'd after ſuch an Act was made? And ſuppoſe it were ſo, that he was an Alien, and happen to be Naturaliz'd by General Words; the Act does not ſay, If he ſhall be a Subject at his Departure; but if he were in *France* ſince ſuch Time, and return after this Act.

He was a Subject to King *William*, and to Queen *Anne*; and that he went away ſince the 11th of *December*, 1688. and return'd into *England* without Licenſe.

This is an Indictment formed ſuitable to the Act of Parliament; it purſues the Words of the Act of Parliament. The Act deſcribes the Perſon, and ſets out what ſhall be the Offence; that is, One that is a Subject of the King, and has gone away into *France* ſince the 11th of *December*, 1688. and ſhall return without Licenſe.

Mr. *Williams*. It appears not he was a Subject when he went away.

L. C. J. *Holt*. If any of His Majeſty's Subjects, that have gone away ſince the 11th of *December*. It does not ſay, Any that ſhall go away; but that have gone away after the 11th of *December*.

Mr. Juſtice *Powel*. A Subject is ſuppoſed to be a Natural Subject, unleſs he be Naturalized afterwards: But now he being laid to be a Subject according to the Act, ſuppoſes him to be a Subject then.

Mr. *Raymond*. My Lord, we think, with Submiſſion, this is not an Indictment according to other Indictments.

Mr. Juſtice *Powel*. It's enough that he is ſaid to be a Subject.

Mr. *Raymond*. But, my Lord, muſt there not be a Diſtinction between a Subject that owes Natural Subjection, and commits Treaſon, and one that only owes Local Legiance?

Mr. Juſtice *Powel*. You might have ſhown that, when you were upon the Evidence.

Mr. *Williams*. My Lord, We humbly think it muſt be ſhown that he was a Subject, at leaſt at the Time of the making of the Act.

Mr. Juſtice *Powel*. We muſt take him to be a Natural Subject, unleſs the contrary appear.

L. C. J. *Trevor*. We ſuppoſe that he was a Subject at the Time of his going out of *England*; and that the Indictment ſufficiently ſets forth. If you could have ſhown that he became a Subject afterwards, that might have help'd you; but elſe it ſignifies nothing.

L. C. J. *Holt*. Have you any more to ſay?

Mr. *Williams*. If we have ſlipt any Thing on Behalf of the Priſoner, which might have been of Service to him, we hope he ſhall not ſuffer for any Omiſſion of his Council; and therefore humbly pray, that your Lordſhip will favour him, and will be pleaſed to hear him for himſelf.

Mr. *Lindſay*. My Lord, What I have done has been out of Ignorance, and being ſupported by what other People did. And therefore, my Lord, having come into *England* by my ſelf, I did not come with any Deſign of Harm, or to do any Thing contrary to the Law. As I am a *Scotchman*, it is not to be preſumed I can underſtand the Laws of *England*: And therefore, if I have done any Thing amiſs out of Ignorance, I hope your Lordſhip will make a favourable Conſtruction of it; and repreſent my Caſe to the Queen. And I hope, as Her Majeſty has given me the Effects of her Mercy in *Scotland*, I ſhall not feel the Effects of her Diſpleaſure in *England*.

L. C. J. *Holt*. Mr. *Lindſay*, You have been indicted, and upon the Evidence of your own Confeſſion of the Fact alledged againſt you, and after a great Debate in Matter of Law, (which by you, and your Council, was urged on your Behalf) are convicted of High Treaſon. That which now remains, is, To pronounce Judgment of Death upon you, which you are to ſuffer in that Manner which the Law hath appointed. Your Crime is, Returning from *France* without the Queen's Licenſe; having before gone thither without any Licenſe from the late King or Queen. That Law which hath made ſuch your Return to be an Offence of ſo high Nature, cannot (by any conſidering *Engliſh* Proteſtant) be thought to be ſevere: For they who, in the Time mention'd in the Act, choſe rather to run into *France*, than to ſtay in *England*; could have no other Inducement, than an Affection to an Intereſt oppoſite to the Proteſtant Religion, and the Ancient Conſtitution of this Kingdom. For they were received, protected and encouraged by that Prince, who is a dangerous and profeſs'd Enemy both to our Religion and Government. The Wiſdom of the Nation thought it abſolutely neceſſary to keep them out; unleſs they ſhould either clear their Innocence, or give Satisfaction by their Repentance, that they were fit to be truſted here. For he that ſhould adventure to return, without doing either, muſt be preſumed to come in upon the ſame Principles, and with the ſame Purpoſes, with which he went out: Which muſt be a conſtant Danger, even to the Foundation of our Government, which is eſtabliſhed upon the Proteſtant Religion, and the Laws of the Kingdom. As to theſe Circumſtances which you have mention'd to be peculiar to your Caſe, they fall not under Conſideration; ſince they are not ſufficient to juſtify you in acting contrary to the Law. Of what Conſideration they may be to obtain the Queen's Mercy, falls not under our Cognizance; for that is a peculiar Attribute, inſeparable from Her Majeſty's Royal Perſon, by whom it can only be diſpenſed. Our Buſineſs is to put the Law in Execution. And you muſt be convinced in your own Conſcience, that you have been convicted on a full Evidence, proving the Fact, which hath proceeded from your own Mouth. We have all heard, and debated that Matter of Law which you urged by your Council in your own Behalf; and are all of Opinion, that doth not avail you; but you are an Offender againſt an Act of Parliament: And nothing remains now, but to pronounce the Sentence of the Law upon you; which is,

That you ſhall be conveyed from hence to Newgate, *the Priſon from whence you came; and from thence to be drawn upon a Hurdle to* Tyburn, *where you are to be hang'd by the Neck; and while you are yet alive, to be taken down, your Privy Members are to be cut off, and your Bowels to be taken out of your Body, and burnt in your View. Your Head is to be cut off; your Body is to be divided into Four Parts; and your Head and your Quarters are to be diſpoſed of as Her Majeſty ſhall appoint. And the Lord have Mercy upon your Soul.*

Mr. *Lind-*

Mr. *Lindſay*. My Lord, I beg that my Wife and Children may come to me; and that I may have a Miniſter of the Church of *England* allow'd me.

L. C. J. *Holt*. You ſhall have whom you will, according to what is uſual in ſuch Caſes.

Mr. *Lindſay*. I deſire my Wife and Children may come to me alone, without the Keeper.

L. C. J. *Holt*. That is not to be permitted, that may occaſion Danger.

Mr. *Lindſay*. I deſire they may be lock'd up with me.

L. C. J. *Holt*. Mr. *Lindſay*, It is a Charge on the Keeper, that he admit them; but ſo as may not occaſion any Danger.

Mr. *Lindſay*. It is a Trouble to the Keeper to wait on me ſo long, (Two or Three Hours together) which was the Reaſon I deſired it. And if a Miniſter come to me, I deſire we may be private.

L. C. J. *Holt*. He will uſe you with all the Charity that may be; but he muſt do what is prudent. Nothing that is reaſonable, or fit, ſhall be deny'd you.

Mr. *Lindſay*. My Lord, I ſhould be ſorry, if I deſired any Thing that is unreaſonable. My Lord, I ſuppoſe it is my Time now to ſay any Thing. I ſhall ſay only thus much; that is, I well underſtood what Circumſtances I was in: I believe no *Scotchman* has been call'd in Queſtion upon that Act; and I believed in my Conſcience I was not guilty.

L. C. J. *Holt*. You are guilty of the Fact charg'd upon you; and it was a very reaſonable Law.

Mr. *Lindſay*. My Lord, I own, the Reaſon was good for making the Act; but that the Reaſon that I am guilty of the breaking it, I cannot own that.

L. C. J. *Holt*. You are guilty of the Thing you are charg'd with. All that you can do now, is, To appeal to the Mercy of the Queen: She is the beſt Judge of it.

Mr. *Lindſay*. My Lord, I reſt upon your Lordſhip's Repreſenting my Caſe to the Queen.

The Tryal of JOHN TUTCHIN, *upon an Information for a Libel, entitled, The* Obſervator, Nov. 4. 1704.

The QUEEN *againſt* JOHN TUTCHIN.

London ſſ. THE Information ſets forth, That *the Defendant being a Seditious Perſon, and a daily Inventor and Publiſher of falſe News, and horrible and falſe Lies and ſeditious Libels, and a perpetual Diſturber of the Peace of this Kingdom; and wickedly and maliciouſly deviſing the Government, and Adminiſtration of Juſtice under our Lady the Queen, to traduce, ſcandalize and vilify; and our ſaid Lady the Queen, her Miniſters and Officers, to bring into Suſpicion, and the ill Opinion of her Subjects*: The 30th Day of May, *in the Firſt Year of Her Majeſty's Reign, at* London, &c. *did falſly, ſeditiouſly and ſcandalouſly, write, compoſe and publiſh, and cauſe to be written, compoſed and publiſhed, a certain falſe, malicious, ſeditious and ſcandalous Libel, entitled,* The Obſervator. *In which Libel (of and concerning this Kingdom, and the Officers and Miniſters of the Queen) are contained* (inter alia) *as follows.*

No. 11. Saturday, *the* 30*th of* May, 1702.

" At the ſame Time we [*the Subjects of this Kingdom meaning*] " conſider the *French King's* " *Succeſs in his Bribery and Corruption*, we ought " to lament the ſad State of our own Country, [*the Kingdom of* England *meaning*] " which affords " ſo many Inſtances of Treachery. If we may " judge by our National Miſcarriages, perhaps no " Nation in *Europe* has felt the Influences of " *French* Gold more than *England*: And wor- " thy it is our greateſt Lamentation, that our " Dear Country [*meaning this Kingdom*] ſhould " be thus *weaken'd by Men of Mercenary Princi-* " *ples*; when Countries inferior to us in Strength " and Riches, are ſecured from Attempts of this " Nature only by the Fidelity of their People. " What is the Reaſon that *French* Gold has not " affected *Holland* as well as *England*; but that " their *Miniſtry* is ſuch as *is entirely in the* " *Intereſt of their Country*, and altogether incor- " ruptible? They prefer Men that are knowing " in their Poſts, and are active in Buſineſs: " When, in *England*, we find out Offices for Men, " not Men for Offices. And a Title of Honour " gives a Man a Title to a Great Employment " he is altogether ignorant of. By this, and by " preferring of Men by Intereſt and Favour, has " *the Exciſe, the Cuſtoms, and other Branches of* " *the Revenue intolerably ſunk*: And by this means " has the Navy of *England*, our Chief Support, " *been hitherto perfectly bewitch'd*. And can *Lewis* " ſpend his Money better, than in getting Men in- " to Offices in *England*, who are either falſe, or " ignorant in the Buſineſs, or are his Friends?

No. 23. Saturday, *the* 11*th of* July, 1702.

That the Defendant afterwards, the 11*th of* July *following, another falſe, malicious, ſeditious and pernicious Libel, entitled* The Obſervator, *falſly, maliciouſly and ſeditiouſly, did write, compoſe and publiſh, and cauſed to be written and publiſhed: In which Libel (of and concerning the Government of this Kingdom, and the Power of the People of this Kingdom) are contained* (inter alia) *as follows.*

" And this is a *Prerogative* of ſingular Advan- " tage to the *People* of *England*; in that their " Repre-

" Repreſentatives are the Judges of the Male-Admi-
" niſtration of their Governors; that they can call
" them in Queſtion for the ſame, *and can appoint*
" *ſuch to wear the Crown*, (meaning the Crown of
" this Kingdom) who are fitteſt for Government:
" Which they have often done, and indeed which
" is the Privilege of all free People, who are au-
" thorized by the Laws of God and Nature, to
" chuſe their own Governors.

N°. 19. Saturday *the* 12*th of* June, 1703.

That the Defendant afterwards, the 12*th of* June, *in the Second Year of the Queen, did write and publiſh, and cauſed to be written and publiſhed, another falſe, ſcandalous and ſeditious Libel, Entituled,* The Obſervator. *In which ſaid Libel (of and concerning the Royal Navy of this Kingdom, and the Government of the ſaid Navy) are contained* (inter alia) *as follows:* " Take one Time with another, the
" Miſmanagements of the Navy (*meaning the Roy-*
" *al Navy of this Kingdom*) have been a greater
" Tax on the Merchants, than the Duties raiſed by
" Parliament: We never had a better Navy, but
" the Wiſdom of the Managers thereof is like a
" bottomleſs Pit, paſt finding out.

N°. 20. Wedneſday *the* 16*th of* June, 1703.

That the Defendant afterwards, the 16*th Day of the ſaid* June, *did Write and Publiſh, and cauſed to be Written and Publiſhed, another falſe, ſcandalous, and ſeditious Libel, Entituled,* The Obſervator; *in which was contain'd* (inter alia, *of the ſaid Royal Navy, and the Officers of the ſaid Navy*) *as follows:*
" What avails it a Man of Learning and Parts, to
" qualify himſelf for the Service of his Country
" on the Ocean? If he has Knowledge enough to
" adviſe *Neptune* himſelf, if he has no Intereſt, he
" ſhall have no Preferment. How much does it
" look to our Nation's Diſadvantage, to have Men
" in Eminent Stations in the Navy, who have not
" ſo much as an Idea, a Notion, a Thought of Na-
" val Affairs? To have Men to ſuperintend the
" Building of our Floating Caſtles, who know not
" the Nature of any Part of the Management? To
" have Men employ'd in the Victualling, who
" qualify themſelves for that Poſt by learning to
" write their Names, which is indeed a Poſt for a
" Philoſopher bred to the Sea?

N°. 27. Saturday *the* 10*th of July*, 1703.

That the Defendant afterwards, the 10*th of* July *following, did write and publiſh, and cauſe to be written and publiſhed, another falſe, ſcandalous, and defamatory Libel, Entituled,* The Obſervator; *in which are contained* (inter alia, *of one* Daniel De Foe, *who was indicted the* 24*th of* Feb. *in the Firſt Year of the Queen, before the Juſtices of* Oyer *and* Terminer *at the* Old Bailey, London: *And in* July *following, was convicted upon his own Confeſſion, for compoſing and publiſhing a ſeditious Libel, Entituled,* The ſhorteſt Way with the Diſſenters, or Propoſals for the Eſtabliſhment of the Church, *and of the Judgment againſt him to pay a Fine of* 200 *Marks, and to ſtand Three Times in the Pillory, and to find Security for his good Behaviour for Seven Years*) *as follows*: " Countryman, truly Maſter *Obſervator*,
" I have no very good News for you: Mr. *Daniel*
" *De Foe* has pleaded Guilty to the Indictment
" againſt him, for writing and publiſhing *the*
" *ſhorteſt Way with the Diſſenters*; and he is ſen-
" tenc'd to ſtand Three times in the Pillory, to pay
" a Fine of 200 Marks, and to find Security for
" his good Behaviour for Seven Years. *Obſerv.* The
" Court could do no otherwiſe than convict him,
" upon his pleading Guilty; *habemus confitentem*
" *reum*, is very often the Voice of Courts of Judi-
" cature, 'tis the Eaſe of Judges and Juries: If
" *Daniel De Foe* was in Expectation of *Coleman*'s
" Black Box, he has found a Pillory inſtead of it.
" I don't trouble my Head about the Cuſtom of
" giving the Pillory to Authors, which is the Pu-
" niſhment of Bakers. You talk'd juſt now of
" turning Author, have a care of your Candle; you
" ſee which is the ſhorteſt Way with Authors;
" you muſt all enter your ſelves in the Regiment of
" Colonel *Foe*: The Law of *England* directs, that
" no Man ſhall be fined *ultra tenementum*; and I
" make no queſtion, but the Juſtice of the Court
" has fined Mr. *Foe* anſwerable to his Eſtate: His
" Security for his good Behaviour for Seven Years,
" without doubt, was rationally conſider'd, as to
" the Legality thereof. For my part, I am only
" acquainted with Old Laws of *England*, the An-
" cient Birthrights and Immunities of *Engliſhmen*:
" This I take to be the Foundation of New
" Laws.

N°. 17. Saturday *the* 20*th of* May, 1704.

That the Defendant afterwards, the 20*th of* May *laſt, did write and publiſh, and cauſe to be written and publiſh'd, another falſe, ſcandalous, and ſeditious Libel, Entituled,* The Obſervator. *In which are contain'd (of and concerning the Defendant, and a Proſecution to be had againſt him for divers ſeditious Libels by him, before that Time, compoſed and publiſh'd) as follows*: " *Countrym.* Maſter *Obſervator*,
" there's another Plot againſt you (*meaning the*
" *Defendant.*) *Obſerv.* Prithee Man, there's a Plot
" againſt the Queen, and the whole Nation; is it
" any Wonder then, that there are Plots againſt me?
" The High-Fliers are now plotting againſt every
" honeſt Man in *England.* I'll tell you more of it,
" the next time we meet. *Countrym.* I fancy ſome
" Sort of People plot againſt you, becauſe you en-
" deavour to countermine their Plots againſt the
" Queen and Nation. *Obſerv.* You are right
" enough; but that ſhan't hinder me from detect-
" ing their Deſigns, and from opening the People's
" Eyes: But prithee, what Plot is this? *Countrym.*
" Why, Sir, it is a Plot preparatory to your Tryal;
" and if they can't effect this Plot, I ſuppoſe you'll
" never be try'd. They inſinuate into the Citizens
" of *London*, that you have lately written very
" ſcandalouſly, maliciouſly, and treaſonably, and I
" don't know how many other Lies, againſt them
" the ſaid Citizens; and by this Means they are
" minded to ſet your Jurors againſt you. *Obſ.* This
" is likely enough; they'll leave no Stone unturn'd,
" to ſuppreſs the Truth. I underſtand, I ſhould
" have been proſecuted by Bill the laſt Seſſions, but
" that the High-Fliers did not like the Jury; nay,
" they ſay they don't like the Two Sheriffs, be-
" cauſe they won't pack Juries to find innocent Men
" guilty". *To the Diſturbance of the Peace of this Kingdom, to the great Scandal of the Queen and her Government, and againſt the Peace of the Queen, her Crown and Dignity*, &c.

Pro-

Proclamation was made for all Perſons to attend. Then the Jury was called.

John Cooper,
Thomas Briſcoe,
Alexander Pollington,
Edward Pinfold *being called, deſired to be excuſed.*

Mr. *Pinfold.* My Lord, I deſire I may be excuſed. I do not know Mr. *Tutchin*, for I never ſaw him in my Life; but I have read his *Obſervators*, and have ſeveral Times publickly diſallowed them; and therefore ſome may think I am prejudiced againſt him.

Mr. *Att. Gen.* The Queſtion is only, whether he was the Author of theſe Papers? For that is the Matter to be tried.

Mr. *Pinfold.* I do not know that.

Mr. *Mountague.* But my Lord, there may be ſomething more in it, for he publickly diſallowed his Papers.

L. C. J. *Holt.* You muſt not be excuſed unleſs the Queen's Council will.

Mr. *Mountague.* My Lord, we Challenge him on behalf the Defendant.

Mr. *Att. Gen.* Shew your Cauſe.

Mr. *Mountague.* My Lord, our Cauſe is, that he himſelf looks upon himſelf as not indifferent.

L. C. J. *Holt.* He ſays, he has read ſome of his Papers, and has publickly condemned them, that he did not approve of the Matter contained in them, but he does not know the Author.

Mr. *Whitaker.* But he ſaid he did not doubt but he was the Author of them.

Mr. Serj. *Darnel.* He is the fitter Man for a Jury.

Sir *T. Powis.* He does not ſay he has diſapproved all the Papers he has read, and it may be thoſe were not the Papers now in Queſtion.

Mr. *Mountague.* My Lord the Matter we are contending for, is, that one that is not altogether an indifferent Perſon ſhould not be on the Jury.

Mr. *Att. Gen.* The Queſtion is not whether the Papers are Criminal, but whether the Defendant is the Author of the Papers; and if this Gentleman knows him to be the Author of them, he is proper to be on the Jury: For the Jury are by Law to be of the Neighbourhood of the Place where the Fact is alledged to be done, becauſe they are preſumed to know what is done there; and if this be a Cauſe of Challenge, you may Challenge all People and ſo there could be no Tryal.

L. C. J. *Holt.* He can't be Challenged, unleſs he had given his Verdict before.

Mr. *Sol. Gen.* My Lord, we can have no Jury in this way they are going. A Jury-man is not to be aſked what his Opinion of the Cauſe is; what he will voluntarily ſay, he may; and if upon what he ſays voluntarily he is liable to Exception he may be ſet aſide.

L. C. J. *Holt.* It is not a Challenge.

Mr. *Mountague.* Surely, my Lord, he is not ſo indifferent as he ought to be. He ſays he has already declared his Opinion publickly concerning Mr. *Tutchin*'s Papers.

Mr. *Pinfold.* My Lord, I know not well what he is indicted for, but it may be they are thoſe Papers that I have given my Opinion of.

Mr. *Att. Gen.* I believe no Man that has read them, but has given his Opinion of them one way or other; but that is not a ſufficient Cauſe of Challenge.

Mr. *Whitaker.* Mr. *Attorney*, I hope you will not contend for one Juryman.

Mr. *Att. Gen.* He ſays, he knows not what Papers he is indicted for, he ſays only that he has read ſome of his Papers, and has declared his diſlike of them.

L. C. J. *Holt.* Draw up your Challenge in Form, and it ſhall be conſider'd.

Mr. *Att. Gen.* If theſe Gentlemen think there is nothing in it, what need they put us to this Trouble?

Mr. *Mountague.* Indeed I believe there is ſomething more than ordinary in it, for I object only what he himſelf has ſaid.

L. C. J. *Holt.* I will have it done, that it may remain a Deciſion *in perpetuam rei memoriam.* But if you that are for the Defendant will wave it you may.

Mr. *Mountague.* My Lord, we muſt inſiſt on it; they have Jurymen enough.

Mr. *Soll. Gen.* We can't tell whether we have or no, for you may challenge them all as well as this Man.

Mr. *Mountague.* No, I will Challenge no body beſides; and I Challenged him, only becauſe he mentioned himſelf as not an indifferent Perſon.

Mr. *Soll. Gen.* Is it a principal Challenge, or to the Favour?

L. C. J. *Holt.* A principal Challenge, if any.

Mr. *Soll. Gen.* He can't Challenge to the Favour in Caſe of the Crown.

L. C. J. *Holt.* He makes it as a principal Challenge; which muſt be determined, and you ſhall have my Judgment when drawn up; it muſt be a principal Challenge or nothing; for there can be no Challenge to Favour in the Caſe of the Crown.

Mr. *Att. Gen.* My Lord, we are not willing to put you to this Trouble, we will leave it to Mr. *Pinfold* himſelf.

L. C. J. *Holt.* Then ask Mr. *Pinfold.*

Mr. *Att. Gen.* Mr. *Pinfold*, do you know who was the Author of theſe Papers?

Mr. *Pinfold.* I know nothing of it but what is commonly reported. I know not Mr. *Tutchin* if I ſee him; I have read his Writings.

Mr. *Att. Gen.* My Lord, we leave it to the Juryman himſelf.

Mr. *Pinfold.* My Lord, I deſire to be excuſed.

Mr. *Att. Gen.* Then we excuſe you.

Then the Perſons following were ſworn on the Jury.

John Cooper,	*Mark Proctor,*
Thomas Briſcoe,	*William Grub,*
Alexander Pollington,	*James Lund,*
James Dod,	*John Baker,*
Iſaac Bennet,	*Thomas Allen,*
Robert Fotherby,	*Jaſper Waters.*

Then Proclamation for Information being made, the Court proceeded.

Mr. Serj. *Weld.* This is an Information againſt *John Tutchin*: The Information ſets forth, that he being

being a ſeditious Perſon, and a daily Inventor and Publiſher of Lies, and maliciouſly deſigning to aſperſe the Government, and the Adminiſtration of it, has compoſed and publiſhed ſeveral malicious and ſcandalous Libels; ſome of them are relating to the Government, ſome to the Parliament, ſome to the Courts of Juſtice, other of them to the Miniſtry. I ſhall not now take up your Time in opening the Words at large, becauſe they are very long, and for that you will have them read to you, when the Witneſſes come to prove them. He hath pleaded, Not Guilty.

Mr. *Att. Gen.* You muſt recite the Words of the Charge.

Mr. *Weld.* The Charge is very long. The Information ſets forth, That he did Write, and Compoſe, and Publiſh a falſe and ſcandalous Libel, called, *The Obſervator*, of and concerning the Government. This is laid to be on *Saturday* the 30th of *May*, 1702. And the Words therein charged againſt him, are theſe: "At the ſame Time, we "the Subjects of *England* conſidering the Succeſs "of the *French* King, in his Bribery and Corrup"tion, we ought to lament the ſad State of our "own Country, which affords ſo many Inſtances of "Treachery. If we may judge by our National "Miſcarriages, perhaps no Nation in *Europe* has "felt the Influences of *French* Gold, more than "*England*; and worthy it is our greateſt Lamenta"tion, that our dear Country ſhould be thus "weaken'd by Men of mercenary Principles, when "Countries inferior to us in Strength and Riches "are ſecured from Attempts of this Nature, only "by the Fidelity of their People. What is the "Reaſon, that *French* Gold has not affected *Holland*, "as well as *England*; but that their Miniſtry is "ſuch, as is entirely in the Intereſt of their Coun"try, and altogether incorruptible: They prefer "Men that are knowing in their Poſts, and are "active in Buſineſs. When in *England* we find "Offices for Men, not Men for Offices; and a Title "of Honour gives a Man a Title to a great Employ"ment he is altogether ignorant of. By this, and "by preparing of Men by Intereſt and Favour, has "the Exciſe, the Cuſtoms, and other Branches of "the Revenue, intolerably ſunk; and by this "Means has the Navy of *England*, our chief Sup"port, been hitherto perfectly bewitch'd: And can "*Lewis* ſpend his Money better, than in getting "Men into Offices in *England*, who are either falſe "or ignorant in the Buſineſs, or are his Friends"? And the Information further ſets forth, *That on* Saturday *the* 11*th of* July, 1702, *he publiſhed another Libel, called*, The Obſervator; *in which are theſe Words:* "And this is a Prerogative of ſingular Ad"vantage to the People of *England*, in that their "Repreſentatives are the Judges of the Male-Ad"miniſtration of their Governors; that they can call "them in Queſtion for the ſame, and can appoint "ſuch to wear the Crown, who are fitteſt for Go"vernment: Which they have often done, and in"deed which is the Privilege of all free People, "who are authorized by the Laws of God and Na"ture to chuſe their own Governors". It further ſets forth, *That* June 12. 1703. *he publiſhed another Libel*, called, The Obſervator; *in which are theſe Words:* "Take one Time with another, the Miſ"managements of the Navy have been a greater "Tax on the Merchants, than the Duties raiſed by "Parliament. We never had a better Navy; but "the Wiſdom of the Managers thereof is like a "bottomleſs Pit, paſt finding out". The Information further chargeth, *That on the* 16*th of* June, 1703, *he publiſh'd another Libel, called*, The Obſervator; *in which were theſe Words:* "What avails "it a Man of Learning and Parts, to qualify him"ſelf for the Service of his Country on the Ocean? "If he has Knowledge enough to adviſe *Neptune* "himſelf, if he has no Intereſt, he ſhall have no "Preferment. How much does it look to our Na"tion's Diſadvantage, to have Men in Eminent "Stations in the Navy, who have not ſo much as "an Idea, a Notion, a Thought of Naval Affairs? "To have Men to ſuperintend the Building of our "floating Caſtles, who know not the Nature of "any one Part of the Management? To have Men "employ'd in the Victualling, who qualify them"ſelves for that Poſt by learning to write their "Names, which is indeed a Poſt for a Philoſopher "bred to the Sea"? It's further ſet forth in the Information, *That on the* 10*th of* July, 1703, *he publiſh'd another Libel, wherein, among other Things, are theſe Words relating to* Daniel De Foe. "*Countrym.* Truly, Maſter *Obſervator*, I have no "very good News for you. Mr. *Daniel De Foe* "has pleaded Guilty to the Indictment againſt "him, for writing and publiſhing *the ſhorteſt Way* "*with the Diſſenters*; and he is ſentenc'd to ſtand "Three times in the Pillory, to pay a Fine of 200 "Marks, and to find Security for his good Beha"viour of Seven Years. *Obſerv.* The Court could "do no otherwiſe than convict him, upon his "pleading Guilty; *habemus confitentum reum* is "very often the Voice of Courts of Judicature; 'tis "the Eaſe of the Judges and Juries: If *Daniel De* "*Foe* was in Expectation of *Coleman*'s Black Box, "he has found a Pillory inſtead of it. I don't "trouble my Head about the Cuſtom of giving "the Pillory to Authors, which is the Puniſhment "of Bakers. You talk'd juſt now of turning Au"thor, have a care of your Candle; you ſee which "is the ſhorteſt Way with Authors: You muſt all "enter your ſelves into the Regiment of Colonel "*De Foe*. The Law of *England* directs, That no "Man ſhall be fined *ultra tenementum*; and I make "no queſtion, but the Juſtice of the Court has "fined Mr. *Foe* anſwerable to his Eſtate: His Secu"rity for his good Behaviour for Seven Years, "without doubt, was rationally conſider'd, as to "the Legality thereof. For my part, I am only "acquainted with Old Laws of *England*, the An"cient Birthrights and Immunities of *Engliſhmen*: "This I take to be the Foundation of New Laws". And *that on* Saturday, May 20. 1704. *he publiſh'd another Libel, called*, The Obſervator; *wherein, among other Things, are theſe Words*: "*Countrym.* Ma"ſter *Obſervator*, there's another Plot againſt you. "*Obſerv.* Prithee Man, there's a Plot againſt the "Queen and the whole Nation; is it any Wonder "that there are Plots againſt me? The High-Fliers "are now plotting againſt every honeſt Man in "*England*. I'll tell you more of it, the next time "we meet. *Countrym.* I fancy ſome Sort of Peo"ple plot againſt you, becauſe you endeavour to "countermine their Plots againſt the Queen and "Nation. *Obſerv.* You are right enough; but "that ſhan't hinder me from detecting their De"ſigns, and from opening the People's Eyes: But, "prithee, what Plot is this? *Countrym.* Why, Sir, "it is a Plot preparatory to your Tryal; and if "they can't effect this Plot, I ſuppoſe you'll never "be tried. They inſinuate into the Citizens of "*London*, that you have lately written very ſcanda"louſly, maliciouſly, and treaſonably, and I don't know

" know how many other Lies againſt them, the " ſaid Citizens; and by this means, they are mind- " ed to ſet your Jurors againſt you. *Obſ.* This " is likely enough: They'll leave no Stone un- " turn'd, to ſuppreſs the Truth. I underſtand, I " ſhould have been proſecuted by Bill the laſt Seſ- " ſions, but that the High-Fliers did not like the " Jury. Nay, they ſay they don't like the Two She- " riffs, becauſe they won't pack Juries, to find in- " nocent Men guilty. The Defendant has pleaded Not Guilty: But if we prove the Charge, I doubt not but you will find him Guilty.

Sir *T. Powis.* My Lord, I am of Council with Her Majeſty. This Information is brought on the Behalf of the Queen, againſt Mr. *Tutchin.* I ſhall not long entertain you about it, becauſe the Matter is ſhort. The Charge is, That he has publiſh'd ſeveral Libels, ſcandalous and ſeditious, reflecting on the Government, and the Adminiſtration of it, in many Inſtances given at large. I think the Papers are Six in Number; and by and by you will have them more particularly before you. I preſume, there ought to be made a Difference between a juſt Liberty, and Licentiouſneſs. This Information is brought, that Men may be warned. The Plea he has made, is, That he is not Guilty. The Matter we are to prove, is, That He was the Perſon that did Write and Compoſe theſe Papers, and did Publiſh them, or cauſe them to be done. My Lord, We ſhall call our Witneſſes: And notwithſtanding what you have heard of late from the Defendant, relating to this Tryal, I do not doubt but there will be all Juſtice done. I am ſure, on our Side, nothing elſe is intended. And I doubt not, but if we prove that he did Publiſh theſe Papers, the Jury will find him Guilty.

Mr. *Att. Gen.* My Lord, The Information is laid againſt Mr. *Tutchin*, for a few of his *Obſervators* of the many he has writ; ſometimes Two, ſometimes Three in a Week. It is a great while that he has done it; and it has been the great Indulgence of the Government, that he has not been proſecuted before. He has been taken Notice of by the *Houſe of Commons*, and been before the Secretary of State; where he has been admoniſh'd to take care of what he ſhould write: But he would not take Warning. And now he is to be try'd for ſome of his Papers; wherein it will appear, that he has taken the greateſt Liberty, I believe, that ever Man took. Libels uſed to come out by ſtealth, and in the dark: But theſe have been publiſh'd openly, with all the Defiance imaginable. You may ſee how mild the Proſecution hath been, by what he has done ſince the Beginning of it: He has been writing in ſuch a manner, to prepare for the Tryal, as I think was never done before. A Proſecution of this Nature is of the greateſt Conſequence: And it may be, I may be blam'd, being in the Office wherein I am, that there have not been more ſuch made. Here is the higheſt Reflection on the Government imaginable. There can be no Reflection on them that are in Office under Her Majeſty, but it muſt caſt ſome Reflection on the Queen who employs them. I believe there is hardly one in any conſiderable Poſt under the Government, but has been criminated by him: Nothing eſcapes him. He cenſures all Mankind; writes magiſterially, and defies all Authority, and caſts the vileſt Reflections on the Government: As if we, who are in the Queen's Service, made it our Buſineſs to corrupt Juries. And makes Reflections both on Sheriffs and Juries. Theſe are of the greateſt Conſequence in the World to the Government, and to every body. For if ſuch Mercenary Writers may have the Liberty to reflect on whom they pleaſe, no Man's Reputation can be ſafe.

Gentlemen of the Jury, The Matter you are to enquire into, is, Whether the Defendant be the Author, or Publiſher of theſe Libels: That is the Matter you are to Try. What the Puniſhment muſt be, if you find him Guilty, is in the Judgment of the Court. We will produce our Witneſſes; and doubt not but you will do the Queen Juſtice.

Mr. *Soll. Gen.* Call *John How.*

[*He appear'd, and was ſworn.*]

Show him thoſe *Obſervators.*

[*Which was done; and he look'd them over.*]

Have you look'd over them?

Mr. *How.* Yes.

Mr. *Soll. Gen.* Then pray acquaint my Lord and the Jury, Whether you know who compoſed, and brought them to the Preſs?

Mr. *How.* I do ſuppoſe them to be Mr. *Tutchin*'s: I dealt with no other Man for them.

Mr. *Att. Gen.* Acquaint my Lord and the Jury, how they came to be printed.

Mr. *How.* About the latter End of *March*, 1702. I treated with Mr. *Tutchin* about writing an *Obſervator*, to be publiſh'd Weekly: The firſt of which was publiſh'd in *April*, 1702. And all that have been printed ſince, I had from him, to this Year.

Mr. *Att. Gen.* You look'd on theſe Papers here: Were theſe printed by the Direction of Mr. *Tutchin*?

Mr. *How.* To the beſt of my Knowledge they were. They were always brought from him to me.

Mr. *Att. Gen.* Was there any Agreement made between you about the writing of it?

Mr. *How.* Yes, it was agreed at firſt to write once a Week; and I was to give him Half a Guinea for it. I have printed in all about 266.

Mr. *Att. Gen.* Have you had frequent Diſcourſe with him about them ſince? You ſaid, you printed in all about 266: Have you paid him for all?

Mr. *How.* Yes.

Mr. *Soll. Gen.* Have you had any Diſcourſe with him, wherein he has owned them all to be his?

Mr. *How.* He has owned them from time to time, till within this Week.

Mr. *Soll. Gen.* Has he own'd himſelf to be the Author of them?

Mr. *How.* He always own'd himſelf to be the Author.

Mr. *Soll. Gen.* Have you had any Diſcourſe with him, leſt you ſhould come into Danger for it?

Mr. *How.* Yes, I have had Diſcourſe with him about the Danger: And he has ſaid to me, I own my ſelf to be the Author: And do not fear; if any Danger happen, you are a Rogue to your ſelf and Family, if you do not diſcover me.

Sir *T. Powis.* Look on theſe Papers, and ſee if he deliver'd theſe very *Obſervators* to you: Were theſe the very ſame?

Mr. *How.* Yes.

Sir *T. Powis.* And was he paid for them by you?

Mr. *How.* Yes.

Mr. *Mountague.* I deſire to ſee them.

Mr. *Att.*

Mr. *Att. Gen.* Deliver them to Mr. *Mountague.*

Mr *Mountague.* Take that *Obſervator*, and look on it: 'Tis that which they are about to read. [*Then Mr.* How *look'd on it.*] How long ago is it, that you had that Paper in your Cuſtody?

Mr. *How.* I ſuppoſe this was deliver'd out of my Shop, to be ſent to Mr. *Borret.*

Mr. *Mountague.* Do you know you ſent that Paper?

Mr. *How.* Yes, I deliver'd it, and put my Mark upon it.

Mr. *Mountague.* How long ago?

Mr. *How.* I do not juſtly remember it.

Mr. *Mountague.* If you do not remember that, do you remember the Printing of it?

Mr. *How.* It was done at my Houſe.

Mr. *Mountague.* When a Copy is brought to you to be printed, do you print that Copy always exactly?

Mr. *How.* As near as I can, I do.

Mr. *Mountague.* The Queſtion I would ask you, is; Do you, when you have a Copy, ſtrictly keep to the Letter of the Copy? Or do you, as you think convenient, alter it?

Mr. *How.* I have alter'd it oftentimes, to make it ſafe.

Mr. *Mountague.* Then you do take it on you to alter.

Mr. *How.* To ſtrike out a Line, never to alter his Senſe.

Mr. *Mountague.* Do you not inſert any Thing?

Mr. *How.* Yes, frequently a Word.

Mr. *Mountague.* Do you not take upon you to inſert ſeveral Words, and leave out ſeveral?

Mr. *How.* Yes.

Mr. *Mountague.* You do. Then I ask you, Are you ſure that that Paper is printed without Alteration?

Mr. *How.* I do not remember any thing of that.

Mr. *Mountague.* I ask you, Whether that Paper were not alter'd from what was ſent you?

Mr. *How.* I cannot ſwear it.

Mr. *Att. Gen.* Can you ſay that Paper was alter'd?

Mr. *How.* Not that I know of.

Mr. *Whitaker.* Look on the Title; whoſe putting down is that?

Mr. *How.* He agreed to the Title.

Mr. *Mountague.* Does the Paper come to you entitled the *Obſervator*, or not?

Mr. *How.* I cannot tell whether he ever put it in.

Mr. *Mountague.* Who put it in then?

Mr. *How.* It was agreed between us to call it *The Obſervator.*

Mr. *Mountague.* Does he write *The Obſervator*, or did you?

Mr. *How.* There is no Occaſion for the Title, that I know of.

Mr. *Mountague.* But who writ the Title to it?

L. C. J. *Holt.* They ask you this Queſtion: Who was it, that put this Title to this Paper?

Mr. *How.* I do not know but I might write it in the Paper at firſt, and ſo it was inſerted afterwards.

L. C. J. *Holt.* Who was it firſt writ that Title?

Mr. *How.* I do not know who did write that, He or I. I did firſt propoſe the Title to him.

L. C. J. *Holt.* Was that Title writ by him or you?

Mr. *How.* I do not know, my Lord.

L. C. J. *Holt.* Was there an Agreement made between you, that this Paper ſhould be writ once a Week with that Title?

Mr. *How.* Yes, my Lord.

L. C. J. *Holt.* Did he agree to that Title? And was he privy to it?

Mr. *How.* Yes, my Lord, it was agreed upon between us; and He agreed to write ſuch a Paper, with ſuch a Title.

Mr. *Whitaker.* Where did you come to this Agreement?

Mr. *How.* I cannot tell.

Mr. *Whitaker.* Was it in *London*, or *Middleſex*, or *Surrey?*

Mr. *How.* I cannot tell.

Mr. *Whitaker.* Where were they printed?

Mr. *How.* I printed ſome of them in *Fenchurch-ſtreet*, about Eighteen; the reſt in *Grace Church-ſtreet.*

Mr. *Harris.* Was that Paper alter'd by you, or not?

Mr. *How.* I cannot remember whether I alter'd that, or no.

L. C. J. *Holt.* You ſay you alter'd ſometimes: Did you acquaint him with the Alterations you made?

Mr. *How.* Sometimes they have been ſent to me; I knew not where to find him; and then I have alter'd them my ſelf, rather than be diſappointed. At other Times, I have been in his Company; and then I complained, and he has alter'd them. And ſometimes he ſaid, You have the Pen; do you alter them.

Mr. *Soll. Gen.* Can you ſay, You alter'd a Syllable in theſe Papers?

Mr. *How.* I cannot ſay ſo.

Mr. *Soll. Gen.* Since the firſt Publiſhing of them, have you not publiſh'd them in Volumes?

Mr. *How.* Yes.

Mr. *Soll. Gen.* And who gave Order for it?

Mr. *How.* Mr. *Tutchin.*

Mr. *Att. Gen.* What Direction had you about this Volume? [*A Volume bound up being in Court.*]

Mr. *How.* That Volume was order'd by Mr. *Tutchin.* He order'd me to bind up Three Volumes: One of which he order'd to be deliver'd to Mr. *Borret*; which I did not deliver, by reaſon of a Proſecution at the *Old Baily.*

Mr. *Att. Gen.* Did he order any other Man's Works to be bound up, or his own?

Mr. *How.* He order'd me to bind his own, with the *Preface.*

Mr. *Att. Gen.* Where is that *Preface?*

Mr. *How.* Before the Book: And he owned that, and put his Hand to it?

Mr. *Att. Gen.* Had you paid for theſe?

Mr. *How.* Yes; He order'd me to bind up theſe together, and to deliver one of them to Mr. *Borret?*

Sir *T. Powis.* Did you pay him for the *Preface?*

Mr. *How.* Yes, and for the *Index.*

L. C. J. *Holt.* Who made the *Index?*

Mr. *How.* He did.

L. C. J. *Holt.* Did he write his Name to the *Preface*, after it was brought to you?

Mr. *How.* It was deliver'd to me with his Hand to it; and he owned it.

Mr. *Soll. Gen.* Then he owned all the *Obſervators* to be his, by ſetting his Name to the Volme?

Mr. *Mountague*. Where was this Book deliver'd to you to be bound up?

Mr. *How*. I do not know, whether in *London*, or *Middlesex*, or *Surrey*.

Mr. *Mountague*. Recollect where it was that you had this Discourse about a Book?

Mr. *How*. I do not remember the exact Time.

Mr. *Mountague*. But you remember the Discourse: And can't you say where it was?

Mr. *How*. No, indeed.

Mr. *Mountague*. The *Preface* they talk of, was it brought in Writing?

Mr. *How*. It was brought, or sent in Writing; and I printed it from a Manuscript Copy.

Mr. *Mountague*. How do you know he sent it?

L. C. J. *Holt*. What did you give him for that *Preface* and *Index*?

Mr. *How*. I think it was Ten Shillings.

Mr. *Mountague*. My Lord, With Submission, they cannot read this Paper: For if it be read, it must be read as the Paper of Mr. *Tutchin*. Now, as to this Paper that they produce, we do insist upon it, that it is Mr. *How's* Paper, and not Mr. *Tutchin*'s. For he tells you, That whatever Papers he had, or whatever Directions were given him from Mr. *Tutchin*, were in Writing. Now if Mr. *Tutchin* is to be charg'd with a Libel in Writing, they must produce that very Writing, or a true Copy thereof. And another Man's taking a Copy of my Writing, cannot be said to make it my Writing; especially when it is not prov'd to be a true Copy. So that this Paper, which is printed by Mr. *How*, cannot be charged on Mr. *Tutchin*. If one single Penman had taken a Copy of it, if he could not be sure it was an exact Copy, it could not be read; much less such a Paper, which goes thro' so many Hands as this has done. And Mr. *How* says, He did often alter it, according to the best of his Understanding; and therefore that makes it his Paper. For, by a very small Alteration, a Thing may be made a Libel, that was not so before. And besides, it appears by Mr. *How*'s own Evidence, that Mr. *How* makes an Advantage by the Printing and Publishing of it: And perhaps he makes Alterations, to make it sell the better. That makes it nothing like to Mr. *Tutchin*'s Paper; and therefore they ought to produce that very Paper that was brought from Mr. *Tutchin*: And this Paper ought not to be read against him.

Mr. *Harris*. My Lord, He does not swear it is a true Copy; and therefore we cannot allow it to be read.

Mr. *Whitaker*. He has added the very Title: It is called an *Observator*; and he has put that Title to it. And he gives you no Account when, or where there was any Agreement made with Mr. *Tutchin* about it.

L. C. J. *Holt*. Where was the Agreement made for Printing the Papers?

Mr. *How*. I am not positive where it was; whether in *London*, or *Middlesex*. I did think it was in *Fenchurch-street*; but he says it was in the *Strand*.

Mr. *Mountague*. Can you be positive it was in *Fenchurch-street*?

Mr. *How*. I cannot be positive.

Mr. *Att. Gen*. Where were they printed?

Mr. *How*. In *Fenchurch-street*.

Mr. *Att. Gen*. Where did you bind the Book, and put the *Preface*?

Mr. *How*. That Book was sent out of my House to be bound; and when it was done, it was sent from my House again.

Mr. *Conyers*. Did he come to *Fenchurch-street*, to direct the Printing at any time?

Mr. *How*. Yes, several Times.

Mr. *Weld*. Did he agree with you to have them printed and publish'd?

Mr. *How*. Yes.

L. C. J. *Holt*. Have you the Original Papers of these *Observators*?

Mr. *How*. I have very few of them now.

L. C. J. *Holt*. How came you to part with them?

Mr. *How*. I thought there would be no Use made of them, and so I did not keep them: But I have most of the Third Volume by me.

Sir T. *Powis*. My Lord, In Answer to this Objection, I must say, If this shall prevail in that Strictness, I take it for granted, that instead of restraining Libels, it will be the best and most effectual Way to publish them. For the Author then hath nothing to do, but when a Copy is printed, to destroy the same; and then no Evidence can be against him: Because the Printer will be called on, to know if that which is printed agree with the written Copy to a Letter. If that be so, it will be impossible to come at the Author. It is not an Answer, to say, You may go to the Printer: For tho' he is punishable; yet it is more reasonable to come at the Author. We have given a fair Evidence, that this is the same that was brought to this Man: And they do not make it appear, that he did add to, or diminish any of these Papers. The Printer says, The Defendant has avowed and justified all that he did for him since the Beginning. That by his Order, he collected all those *Observators* we insist on, in this Volume; which he has owned, and publish'd sufficiently: For here is his *Index* and *Preface*. And that he did publish this Volume, there is no room to question. We have given as good Evidence of this, as the Matter will bear.

Mr. *Att. Gen*. My Lord, we have given as good Evidence as can be expected, of a Matter of this Nature. We are prosecuting the Author, and have brought the Printer to give his Evidence; which is all we are able to get: For it is not in our Power to prove, where the Defendant did actually write them. The Printer had no Reason to take care of the Original Papers, because when they were printed, they were of no Use. He tells you, the whole Volume was printed, and owned by Mr. *Tutchin* continually, and by him directed to be made up into a Book, and he paid Mr. *Tutchin* for writing them from Time to Time. If this be not a sufficient Evidence of his publishing of them, it would be impossible to give any Evidence; for the Author would always take away his Copy, and then he is safe. These were printed and published in *London*; and where-ever the Agreement was made, we may charge the Defendant, where the Papers were printed, pursuant to an Agreement made between him and Mr. *How*; which makes the Composing and Printing his Act.

Mr. Serj. *Darnell*. My Lord, if this be not Evidence, that this Man is the Maker or Publisher of these Papers, his Agreement to have it done, his owning after it is done, and his own Confession, and his being paid for it; if this be not Evidence, nothing is.

L. C. J. *Holt*. His Agreement to publish that Book, is sufficient to prove that he owned it.

Mr. *Conyers*. My Lord, there is one Thing very conſiderable; the Diſcourſe he had with this Man. Says he, *If you are queſtion'd about it, I am the Author, I gave you the Copy, and directed the printing of it; and you are unjuſt to your ſelf and your Family, if you do not diſcover me.* My Lord, they make this Objection: We did contract with Mr. *How* to make an *Obſervator*, but he made Alterations in it, as he thought fit; and ſometimes he ſhew'd them to him, and ſometimes not. Now it's clear, Mr. *Tutchin* did give him that Liberty; and he cannot ſay, that there was any one of theſe Papers that was altered.

Mr. *Soll. Gen.* And, my Lord, after there were an Hundred compoſed, he directs Mr. *How* to bind them up in a Volume, and puts a Preface and Index to them, and ſets his Name to it. Now that is certainly a Publication and owning of them.

Mr. *Weld.* So far as in that Book goes, there is Evidence that he is the Author and Publiſher; and they have objected nothing to it: So that the only Queſtion is concerning the other *Obſervators*. Now he ſays he had Leave from the *Obſervator* to make thoſe Alterations.

L. C. J. *Holt.* No, he does not ſay ſo. Heark you, Sir, Did you ever add any thing?

Mr. *How.* Not that I know of, but a Word ſometimes to make it Senſe.

Mr. *Weld.* Did he ever allow you to do it?

Mr. *How.* He has often ſaid, that Printer was a Blockhead that did not.

Mr. *Mountague.* My Lord, my Objection was ſingly, as to the reading the Papers, not of the Book. The Thing they offer'd as Evidence, was the Papers; and we ſay they ought to produce the Originals, which they have not done.

L. C. J. *Holt.* They offer the Book in Proof.

Mr. *Mountague.* Then, my Lord, I muſt beg Leave to oppoſe that likewiſe. For this Book is proved to be his, no otherwiſe, than by the Printer's ſwearing, that Mr. *Tutchin* order'd him to bind up Three Volumes of his *Obſervators*; and the Printer himſelf has put together theſe Papers, and Mr. *Tutchin* has writ a Preface before them; but whether the Papers thus put together were ever examined, *non conſtat*; or whether the Bookbinder has made no Alterations, *non conſtat*. And it does not appear, that Mr. *Tutchin* look'd over any of the Papers that are here bound up. So that the moſt the Queen's Council can make of this Evidence, is this: Here is a Book Mr. *Tutchin* took to be his Book upon the outward View of it, or at leaſt upon the Credit of his Printer; and therefore every thing in it muſt be read againſt him, as his. Surely, my Lord, that ought not to be allowed of. When Dr. *Drake* was here tried for being the Author of a ſcandalous Book, it was ſworn againſt him, That upon ſhewing him one of the Books he was charged with, he owned himſelf to be the Author of it. But a Queſtion being ask'd, Whether the Book that was offer'd to be read in Evidence againſt him, was that very Book that had been ſhewn him, when he owned himſelf to be the Author? It was anſwered, No: But it was a Book of the ſame Impreſſion, and therefore ought as much to be read againſt him, as the Book he owned. But, as I take it, that Evidence was diſallowed.

Mr. *Att. Gen.* Mr. *Mountague*, You ſtate it wrong; for that Book was read.

L. C. J. *Holt.* That Book was read, tho' it was not proved as that very Book that was deliver'd. It was the Bookſeller that ſaid the Book was printed by Dr. *Drake*; but he would not ſay it was that very Book that was given in Evidence. He took a Book with ſuch a Title: But was this the Book? But he could ſay, the other Book was never taken away. Now this Book is owned by Mr. *Tutchin*, by making the *Preface* and *Index* to it.

Mr. *Mountague.* It was a Book of the ſame Impreſſion with that which Dr. *Drake* had own'd himſelf to be the Author of, that was offer'd in Evidence.

L. C. J. *Holt.* He took the Book from the Shop that was read, the other Book was in the Shop.

Mr. *Att. Gen.* The Bookſeller ſaid he knew who writ the Book, but not who writ the Preface.

Mr. *Mountague.* But, my Lord, be the Caſe one way or the other: The Thing we inſiſt on is, That they cannot read the firſt Papers produced, becauſe Mr. *Tutchin* has not owned that Paper in particular for his, that is inſerted in the Book.

L. C. J. *Holt.* If the firſt Paper was printed by his Order, according to the Bargain made between them, it is reaſonable it ſhould be read. *I do not know*, ſays he, *that I made any Alteration here; ſometimes I did alter, and ſometimes ſtrike out, and made the Expreſſion lower; but I know not that I made any Alteration here; and when I did, I oftentimes acquainted him with it; but that I made any Alteration here, I know not: I printed it by the Copy, and the Copy is loſt.* Now Mr. *Tutchin* would have him make up a Volume; and, ſays he, This Volume I bound up by his Order.

Mr. *Mountague.* My Lord, Here is a Paper offer'd, which they cannot prove to be a true Copy; and will you let them read it, becauſe they produce another Paper like it, bound up in a Volume; which, by the way, is proved no otherwiſe to be his, than by his beſpeaking a Set of *Obſervators* to be bound up for him?

L. C. J. *Holt.* It is the ſame.

Mr. *Mountague.* My Lord, I think, with Submiſſion, they may not read any of the Papers, if they have not examined the firſt Copy ſent to the Printer's.

L. C. J. *Holt.* A Man ſends a Copy to print, which is a Libel, and the Print is produced that is ſaid to be according to the Copy: There is another Print produced, that agrees with the firſt, which he hath owned.

Mr. *Mountague.* My Lord, I did hope that the Queen's Council would have given an Anſwer to that Part of my Objection, That theſe printed Papers are no more than Copies.

L. C. J. *Holt.* It is more than a Copy. Every Copy of a Libel is a Libel; and every Printer of a Libel is guilty of a Libel.

Mr. *Mountague.* My Lord, It's true, every Copy of a Libel is a Libel: But whoſe Libel is it?

Mr. *Harris.* My Lord, It is not proved that he ever peruſed that Copy.

Mr. *Mountague.* Pray, Mr. *How*, was it his Direction to put theſe very Sheets together, or to make up a Volume of *Obſervators*? I do aſk you, Whether your Direction was to make up a Book of *Obſervators*, or to bind up theſe very Sheets?

Mr. *How.* He gave me Direction to make up a Set of *Obſervators*.

Mr. *Mountague.* Then you ſay, it was only to bind up a Set of *Obſervators*; and ſo on your own Head you bound up theſe *Obſervators*. But can you ſay, he has look'd over all the Papers in that Book, and owned them?

Mr. *Weld.*

Mr. *Weld.* My Lord, Here is a Man ſays, he order'd him to deliver them to my Lord *Nottingham.*

Mr. *Mountague.* How long is it ſince he gave you theſe Directions?

Mr. *How.* I believe it was about a Week after the Volume was publiſhed?

Mr. *Mountague.* How long ſince is it, that the Volume was publiſhed?

Mr. *How.* It was about *April*, 1703.

Mr. *Mountague.* How long after did you deliver them?

Mr. *How.* I deliver'd them within a Week after.

Mr. *Att. Gen.* There are but Two of the *Obſervators* we charge the Defendant with in that Book; and therefore we humbly inſiſt on reading of the printed Papers, on the Evidence we have given, which we take to be ſufficient to read them without the Book; theſe Papers being printed after this Agreement was made between them, and bound up by his Directions, he is anſwerable for them.

Mr. *Mountague.* My Lord, I do, with Submiſſion, ſay it ought not to be read, tho' it be in that Book; for no Man has proved that Paper that is in it to be his. But if they lay any Weight on the owning the Book, the publiſhing the Book is a new Crime, for which he may be puniſhed afterwards, and he is not charged with it in this Information.

Mr. *Att. Gen.* If a Man be indicted for being the Author of a Book; being indicted once, he is indicted once for the whole Book.

Mr. *Whitaker.* My Lord, We are indicted for a ſingle Paper; and that Book is not the Matter of the Indictment.

Queen's Council. My Lord, We have done now. We deſire the Papers may be read.

L. C. J. *Holt.* Read them both.

Then the Firſt Obſervator *was read.*

Obſervator, *May* 30. 1702. " At the ſame " time we conſider the *French* King's Succeſs in his " Bribery and Corruption, we ought to lament the " ſad State of our own Country, which affords ſo " many Inſtances of Treachery. If we may judge " by our National Miſcarriages, perhaps no Nation " in *Europe* has felt the Influences of *French* Gold " more than *England*; and worthy it is our greateſt " Lamentation, that our dear Country ſhould be " weaken'd by Men of mercenary Principles, when " Countries inferior to us in Strength and Riches " are ſecured from Attempts of this Nature, only " by the Fidelity of their People. What is the " Reaſon, that *French* Gold has not affected *Holland*, " as well as *England*; but that their Miniſtry is " ſuch, as is entirely in the Intereſt of their Coun- " try, and altogether incorruptible: They prefer " Men that are knowing in their Poſts, and are " active in Buſineſs. When in *England* we find " Offices for Men, not Men for Offices; and a Title " of Honour gives a Man a Title to a great Employ- " ment he is altogether ignorant of. By this, and " by preferring of Men by Intereſt and Favour, has " the Exciſe, the Cuſtoms, and other Branches of " the Revenue, intolerably ſunk; and by this " Means has the Navy of *England*, our chief Sup- " port, been hitherto perfectly bewitch'd: And can " *Lewis* ſpend his Money better, than in getting " Men into Offices in *England*, who are either falſe " or ignorant in the Buſineſs, or are his Friends"?

" And this is a Prerogative of ſingular Ad- " vantage to the People of *England*, in that their " Repreſentatives are the Judges of the Male-Ad- " miniſtration of their Governors, that they can " call them in Queſtion for the ſame, and can " approve ſuch to wear the Crown who are fit- " teſt for Government; which they have often " done, and indeed which is the Privilege of all " free People, who are authorized by the Laws " of God and Nature to chuſe their own Go- " vernors.

Mr. *Att. Gen.* Now we will ſhew theſe Papers to Mr. *How*, for theſe are all that are in the Book. (*They were ſhewn him.*) Mr. *How*, pray tell us who was the Author of theſe Papers?

Mr. *How.* Mr. *Tutchin.*

L. C. J. *Holt.* How do you know that?

Mr. *How.* I had them of him.

Mr. *Att. Gen.* Did you pay him for them?

Mr. *How.* I paid him for theſe very Papers.

Mr. *Mountague.* What, theſe Papers that are now produced? You never ſhew'd them to him did you?

Mr. *How.* No, but I ſhew'd him the ſame Number.

Mr. *Mountague.* Have you read them to him?

Mr. *How.* He has owned them all; he has own'd them an Hundred and an Hundred times, all of them.

Mr. *Mountague.* Have you the Copy of theſe Papers by you?

Mr. *How.* No.

Mr. *Mountague.* Did you ſearch for them?

Mr. *How.* No, I have not.

Mr. *Harris.* My Lord, If we had ſeen theſe Papers, then we might have ſeen what Alterations were made in them.

Mr *How.* I believe he had them back again.

Mr. *Mountague.* I believe he has not been aſk'd to ſearch for them.

Mr. *Att. Gen.* Did not Mr. *Borret* ſend to you about the Original Papers?

Mr. *How.* Yes.

Mr. *Att. Gen.* Did you look out what you had?

Mr. *How.* Thoſe that I had were look'd out.

Mr. *Att. Gen.* What became of them?

Mr. *How.* I know not, but he might have them back again.

Mr. *Att. Gen.* Thoſe that you did find, what did you do with them?

Mr. *How.* Thoſe that I have now, are but Two or Three.

Mr. *Att. Gen.* Did you carry all the Original Papers you had to Mr. *Borret*?

Mr. *How.* Yes, all that I know of.

Mr. *Mountague.* Have you no Copies? Did you not ſay you were not deſired to look for theſe *Obſervators*?

Mr. *How.* I ſaid, I did not know whether I was ordered to ſearch for theſe particular *Obſervators.*

Mr. *Mountague.* Did Mr. *Borret* deſire you to look after theſe Original *Obſervators*?

Mr. *How.* I am not poſitive.

L. C. J. *Holt.* Did you deliver all thoſe that you had to Mr. *Borret*?

Mr. *How.* Yes, my Lord, all that I had at that Time; but I have had ſome ſince.

Mr. *Att. Gen.* He told you before, That till there was like to be a Proſecution, he did not keep them

Mr. *Soll. Gen.* The next is N°. 23. *Saturday*, *July* 11. 1702.

them, but ſince he did; and now he look'd for what he had, and deliver'd them to Mr. *Borret*.

L. C. J. *Holt*. Then Mr. *Borret* muſt be ſworn.

And he was Sworn accordingly.

Sir T. *Powis*. Mr. *Borret*, acquaint my Lord, and the Jury, whether you deſired Mr. *How* to look out the Copies of the *Obſervators*.

Mr. *Borret*. I ſent to deſire Mr. *How* to look out all the written Copies of the *Obſervators*, which he had received from Mr. *Tutchin*; and he afterwards brought me a conſiderable Number of them, and ſaid they were all he could find: And I have very carefully look'd them all over, but cannot find any one amongſt them that relates to any of thoſe *Obſervators* mentioned in the Information, except one, which is in *May* laſt, the which I have here in Court.

Mr. *Mountague*. Did you ſend to Mr. *How*, to aſk for the Original of theſe Papers here named?

Mr. *Borret*. I did.

Mr. *Mountague*. Will you produce the Papers you have? My Lord, they have taken thoſe Original Papers; and if they were produced, you would ſee how they are mangled.

Mr. *Att. Gen.* If they were nothing to the Matter, what did they ſignify? Only this is a popular Thing, and they muſt ſay a great deal.

Mr. *Conyers*. Read the *Obſervator* of the 12th of *June*, 1703, which contains theſe Words.

(*Which the Clerk read, as follows.*)

" Take one Time with another, the Miſmanage-
" ments of the Navy have been a greater Tax on
" the Merchants, than the Duties raiſed by Par-
" liament. We never had a better Navy; but the
" Wiſdom of the Managers thereof is like a Bot-
" tomleſs Pit, paſt finding out.

Mr *Conyers* Now go on to N°. 20. the 16th of *June* 1703. (*Which the Clerk read, as follows.*)

" What avails it a Man of Learning and Parts,
" to qualify himſelf for the Service of his Country
" on the Ocean? If he has Knowledge enough to
" adviſe *Neptune* himſelf, if he has no Intereſt, he
" ſhall have no Preferment. How much does it
" look to our Nation's Diſadvantage, to have Men
" in Eminent Stations in the Navy, who have not
" ſo much as an Idea, a Notion, a Thought of Na-
" val Affairs? To have Men to ſuperintend the
" Building of our Floating Caſtles, who know not
" the Nature of any Part of the Management? To
" have Men employ'd in the Victualling, who qua-
" lify themſelves for that Poſt by learning to write
" their Names, which is indeed a Poſt for a Philo-
" ſopher bred to the Sea?

Then Mr. Tanner *was Sworn, as to an Original Record, which he produced about* Daniel De Foe's *Tryal, to be compared with the Paſſage to be next read.*

Mr. *Conyers*. Now read the *Obſervator*, N°. 27. *Saturday* the 10th of *July*, 1703. (*Which was read, as follows.*)

" *Countrym.* Truly, Maſter *Obſervator*, I have
" no very good News for you. Mr *Daniel De Foe*
" has pleaded Guilty to the Indictment againſt him,
" for writing and publiſhing *the ſhorteſt Way with*
" *the Diſſenters*; and he is ſentenc'd to ſtand Three
" Times in the Pillory, to pay a Fine of 200 Marks,
" and to find Security for his good Behaviour for Se-
" ven Years. *Obſerv.* The Court could do no other-
" wiſe than convict him, upon his pleading Guilty;
" *habemus confitentem reum* is very often the Voice
" of Courts of Judicature: 'Tis the Eaſe of Judges
" and Juries. If *Daniel De Foe* was in Expectation
" of *Coleman*'s Black Box, he has found a Pillory
" inſtead of it. I don't trouble my Head about the
" Cuſtom of giving the Pillory to Authors, which
" is the Puniſhment of Bakers. You talked juſt
" now of turning Author, have a care of your
" Candle; you ſee which is the ſhorteſt Way with
" Authors: You muſt all enter your ſelves in the
" Regiment of Colonel *Foe*. The Law of *England*
" directs, That no Man ſhall be fined *ultra tene-*
" *mentum*; and I make no queſtion, but the Juſtice
" of the Court has fined Mr. *Foe* anſwerable to his
" Eſtate: His Security for his good Behaviour for
" Seven Years, without doubt, was rationally con-
" ſider'd, as to the Legality thereof. For my part,
" I am only acquainted with Old Laws of *England*,
" the Ancient Birthrights and Immunities of
" *Engliſhmen:* This I take to be the Foundation of
" New Laws.

Sir *T. Powis*. The laſt is of the 20th of *May* laſt; Mr. *Borret*, is the Original of that here?

Mr. *Borret*. Yes.

Sir *T. Powis*. Who had you this of?

Mr. *Borret*. I had it from Mr. *How*.

Sir *T. Powis*. Shew it to Mr. *How*. (*Which was done.*)

L. C. J. *Holt*. Whoſe Hand is that?

Mr. *How*. To the beſt of my Knowledge, it is Mr. *Tutchin*'s.

L. C. J. *Holt*. Who had you it from?

Mr. *How*. From Mr. *Tutchin*, or his Order.

L. C. J. *Holt*. Did you pay him for it?

Mr. *How*. Yes, my Lord.

Mr. *Att. Gen.* Then that likewiſe was printed under the Title of the *Obſervator*?

Mr. *How*. Yes, Sir.

Then the Paragraph was read.

" *Countrym.* Maſter *Obſervator*, there's another
" Plot againſt you. *Obſerv.* Prithee Man, there's
" a Plot againſt the Queen, and the whole Nation;
" is it any wonder then that there are Plots againſt
" me? The High-Fliers are now plotting againſt
" every honeſt Man in *England*. I'll tell you more
" of it the next Time we meet. *Countrym.* I fancy
" ſome Sort of People plot againſt you, becauſe
" you endeavour to countermine their Plots againſt
" the Queen and Nation. *Obſerv.* You are right
" enough; but that ſhan't hinder me from detect-
" ing their Deſigns, and from opening the People's
" Eyes. But, prithee, what Plot is this? *Countrym.*
" Why, Sir, it is a Plot preparatory to your Tryal;
" and if they can't effect this Plot, I ſuppoſe you'll
" never be try'd. They inſinuate into the Citizens
" of *London*, that you have lately written very
" ſcandalouſly, maliciouſly, and treaſonably, and I
" don't know how many other Lies, againſt them
" the ſaid Citizens; and by this Means they are
" minded to ſet your Jurors againſt you. *Obſ.* This
" is likely enough; they'll leave no Stone unturn'd,
" to ſuppreſs the Truth. I underſtand, I ſhould
" have been proſecuted by Bill the laſt Seſſions, but
" that the High-Fliers did not like the Jury; nay,
" they ſay they don't like the Two Sheriffs, be-
" cauſe they won't pack Juries to find innocent Men
" Guilty.

Mr. *Mountague*. Now, my Lord, we take it, there is a Variation between this Paper, and the Information. In the Copy, it is only *C.* in the Information, it is *Countryman.* Now when they deſcribe any Paper, it muſt be as it is writ; and they cannot ſay *Countryman*, when it is but *C.*

L. C. J.

L. C. J. *Holt*. He writes a Dialogue between the *Countryman* and the *Obſervator*; but now he makes *C.* for *Countryman*.

Mr. *Mountague*. My Lord, if they go upon the Libel, they muſt give it as it is under his own Hand.

Sir *T. Powis*. That Letter is to be underſtood *Countryman*.

L. C. J. *Holt*. When he us'd to write *C.* were you not to write *Countryman* at large?

Mr. *How*. At firſt we were; afterwards as it might be intelligible.

Mr. *Mountague*. Still we think they have not done enough: They have not proved this Thing ſufficiently, by the Witneſſes they have called. For, my Lord, we take it, that they muſt poſitively ſhew it was writ within the City. In the Tryal of the Biſhops, it was proved to be all under their Hands: Yet it was required then, that they might make it appear, that that Paper was writ in the County of *Middleſex*.

Mr. *Att. Gen.* Mr. *How*, where do you live now?

Mr. *How*. In *Grace-Church-ſtreet*.

Mr. *Att. Gen.* Let that Agreement be made where it will, the Publiſhing was in *London*; and we may lay the Information here.

L. C. J. *Holt*. Where did you receive theſe Papers?

Mr. *How*. Moſt commonly they were ſent to my Houſe, in *Talbot Court*, in *Grace-Church ſtreet*.

Mr. *Whitaker*. Have you not fetch'd ſome of them from *Lambeth*?

Mr. *How*. Yes, ſome of them.

L. C. J. *Holt*. Suppoſe a Man draws up a Libel in *Middleſex*, and there agrees with a Printer who lives in *London* to print it: He takes it away, and prints it in *London*, and there publiſhes it. Now the Queſtion is, Whether he that drew it, is not guilty of Compoſing and Publiſhing of it in *London*? Every Copy is a Libel of it ſelf.

Mr. *Mountague*. Every Copy is a Libel; and the taking a Copy of a Libel, may be a Publication: But that is not the Thing laid to his Charge; it is, *Scripſit & Compoſuit*. Now the Writing is in the County of *Surrey*; there he writes, and there he compoſes.

L. C. J. *Holt*. He is charged with Writing, Compoſing and Publiſhing a Libel in *London*. Tho' he be not guilty of Writing there, yet he may be guilty of Compoſing it there.

Mr. *Mountague*. Now, my Lord, as to the Publiſhing, the Printing is not the Defendant's Publiſhing: That affects another Man. Therefore we think they ſhould give ſome Evidence of his writing theſe Papers in *London*.

Sir *T. Powis*. My Lord, As to that, the Word *Compoſuit* is proper to relate to the Printing of it: (For the Printers have ſuch a Term as Compoſing:) And that is fully proved to be in *London*. And for Writing, (whether that be a material Thing between us) I take it, that he that does write a Libel, and ſends it to *London*; and there, by his Authority and Directions, it is compoſed again in another Paper, and printed; that Paper is ſtill his Writing, whereever it goes. However, the other Words come up to the Caſe fully; becauſe if that which he writes is ſo publiſhed, it may be ſaid to be writ by him, whereever it is ſo publiſhed.

Mr. *Att. Gen.* We have proved his owning himſelf to be the Author, and his cauſing it to be printed in *London*.

L. C. J. *Holt*. That is not an Evidence of his writing it.

Mr. *Att. Gen.* My Lord, It is a Proof of his cauſing it to be printed.

L. C. J. *Holt*. If he be guilty of a Fact in one County, you cannot charge it in another. But if he caus'd it to be printed in *London*, no queſtion it will be a Publication here.

Mr. *Att. Gen.* The Compoſing and Printing is a Publication; and that we have proved to be done in *London*, purſuant to his Agreement. And we alſo charged him with writing the ſame; and as a Proof of that, we have proved his owning himſelf to be the Author. If that be not an Evidence of his writing it, we can hardly ever prove that Part of the Charge of writing: For he that writes a Libel, will do it alone; and proving the Copies to be received in *London*, is an Evidence they were writ there firſt, if the Defendant doth not prove the contrary.

Mr. *Whitaker*. Mr. *How* ſwears, he had the Copy from *Lambeth*.

Mr. *Att. Gen.* Where was it compoſed?

Mr. *How*. At my Houſe.

Mr. *Att. Gen.* Was he there at your Houſe?

Mr. *How*. Yes; and I had them from him there.

L. C. J. *Holt*. Did he write any of them there?

Mr. *How*. Not that I know of.

Mr. *Att Gen.* Is Mr. *Tutchin* in the Court?

Mr. *Mountague*. I believe not.

L. C. J. *Holt*. Why is he not here?

Mr. *Mountague*. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, to ſpare me a few Words in Behalf of the Defendant. I can hardly ſay I am of Council with Mr. *Tutchin*, becauſe I have never ſeen him, but upon Recording his Appearance in open Court; and he has not thought fit to ſend us any Inſtructions till this Morning, when we were juſt going down to *Weſtminſter*. But I do ſuppoſe, this Remiſsneſs in his Temper, does proceed from his Innocency of the Accuſation againſt him: And he has a Mind to let the World ſee, how eaſy it is to make his Defence; ſince he has pitch'd upon me for his Advocate, and given me ſo little Time to prepare my ſelf for it. But as ſhort Notice as I have had of this Information againſt him, thus much I will beg Leave to ſay to it in general; That it does by no means come up to what the Gentlemen on the other Side call it, *A Charge of Writing and Publiſhing a Falſe and Scandalous Libel.* My Lord *Coke* has given us a Definition, or rather a Deſcription of a Libel: Says he, "*Famoſus Libellus, ſeu infamatoria Scri-*"*ptura*, is made either againſt a private Man, or "a Magiſtrate. If it be againſt a private Man, "it does deſerve to be puniſhed; becauſe it is "likely to incite all the Family or Kindred of "ſuch Perſon, to revenge the Injury; which "tends to the Breach of the Publick Peace. If "it be againſt a Publick Perſon, as a Magiſtrate, "it is a greater Offence: Becauſe it concerns not "only the Breach of the Peace, but it is a Scan-"dal to the Government. And it matters not whe-"ther ſuch private Man, or Magiſtrate, be dead or "alive at the making of ſuch Libel; becauſe the "Friends and Relations of ſuch Perſons, are inci-"ted thereby to diſturb the Peace of the King-"dom. By all which Sayings of my Lord *Coke*, I do humbly ſuppoſe, That there can be no Libel, where no Perſon certain is reflected upon, or ſcandalized. A Libel that points at no body in particular,

is like a Shot at Random, that ſeldom does any Miſchief. And therefore I do take it, with great Submiſſion, That in this Caſe, Mr. *Attorney* ſhould have ſhew'd us, what Perſon (either publick or private) theſe *Obſervators* have aſperſed. My Lord *Coke*, in another place, does liken Libelling to Poiſon, which ſecretly deſtroys a Man's Reputation, as the other does his Life. But certainly it would be thought a ſtrange Sort of Indictment, to charge a Man with being guilty of Murder; and not mention ſome one in particular, that has loſt his Life thro' the Defendant's Means or Procurement. Now pray, my Lord, how much does this Information differ from ſuch an Indictment? Here it is ſaid, That the Defendant *Tutchin* has wrote and publiſhed a falſe and ſcandalous Libel, of and concerning this Kingdom of *England*, and the Officers and Miniſters of the Queen. But a National Reflection, that equally concerns every individual Perſon in the Kingdom with the Reflector himſelf, cannot excite and ſtir up the People to quarrel one with the other. And to tell me, the Miniſters and Officers of the Queen are particularly concern'd; does but give me Occaſion to ask, what Officers and Miniſters Mr. *Attorney* is taking care of? For I do not find any Miniſter of State, or other Great Officer, ſo much as mention'd throughout this Record. A Bailiff, or Conſtable, is one of the Queen's Officers; and yet very few will think, a Man ought to be puniſh'd for Scandal, that ſhall ſay of ſuch Officers and Miniſters, they commit frequent Miſdemeanors, and are of Mercenary Principles. Would it not have been eaſy for Mr. *Attorney* to have aſſigned the Particulars, if he knows of any body that has been defamed by theſe *Obſervators*? But ſince the Information ſets forth no Particulars, I hope the Jury will take it for granted, that nothing in theſe Papers can be affixed to any Man's Door: But whatever has been writ, is ſpent in the Air; and I hope this Accuſation will vaniſh there likewiſe.

In the next place, my Lord, I would beg Leave to take notice of the particular Papers, which have been ſeverally read in Evidence. And the firſt that has been produced, is one of the printed *Obſervators*, agreed on all Hands to have been publiſh'd ſo long ago as the 30th of *May*, which was in the firſt Year of Her preſent Majeſty's Reign. And as to this, the Charge is, That the Defendant has Written, Compoſed and Publiſhed it. But how many of theſe Three Particulars have been made out, muſt be next obſerv'd. And as to the writing of it, Mr. *How* has ſworn, That there was an Agreement made betwixt him and the Defendant, (but where, he cannot ſay) that Mr. *Tutchin* ſhould write a Paper, ſometimes once, ſometimes twice a Week, of the Publick Tranſactions: And ſuch a Paper has been writ by Mr. *Tutchin*; but where this Paper was wrote by Mr. *Tutchin*, or deliver'd, Mr. *How* cannot ſwear. However, ſo far he goes, that from theſe Papers of Mr. *Tutchin* he has printed at his Houſe in *London*, theſe Papers are now produced. But on this Evidence, I muſt, with your Lordſhip's Favour, obſerve, That there are Two different Sorts of Libels ſpoken of: The one is in Writing; ſuppos'd to be written by Mr. *Tutchin*, but God knows where: The other in Print, own'd by Mr. *How* to be printed and publiſhed from the written Paper; which does not appear, and of which no true Copy has been proved. Now we hope, therefore, my Lord, that the Gentlemen of the Jury will rightly diſtinguiſh betwixt this Firſt and Second Libel, and make a Difference betwixt the Act of Mr. *How*, and that of Mr. *Tutchin*. The printed Papers here produc'd, are ſtil'd the *Obſervator*; ſo was not the written ones, if Mr. *How* be to be believed. The printed *Obſervators* are ſold about, for the ſole Benefit of Mr. *How*; and Mr. *Tutchin* receives only a ſmall *Præmium*, for the writing once or twice in a Week. Mr. *Tutchin* only earns his weekly Subſiſtance, by making Obſervations in the Country; and it does not appear, that he concerns himſelf further about the Printing or Publiſhing of them. If he gets his Money, Mr. *How* may do with his Papers as he thinks fit. So that I muſt humbly inſiſt upon it, That what Mr. *How* has done within this City of *London*, can never reach Mr. *Tutchin* into *Surrey* or *Eſſex*. It has been ſaid indeed, and I ſhall not contradict it, That the bare Tranſcribing of a Libel, will make a Man guilty of Libelling: But for this Reaſon I do ſay, That Mr. *How* only has been guilty of making and publiſhing theſe printed *Obſervators* in *London*: And Mr. *Tutchin*, if he be guilty, muſt be convicted of the making and publiſhing that, which can be ſworn to be his written Obſervations; eſpecially ſince it has plainly appear'd, that the Papers written by Mr. *Tutchin*, have been frequently alter'd by Mr. *How*, before they were printed off.

And if we conſider the Paſſages that have been produced; the Gentlemen of the Jury will perceive, a very little Alteration will make theſe Papers quite different from what they are. However, as they be, I hope there is no great Matter in any of them. The Firſt *Obſervator* ſays; "At the ſame time, "if we conſider the *French* King's Succeſs, in "his Bribery and Corruption, we ought to la- "ment the ſad State of our own Country, which "affords ſo many Inſtances of Treachery, *&c.* Now, pray who is *We* in this Caſe? Says Mr. *Attorney*, in his *Innuendo*, The People of *England*. But I hope an *Innuendo* ſhall not make a Man guilty of a Crime, which otherwiſe can't be affixed upon him. But ſuppoſing this ſame Paper were in truth written with relation to *England*; will any one ſay, that (no Times whatſoever) this Country has afforded not any Inſtances of Treachery? And what Part of this Information does ſo much as fix the Time to which the *Obſervator* alludes? If all that is here ſet forth were written of a former Miniſtry, I do ſuppoſe there would not be ſo much Blame laid on the Author, as if he comes nearer the preſent Times: So the Time to which theſe Papers do refer, muſt certainly be material, and fit to be conſider'd of, before any one can rightly judge of this Caſe. And for want of its being aſcertain'd and determin'd whither theſe Reflections may extend, I hope the Jury will not very much regard them.

The next Charge does ſet forth a wicked Aſſertion to have been made, *de & concernen' Poteſtat. Populi Anglicani.* But we muſt be in your Lordſhip's Judgment, whether the Paper that is produced, does make out that Aſſertion to be juſt as it's laid. I take it, with Submiſſion, that there is a manifeſt Variance betwixt the Charge and the Libel. The Charge makes him ſpeak of the Power of the People at large; when the Paper comes to be read that ſpeaks of our Repreſentatives in Parliament. And ſurely there is a Difference, to ſay, The People at large can do ſo and ſo; and to ſay, Our Repreſentatives in Parliament can do it. For inſtance; The making of Laws is not in the Peo-

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ple diſperſed over *England*; but in their Repreſentatives in Parliament, in Concurrence with the Houſe of Lords, when the Royal Aſſent does likewiſe concur with them; therefore I think this Charge can't affect us, upon Account of this Variance. The next Article then to be taken notice of is that concerning the Navy.----

Mr. *Soll. Gen.* But Mr. *Mountague* ſays nothing of the Prerogative the People have, that the Repreſentatives are the Judges of the Male-Adminiſtration of their Governors; that they can call them in Queſtion for the ſame, *and can appoint ſuch to wear the Crown*, who are fitteſt for Government; which they have often done. He paſſes by all this ſcandalous Matter.

Mr. *Mountague.* I did ſo, Mr. *Sollicitor*, and I did it on purpoſe, becauſe I look'd upon it as a Matter not proper for you and I to talk of as Advocates in this Place. And I am apt to think, my Diſcretion in paſſing it by will be more eaſily juſtified, than theirs that ſhall bring ſuch Points as theſe upon the Stage, to be talk'd on before this Aſſembly. I muſt declare for my own Part that I think the Rights of Princes and the Power of the People too high Topicks for me to meddle with; let others do as they think beſt. I ſhall paſs over to the next Article concerning the Navy. "Take one Time with ano-"ther, the Miſmanagements of the Navy have "been a greater Ta.. on the Merchants, than the "Duties raiſed by Parliament". Now how does this relate only to the Navy Royal; it is no where ſaid, the Miſmanagement of the King's Navy, or the Queen's Navy. And the Word Navy does, in my poor Underſtanding, ſignify no more than a Number of Ships got together; and therefore I do humbly conceive, there may be a Navy of Merchant Ships as well as a Navy of Men of War, 'tis altogether uncertain what Navy the Author does allude to.

L. C. J. *Holt.* Surely the Navy muſt be the Navy Royal.

Mr. *Mountague.* If it muſt, my Lord, yet no body can ſay that we never had any Miſmanagements in the Royal Navy, and whenever that has happened the Merchants of *England*, in all Probability have ſuffered for it.

Mr. *Att. Gen.* My Lord, I think all this Diſcourſe is ſuch as is not to be allowed.

Mr. *Soll. Gen.* When a Man complains of the Miſmanagement of the Government, and then comes after this, and ſays that the People have a Power inherent in them to call their Governors to an Acount: What is this? Does it want an Expoſiction, thus to poſſeſs the People with an Opinion of the Power they have to call the King or Queen to an Acount? What does ſuch Things tend to, but to raiſe in the People an Indignation againſt the Government?

Mr. *Mountague.* My Lord, the Thing I was inſiſting upon was, that whatever is here ſet forth, is not brought within any Compaſs of Time, and there is no particular Reflection upon any Perſon whatſoever. Tho' mention is made of divers Miſmanagements and of ſeveral Miſcarriages; yet all theſe Things may be ſaid of other Times long ſince. And therefore ſince this Exception goes to all the reſt of the Charges in the Information, I ſhall paſs by the other Particulars. And ſince I have taken up a great deal of your Lordſhip's Time already, I ſhall leave the reſt to theſe Gentlemen that are to ſpeak after me.

Mr. Serj. *Darnel.* Will you ſay they are true?

Mr. *Whitaker.* My Lord, here is an Accuſation that we did write and compoſe and publiſh theſe Papers; now it appears that the firſt Author was often out of *London*, and that the Copy was often fetch'd from *Lambeth*, and other Places; and the Witneſs did apply the Title of *Obſervator* to every one of theſe Papers. Now that which they call Libellous is not in the Writing which we did write; and if we did not write it in *London*. I hope you will not find us Guilty of writing and publiſhing of a Libel.

Mr. *Mountague.* My Lord, we have not done any Thing as to the Printing at all; we had nothing to do with it.

L. C. J. *Holt.* Were not you concerned in printing it? I can't imagine how Mr. *How* came to pay for it elſe. Mr. *How*, what were you to give for every *Obſervator*?

Mr. *How.* For about Sixty ſix of the laſt, I paid Twenty Shillings a Time.

L. C. J. *Holt.* What did you give for them before?

Mr. *How.* Half a Guinea a Time.

L. C. J. *Holt.* Was it the ſame Thing to him whether you printed it or not?

Mr. *How.* Yes; but I would not have given it him, if it had not been to be publiſhed.

Mr. *Whitaker.* My Lord, we are in your Judgment as to this Matter, whether they can find us guilty of a Libel in *London*?

Mr. *Soll. Gen.* It was in *London.*

L. C. J. *Holt.* Where was the Agreement made?

Mr. *How.* I did think at firſt that it was in the City, and I do think ſo; but he ſays it was in *Surrey.* The Papers were delivered ſometimes at my own Houſe, and ſometimes in the Country.

Mr. *Att. Gen.* Were they deliver'd to you to be printed?

Mr. *How.* Yes.

Mr. *Att. Gen.* You ſaid you and he have mended the Papers, has that been done at your Houſe in *London*; or in the Country?

Mr. *How.* I do not know which.

Mr. *Mountague.* Let me ask you one Queſtion: Can you ſwear to any particular Paper, that he deliver'd that Paper in *London*?

Mr. *How.* I do not know where they were delivered.

Mr. *Weld.* It need not be inſiſted on to find him guilty of all; if they find him guilty of the Publication that will be enough; and that they cannot deny but he is guilty of that. When it is deliver'd to be printed, it is as much a Publication as the compoſing of it.

Mr. *Mountague.* But it does not appear that it was delivered in *London.*

Mr. *Weld.* But he owned it in *London.*

Sir *T. Powis.* He did cauſe theſe Papers to be printed in *London.*

L. C. J. *Holt.* He deliver'd them to be printed in *London*: *How* agrees to give him half a Guinea a Paper at firſt, and Twenty Shillings afterwards; and ſurely then he deſigned to have them printed.

Mr. *Mountague.* He cares not what he does with the Papers, he was only to have ſo much Money for them.

Mr. *Att. Gen.* My Lord, here they are ſetting up a Doctrine that will make libelling ſafe, ſo that no Man ſhall ever be puniſhed for it. We have charged him with writing, compoſing and publiſh-

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ing a Libel: We have proved the Agreement made with the Printer, be it in *London*, or out of *London*, is not very material. Now if there be an Agreement made out of *London*, for printing and publiſhing a Libel; wherever that Libel is printed and publiſhed, he is guitly; for whatever is done by his Agreement, he is guilty of it. As to the next Thing, I am much concerned to hear them ſay, that which I never before heard urged in any Court, that a Libel is not a Libel unleſs they aſſign ſome particular Perſon; but I look upon it as the higheſt kind of Libels to reflect on publick Officers in general; on the Adminiſtration of Juſtice in general. I believe every one knows a Libel is a Libel, tho' particular Perſons are not named: If it reflect on Officers, in general as Miniſters of State, or Judges, or the like. Mr. *Mountague* would have it, that Reflections on the Miniſters of the Crown is not a Reflection on the Queen; and he would have it, that we ſhould have averr'd who theſe Miniſters are that were meant in the Libels. As to the firſt, certainly they that reflect on the publick Adminiſtration of Juſtice by the Queen's Officers, do reflect on her Majeſty who places and continues them in their Offices. And to the Second Reflection, being in general on the Miniſtry, we ought not, nor could aver, who in particular he meant in theſe Libels; the whole Adminiſtration under the Queen is reflected on, in placing in Officers in general; in the Management of the Navy, and placing in the Officers thereof; and in the Adminiſtration of Juſtice in the Courts of Juſtice; and what can be more ſcandalous? There needs no Averment to explain theſe, in themſelves they appear to be Libels; and I hope ſuch Diſcourſes as have been made on this Occaſion for the Defendant, will not meet with any Countenance; but I am ſurprized to hear it juſtified here by a Council, That the People have Power to call their Governors to Account.

Mr. *Mountague*. I did not ſay ſo.

Mr. *Att. Gen.* Certainly what you did ſay, *viz.* That you ſhewed more Diſcretion in paſſing it by, than we did in queſtioning the Defendant for it, and that we wanted Diſcretion in bringing this Matter on the Stage; could have no other Meaning, but that the Matter was juſtifiable, but you would not in Prudence do it; which, I muſt ſay, is the greateſt Liberty I have known taken by a Council.

L. C. J. *Holt*. I did not hear him ſay ſo.

Mr. *Mountague*. I did not ſay ſo, I ſaid it was more diſcreet to paſs it by than take notice of it.

Mr. *Att. Gen.* I will always proſecute any Man that ſhall aſſert ſuch Doctrine. My Lord, I think my ſelf obliged in Duty, being in the Station I am, always to take notice of ſuch Diſcourſes as theſe, which no Council ought to preſume to make.

L. C. J. *Holt*. Gentlemen of the Jury. This is an Information that is preferred by the Queen's Attorney General againſt Mr. *Tutchin*, for writing, and compoſing, and publiſhing, or cauſing to be writ, compoſed, or publiſhed, ſeveral Libels againſt the Queen and Her Government; and all theſe that are ſet forth as Libels, are entitled, The *Obſervator*, and they are in Number Six. The firſt is ſaid to be made and publiſhed *May* 30. 1702. and in which Mr. *Tutchin* is charged with having this Libellous, ſcandalous Paragraph againſt the Govermnent, and the Adminiſtration of it. The Words are theſe, " If we conſider the *French* King's " Succeſs, in his Bribery and Corruption, we ought " to lament the ſad State of our own Country, " which affords ſo many Inſtances of Treachery. " If we may judge by our National Miſcarri- " ages, perhaps no Nation in *Europe* has felt " the Influences of *French* Gold, more than *Eng-* " *land*; and worthy it is our greateſt Lamenta- " tion, that our dear Country ſhould be thus " weaken'd by Men of mercenary Principles, when " Countries inferior to ours in Strength and Riches " are ſecured from Attempts of this Nature, only " by the Fidelity of their People. What is the " Reaſon, that *French* Gold has not affected *Holland*, " as well as *England*; but that their Miniſtry is " ſuch as is entirely in the Intereſt of their Coun- " try, and altogether incorruptible: They prefer " Men that are knowing in their Poſts, and are " active in Buſineſs. When in *England* we find " out Offices for Men, and not Men for Offices; and " a Title of Honour gives a Man a Title to a great " Employment he is altogether ignorant of. By " this, and by preferring of Men by Intereſt and " Favour, has the Exciſe, the Cuſtoms, and other " Branches of the Revenue intolerably ſunk; and " by this Means has the Navy of *England*, our " chief Support, been hitherto perfectly bewitched: " And can *Lewis* ſpend his Money better than in " getting Men into Offices in *England*, who are ei- " ther falſe or ignorant in the Buſineſs, or are his " Friends"? This now is charged on him as a Defaming the Government, in employing corrupted Officers, or ignorant Officers, when they are not fit for their Places. There is another that has been produced, which is the Second, that hath theſe Words: " And this is a Prerogative of ſingular Ad- " vantage to the People of *England*, in that their " Repreſentatives are the Judges of the Male-Admi- " niſtration of their Governors; that they can call " them in Queſtion for the ſame, *and can appoint* " *ſuch to wear the Crown*, who are fitteſt for Go- " vernment: Which they have often done, and in- " deed which is the Privilege of all free People, " who are authorized by the Laws of God and " Nature, to chuſe their own Governors". This is to poſſeſs the People, that they may at their Will and Pleaſure when they take a Fancy thereto, diſſeiſe the Queen, and ſet up what Governor they pleaſe. Theſe Two, and the reſt which I ſhall mention by and by, are given in Evidence. And it ſeems at firſt Mr. *Tutchin* came to Mr. *How*, the Printer, and there is a Contract made between them two, to print a Weekly Paper, and it was to be entitled, The *Obſervator*, and he was to have half a Guinea a Time. Mr. *Tutchin* was to write, and the other was to print; his Printing-Houſe was here in *London*: Accordingly he enters into this Contract, and from Time to Time has received Copies, and prints them, and has paid Mr. *Tutchin* for them, and has printed all his *Obſervators*, even to this very Day: Afterwards there came Two out in a Week. Now it is moſt plain, that a Contract was made between Mr. *Tutchin* and Mr. *How*, for Mr. *Tutchin* to write and frame, and Mr. *How* to print. And no body can imagine that Mr. *How*, the Printer, would give him Money, unleſs that written Copy were to be printed: But now ſay they, was there no Alteration made; but were they printed exactly purſuant to the Copy of Mr. *Tutchin*? Yes, but theſe Two were not; not but that ſometimes I made ſome Alterations; for ſays he, when I thought his Expreſſions were too paſſionate and ſevere, I apprehended Danger, and made

made ſome literal Alterations. But after this, theſe Two were read, and Mr. *Tutchin* owned them, and divers others, and ordered him to bind them in a Volume, and he does ſo, and Mr. *Tutchin* makes a Preface, and binds it to this Volume. It appears that his own Hand is to it, to the Preface, and was paid Money for them, and Mr. *Tutchin* owned this Number; ſo that there is a full Proof that theſe were compoſed by Mr. *Tutchin*, in order to be printed, and they were printed afterwards and he has received Money for them.

Now there are Four more which are charged in the Information, of the ſame Nature. One is thus: " Take one Time with another, the Miſ- " managements of the Navy have been a greater " Tax on the Merchants, than the Duties raiſed by " Parliament: We never had a better Navy; but " the Wiſdom of the Managers thereof is like a " bottomleſs Pit, paſt finding out". A Fourth Paper hath theſe Expreſſions. " What avails it " a Man of Learning and Parts, to qualify " himſelf for the Service of his Country on the " Ocean? If he has Knowledge enough to " adviſe *Neptune* himſelf, if he has no Intereſt, he " ſhall have no Preferment. How much does it " look to our Nation's Diſadvantage, to have Men " in Eminent Stations in the Navy, who have not " ſo much as an Idea, a Notion, a Thought of Na- " val Affairs? To have Men to ſuperintend the " Building of our Floating Caſtles, who know not " the Nature of any one Part of the Management? " To have Men employ'd in the Victualling, who " qualify themſelves for that Poſt by learning to " write their Names, which is indeed a Poſt for a " Philoſopher bred to the Sea"? This alſo charges the Government for employing unfit Miniſters in the Navy. There is a Fifth and that hath theſe Words. " *Countryman.* Truly Maſter *Obſervator*, " I have no very good News for you: Mr. *Daniel* " *De Foe* has pleaded Guilty to the Indictment " againſt him, for writing and publiſhing *the* " *ſhorteſt Way with the Diſſenters*; and he is ſen- " tenc'd to ſtand Three times in the Pillory, to pay " a Fine of 200 Marks, and to find Security for " his good Behaviour for Seven Years. *Obſerv.* The " Court could do no otherwiſe than convict him, " upon his pleading Guilty; *habemus confitentem* " *reum*, is very often the Voice of Courts of Judi- " cature, 'tis the Eaſe of Judges and Juries: If " *Daniel De Foe* was in Expectation of *Coleman*'s " Black Box, he has found a Pillory inſtead of it. " I don't trouble my Head about the Cuſtom of " giving the Pillory to Authors, which is the Pu- " niſhment of Bakers. You talk'd juſt now of " turning Author, have a care of your Candle; you " ſee which is the ſhorteſt Way with Authors; " you muſt all enter your ſelves in the Regiment of " Colonel *Foe*. The Law of *England* directs, that " no Man ſhall be fined *ultra tenementum*; and I " make no queſtion, but the Juſtice of the Court " has fined Mr. *Foe* anſwerable to his Eſtate. His " Security for his good Behaviour for Seven Years, " without doubt, was rationally conſider'd, as to " the Legality thereof. For my part, I am only " acquainted with Old Laws of *England*, the An- " cient Birthrights and Immunities of *Engliſhmen*: " This I take to be the Foundation of New " Laws". And then here is the laſt which hath theſe Words. " *Countrym.* Maſter *Obſervator*, there's another " Plot againſt you. *Obſerv.* Prithee Man, there's a " Plot againſt the Queen, and the whole Nation; is it " any Wonder then, that there are Plots againſt me? " The High-Fliers are now plotting againſt every " honeſt Man in *England*. I'll tell you more of it, " the next time we meet. *Countrym.* I fancy ſome " Sort of People plot againſt you, becauſe you en- " deavour to countermine their Plots againſt the " Queen and Nation. *Obſerv.* You are right " enough; but that ſhan't hinder me from detect- " ing their Deſigns, and from opening the People's " Eyes: But prithee, what Plot is this? *Countrym.* " Why, Sir, it is a Plot preparatory to your Tryal; " and if they can't effect this Plot, I ſuppoſe you'll " never be try'd. They inſinuate into the Citizens " of *London*, that you have lately written very " ſcandalouſly, maliciouſly, and treaſonably, and I " don't know how many other Lies, againſt them " the ſaid Citizens; and by this Means they are " minded to ſet your Jurors againſt you. *Obſ.* This " is likely enough; they'll leave no Stone unturn'd, " to ſuppreſs the Truth. I underſtand, I ſhould " have been proſecuted by Bill the laſt Seſſions, but " that the High-Fliers did not like the Jury; nay, " they ſay, they don't like the Two Sheriffs, be- " cauſe they won't pack Juries to find innocent " Men guilty".

This is the laſt of the Libels. Now whatever you admit concerning theſe, the ſame is proved concerning the other Two, except that of the Volume. Theſe he did receive from Mr. *Tutchin*, or by his Agent. He alſo paid Mr. *Tutchin* upon the ſame Account that he paid for the reſt, and they were printed here in *London*, and publiſhed. Now Mr. *Tutchin* did not at any Time complain that they were not printed according to the Copies ſent. As to the Copies they are loſt all of them but one of theſe Four. There are divers others, but they concern not this Information, but one, and that is Mr. *Tutchin*'s Hand, the ſame Hand as the other Papers and by that Copy the Paper was printed, and Mr. *Tutchin* alſo received the Money for it. So that now you have heard this Evidence, you are to conſider whether you are ſatisfied that Mr. *Tutchin* is guilty of Writing, Compoſing and Publiſhing theſe Libels. They ſay they are innocent Papers and no Libels, and they ſay nothing is a Libel but what reflects upon ſome particular Perſon. But this is a very ſtrange Doctrine, to ſay, it is not a Libel reflecting on the Government, endeavouring to poſſeſs the People that the Government is Male-adminiſtred by corrupt Perſons that are employed in ſuch or ſuch Stations either in the Navy or Army.

To ſay that corrupt Officers are appointed to adminiſter Affairs, is certainly a Reflection on the Government. If People ſhould not be called to account for poſſeſſing the People with an ill Opinion of the Government, no Government can ſubſiſt. For it is very neceſſary for all Governments that the People ſhould have a good Opinion of it. And nothing can be worſe to any Government, than to endeavour to procure Animoſities; as to the Management of it, this has been always look'd upon as a Crime, and no Government can be ſafe without it be puniſhed.

Now you are to conſider, whether theſe Words I have read to you, do not tend to beget an ill Opinion of the Adminiſtration of the Government? To tell us, that thoſe that are employed know nothing of the Matter, and thoſe that do know are not employed. Men are not adapted to Offices, but Offices to Men, out of a particular Regard to their Intereſt, and not to their Fitneſs for the Places; this is the Purport of theſe Papers.

Now they on his behalf inſiſt on theſe Things. Firſt, they ſay you do not prove any Crime againſt him in *London*. Indeed it is not proved that he writ them in *London*; but the Queſtion is, whether there is not Proof of the Compoſing and Publication in *London*? There is Proof that they were ſent to Mr. *How*, in order to print them in *London*. Now whether he received them from him in *London* or no, (but ſuppoſe out of *London*,) yet if he received them to print them in *London*, that is a Publication in *London*. If they ſcruple that Matter, it ſhall be ſpecially found. If they were delivered to be printed at *London*, I muſt leave it to your Conſideration, whether you will not find him Guilty of publiſhing them in *London*. They were ſome of them printed in *Fenchurch-ſtreet*, and others in *Gracechurch-ſtreet*. He knew where the Printer lived, the Contract was made, and he was paid for them. Gentlemen, I muſt leave it to you; if you are ſatisfied that he is guilty of Compoſing and Publiſhing theſe Papers at *London*, you are to find him Guilty.

Then the Jury withdrew, and about a Quarter of an Hour after return'd into Court.

Clerk. Anſwer to your Names, &c. How ſay you, Is *John Tutchin* Guilty of the Charge laid againſt him, or Not Guilty?

Foreman. Guilty of Compoſing and Publiſhing.

L. C. J. *Holt.* They appeal from my Opinion; they don't find the Writing in *London*, but they find him Guilty of Compoſing and Publiſhing in *London*, that is, ſuppoſing he did write them out of *London*, and deliver them in order to be printed in *London*.

Mr. *Soll. Gen.* Do you find that the Papers, the ſeveral Copies of theſe Six *Obſervators* were delivered to be printed in *London*?

Foreman. Yes, Guilty of Compoſing and Publiſhing, but not of Writing.

Mr. *Soll. Gen.* Do you find him Guilty of the whole Charge except the Writing?

Foreman. Yes.

Clerk. Gentlemen, hearken to your Verdict, you ſay *John Tutchin* is Guilty of the whole Information, except the Writing?

Foreman. Yes.

Clerk. And ſo you ſay all.

Jury. Yes.

The Arguments for and againſt Arreſting Judgment, November 13.

Mr. *Att. Gen.* MY Lord, Mr. *Tutchin* has given me Notice that he will bring an Appeal in Arreſt of Judgment; and indeed he has given publick Notice of it, for it is put into the News-Papers.

L. C. J. *Holt.* Is he here?

Mr. *Mountague.* Yes, my Lord, he is about the Court.

Mr. *Att. Gen.* Call him.

Cryer. John Tutchin, Gentleman.

[*Then he came into Court.*]

Mr. *Mountague.* May it pleaſe your Lordſhip to favour me a few Words in behalf of the Defendant, *John Tutchin*. He was tryed before your Lordſhip at the *Guild-hall*, *London*, on *Saturday* was Sevennight, for being the Author, Compoſer and Publiſher of ſome Papers entitled, *The Obſervator*; and there is a Verdict enter'd againſt him, and now he appears to ſubmit to the Judgment of the Court, which he humbly hopes ſhall not be given againſt him. For, my Lord, in the firſt Place I beg leave to take notice that we think there is Cauſe why your Lordſhip ſhould ſet aſide the Tryal that has been had; for we look on all the Proceedings upon the Writ of *Diſtringas* on which the Verdict is taken, as null and void. This is an Information againſt Mr. *Tutchin* for a Libel; and the Facts laid in the Information are ſaid to have been tranſacted within the City and County of *London*. To this Information he pleaded the laſt *Trinity* Term, and the *Venire Facias* was awarded the laſt Day of that Term, *Return. Die Lunæ proximæ poſt tres Septimanas Sancti Michaelis*, which your Lordſhip knows was *October* 23. the firſt Day of the Term, and the *Diſtringas* ſhould have iſſued the very ſame Day; but it ſo happens that the *Diſtringas* in this Caſe does appear to have been ſued forth *October* 24. which is a Day after the Return of the *Venire*, and therefore we ſay the *Diſtringas* is naught, and all the Proceedings thereupon are null, becauſe there is no Award of the Court to warrant this *Diſtringas*. In the next Place we ſay that the Return, neither of the *Venire*, or the *Diſtringas*, are as by Law they ought to be; for the Return of the *Venire* is *Die Lunæ proximæ poſt tres Septimanas Sancti Michaelis*, and the Jury are to be brought *coram Domina Regina apud Weſtm. Die Jovis prox. poſt*; and the return of the *Diſtringas* is *Craſt. Anim.* with an *Hab. Corpora coram Regina apud Weſtm.* For both which Reaſons we think it naught, becauſe when any Proceedings in Criminal Matters are laid in a Foreign County, the Proceſs muſt be made returnable at a Day certain. Day might be given *coram Regina ubicunq;*.

L. C. J. *Holt.* You mean at a common Day; and it is ſo, whenever Indictments are remov'd hither by *Certiorari* out of foreign Counties.

Mr. *Mountague.* My Lord, we think there is no Difference to be made between the Proceedings in *London*, and other Counties more remote from *Weſtminſter*.

L. C. J. *Holt.* In Informations exhibited by Mr. *Att. Gen.* in this Court for Crimes done in Foreign Counties, 'tis uſual to return the Proceſs upon Days certain.

Mr. *Att. Gen.* My Lord, Informations are of the Nature of a Bill.

L. C. J. *Holt.* Proceſs on an Indictment may be made returnable on a certain Day, if it be found in this Court; but if it be removed hither by *Certiorari* it is otherwiſe.

Mr. *Mountague.* My Lord, we take it that the Proceſs that has been hitherto taken out upon all Informations that charge Crimes on Defendants as done out of the County of *Middleſex*, has been made returnable on ſome common Return-Day, and not at a Day certain.

Mr. *Att. Gen.* It has always been allowed to be upon a Day certain, as well as upon a gene-

ral Return-Day; and it is ſettled and declared ſo by the Court.

L. C. J. *Holt.* I am apt to think the Clerks have gone both Ways.

Mr. *Att. Gen.* A Man takes a long Day if he will.

Mr. *Mountague.* We have look'd over many Informations, and the Practice does not appear to have been ſo. But what does Mr. *Attorney* ſay to the firſt Exception we have taken? Here is a Diſcontinuance after the Return of the *Venire*, which was upon *October* 23. and the *Diſtringas* bears *Teſte viceſſimo quarto die Octobris.*

L. C. J. *Holt.* Ay, what can you ſay to that, Mr. *Attorney?* That very Day the Writ is enter'd there muſt be a *Diſtringas.*

Mr. *Att. Gen.* My Lord, I know not how it came to paſs. I believe ſomebody has done it on Purpoſe. I deſire the Clerk may give an Account of it. I never ſaw the Writ. I deſire Time to know how this has been manag'd.

L. C. J. *Holt.* There muſt be a Continuance to that Day; if there be no Continuance, all is fallen.

Mr. *Att. Gen.* If they come again, we will ſee how this has paſt.

L. C. J. *Holt.* If it be ſo, the Plea is diſcontinued, and you muſt plead *de Novo.*

Mr. *Mountague.* My Lord, ſeeing it is in Court, I deſire it may be read now.

Mr. *Att. Gen.* What need you make that Reflection? Do you think we will make any Alteration in it?

Mr. *Mountague.* I hope I may aſk that without making any Reflection: I am ſure I did not intend it ſo.

[*Then the Record was read.*]

Mr. *Att. Gen.* Come again To-morrow.

Mr. *Mountague.* Mr. *Tutchin* then you may go for to Day, but be here again To-morrow.

L. C. J. *Holt.* Is the *Venire* made returnable *Die Lunæ?*

Mr. *Mountague.* Yes, my Lord, it is, I look'd upon it.

Mr. *Att. Gen.* I will ſee if it can't be found out.

November 20.

L. C. J. *Holt.* Mr. *Attorney*, will you go on?

Mr. *Att. Gen.* My Lord, we are ready, if they will maintain their Exceptions.

Mr. *Mountague.* My Lord, we think we have no Occaſion to cite many Authorities and Preſidents to maintain the Exception, when it is apparent that there is a Diſcontinuance; the Reading of it makes it appear, that the *Diſtringas* was ſued out a Day after the *Venire*, ſo that here is a *Niſi Prius* that has been iſſued out erroneouſly. The Statute ſays the Day and Place for taking Inquiſitions muſt be in *Præſentia Partium.* And 'tis plain, the Day and Place mentioned in this Writ was appointed when the Defendant was not in Court, and therefore is null and void.

L. C. J. *Holt. In Præſentia Partium*, where is that required?

Mr. *Mountague.* By the Statute of *Niſi Prius*, which ſays, *nec alterminentur hujuſmodi Inquiſitiones coram aliquibus Juſticiarijs de Banco niſi ſtatuatur certus dies & Locus in Comitatu in Præſentia Partium.*

L. C. J. *Holt.* Which Statute do you mean?

Mr. *Mountague.* The Statute of *Weſtminſter* the Second, *Cap.* 30.

L. C. J. *Holt.* Call for that Statute.

Mr. *Att. Gen.* My Lord, I deſire that they will maintain their Exception, for I am in the dark about it, and that they may maintain it by the Authority of the Law, and not only by an *ipſe dixit*, and a Noiſe in the Town.

L. C. J. *Holt.* They ſay the Exception maintains it ſelf.

Mr. *Att. Gen.* My Lord, let 'em go on firſt, and then we will anſwer them. If they will rely upon this Exception without Authority, then we muſt pray the Judgment of the Court; but if they will bring Authority for it, we do deſire to hear 'em and ſhall give 'em an Anſwer.

Sir *T. Powis.* My Lord, if they have any other Exception to make, I deſire they may make it now.

Mr. J. *Powel.* Mr. *Mountague* you have made one Exception, that is, of the Diſcontinuance of the Proceſs; now if you have any other Exceptions to make, you may make them now.

Mr. *Mountague.* My Lord, the Exceptions I have hitherto taken have been to the Tryal. I mention'd this, and I mention'd another which I do not inſiſt on; ſince I underſtand it has been otherwiſe ſettled, that is, about the Return of theſe Writs upon a Day certain; which, my Lord, I did look upon to have been wrong; becauſe I did not think Mr. *Attorney* could ſhew any Precedents of any ſuch Returns to warrant this; for I can find none, and I have ſearched in the Time of King *Charles* I. and in King *Charles* II. and King *James.*

L. C. J. *Holt.* If a Suit be commenced in the *Common Pleas* by Bill, as if an *Attorney* ſhall file a Bill there, the Proceſs is made returnable at a Day certain, and here our Proceedings by Bill are always at a Day certain. Now an Information which is originally filed here, is in Nature of a Bill, and the Proceedings therefore may be confined to a Day certain; but if any Indictment be brought hither by *Certiorari*, the Proceſs muſt be returned at a common Day, and not at a Day certain. We had this Matter under Conſideration before upon another Occaſion, and we thought it very reaſonable the Proceedings on Informations here ſhould be the ſame as the Proceedings by Bill, which are returnable on Days certain from any County of *England.*

Mr. *Mountague.* My Lord, if that be your Opinion, I have nothing to ſay to it. I have ſome Records here in my Hand, ſome in King *Charles*'s Reign, and ſome in King *James*'s Time, and all theſe are made returnable on the common Return, and one of theſe Records was ſettled by Sir *William Jones.* As to what the Officers ſay, they are divided I find, for ſome of them have told me, it is quite contrary to what Mr. *Harcourt* reports the Courſe of the Court to be.

Mr. *Att. Gen.* My Lord, I dare appeal to you whether this has not been argued Twenty Times.

Mr. *Mountague.* My Lord, let Mr. *Attorney* ſhew Precedents.

Mr. *Att. Gen.* You muſt ſhew Precedents.

Mr. J. *Powel.* It is otherwiſe when there is an original Proceeding.

L. C. J. *Holt.* Have you any more Exceptions?

Mr. *Mountague*. I rely on the firſt Exception. It lies on Mr. *Attorney* to anſwer this Exception.

Mr. *Att. Gen.* My Lord, I deſire they may ſhew any Caſe or Reſolution of Law, that the *Diſtringas* ſhould bear *Teſte* the ſame Day the *Venire* is return'd upon. The *Diſtringas* is awarded on the Roll upon the firſt Day of Term; and the *Venire* is return'd the firſt Day of Term: And at the ſame Time it is awarded, that there ſhall be a *Diſtringas*, Day is given to the Party; that is the Warrant: For the *Diſtringas* and the *Teſte* never appear upon the Roll. If they have any Authority, I deſire they may ſhew it. My Lord, I think we can ſatisfy you, that it is right; or that it is amendable. This is a Maxim of the Law, *There muſt be Authority.*

L. C. J. *Holt*. It may be the Thing is ſo plain, as to need no Authority.

Sir *T. Powis*. I deſire to know, whether the Award of the *Diſtringas* is right on the Roll. I take it, that the *Venire* is return'd the firſt Day of the Term; and that there is thereupon a *Diſtringas* awarded returnable, *Die Jovis prox. poſt Craſt. Anim.* I beg to know, whether it be ſo or no.

L. C. J. *Holt*. I have it in my Hand; and I was apprized of that before; and was going to ſtate it. For the Continuance of the Roll is right. The *Venire Facias* is return'd, *Die Lunæ prox. poſt Tres Mich.* On which Day, the Attorney appears on the Queen's Behalf; and the Defendant appears likewiſe. What is then done? *Ideo præceptum eſt Vicecomitibus London, quod diſtringant eos; itaque habeant Corpora eorum coram Domina Regina, Die Jovis prox. poſt Craſt. Anim.* Now, on what Day muſt this Award be ſaid to be? That muſt be that Day whereon the *Venire* is ſaid to be return'd; which is, *Dies Lunæ prox. poſt Tres Mich.* The Award of the *Diſtringas*, therefore, by the Roll, is that very Day, the 23d: But the *Diſtringas* bears Date, not the 23d, but the 24th.

Sir *T. Powis*. Now do they rely on it, that notwithſtanding the Roll has awarded it *Die Lunæ*, yet becauſe the *Diſtringas* is dated *Die Martis*, do they rely on it, that this is to prevail, without any more to be ſaid to it?

L. C. J. *Holt*. This is the true State of the Matter. Now there is no Diſcontinuance on the Roll; for it appears on the Roll, that the *Diſtringas* was awarded the 23d.

Mr. *Broderick*. The Objection is, That the *Diſtringas* has been ſued out without Warrant. They ask for Authorities. I believe, we might ſhew Twenty.

Mr. *Att. Gen.* My Lord, I deſire they would cite ſome Authorities of the Twenty they ſpeak of. I can ſhew them Caſes, where the *Diſtringas's* have been *Teſte'd* out of Term, or upon the *Sunday*: Theſe are to be ſet right. I would be glad to ſee any Authority, wherein it appears the *Diſtringas* muſt be the ſame Day. I would be glad they would do more than ſay it.

Mr. *Mountague*. My Lord, Before I anſwer this, I would ask, Whether that Roll be the *Niſi Prius* Roll, or the Plea Roll?

L. C. J. *Holt*. It is the *Niſi Prius* Roll.

Mr. *Mountague*. My Lord, The Plea Roll has been made right ſince I took my Exceptions. The *Niſi Prius* Roll ought to be a Tranſcript of the Plea Roll.

Mr. J. *Powel*. The *Niſi Prius* Roll is made out of the other: If the *Niſi Prius* Roll be good, it is well enough.

Mr. *Mountague*. My Lord, To have a Tranſcript of a Roll that has been made up ſince, is not right.

Mr. *Att. Gen.* My Lord, He ſtrikes at the Root of the Court.

Mr. *Broderick*. My Lord, I would take notice, that it is the Courſe of the Court, that the *Diſtringas* ſhall bear Date the Day of the Return of the *Venire*. The Clerks tell me, they never knew it otherwiſe.

Mr. J. *Powel*. The Award is right; but you have not taken out a Writ according to the Award of the Court: Whether that will be warranted?

Mr. *Att. Gen.* They have no Authority, but the Reaſon of the Thing; and then I think we may give this ſhort Anſwer: We do affirm, That it is right as it is: But if it were not right, we ſay it is amendable.

L. C. J. *Holt*. All the Matter will be to prove that it is amendable.

Sir *T. Powis*. If need be, we may put the Matter into the right way: For if the *Diſtringas* be not the ſame Day with the Award, we pray that it may be amended.

L. C. J. *Holt*. By what Law muſt it be amended? You are in the Affirmative: If you acknowledge it wants Amendment; by what Law muſt it be amended?

Sir *T. Powis*. It is amendable by the Common Law.

Mr. J. *Powel*. You ſay it is no Fault; and if it be, it is amendable by the Common Law.

L. C. J. *Holt*. Firſt, let us know whether it needs Amendment? And then next, whether it can be amended?

Sir *T. Powis*. My Lord, Let them ſhew that it needs Amendment: For if they make Exceptions, and ſay no more, and we proceed to anſwer them; then they may come upon us again with new Matter, and ſo there will be no End.

Mr. *Mountague*. When we were in the Affirmative in our Exception, we did give ſome Reaſons why we ſaid it is not right.

Mr. J. *Powel*. The Party was in Court the 23d. Then they awarded the *Diſtringas* in his Preſence; ſo that the *Niſi Prius* was awarded in the Preſence of the Party: The Award of it is *Die Lunæ*. But here's the Fault: They did not make a right *Teſte* that Day; ſo that the Fault is, the *Diſtringas* that is ſued out.

Mr. *Mountague*. On *Monday* there is an Award of the *Niſi Prius*; but on *Tueſday* it is taken forth. Now we ſay, that it is not according to the Writ awarded: For the Writ bears *Teſte* the Day after; and upon that Account we ſay, the Proceedings are null. My Lord, Mr. *Attorney* asks for Precedents for this: But, with Submiſſion, we take it to be plain, that the Motion made for the amending this Thing, ſuppoſes it not to be right.

L. C. J. *Holt*. The firſt Queſtion to be debated, is, Whether this be a right Tryal? Or if not, Whether it be a Diſcontinuance of the whole? The *Diſtringas* bears Date the 24th of *October*; the Roll is the 23d of *October*; and there is no ſuch Writ then taken out, but the Day after; ſo that the *Teſte* is not according to the Roll. When a Writ is not awarded according to the Roll, what the Conſequence will be, is another Matter.

Mr. *Att. Gen.* I beg your Lordſhip's Direction in this Matter. It deſerves a great deal of Care; for there has been a great Noiſe in the Town about it.

it. However, we will go your way. Whether they begin firſt, or we, I am very eaſy.

L. C. J. *Holt.* It is not warranted by Award of the Court. This is a Matter of the greateſt Conſequence to the Government.

Mr. *Broderick.* Mr. *Attorney* ſpeaks of a Noiſe about the Town: I concern not my ſelf about that, nor any further in this Caſe, than as it may be the Caſe of every Subject of *England.*

L. C. J. *Holt.* He is found to be the Author of the *Obſervators.*

Mr. *Att. Gen.* I do not ſpeak it now upon the Buſineſs of this Proſecution; for he is ſo inconſiderable, that it matters not much how it goes. But if this be not amendable, it will blow up all Proceedings. Every Man muſt have Juſtice; and God forbid but he ſhould.

Sir *T. Powis.* My Lord, If it be thought proper, we will go on. Your Lordſhip obſerves, what Warrant there was for a *Diſtringas*, and that it is rightly awarded on the Roll, which is a Warrant to the Clerk for a *Diſtringas*; and by Conſequence if the *Diſtringas* be not made according to that Award, it is the Miſpriſion of the Clerk. Now if we do admit this to be out of all the Statutes of Amendment (tho' it is fit to be conſidered whether ſome Statutes do not warrant it) but ſuppoſe it ſhould be out of all the Statutes of Amendments; yet by the Common Law it may be amended.

There were Amendments at the Common Law before any Statute, both in Civil and Criminal Matters; and theſe Amendments chiefly regarded the Proceſs of the Court, and ſuch Errors as were occaſioned by the Inadvertencies or Neglects of the Officers; but eſpecially in the ſame Term, during which Time the Judges have the Records of the Court in *Scrinio Pectoris.*

So it is *Trin.* 22. *Edw.* III. *Fol.* 7. *b.* and 10. *a.* a Diſcontinuance Amended. 29 *Edw.* III. *f.* 32. *a. b.* a *Habeas Corpus Jurat.* amended. 7 *H.* VI. *f.* 29. *Brook* Tit. *Amendment* 32. and 4 *H.* VI. *f.* 16. *b.* by theſe Books it appears the Judges had by Common Law a Power of Amendment. So is *Fitz. Title Amendment.* 12. 19. 22. eſpecially for the King; but more at large in *Blackmore*'s Caſe in 8. *Co. f.* 156 *b.* and 157. *a.* where many Caſes are cited to this Purpoſe, and this Matter fully ſtated; and there it appears that the very Original Writ in a *Quare Impedit* was amended in the Caſe of the King, it being *Præſentere* inſtead of *Præſentare*; which could not have been done in the Caſe of a Subject; ſo much was the King's Suit favoured in Amendments beyond the Caſe of a Subject.

But if this were not Amendable by the Common Law, it is Amendable by Statute.

The firſt Statutes for Amendments were 14 *Edw.* III. *Cap.* 6. 9 *H.* V. *Cap.* 4. and 4 *H.* VI. *Cap.* 3. which extends to the Amendment of a Letter or a Syllable; but the Judges were wonder'd at in Parliament for their great Nicety, when they aſk'd the Queſtion there, whether they might not amend a whole Word; as appears in 39 *Edw.* 3. *f.* 21. And 40 *Edw.* III. *f.* 34. *b.* they were told that undoubtedly they might.

The Statutes moſt to our Purpoſe are 8 *H.* VI. *c.* 12. whereby it is enacted, that the Judges may Reform and Amend all Defects in any Record, Proceſs, Plea, Warrant, Writ, Pannel or Return (except Appeals, Indictments of Murder, and Out-lawries for the ſame; and Additions left out in Original Writs, Exigents, and other Writs of Proclamation, contrary to the Statute of *H.* V.) ſo that by ſuch Miſpriſion of Clerks, no Judgment ſhall be Reverſed or Annull'd. And again the Statute of 8 *H.* VI. *Cap.* 15. ordains, that the King's Juſtices before whom any Miſpriſion or Default ſhall be found, be it in any Records and Proceſſes depending before them, as well by way of Error, as otherwiſe, or in the Returns of the ſame, by Miſpriſion of the Clerks, or other Officers or Miniſters whatſoever, in minute Matters (ſuch as this is) they ſhall have Power to Amend ſuch Miſpriſion, upon Examination thereof, according to their Diſcretion; except the Proceſſes and Records of Felonies and Treaſons and the Dependancies thereof.

Now by Reaſon of the particular Exceptions in theſe Statutes, and by reaſon that the following Statutes of *Feofail*, in 32 *H.* VIII. 18 *Eliz.* 21 *Jac.* I. *&c.* do not extend to criminal Caſes, an Opinion hath been taken up among ſome Perſons that no Amendment can be made in Criminal Matters by any Statute; which is a ſtrange Miſtake.

For theſe Two Statutes of 8 *Hen.* VI. *Cap.* 12. and *Cap.* 15. being general Laws, and in general Words, they, in Caſes not excepted, extend to Amendments to be made by the Judges in Criminal Proſecutions, as well as in Civil Cauſes, without Diſtinction: And the Special Exceptions, after the General Words, are the higheſt Proofs imaginable. For nothing could be more abſurd and vain, than carefully to except, what the Words precedent, without ſuch Exception, would not have reach'd or extended to; and that would highly reflect on the Wiſdom of Parliament.

This will appear more fully by the following Series of Authorities, whereby the Judges have amended Diſcontinuances of this Nature, in Criminal Proſecutions at the Suit of the Crown.

In 2. *Cro.* f. 502. in *Harris*'s Caſe:

Harris was indicted for a Nuſance; He pleaded Not Guilty, and a Verdict was againſt him; and the Record removed hither by *Certiorari*: And it appear'd, that no Iſſue at all was joined; for the Clerk of Aſſize had omitted to enter the Joining thereof: And ſo a plain Diſcontinuance. But amended by the Court, and interlined, even in the Time of another Clerk of Aſſize.

2. *Cro.* f. 529, 530. Sir *John Curſon*, and Dame *Magdalen* his Wife.

An Information for Recuſancy was brought againſt Sir *John Curſon*, and Dame *Magdalen* his Wife: The Iſſue joined, was, *Ipſa Magdalena dicit, quod ipſa non eſt inde culpabilis; & de hoc ponit ſe ſuper Patriam*: And the Attorney General *ſimiliter*; and a Trial and Verdict was had: And tho' this was no Iſſue, being only the Plea of the *Feme Covert*, yet amended, tho' in another Term; the Docket being right, and it being only the Miſ-Entry and Miſpriſion of the Clerk; *a Fortiori* in this Caſe this is amendable in the ſame Term.

Cro. Car. f. 144. Sir *Humphry Tuſton v.* Sir *John Aſhley:*

In a *Quo Warranto* againſt the Coporation of *Maidſtone*, for Claiming divers Liberties in the Pariſh of *Maidſtone*; and a Judgment by Diſclaimer was enter'd, *Virtute vel Prætextu Liter. Patent.* dated 17. *Jac.* I. And the Words *gerent. dat. Anno* 17. *Jac.* were left out by Negligence of the Clerk, and held, tho' not within any of the Statutes

tutes of Amendments; yet it was amendable by the Courſe of the Common Law, and amended accordingly, after great Oppoſition, even in another Term.

Siderfin (the Part which firſt came out) f. 243, 244. in the Caſe *Le Roy* v. *Percival, Godfrey & Al.*

An Indictment for a Riot, and Not Guilty pleaded, and a *Venire Vicecomitibus*; where there really was but One Sheriff, and he only made the Return; and held amendable by the Common Law: And in this Caſe it was obſerved, that the Exceptions in the Statutes of *Jeofails* of Indictments and Informations, were only of ſuch as were on Penal Statutes: But Indictments and Informations at the Common Law, were amendable within the Statutes of *Jeofail.* And with this Caſe of *Siderfin*, agrees our preſent Caſe; for it is not an Indictment or Information upon any Penal Statute, but an Information at Common Law.

Now if this Opinion, as reported by *Siderfin*, be Law, then this Diſcontinuance is plainly made good by the Statutes of *Jeofail.*

So in the Caſe of *Dolphin* and *Clerk*, 2. *Cro.* f. 64, 65. The Appearance and Iſſue were in *Hillary Term*, 1 *Jac.* the *Venire* awarded did bear *Teſte* 23. *Jan.* 1 *Jac.* ſo the *Venire* awarded before the Iſſue or Appearance; but yet amended, for the Roll is the Warrant of the *Venire*, which was right. So where the *Teſte* was upon a *Sunday*, it was amended; for it was the Default of the Clerk, in the Miſ-awarding of Proceſs. So if *Teſte* out of Term. So if it be *Vicecom.* and ſays not of what County: Or if the King's Reign be miſtaken; 2. *Cro.* f. 78. *Lea* v. *Lacon.* The Roll being right, and a Judicial Proceſs, it may be amended.

So *Yelvert.* f. 64. *Nevill* v. *Bates.* The *Venire fac.* was made returnable *Quind. Hill.* and yet bore *Teſte* 12. *Feb.* which is the laſt Day of the Term: And yet, *per Cur.* it ſhall be amended in the Date of the *Teſte*, for it is but the Default of the Clerk. And other like Inſtances there put.

The like in *Cro. Car.* f. 38. *Ayſleworth* v. *Chadwell.*

So in *Cro. Car.* f. 90, 91. *Moor* v. *Hodges.* The Iſſue was in *Trinity Term*; and the *Venire* and *Diſtringas* were of Days in *Eaſter Term* before; and yet amended: For the Roll of awarding the *Venire Facias* was well enough; and the miſdating the *Venire Fac.* which is a Judicial Proceſs, ſhall alſo be ſet right.

So in later Caſes, *Trin* 2. *Jac.* II. the King *v. Edes.* The Defendant was convicted of a Miſdemeanor, upon an Information exhibited *per Robertum Sawyer*, &c. The Continuance was, *Ideo dies datus eſt præfat. Sam. Aſtrey*; reſolved it might be amended.

And *Hill.* 3. & 4. *Jac.* II. the King *v. Holmes.* Upon an Information for a Riot, and the Defendant convicted; the Miſtake of *Octabis Martini*, inſtead of *Octabis Hill.* amended.

We are here in a much ſtronger Caſe. The Defendant hath been found guilty upon a fair Tryal: And the Preamble of the Statute of 32. *Hen.* VIII. takes notice, That the ſetting aſide of Verdicts, for Diſcontinuances and other Miſpriſions, is a great Slander to the Common Law and Judges. The *Venire* and *Diſtringas* are duly awarded upon the Roll; and the making the *Teſte* of the *Diſtringas* 24. *Oct.* inſtead of 23. *Oct.* is a plain Miſpriſion: It is in a Judicial Proceſs; and it is in the ſame Term. And we humbly inſiſt upon it, That it is amendable, both by the Common and the Statute Law. For according to my Lord *Coke*, in *Blackmore*'s Caſe, *f.* 156, *b.* 157, *a.* it is hard to ſay, what the Court cannot amend in the ſame Term. For, ſays he, at Common Law, the Judges might as well amend their Judgment, as any other Part of the Record, in the ſame Term. For during the Term, the Record is in the Breaſt of the Court, and of the Judges, and not in the Roll. And therefore we pray this Miſpriſion may be amended, if it ſtand in need thereof.

Mr. Serj. *Darnel.* MY Lord, There has been ſo much ſaid already, that I ſhall ſay very little. I ſhall only cite Two or Three Caſes. The Queſtion is only this: Whether a Miſpriſion of the Clerk, is not amendable in the ſame Term? For that we have 10 *Edw.* III. 20. there was an Error amended of 63 for 59. I think all the other Caſes have been mention'd already. The 5*th* of *Edw.* III. has been cited, and it is ſtrong. I have thought it always ſufficient, without any Statute of Amendments: And thoſe that have been amended by Common Law, will be Authorities in this Caſe. Now that the Court have always taken on them, as their Duty, to amend the Faults of the Clerks in any Entry, or Proceſs, or Continuance, the Books are full in it; and I hope it will be amended here.

Mr. *Broderick.* I Pray your Lordſhip's Favour, to ſpare me a few Words on the other Side. I ſee ſo much *Warmth* in this Caſe, that I muſt beg Leave to preface ſomething, before I ſpeak to the Point of Law.

Mr. *Att. Gen.* You might have wav'd that.

Mr. *Broderick.* The Occaſion of my ſaying that, was, that Mr. *Attorney* ſaid, There had been a Noiſe about the Town concerning this Exception. And that a whole *Party* - - - - -

Mr. *Att. Gen.* There has been ſo - - -

Mr. *Broderick.* I would not be believ'd to concern my ſelf any otherwiſe for this Man, more or leſs, than for any other Client. Nay, what I am concern'd in, and have to ſay at preſent, doth concern every Subject in *England*, as well as Mr. *Tutchin.* But when 'twas ſaid, That there was a Diſcontinuance in the Caſe of the *Warden* of the *Fleet*, which, after the long Tranſaction of that Cauſe, was not obſerved by the Council for him; and that they were clearer-ſighted for the *Obſervator*; I could not take that otherwiſe, than as meant to my ſelf, who was Council for the *Warden* of the *Fleet*, and am now for this Defendant. I confeſs, I did not obſerve that Fault in the Caſe of the *Warden* of the *Fleet*, (nor ever had a perfect Copy of that Record, to enable me to do it:) And I muſt own at the ſame Time, that I had not the Fortune to make the Diſcovery in the preſent Caſe. The Exception was taken before I was any ways concerned in the Cauſe: And when 'twas made, I thought it a good Exception; and made no Difficulty of accepting my Fee to ſpeak to it.

Mr. *Att. Gen.* I had another Meaning in it. I knew not that Mr. *Broderick* was Council for the *Warden* of the *Fleet.*

Mr. *Mountague.* My Lord, I believe Mr. *Broderick* is afraid of my Fate in this Caſe: I have been very much reflected upon for being Council in this Caſe; and it has been ſpread about all the

Counties in *England*, by *Dyer* the News-Writer, That I broach'd ſeditious Principles at the Tryal, and was reprimanded by your Lordſhip for it: And I believe Mr. *Broderick* is afraid of the like Scandal.

L. C. J. *Holt*. You muſt not be afraid of Scandals. *Dyer* is very familiar with me too ſometimes: But you need not fear ſuch a little ſcandalous Paper of ſuch a ſcandalous Author.

Mr. *Mountague*. My Lord, I am not much concern'd at it, ſeeing it comes from him.

Mr. *Broderick*. I muſt agree, That this is a Point of great Concern to the Crown; becauſe all Proſecutions for the Crown may be affected by it, as Mr. *Attorney General* ſaid: But on the other ſide, I beg Leave to ſay, That (whatever the Perſon now before the Court may be) it is of great Concern to the Subject too: For the Rule in this Caſe, will be a Rule in the Caſe of every other Subject of *England*; ſo that the Concern is great on both Sides.

I muſt beg Pardon of the Court, if in anſwering off-hand to very Learned and Elaborate Arguments, from the ſhort Notes which I have been able to take of them, I happen to be diſorder'd in Method: I muſt take Leave to offer ſuch ſhort Obſervations upon them, and give ſuch Anſwers to them, as I can at preſent; as my Memory ſuggeſts the Objections to me, tho' not in the ſame Order in which they were deliver'd. But I will uſe my Endeavour, not to omit the taking ſome ſhort Notice of the General Heads, under which I apprehend all the Objections will fall.

I would obſerve, (which I think will be an Anſwer to a great deal that has been ſaid on the other Side,) That our Law-Books make a very great Difference between the King's Proſecutions in his own Name, as a Civil Right, and Proſecutions wholly in his Capacity of King, as he is Head of the Commonwealth; and in the Exerciſe of his Royal Office, to affect the Subject with, or puniſh him for Crimes thereby charged upon him. I agree, the Caſes cited by Sir *Thomas Powys* and Mr. *Attorney General*, of Amendment of the King's Writ of *Qu. Impedit*, and ſome others; and that the Common Law gave greater Indulgences to the Crown, in the Proſecution of its Civil Rights, than to any Subject. The King was known to be employ'd in the Concerns of the whole Kingdom; to have the Care of all his People upon him: Whereas the Subject had only his perſonal and private Affairs to look after. And 'tis no wonder that the Law ſhould adjudge, that great Allowances were to be made to the Crown, as to its own particular Rights; That it ſhould not be ty'd up to ſo ſtrict Rules as the Subject, who was ſuppoſed to attend his own Affairs only. This is the Reaſon generally given, why the Crown had ſuch a Prerogative, that greater and more favourable Allowances ſhould be made in its Suits, than in thoſe of the Subject.

But it has hitherto (as far as I have been able to obſerve) been taken, That the Law was very nice and tender in all Proſecutions, that aim at the charging the Subject with Crimes and Penalties. It ſeems to be a new Light, ſprung up of late, which has diſcover'd, that there is a greater Neceſſity for that Privilege in *Criminal* Proſecutions, than in *Civil*. The Opinion of the ſucceſſive Ages, which have made favourable Acts for amending and curing of particular Defects in Legal Proceedings, ſeems to have been much otherwiſe. In many of theſe, all Criminal Proſecutions, of all kinds, are expreſly excepted: And where they are not, I muſt ſay I have not heard yet quoted; nor can find any Caſe of Authority, where thoſe Statutes were interpreted to extend to Proſecutions for Crimes. I perceive, the Council for Her Majeſty in this Cauſe, have in their Arguments relied very much upon Amendments made by the Common Law. I can't pretend to be now prepar'd to run thro' each particular Caſe: In general, it cannot be deny'd, that ſeveral Amendments were made, by a Power that the Court had at Common Law; but we think there never was any which came up to this Caſe. And indeed, if all the Amendments in the Multitude of Caſes that have been cited in theſe elaborate Arguments, are allow'd as good at Common Law; it would make one wonder, where the Neceſſity was of making an expreſs Statute, for the Amendment of a Letter or Syllable; (and of the nice Doubts upon that) or of the other ſubſequent Statutes of *Jeofails* and Amendments. The Court, to me, by theſe Authorities, would ſeem to be arm'd with a ſufficient Power to have done the Buſineſs, without the Help of any Statute.

Tho' Her Majeſty's Council rely principally upon the Statute of 8 *Hen.* VI. yet in regard they do not wave, or give up the Aid of the Statute 32 *Hen.* VIII. (For Mr. *Attorney* takes notice, that there is a *Quære* in my Lord *Dyer*, (*Dyer*, 353.) Whether the King, in an *Information* of *Intruſion*, ſhould not have the Advantage of that Act? And he has cited Lord *Dyer*, 346. of an *Information Qui tam*, &c. to be within the Act: And that Lord *Hales*, in Lord *Fitzwaters*'s Caſe, held, That 'twas reaſonable, that Criminal Proſecutions ſhould be aided) I think it will be very proper to conſider how the Law has been taken upon that Statute; and to ſee whether the Reaſon of thoſe Caſes, won't go as far backwards as to the Statute 8 *Hen.* VI. The Words of the Statute, 32 *Hen.* VIII. C. 30. are not expreſly reſtrain'd to Actions or Suits *between Party and Party*; tho' the Word *Party* be mention'd in the Statute, both as to the Plaintiffs or Demandants, as to the Tenants or Defendants. And the Enacting Clauſe is, *That from thenceforth, after Iſſue try'd for the Party Plaintiff or Demandant, or for the Party Tenant or Defendant, in any manner of Action or Suit at the Common Law; the Judges ſhould proceed to give Judgment in the ſame, notwithſtanding any of the Miſtakes therein mention'd, in like Form as if no ſuch Default or Negligence had been.* It is true, as Mr. *Attorney* has cited it, that 'tis left a *Quære*, as it ſtands printed in my Lord *Dyer*, which was in the 18th Year of Queen *Elizabeth*: But even in that very Caſe, 'twas held, 22 *Eliz.* that the Statute did not extend to it: As appears in 1. *Rolls Reports*, fol. 447. as well as by *Blackmore*'s Caſe, 8. *Cro.* 163. where 'tis expreſly ſaid, That the Statute 32 *H.* VIII. extends not to *Pleas of the Crown*. And this Point is expreſly agreed by the whole Court, in *Sherington Talbot*'s Caſe, 1. *Cro.* 312.

A *Venire Facias* bearing *Teſte* out of the Term, and an Iſſue tried upon it, is *a Miſconveyance of Proceſs*, ſalved after Verdict, by thoſe Words in the Statute of 32 *H.* VIII.

So a *Venire* awarded, which bears *Teſte* on a *Sunday*, is adjudg'd to be aided within thoſe Words.

Yet in *Theobald* and *Newton*'s Caſe, *Style* 307. there was a Suit upon the *Statute* of *Inmates*; and the *Diſtringas* bore *Teſte* on a *Sunday*, and out of Term. Exception was taken to this after Verdict, and

and held not to be aided by the *Statutes* of *Jeofails*. I thought it neceſſary, by mentioning the Two former Caſes, to ſtate which of the Statutes it was, which would have remedied the Fault, if the Statute had extended to the *Suit it ſelf*; becauſe the Reporter (which is no wonder in him) ſo far miſtook the Senſe of the Court, as to omit the Material Statute, and to mention the 18th of *Eliz.* and 21. *Jac.* in neither of which Laws there are any Words which reach the Caſe; tho' in this Act of 32 *H.* VIII. there are.

And in Lord *Fitzwater*'s Caſe, cited by Mr. *Attorney*, tho' my Lord *Hales* does ſay, *The Caſe of the King will often ſtand in need of the Amendment of a wrong* Venire; and therefore he was of Opinion, to bring him within the Statute of 16 and 17 *Car.* II. which has very extenſive Words; yet he allows the Diſtinction between his *Criminal* Proſecution, and *Civil* Action; as appears in 3. *Keb.* 485, 519.

In *Percy*'s Caſe, 21 *Car.* II. 1. *Vent.* 17, 35. an Information of *Forgery* at Common Law, laid the Forging to be of a Releaſe at *Sherborn*; and the giving it in Evidence, to be at *Dorcheſter*. The Defendant was convicted by a Jury *de Vicineto* of *Dorcheſter* only: 'Twas adjudg'd to be a Miſtryal; and a New *Venire* was awarded. For the King, 'twas labour'd to ſupport the Tryal by the Word *Suit*: For, ſay they, the Information is, *Secta Domini Regis*; ſo that the Word is extenſive enough to reach this Proſecution: *And 'tis plainly out of the Exception*, which excepts no Information, but thoſe upon Penal Statutes. But the Court held, *Any Information, tho' at Common Law, was not remedied by the Words or Intent of the Act.*

In the principal Caſe of *Sherington Talbot*, 1. *Cro.* 311. *Jones*, 320. 2. *Ro. Ab.* 619. Information, in nature of a *Quo Warranto*, for Claiming Liberty of Free Warren in Three Vills, in the *Foreſt* of *D.* Defendant diſclaims in the *Foreſt*, and in all but one Vill; and ſays, That that Vill is Parcel of the *Manor* of *S.* and preſcribes for Free Warren in his Manor; Iſſue on that Preſcription, and the *Viſne* is from the Vill, not from the *Manor*; held to be miſ-tried, and not aided by any of the Statutes of *Jeofails*: *Tho' not within the Exception; becauſe the Statutes do not extend to the King's Caſe, He not being named.* The then Judges thought this a Reaſon; which will equally extend to the King's Caſe, upon the former Statutes of Amendments. And Mr. *Noy*, a very Learned Predeceſſor of Mr. *Attorney General*'s, did not venture to carry the Point further for his Maſter, than to a *Peradventure* he might have the Advantage of thoſe Acts, in caſe of a *Quare Impedit*, or other *Civil* Right, where the Suit is in the King's proper Name, and not by his Stile of King only.

Nothing is more plain, than the Difference which the Law makes between Caſes where the King proſecutes his Right in his own Name, as for a *Civil* Right, and where the Proſecution is in his Capacity of King, and in the Exerciſe of the Royal Authority. If the King (*Henricus Rex*) brings a *Quare Impedit*, and dies before Judgment, the very Writ abates; becauſe *Henricus Rex*, who was nam'd by his proper Name, ceaſes to be. But if the Proſecution be *pro Domino Rege*, tho' the King *in individuo* be dead, yet *Dominus Rex in genere* not being dead, the Information or Indictment ſhall ſtand, to be proſecuted by the Succeſſor. Yet all Proceſs upon them, wherein his own Name is uſed, and not his Name of Kingly Office only, ſhall fall; becauſe the particular Perſon is dead.

According to this Diſtinction, I do agree, That where the King ſues in his own Name for a *Civil* Right, his Suit has more Favour allow'd to it than that of a Common Perſon. And ſo far goes the Caſe in *Blackmore*'s Caſe, 8. *Co.* 156. before-mention'd, cited by Sir *Thomas Powys*; That a Writ of *Quare Impedit*, which was *preſentere* for *preſentare*, was amended; *being the King's Caſe.* Tho' had it been the Caſe of a common Perſon, it could not have been amended: For no Original Writ was at Common Law amendable in the Caſe of a common Perſon. But that an Information or Indictment ever found Favour beyond, or equal with a *Civil* Action, I never heard before; nor find any Authority quoted to warrant it now. I would take leave to mention the Caſe, 13 *Car.* II. in *Scan. Hardreſs*, 217. (9.) *Pitcher* and *Jones*: 'Twas an *Information* upon the Act of *Navigation* for Importing Spices, being the Growth of *Aſia*, *Africa*, or *America*, from *Holland* beyond the Seas, not being the Place where ſuch Goods were firſt and moſt uſually ſhipp'd for Tranſportation, *contra Formam Statuti.* The Defendant pleaded, he did not import them *contra Formam Statuti*, and Iſſue upon it; and Verdict againſt the Defendant. He moved in Arreſt of Judgment, That 'twas not laid, that theſe Commodities were not of the Growth of *Holland.* To this 'twas ſaid, That the Verdict would help that, it neceſſarily implying it: For that they were laid to be of the Growth of *Aſia*, *Africa*, or *America*, and imported from *Holland*; which ſhews thoſe were diſtinct Places: And the Defendant could not elſe have been found guilty, *contra Formam Statuti.* Yet after long Debate, the Exception was held to be a good one, and the Judgment was arreſted.

I muſt obſerve, That the Council for the Informer in this Caſe, had not the Courage ſo much as to hope for Aid from, or mention the Statutes of *Jeofails* in this Caſe. They cite there *Johnſon*'s Caſe, 2. *Cro.* 609. and *Cholmley*'s, P. 1. *Cro.* 464. where in *Criminal* Proſecutions reaſonable Intendments after a Verdict, are allowed at Common Law. But tho' nothing was wanting in this Caſe, but an Averment that *Holland* was not within *Aſia*, *Africa*, or *America*, (which muſt neceſſarily be proved at the Tryal, elſe the Defendant could not have been convicted) they either did not know, that the want of an Averment of a Thing neceſſary to be averred, if Iſſue be taken upon another Point, is aided as a *Miſpleading*, by the Statute 32 *Hen.* VIII. (tho' the Caſes of it are numberleſs); or they did not think there was any Colour for offering to extend that *Statute* to a *Penal* Law, with regard to the Intereſt the King has in the Proſecution, tho' a common Perſon was the Informer; and tho' there is no Exception of Informations on *Penal* Laws.

As to the Caſes cited on the other Side, of Amendments at the Common Law by the King's Prerogative; I muſt rely upon the Difference I have already taken between *Criminal* and *Civil* Caſes; and that there are not any Inſtances of Amendments in *Criminal* Proſecutions. As to ſeveral other Caſes, which have been cited by the other Side, of Amendments upon Returns to *Certiorari's*, Returns upon *Writs of Error*, &c. Thoſe, with Submiſſion, will not come up at all to the preſent Caſe. When a Record is certified upon a *Certiorari*, &c. the Parchment annexed to the Writ, is ſuppoſed

to

to be the real Original Record; and that remains in the Court here, and is become by the Return a Record of this Court. Where, by the Course of the Court, 'tis enter'd upon a Roll here, if in the Entry it varies from that that is the true Record, it is the Duty of the Court to take Care, that the Misentry be rectify'd; and the Record, which is transcrib'd here, made agreeable to the Original. The rectifying such Misentries, or Miscopyings, are not Amendments of Faults in a Record, (for that faulty mistaken Entry is not really the Record) but making true Entries of the Record. And upon the like Reason was the Mistake rectified in Sir *H. Tuston*'s Case, 1. *Cro.* 144. where there was a Consent of the Parties for Entring a Judgment by Disclaimer, by *Virtue or Pretence of Letters Patents, bearing Date* 7. Jac. which Words were inserted in the Paper-Book, by the Attorney General's own Hand; yet omitted by the Clerk, in the Entring it upon the Roll: There, upon great Examination, and Consideration of the Circumstances, *all Parties consenting*, that Misentry was corrected; being, as the Book says, no more *than when a Special Verdict is misenter'd; which is rectified by the Notes of the Clerk of the Assize.* But it is very much insisted on, That the Statute 8. *H.* VI. C. 12. shall extend to this Case; because there are particular *Criminal* Prosecutions excepted therein, of which this is not one. I do not find that there has been one Authority cited, when it was ever held, that that Law extended to any *Pleas of the Crown.* And I take the uniform Opinion of near Three Centuries, since that Statute, to be against it.

Mr. *Attorney* relies much upon the Case of the King against *Percival* and *Godfrey*, and others, *Sid.* 244. where the *Venire* for the Trying the Defendants, upon an Indictment for a *Riot*, was directed *Vicecomitibus de Canterbury*, and return'd by *R. S. Vicecomes*; the City having in truth but one Sheriff: There, upon Examination of the Sheriff himself upon Oath, in Court, (who swore that City had but one Sheriff) there was an Amendment. But what was that? Not of any Thing that was the Act of the Court: But the Sheriff adds to his Endorsement upon the Writ, (when he had answer'd single,) That there was not any other Sheriff; as it appears in the same Book, and in 1. *Keb.* 900 (71), 901 (75): And this the Court held to be well, upon the Authority of the Book of 39. *H.* VI. *f.* 40. where a Writ was directed *Coronatoribus*, and return'd by one Coroner only, yet held to be well: For, say the Court, we won't take notice there are more Coroners than one. And so Just. *Wyndham* said, in this Case, We shall intend but one Sheriff, unless more appear; 1. *Keb.* 901.

A good Part of Mr. *Attorney*'s Argument seems to tend to the making it not necessary, or at least disputable whether it be necessary, that the *Distringas* should be *Teste'd* on the same Day that the *Award* is. Won't that Argument turn another way than 'tis intended? If it be a doubtful Thing, whether it be right or not; I doubt it will be an Error in Judgment, like the making out an improper Writ in the *Debet* and *Detinet*, where it should be in the *Detinet* only: And then, tho' it is a Default of the Clerk, 'twill not be such a Default as will be within the Aid of the Statute, if that should be held to extend to the Case. If it were a doubtful Thing, it can't be said he had a certain Rule to walk by: But he ventur'd upon his own Judgment; in which if he has chanced to mistake, 'tis not amendable as a Thing of Course. But in truth, if it were to be enquir'd into, I believe 'twould be found not to be an Error in Judgment in the Clerk, but a Mistake of a Matter of Fact, in taking *Sunday* to be the first Day of the Term.

Mr. *Att. Gen.* That will not alter it.

Mr. *Broderick.* There has been another Case cited; the King and *Walcot*; where a Reversal of an *Attainder* was pronounced, and the Judgment of Reversal actually enter'd up; yet being done by Surprize, the Entry of the Reversal was set aside, and razed out of the Record. Surely that cannot be an Authority for any. There the Entry was wholly irregular, contrary to the Rules of the Court: For the Judgment of the Court is not compleat, till the End of the Term.

L. C. J. *Holt.* 'Tis in the Breast of the Court during the whole Term.

Mr. *Broderick.* And if any one, within the Term, without the Direction of the Court, will enter a Thing as the Act of the Court; shall not the Court have a Power to reform that Irregularity, and do themselves right? This is not an Amendment of a Record, but a Reforming of an ill Practice; a preventing of an Attempt to make that an Act and Record of the Court, which really is not so. Neither does my Lord *Macclesfield*'s Case bear any Proportion to this.

There is no Question, but that a Court, which is intrusted with the Custody and Preservation of the Records wherein other Persons are concerned, may take care upon any Mischance; and that they have a Power to put Things into their right State: As in case of Fire, or any inevitable Accidents, the Court, incident to their Trust of the Custody of the Records, and by the Authority they have to do Right and Justice to all Persons, must have a Power to supply such Losses.

As to the Case of the *Warden* of the *Fleet*, there was no Amendment made: But if there had, it would not have come up to this Case. I may, I am sure, safely affirm, that the Court did declare, That was not to be esteem'd a *Criminal* Prosecution; in regard there was not to be a Judgment to punish the Party, but the Proceeding was only to transfer the Estate to the Crown by way of Forfeiture.

The Council who have argued for the Queen, have not cited any one Authority, of an Amendment in a *Criminal* Case, within the Satute of 14. *E.* III. or 8. *H.* VI. C. 12. or proving, that those Statutes extend to Cases of that kind: But they call upon us, since the Words seem to be large enough to reach both, (especially those of 8. *H.* VI. where there are some particular Criminal Prosecutions mention'd and excepted) to produce some Authority, to establish the Distinction between *Criminal* and *Civil* Cases. We think *the daily Practice in Civil* Cases, and *the want of a single Instance in a Criminal one*, carries a strong Argument, if we could go no further: But I think we do not want an express Authority in this Point too. *Orde* and *Morton*, *Trin.* 11. *Jac.* I. *Ro. Ab.* 201. There a Writ of *Venire Facias* out of the *B. R.* was *Venire Fac. duodecim*, &c. *coram Nobis apud Westmonasterium, ubicunque fuerimus in Anglia:* But the Roll was well, omitting the Words *apud Westmonasterium.* 'Twas adjudg'd the Writ might be amended by the Roll; for 'tis but Matter of Form. This was a Default in the Body of the Writ, and amended by the *Statute* of 8. *H.* VI. as a Default of the Clerk.

Yet *Brigs* and *Thompſon*'s, &c. *Yel.* 60. 111. In an *Information* upon the Stat. 21 *H.* VIII. *againſt Spiritual Perſons taking Farms*, the Award of the *Venire facias* upon the Roll was right, returnable *ubicuncunq*; but the Writ it ſelf was returnable *coram nobis*, omitting *ubicunq*; and ſo it did not anſwer the Award upon the Roll. This certainly had been amendable in a *Civil* Plea, but the Report tells us, that Judgment was ſtaid upon it. And, my Lord, I will beg the Liberty to make this Obſervation upon the Caſe of the *King* againſt *Percivale* and *Godfry*, (which is ſo much relied on.) There are ſome Caſes of ſo odious a Nature, and move ſuch Indignation, that there is a Danger of Things being paſſed over, unobſerved, which would not have been admitted in another Caſe. That was the Caſe of One of the King's Meſſengers, employed in His Majeſty's immediate Service, barbarouſly inſulted and abuſed in his Inn at *Canterbury*, by the Defendants and a great Rabble of People: As the Offence was very flaming, the Reſentment of the Court ran high; and they thought it reaſonable to do in that Caſe, what perhaps in an ordinary one they might not *eaſily* have done: Yet what was then done, is now to be cited for a Preſident in every Criminal Caſe whatſoever. I muſt ſay the ſame in this Caſe; whatever my Client is charged with, the Rule given in his Caſe may affect every Man in *England*, who ſhall hereafter be charged criminally: And therefore I doubt not your Lordſhip will very well conſider of it.

I hope, my Lord, I have given ſome Anſwer to moſt of the Things that have been inſiſted; and that upon the whole Matter, this Miſtake will not be accounted a Thing amendable by Law.

Mr. *Mountague.* MY Lord, in Anſwer to what has been ſaid, I ſhall not preface what I have to ſay with any Apology for being of Council with Mr. *Tutchin*, tho' I have been egregiouſly miſrepreſented in what I did, as Council for him at *Guild-Hall*. I know your Lordſhip is no Reſpecter of Perſons, but will have the ſame Regard to one Defendant as another.

Mr. *Att. Gen.* I am not concern'd at any Thing that has been Written or Printed about that Tryal.

L. C. J. *Holt.* We will take no Notice of that.

Mr. *Mountague.* My Lord, as to what Mr. *Attorney General* and Sir *Thomas Powis* have ſaid, I beg leave in the firſt Place to take Notice wherein it is we agree, and in what we ſhall differ. Firſt, we agree that this Cauſe is a Cauſe of the greateſt Conſequence. Mr. *Attorney* tells your Lordſhip, it concerns all the Proceedings of the Crown; and I hope I may be pardoned if I ſay, it is of no leſs Concern to the Defendant and the Subjects of *England*. I would therefore pay that Reſpect to the Court, not haſtily to ſpeak to a Point of this Moment, but ſhall deſire to have Time to look on thoſe Caſes that have been mentioned.

L. C. J. *Holt.* If you will do this, you may conſider the Statute of *H.* VI. for thoſe Words are general and not relative either to Civil or Criminal Caſes in particular. It remedies the Miſchief between Plantiff and Defendant generally.

Mr. J. *Powel.* Mr. *Broderick* has not taken Notice of that Objection that my Lord *Coke* takes Notice of, Becauſe they are not excepted, therefore they are included.

L. C. J. *Holt.* I would have you conſider why it is not within the Words of the Statute. It is as plain that it is the Fault of the Clerk as can be; he had the Roll before him, therefore it muſt be the Miſtake of the Clerk. The Award of the Writ is the Act of the Court, and that was the 23d; now this Writ did bear Date the 24th, and I believe we did not award the Writ the 24th, therefore it is to be judged they miſtook the Time of the Teſte. For the Record ſays the 23d, and this Writ ſays not till the 24th. Now why ſhould not this be within the Statute of *H.* VI. For it is the Miſpriſion of the Clerk? And then the Queſtion is, whether that Statute does not extend to this Matter.

Mr. J. *Powel.* I do indeed queſtion whether any Statute of *Jeofails* extends to it; but this Statute does not, as appears by 8 *Coke*, becauſe they are excepted. There are Indictments of Felony and Treaſon that are excepted. Now that this is a Miſpriſion of the Clerk is plain, becauſe he had the Award of the Court.

Sir *T. Powis.* I think all agree it was perfectly a Miſtake, and that makes it a diſputable Caſe; I do not ſtand on it as if it were right, but grant it was a perfect Miſtake; and then that Objection is clear, that Criminal Matters are not within the Statutes of *Jeofails*, and it is certain moſt of them are excepted, *viz.* Indictments, in this Statute of *H.* VI. where it is ſaid what are excepted, *&c.* 'Tis true you cannot amend what are excepted, where the Party was in Danger of Life; but it leaves out in Inferior Matters; therefore it ſeems, that whatever was ſaid of Criminal Matters, was intended of the greater Criminal Matters, and ſo was the Opinion in the Caſe of —

L. C. J. *Holt.* That was a Civil Cauſe, but we thought we could not amend it: For it would be contrary to our Duty as Judges, to alter a Record. And therefore we refuſed even in Point of Scandal in that Caſe; alſo on Examination we found that we could not amend it, contrary to Truth.

Sir *T. Powis.* My Lord, we had not in that Caſe any Thing to amend by; but here we have a Roll to direct us.

Mr. *Att. Gen.* If your Lordſhip indulge them from Time to Time to put it off, we ſhall never have done.

Mr. *Mountague.* My Lord, I am not prepared to anſwer what has been ſaid, for I did not expect this Motion would have been made.

Mr. *Att. Gen.* That we may be once at an End, I would fain hear what they have to ſay, and whether they have any more Exceptions.

L. C. J. *Holt.* Have you any more Exceptions to make?

Mr. *Mountague.* My Lord, we have no more Exceptions to the Matter we are now upon, which is ſetting aſide the Tryal. You know Mr. *Attorney*, there are Two Things incumbent on a Defendant's Council. One is to ſet aſide the Tryal if he can, and that is the Thing we are now upon: The other is, to move in Arreſt of Judgment. Now Mr. *Attorney* well knows 'twill be a Waver of our Motion for a new Tryal to ſtir any Thing in Arreſt of Judgment.

Mr. *Att. Gen.* He that makes Exceptions ſhould be prepared to give all his Exceptions together.

Mr. J. *Powel.* This is not a Motion to ſet aſide the Tryal? Mr.

Mr. *Mountague.* Yes, my Lord, it is to ſet aſide the Tryal: Not to arreſt Judgment being given upon the Verdict.

Sir T. *Powis.* My Lord, if they have any more Exceptions to offer, I deſire they may let us have them now.

Mr. J. *Powel.* If there be an Error in the Writ there muſt be a *Diſtringas de novo*, there muſt be a new *Diſtringas* only iſſued, you cannot make it a Diſcontinuance of the whole Proceedings; but there muſt be a new Award of a *Diſtringas*, the Error wherein is the Cauſe of Exception; if we ſhould give our Opinion that it is not amendable, we ſhould try him next Week.

Mr. *Att. Gen.* My Lord, they ſhould lay down all their Exceptions together.

Mr. *Mountague.* My Lord, I know you do not expect in this Caſe any Thing ſhould be done otherwiſe than what is uſual in all other Caſes. Now I appeal to Mr. *Attorney* if it be not the conſtant Courſe here, to move firſt for a new Tryal; and if you object any Thing in Arreſt of Judgment, it is generally ſaid, you have waved your Motion for a new Tryal.

L. C. J. *Holt.* No, that is not ſo.

Mr. *Mountague.* My Lord, we are now in your Judgment whether this Man ſhall be tried again or not? And if we ſhall happen to prevail for a new Tryal, then it will be a Diſadvantage to our Client to have told our Exceptions to the Information, for then Mr. *Attorney* will pray to amend.

L. C. J. *Holt.* You are ſo far in the right, if indeed here were a Verdict that is unqueſtionable, that is your proper Time to move in Arreſt of Judgment; but if this Verdict be not right, it is too ſoon to make Exceptions to the Information. Then we ſhall tell you what we have to do.

Mr. *Att. Gen.* I am content they ſhould keep their Learning to themſelves; but, my Lord, if they will not do that, I hope you will not give them further Time.

L. C. J. *Holt.* We ſhall give 'em but till to Morrow.

Mr. J. *Powel.* Mr. *Mountague*, it is a ſtrange Thing that you ſhall make an Exception, and not be ready to maintain it; at this Rate any Proſecution whatſoever may be hung up and delayed. If this be the way, we muſt give you the leſs Time.

Mr. *Mountague.* My Lord, I ſhall entirely ſubmit to what the Court ſhall think fit to order; but 'tis now pretty late in the Day, and your Lordſhip knows 'tis a Sitting this Afternoon in *Middleſex*, and to Morrow is another Sitting in *London* where I am already retained to be, and I know not how late your Lordſhip may keep us in both Places: Your Lordſhip ſeldom diſcharges us till late at Night, and it will be impoſſible for me to look into the Authorities which have been quoted, much leſs to conſider of any Thing that will be fit to offer in anſwer to both theſe learned Arguments in a Matter which I muſt profeſs is altogether new to me.

Mr. J. *Powel.* There are Amendments made every Day.

Mr. *Mountague.* My Lord, I hope I ſhall ſhew you it has not been done yet, in any ſuch Caſe as this, neither can it be done, with Submiſſion.

L. C. J. *Holt.* You ſhould have prepared for it. I will tell you of a Caſe at *Hicks's-Hall*, where I my ſelf took the like Exception, but it was over-ruled by Sir *William Smith* the then Chairman of the Seſſions. In an Indictment againſt ---- ----- for a wrongful Entry, *&c.* there was a Miſtake in the Time of the Entry alledged, *&c.* And they amended the Fault by the Statute of *E.* VI.

Mr. *Att. Gen.* My Lord, I hope you will give them but till To-morrow.

Mr. *Mountague.* I hope you will not preſs that, Mr. *Attorney*, who have been ſo lately a *Niſi prius* Practicer.

Mr. J. *Powel.* You are not preſs'd in it; none can imagine you came here in this Caſe, and that you were not provided to defend it. I hope you are as ready as Mr. *Broderick*, he is but your Aſſiſtant, and yet he was ready.

Mr. *Mountague.* It will be impoſſible for me to be more ready To-morrow. I will rather go on with it now, than do it To-morrow. This is a new Motion, and I did not in the leaſt expect it.

Mr. *Att. Gen.* This is no new Motion, I believe none would believe but it would be made.

Mr. J. *Powis.* Why can't you be as ready as Mr. *Broderick* is?

Mr. *Mountague.* I do not pretend to ſet my ſelf upon the ſame Level with Mr. *Broderick*: Tho' he be ready to give an Anſwer *extempore* to the Arguments that have been made, I hope your Lordſhip will indulge me with a Day or Two more to conſider of what has been ſaid, ſince the Queſtion now before the Court is of that Concern to all the Subjects of *England*. My Lord, I deſire we may have but till *Thurſday* next, and by that Time I will undertake to be ready.

Mr. J. *Powel.* When you make an Exception, you ought to be ready to defend it.

Mr. *Mountague.* It was impoſſible for me to foreſee what Courſe the *Attorney General* would take to obviate the Objections I have made. I muſt own I did not expect this Motion for an Amendment; I thought of that the leaſt of any Thing, becauſe I never knew the like Attempt in a Criminal Proſecution. And ſince Mr. *Attorney General* has been pleaſed to countenance the Exception I have taken, with a Weeks Conſideration of it; I ought in Civility to pay as much Reſpect to the Arguments he has made in Anſwer to it. And therefore I muſt beg a little Time of your Lordſhip, as well to ſhew my Reſpect to Mr. *Attorney General* as to diſcharge my Duty to my Client.

Mr. *Att. Gen.* I deſire none of your Reſpect.

Mr. *Mountague.* I hope, Mr. *Attorney*, you are not angry becauſe I would pay Reſpect to you.

Cur'. Well, Take Time till *Thurſday*.

November 23. 1704.

L. C. J. *Holt.* Mr. *Attorney*, have your any Thing to move?

Mr. *Att. Gen.* My Lord, I attend here only upon the Account of Mr. *Tutchin*.

L. C. J. *Holt.* Who is for Mr. *Tutchin*.

Mr. *Mountague.* My Lord, I am of Council for Mr. *Tutchin*, and I am to Day to ſhew your Lordſhip Cauſe why the Motion made the other Day by the Council for the Queen to amend the *Teſte* of the Writ of *Diſtringas* cannot be

allow'd. And ſince the Court hath been pleaſed to indulge me with a little Time to think of the learned Arguments that have been made both by Sir. *T. Powis*, and Mr. *Attorney General*; and to look into the Authorities which have been cited, I hope I ſhall take up leſs of your Lordſhip's Time than if I had been put to anſwer *extempore* to the ſeveral Matters that have been inſiſted upon. For I muſt beg leave to ſay, that upon Conſideration of what was then offer'd, I do find that a great many Things that were then ſaid, do not carry that Weight along with them as I did then apprehend. And tho' I do not Queſtion but every Thing that can be thought of has been ſaid for the obtaining ſuch an Amendment, yet I have the Satisfaction at laſt to find that there is but one Caſe, and that is what your Lordſhip was pleaſed to mention, of the Judgment of Sir *William Smith*, that looks like a Preſident for this Amendment. My Lord, in ſpeaking to this Matter I ſhall not trouble the Court with many new Citations out of *Fitz-herbert* and *Brook's* Abridgment, Title *Amendment*; for I perceive the Gentlemen on the other Side have look'd over the Bed-Roll of Caſes which are to be met with there, and find, that they have taken notice of every Thing that will make to their Purpoſe; my Buſineſs therefore ſhall be, cloſely to apply my ſelf to the Conſideration of what they on the other Side did inſiſt on; and I hope I ſhall be able to ſhew to your Lordſhip that nothing they have ſaid will warrant this Amendment.

But before I enter upon the Argumentative Part, I muſt beg leave ſhortly to ſtate the Caſe it ſelf, and ſhew how it now ſtands before the Court; and if I miſtake in giving an Account of the leaſt Matter of Fact, I deſire Mr. *Attorney General* would interrupt me ſo far as to ſet me right; for if we do not agree in the State of the Caſe, our arguing will be to very little Purpoſe.

Mr. *Att. Gen.* It is the Record that is in Diſpute, it is not Matter of Fact.

Mr. *Mountague.* Mr. *Attorney*, there is ſomething of Fact beſides the Record, which is now before the Court. This Information was exhibited in *Eaſter* Term laſt, and the Defendant pleaded to it in *Trinity* Term; and Iſſue being then joyned, a *Venire Facias* was awarded, and made returnable the firſt Day of this *Michaelmas* Term. On that Day (the Roll ſays) all the Parties did appear; but none of the Jury came, and thereupon the Court did order, that a *Diſtringas* ſhould iſſue, and be returned hither *Die Jovis proxime poſt Craſt. Animarum*: On the Return of the Writ of *Diſtringas*, which is now before the Court, the Defendant appear'd in Court, and by his Council took Exception to the *Teſte* of this Writ, becauſe it was not iſſued as the Roll hath awarded, on the Day he was preſent in Court, which was the 23d Day of *October*; but on the next Day which was the 24th Day of *October*, when he is ſuppoſed to be out of Court; ſo that the Award has plainly not been complied with, and therefore the Writ which is now before the Court was taken without any Authority from the Court, and the Tryal cannot be ſupported, becauſe the Day and Place mentioned in the *Diſtringas*, was not appointed *per formam Statuti*, in the Preſence of the Parties. For theſe and other Reaſons, it was prayed in his behalf that all the Proceedings upon this *Diſtringas* ſhould be vacated.

Mr. *Att Gen.* The Day is right when the Perſons are to appear, and the Award of the *Niſi prius* is as it ſhould be.

Mr. *Mountague.* The Return is *Die Jovis prox. poſt Craſtin. Animarum*, as it is in the Roll, but the *Teſte* of the Writ is the Day after it was awarded.

L. C. J. *Holt.* The Award is right.

Mr. *Mountague.* My Lord, we own the Award is right on the Roll.

L. C. J. *Holt.* But the Queſtion is, whether the *Teſte* of the Writ be as it ſhould be.

Mr. *Mountague.* My Lord the Writ that is now before you being *Teſte'd* on the 24th of *October* cannot be ſaid to be taken out upon any other Day than the 24th of *October*, and in that it is not purſuant to the Roll. Upon the taking of this Exception Mr. *Attorney* was ſurprized, and could not then ſay much to it; but deſired Time to enquire how it came to be ſo.

Mr. *Att. Gen.* I could have ſaid as much to it then, as after Four Days; it became you to have been as ready.

Mr. *Mountague.* My Lord, Mr. *Attorney* is a little too haſty for me in this Matter. I intend to do him right, if he'll have Patience to hear me out.

L. C. J. *Holt.* Come to the Point.

Mr. *Att. Gen.* This is a popular Argument, and ſpoken *ad captandum Populum.*

Mr. *Mountague.* Mr. *Attorney* did ask ſome Time to have this Matter enquired into, and that Requeſt was agreed to: And upon Examination it appears that this Writ was actually taken out after the Firſt Day of the Term; and the Clerk being dobutful with himſelf how to make the *Teſte*, ask'd the Maſter how to *Teſte* it, and he directed it to be *Teſte'd* the 24th of *October*; and upon this ariſes this Motion. The Gentlemen that are of the Queen's Council pray that it may be amended, and the Queſtion is, whether it can be ſet right; and with Submiſſion, I think it cannot, and that no ſuch Obliteration ought to be made, though the Defendant were found Guilty of Six Times as many Crimes as he ſtands now charged with. I muſt agree with Mr. *Attorney*, in what he ſays with relation to the Conſequence of the Determination of this Point, that it will be a Preſident that will affect all the Proceedings of the Crown in all ſuch Caſes. And this it is that makes it to be a Matter of wonderful Conſequence to the People, as well as to the Crown; for tho' under the preſent Adminiſtration of Affairs innocent Men may think themſelves very ſafe, yet no body can be ſure in after Ages that they ſhallnot fall under violent Proſecutions; and then Slips and Miſtakes may be of Service. My Lord, hitherto I may ſay, all Advantages of this kind have been allowed to Defendants in Criminal Caſes; and upon this Occaſion it may be obſerved, that even Actons *Qui tam* upon Penal Statutes, have always been excepted out of the Statutes of *Jeofails*; and from hence, I think, ariſes an Argument *a Fortiori*, that the *Jeofails* of Clerks in Proſecutions more penal, are not to be amended. Sir *Thomas Powis* in his Argument did, as I remember, inſiſt upon theſe Two Propoſitions, and as I take it he was ſeconded in them by Mr. *Attorney*; Firſt, That the *Teſte* of this Writ is amendable by the Common Law, and if not that, Secondly,

It

It is to be amended by the Statutes of Amendments either by that of 14 *E.* III. or that of 8 *H.* VI. And Two Reaſons were given for this Opinion; Firſt, Becauſe it appears to be a plain Miſtake in the Clerk; and Secondly, becauſe they come to move for the Amendment in the ſame Term wherein the Writ was ſued forth and return'd.

Now, my Lord, in Anſwer to both theſe Reaſons and Aſſertions, I hope I ſhall make it appear in the firſt Place, that this *Teſte* cannot be alter'd, either by the Common Law, or by the Statute Law: And in the next Place I hope to ſhew your Lordſhip that the making the *Teſte* of this Writ to be upon *October* 24 is not purely a Slip in the Clerk, but does proceed from the Neſcience of him that was adviſed with about it. And altho' this Motion for an Amendment be made the ſame Term the Error has been committed in; yet it is not in the Power of the Court to ſet it right.

As to the firſt of theſe Particulars, I ſhall readily agree with Sir *Thomas Powis* and Mr. *Attorney General*, That by the Common Law many Things were to be amended without the Help of any Act of Parliament; but the Thing that I deny, and which, with Submiſſion, has not yet been proved by any Authority that has been quoted, is, That no Error in the *Teſte* of any Proceſs that does iſſue out of the Court and is returned back again by the Sheriff, can be alter'd by the Rules of the Common Law, and I hope by and by to make it appear, not by any Act of Parliament neither. My Lord *Coke* in *Blackmore*'s Caſe *Lib.* 8. *Fol.* 156. *b.* and 157 *a.* does ſay, as has been obſerved, that the Judges by the Common Law may amend the Entry of their own Judgment, or any other Part of the Record, the ſame Term; but he does not there ſay that they may amend any Writ made out and returned by any Officer or Miniſter of the Court. And the Reaſon given why they may amend their own Judgments and the Continuance entred upon the Roll is, becauſe ſuch Things as they themſelves do, are ſaid to remain in their own Breaſts till the End of the Term: But ſurely the Actions of another Perſon, his diſobedience to the Order of the Court, can never be look'd upon as an Act of the Judges. And I cannot ſee how a Writ ttken out *in Pais* which is never in Court till it be brought thither by the Hands of the Sheriff, can be ſaid to remain in the Breaſts of the Judges. The Inſtances of Amendments by the Common Law which are given by my Lord *Coke*, are in the Entries of Eſſoigns and Continuances and ſuch like Miſpriſions *del Court Meſme*: As for Inſtance in 5 *E.* III. *Fol.* 25. *W.* brought a *Præcipe* againſt *B.* who vouches *C.* to warranty and he enters into the Warranty and pleads to Iſſue and a *Venire facias* is awarded and the Jury is afterward put in reſpite and the Entry of that upon the Roll was in this Manner *jurata inter B.* and *C.* that is between the Tenant, and the Vouchee *ponitur in Reſpectum*, and ſo it appears on the Roll, whereas it ſhould have been *inter W.* the Demandant, and *C. quem B. vocavit ad Warrantum.* Now this was look'd on as the Clerk's Miſtake in the Entry of the Order of the Court, and ſo it was amended, *Coke*'s 8th *Report*, *f.* 157. *b.*

Now my Lord, with Submiſſion, this Caſe and all the reſt of the Caſes that have been mentioned for Amendments at the Common Law will only juſtify an Amendment of the Roll. And indeed had there been an Error in the Entry of the Award of the *Diſtringas*, I ſhould rather think that amendable than this; for 'tis certainly more reaſonable that the Court ſhould intermeddle with their own Acts than with the Acts of another. Till this Writ was return'd, annex'd to the *Niſi prius* Roll the Court had nothing to do with it. And now this Writ is before the Court your Lordſhip is only to judge, whether it be purſuant to your Award or not; if it be not made right it muſt be imputed to the Fault of the Perſon that made it out, and the Court can never be ſaid to be in Fault; if the Clerk employed makes out a Writ contrary to direction; and if the Party concerned ſuffer by ſuch Miſtake he may thank himſelf for employing ſuch an Agent. But Sir *Thomas Powis* ſays, that this Amendment is pray'd on behalf of the Queen, whoſe Prerogative it is to have many Advantages, in Pleading which the Subject ſhall not have. My Lord, with Submiſſion to better Judgments, I conceive that for this very Reaſon the Queen's Council have the leſs Reaſon to pray an Amendment. For ſince they have other Prerogatives to have recourſe to they ought not to ask this beſides. Your Lordſhips will often hearken to us when we move for new Tryals in Actions of Debt upon a Bond where the Verdict and Judgment are concluſive: When you will not give ear to ſuch a Motion in Ejectment, where the loſing Side may have freſh Actions if they will. But, my Lord, not to rely altogether on this Anſwer I ſhall add this one Word further, that according to my ſmall Obſervation theſe Advantages in Pleading do not belong to the Throne in the Pleas of the Crown, but in ſuch Actions as *Quare impedits*, and the like, As to the particular Inſtances that have been mentioned, I conceive they do not come up to the Caſe in the Queſtion. The firſt Caſe which I have taken down as cited by Sir *Thomas Powis*, is *Brook's Abridgment*, *Title Amendments*, *f.* 32. and that is, That if Judgment be entred otherwiſe than the Truth is, it ſhall be amended in the ſame Term, becauſe the Record is, *in les Cores des Juſtices meſme le term & nemy in le Roll.* This Caſe is one of the Authorities taken Notice of in the 8th Report to warrant the Amendments of the Acts of the Court, but does not in the leaſt relate to the Amendment of Writs and Proceſs which are ſued out and executed *in Pais.*

The next Caſe was 4 *H.* VI. *f.* 16. which is only whether he that caſts an Eſſoign for a Tenant in a *Formedon* ſhall be permitted to take Exception to the Writ which appears to be vicious. The Demandant there was the Ward of the Crown and he that caſt the Eſſoign for the Tenant, took Exception to the Writ. The Exception was this, That in the Style of the King he is ſaid to be *Dux Hiberniæ* inſtead of *Dominus*, and he would have had the Writ for that Reaſon to be quaſh'd, And there *Martin* demands whether the Writ ſhall not be amended *ſicome le Roy meſme ſoit party*, and the Caſe concludes with *quære Legem.*

As to the Caſe of *Fitzberbert*, *Title Amendment f.* 19. that is what my Lord *Coke* takes notice of in *Blackmore*'s Caſe when he ſays, that in a *quare impedit* brought for the King, the Word *preſentere* was put inſtead of *preſentare*, and it was held that it ſhould be amended, but how does the Book ſay it was amended? Why

the Writ it ſelf was brought into Chancery *& la ſuit Amend.* Now I take that to be *tantamount* to the iſſuing of a new Writ. Moſt of the other Caſes mentioned out of the old Year Books, are relating to Amendments in Civil Caſes, and therefore I ſhall ſpend no more Time in taking notice of them particularly.

My Lord, the next Thing to be conſider'd is, Whether any Statutes do direct ſuch an Amendment as this; and I hold they do not. Indeed the firſt, of theſe which is 14 *E.* 3. *Chap.* 6. is pretty home; the Words are, that by the Miſpriſion of a Clerk in *any Place whereſoever* it be, no Proceſs ſhall be annull'd, or diſcontinued, by Miſtake in writing one Letter, or one Syllable, too much, or too little; but as ſoon as it ſhall be perceived by Challenge of the Party, or in any other Manner, it ſhall inſtantly be amended in due Form. Now here are as large Words to fit the Purpoſe, as Mr. *Attorney* can deſire, and if he were now to frame an Act of Parliament, I don't know how Mr. *Attorney* could make it fuller; and I muſt confeſs, if I were to argue this Point within a Year after the making of ſuch an Act of Parliament, I ſhould reckon my ſelf to have a difficult Province to maintain, that this Miſpriſion does not come within the Purview of ſuch an Act: All therefore that I ſhall ſay to it is, that it is now a great many Years ſince this and all Statutes of Amendments have been made, and no one adjudged Caſe as I know of, does ſay, that Criminal Proceedings are within the Purview of this Statute. Mr. *Attorney General* as I remember, did, in his Argument admit that this Statute of 14 *E.* III. *Cap.* 6. did not extend to Criminal Caſes.

Mr. *Att. Gen.* I deny that; I did enforce it.

L. C. J. *Holt.* I do not remember he did admit that.

Mr. *Mountague.* Then I acquit him of it, and to ſhew him that I meant him no wrong by ſuppoſing he ſaid ſo, I will mention ſome Authorities that are expreſs in this Point.

Mr. *Att. Gen.* I did enforce that Statute by ſubſequent Statutes, particularly by the Statute of 8 *Hen.* VI. *Cap.* 12. for there the Word Proceſs is included.

Mr. *Mountague.* Perhaps Mr. *Attorney General* did ſo; but if he had admitted it, he would not have been in the wrong, if my Lord *Coke* be in the right in what he ſays. For in the ſame Caſe of *Blackmore*, *fol.* 157. ſpeaking of the Extent of the Word *Proceſs*, he ſays, "This Statute muſt be underſtood to mean Proceſs in all Actions, Real, "Perſonal, and Mix'd; and not Proceſs in Pleas "of the Crown. And my Lord *Coke* does not here aſſign it for a Reaſon, becauſe they are excepted; for in this Statute of 14 *Edw.* III. *C.* 6. there is no Exception: And therefore ſpeaking of this Statute, he could not ſay, Pleas of the Crown are there excepted; yet he is poſitive this Statute does not extend to any other Proceſs, than what iſſues in Actions Real, Perſonal and Mix'd. Now what can be the Reaſon, that Proceſs in all Criminal Caſes ſhould be excepted out of this Statute, by the Interpretation of the Judges in all Ages; when the Words are ſo full, that no Proceſs whatſoever ſhall be annull'd by any Miſpriſion, whereſoever it be? Truly, I can't conceive otherwiſe, but that the Judges in all Ages have thought it reaſonable, all Advantages ſhould be allow'd to People under ſuch Proſecutions.

Mr. *Attorney General* did ſeem to give another Reaſon, That the Crown not being named, was a great Argument that it did not want the Aid of ſuch an Act of Parliament; but that the King had a Right by the Common Law to make Amendments. And for this he cited *Hardreſs*, *fol.* 504. That before Judgment, there can be no Diſcontinuance in the Caſe of the King; and 2 *Cro. fol.* 211. *Beecher*'s Caſe. Now if this be ſo as he would have it, that all Proceſs in the King's Caſe is amendable by the Common Law, and all other Proceſs by this Statute; how comes there to be any Occaſion for my Lord *Coke* to caution us about the Exrent of this Act of Parliament, by ſaying, it extends to Proceſs in Pleas Real, Perſonal, and Mix'd; but not in Pleas of the Crown? What does it ſignify, whether this Proceſs be amendable at Common Law, or by the Statute, if it be amendable? But on the other ſide, one may ſtrongly infer, that if no Proceſs were amendable before the Statute 14 *Edw.* III. and that Statute ſays, all Proceſs hereafter ſhall be amended; it was then fit for my Lord *Coke* to tell us, That tho' theſe Words in the Statute ſeem very extenſive, yet it has been the Opinion of all Ages ſince, that no Proceſs, but what iſſues in Actions Real, Perſonal and Mix'd, are meant by it.

I do take it therefore, with great Submiſſion to Mr. *Attorney*, that the right Inference to be made from this *Notamen* of my Lord *Coke*, is to caution the Reader not to conclude over-haſtily, from the Comprehenſiveneſs of the Words of the Statute, that Proceſs may be amended in Criminal Caſes. That way his Admonition may be of Service: But the other way with great Reſpect to his Memory I ſpeak it; it will ſignify little. As to the Caſe of *Beecher*, and the other Quotation out of *Hardreſs*, nothing more can be inferr'd from them than what already has been taken Notice of; that after the Term they may enter Continuances before Judgments. This appears by the Caſe in 3d *Levin* 430. where all the Caſes cited by Mr. *Attorney* to this Purpoſe are taken notice of.

Now we come to the next Act of 8 *H.* VI. The Words of which Statute as I apprehend, Mr. *Attorney* did ſtrongly rely on: For there, ſays he, are Exceptions of Appeals, Indictments of Treaſon, and of Felonies, and of Out-lawries for the ſame; and nothing is ſaid of Informations; and the King's Judges have thereby Power to amend all that they think the Miſpriſion of any Clerk, in any Writ, Warrant of Attorney or Panel in Affirmance of Judgments. Now the Anſwer that I would offer to this Statute, is, That the Words in the enacting Part, are not larger than the Words are in the 14th of *Edw.* III. that is, they are not larger as to this Purpoſe. The Words indeed of this Act are, That all Miſpriſions of Clerks, in all all Writs, ſhall be amended. The Words in the Act of *Edw.* III. are, That all Miſpriſions, in all Proceſſes whatſoever, ſhall be amended. And I take the Words, *all Proceſs whatſoever*, to be as extenſive to the preſent Caſe, as to ſay, All Writs ſhall be amended. Therefore I cannot ſee, from the enacting Part, why one Act, to wit, that of *Henry* VI. ſhould include Criminal Proceedings, when that of *Edw.* III. does not include them. Thus much for the enacting Part.

Now I ſhall take notice of the Exceptions. There are indeed ſome Things mention'd to be excepted out of the Purview of this Act of *Hen.* VI.

which are not excepted out of the former in *Edward* III.'s Time; as Appeals and Indictments: But I think they were put in *ex abundanti Cautela*, to ſhew, that the Law Makers did not intend to include Criminal Proceedings. And tho' ſome Particulars are only mention'd; yet I hope the Rule of *Expreſſio unius*, ſha'n't hold in the Expoſition of Acts of Parliament, to exclude every Thing elſe that is not named.

By *Littleton*, Sect. 21. it appears, there are many *Eſtate Tails*, beſides thoſe that are particularly mention'd by the Statute of *Weſt.* 2. *de Donis Conditionalibus*. And there are many Offices not within the Purview of the Statute of 5 and 6 *Edw.* VI. *Cap.* 16. that are of more Conſideration than the Park-Keeper's Place, which are not mention'd in the Exceptions of that Statute, againſt the Buying and Selling Offices. And therefore I can't think any great Weight is to be laid upon the Statutes mentioning Appeals and Indictments; eſpecially ſince the Opinion of all Ages, ſince the making the Statutes of Amendments, ſeems to concur againſt extending the Power of Amending to Criminal Caſes.

My Lord, It would be an endleſs Thing to enumerate the ſeveral Indictments and Informations, that have been quaſh'd within the Compaſs of my Memory, by reaſon of Clerks Miſtakes. I ſhall inſtance but in one, and that is the Caſe of the Queen and *Frankling*; where no longer ago than the Beginning of this Term, your Lordſhip and the whole Court quaſh'd an Indictment, becauſe the Clerk had writ in the Caption, *Præſentant Exiſtit*, inſtead of *Præſentat Exiſtit*. Here was but a Letter to amend; and this muſt plainly be the Clerk's Miſtake, not his Fault in wanting Skill in ſuch Caſe. But I take it, the Caſe now before the Court is of a different Nature The *Teſteing* of this Writ the 24th of *October*, cannot be accounted a Slip of the Clerk, but did proceed from wrong Advice. And this is the Third Thing I propos'd to ſpeak to: If this Writ with the *Teſte* had been enter'd upon the Roll, and tranſcrib'd only thence to deliver to the Sheriff; perhaps the varying from the Day mention'd in the Roll, might be accounted a Slip of the Clerk: But when this Writ was made out, it was certainly a Day after the Time it ought to have iſſued; and upon Advice ask'd, it was directed ſo to be *Teſte'd*. So this is not a Slip.

If it be inſiſted upon, That this Miſtake happen'd thro' Forgetfulneſs of the Day the Term did begin on; to that I muſt anſwer, That all Knowledge is ſaid to be nothing but *Reminiſcentia*. If a Man forget any Thing that he has read or heard of, he may be ſaid to be as ignorant of that, as if he had never known it. Now it plainly appears, that they who were adviſed with about the *Teſte* of this Writ, did not then know on what Day the Term did begin, and therefore *Teſte'd* the Writ the 24th, inſtead of the 23d. I muſt therefore, in Behalf of my Client, inſiſt upon it, that this Error proceeds from the Neſcience of the Adviſer, and not from the Slip of the Writer. And this Point will ſet us clear of all the Statutes of Amendments, if they did extend to Criminal Caſes.

As to the grand Caſe of *Harris*, reported in *Crooke James*, fol. 502. that has been ſo very much relied on, I hope, upon Conſideration, it will not appear to be ſo great a *Goliah* as it was repreſented to be. There was an Indictment for a Nuſance remov'd hither by *Certiorari*; and the Record that was tranſmitted, was found imperfect, in a Point which was inconſiſtent with the Verdict: For in truth the Plea of Not Guilty was omitted. And what did the Court do hereupon? Why, they ſent for the Clerk of Aſſize, in whoſe Time the Record was filed below; and he was order'd to amend that which was come hither by the *Certiorari*, and ſet it right: I ſuppoſe, by making it agree with the Original Proceedings, which remain'd upon the File below. Now, does Mr. *Attorney* think this is like the Amendment he would make, ſuppoſing all in *Harris*'s Caſe were rightly done? Does Mr. *Attorney* think, that this will juſtify the Amendment now propos'd? Which is, indeed, making this Writ to be another Writ than it is: For a Writ that is *Teſte'd* on the *Monday*, does as much differ from a Writ *Teſte'd* on a *Tueſday*, as one Day differs from another. And I take it, with Submiſſion, that the Amendment now pray'd, will alter this Writ, as much as the Amendment that is ſo much taken notice of by Juſtice *Ingham*, 2. *Rich.* III. fol. 10. did the Amercement in that Caſe. There was an Amercement recorded of Thirteen Shillings Four-pence; and becauſe it was a Poor Man's Caſe, it was afterwards agreed to make it Six Shillings and Eight-pence. There was a Diminution in the Sum. And here Mr. *Attorney* would have a Diminution of a Day.

L. C. J. *Holt*. Was that done judicially, or clandeſtinely?

Mr. *Mountague*. My Lord, How it was done, does not appear: But it is ſaid to have been done out of Pity and Commiſeration to the Poverty of the Defendant. And yet that Amendment was look'd upon to be illegal.

Mr. J. *Powel*. That was not done by the Court.

Mr. *Mountague*. It comes to be mention'd in King *Richard* III.'s Days, upon a Queſtion that was put to the Judges by the King, when they were together in the *Star Chamber*: "What if a "Juſtice of Peace ſhall procure an Indictment, not "found by the Jury, to be filed among other In-"dictments, as if it really had been found by the "Grand Jury; what Puniſhment ought to be in-"flicted upon him hereupon? They take notice of that Obliteration that had been made in a Record by Juſtice *Ingham*, and of the Puniſhment he underwent for it.

But to come to the preſent Caſe. Suppoſe it were *Teſte'd* the 14th Day of *October*, inſtead of the 4th; would Mr. *Attorney* then ſay it were to be amended? Suppoſe the Return was out before the *Teſte* of this *Diſtringas*, that would come nearer to *Gage*'s Caſe in the Fifth Report. There was a Writ of Covenant, *Teſte* the 24th of *April*, and made returnable the 15th of *April*. The Lord *Coke* indeed ſays in his *Reports*, It is a Miſpriſion in the Clerk, that is amendable: But your Lordſhip knows, in his own Book of *Entries*, *Fol.* 250. *Part* 9. the contrary to that appears; and that it was not permitted to be amended.

Another Thing they have ſaid, is, That this Writ ſhall be amended by the Award of the Roll in Court. But, with Submiſſion, there is nothing there to amend the *Teſte* by. We know there is a right Order of a *Diſtringas* on the Roll; but that will not help an Error in the *Teſte* of the Writ iſſued forth: And for that I will cite a Caſe out of *Crooke*'s *Eliz.* fol. 825. *Carew* v. *Marler*; and another Caſe was tried before your Lordſhip in *Michaelmas*

chaelmas Term, in the 11th of King *William*, between *Child* and *Harvey*. There the *Diſtringas* was made returnable *Die Jovis prox. poſt tres Septimanas Sanctæ Trin.* inſtead of *Sancti Michaelis*: So the Day of the Return happen'd to be the ſame Day that the Cauſe was to be tried upon, before your Lordſhip, at the *Niſi Prius*.

L. C. J. *Holt*. It was actually tried at another Day.

Mr. *Mountague*. We came afterwards to the Court, and pray'd the *Diſtringas* might be amended by the Award on the Roll, which was right, *Die Jovis prox. poſt tres Septimanas Sancti Michaelis*: But the Court denied our Motion; and we were forc'd to take out a new *Venire Facias*, and try the Cauſe again.

The next great Caſe is that of *Curſon*, which is in *Crooke James*'s Reports, *fol.* 529. There is an Information upon the Statute of *Recuſancy*, againſt *Baron* and *Feme*; and the Declaration demands 220 *l.* for Ten Months Recuſancy. But the Wife was charged for being abſent Thirteen Months from Church. There the Wife only pleaded Not Guilty; and after a Verdict, this Miſ-joining of the Iſſue was amended by the Docket. How agreeable to Law this Caſe is, muſt be left to your Lordſhip's Conſideration. There leſs is demanded, than (of the Plaintiff's own ſhewing) appears to be due: For 'tis laid, that ſhe had been abſent Thirteen Months, and yet 220 *l.* is only demanded; ſo it does not appear how the reſt was ſatisfy'd. And beſides this, it may be obſerv'd, that Mr. *Hughes*, who has abridg'd the Three *Crooks*, in his Abridgment of this Caſe, has not thought this Reſolution worthy his taking notice of.

L. C. J. *Holt*. A good Authority indeed! Did you know him?

Mr. *Mountague*. I did not know him; but I have heard him accounted a Learned Man: And he did not, belike, think this Point worth his remembring. Whether he had any Scruple in the Caſe, I know not; but he omits it.

Then there is the Caſe of Sir *Humph. Tufton*, in *Crooke Charles*, 144. There was a *Quo Warranto* brought by Sir *Humph. Tufton* againſt the Corporation of *Maidſtone*; and there a Judgment is enter'd by Diſclaimer, with Conſent of Parties, ſays the Book. And that Diſclaimer is afterwards amended, and made of leſs Conſequence than it was before. But how was that Amendment made? Why, upon the Certificate of the Attorney General, that he with his own Hands had inſerted in the Paper-Book from which the Record was tranſcrib'd, the Words which the Clerk had omitted; now upon this Caſe I may obſerve, That the Judgment had been enter'd by Conſent, tho' the Amendment pray'd was to the Diſadvantage of the Crown: Tho' that Amendment was pray'd in the Caſe of a *Quo Warranto*, which is in Nature of a Civil Action. Tho' Mr. *Attorney General* did conſent, yet a Difficulty was made in doing it. For all which Reaſons, I do humbly conceive, that that Caſe is for me, rather than againſt me: Eſpecially ſince ſo Great a Man as Mr. *Noy* does there aſſert, That none of the Statutes of Amendments extend to Caſes of *Quo Warranto*, or Suits where the King is Party. Now tho' this Saying of Mr. *Noy*'s were only as he was of Council for thoſe that oppos'd the Amendment; yet this muſt have been look'd upon as a ſtrange Aſſertion, by the Judges at that Time, if they had been as clear of Opinion as Mr. *Attorney* is, that the Statute of *Harry* VI. did extend to Criminal Proſecutions. And the Learned Judge that reports that Saying of Mr. *Noy*, would hardly have let it paſs, without taking ſome Notice that the Law was otherwiſe, if he had thought ſo.

As to the Caſe of 1 *Siderfin*, *fol.* 244. it was anſwer'd by your Lordſhip the other Day: For tho' the Writ is *Vicecomitibus*, where there was but one Sheriff; yet the Return is help'd by a Suggeſtion that was enter'd, that there is but one Sheriff.

The Caſes out of *Dyer*, 353, 346. have been taken notice of by Mr. *Broderick*; and the Query is, Whether any Diſcontinuance *in Caſu Reginæ* be aided by any of the Statutes of *Jeofails*? Now I cannot but think, that the Makers of thoſe Laws would have taken as much care to except *Criminal Informations*, as well as Actions *Qui tam*, if there had been Occaſion. And to ſhew your Lordſhip, that none of theſe Statutes do extend to Informations at the Common Law, I would mention a Caſe out of 1 *Vent. f.* 17. It is *Perry*'s Caſe. There is an Information for a Forgery: There happen'd a Miſ-tryal; and it was adjudg'd that it could not be help'd by any of thoſe Statutes. The Error was, That the Defendant is charg'd to have forg'd a Leaſe in *Sherborn*, and to have given it in Evidence at *Dorſet*: And the *Venire* was awarded only to *Dorſet*. And this Caſe puts me in mind of the late Caſe of *Paul Tracy*; where the Tryal was ſet aſide, becauſe the Defendant himſelf had ſued out a wrong *Venire*; tho' the Proſecutor there, at the ſame Time, had ſued out a right one, in order to have try'd him thereupon, if he had not put in his wrong Writ.

L. C. J. *Holt*. How was that Writ?

Mr. *Mountague*. The *Venire* was to the Pariſh of St. *Clement's Danes* only; whereas it ſhould have been to the Pariſh of St. *Giles in the Fields* as well.

L. C. J. *Holt*. Was it try'd on that Writ?

Mr. *Mountague*. The Tryal was had upon the Writ the Defendant had taken out, and for that Reaſon ſet aſide.

As to the other Caſe, in 1 *Siderfin*, *fol.* 259. the Caſe of the King againſt *Glover*; an Amendment was made of an Inquiſition *poſt Mortem*; but that is of no Conſequence. For in all theſe Caſes, that Inquiſition is to be travers'd afterwards: And the Jury, when they deliver ſuch Inquiſitions in, are ask'd, Whether the Clerk ſhall not have Leave to amend any Defect in Form, or falſe *Latin*; and it is always allow'd, provided nothing in Subſtance be alter'd. And in this Caſe of *Glover*, the Amendment was of a Matter of Form: For the Inquiſition ſaid, the Deceas'd *ſeipſum ſubmerſus fuit*; but did not ſay he threw himſelf into the Water.

The Caſe of *Sampſon*, in 1 *Jones* 420. tho' it has been cited on the other Side, yet I take it to be a ſtrong Caſe on our Side. That Caſe plainly ſhews, that it was the Opinion of the Judges, that there was no ſuch Thing as an Amendment of Indictments by Common Law. Both *Jones*, and *Keeling*, who (I ſuppoſe) was Clerk of the Crown, do affirm, no Preſident can be ſhewn of any ſuch Amendment made. And therefore I may queſtion the Authority of *Harris*'s Caſe, which is ſaid to be adjudg'd *Mich.* 16. of K. *James*'s; and this Caſe of *Sampſon* was in the 14th of K. *Charles* I. And there *Jones* ſays expreſly, That if a Record be certify'd by the Clerk of Aſſize that is faulty, it cannot

not be amended, either by the Common Law, or by the Statute Law.

My Lord, I doubt I have taken up too much of your Time. There are other Caſes that have been mention'd out of *Brook* and *Fitzherbert*; but I hope none of them will any ways affect the preſent Caſe. I have taken notice of thoſe which I think the moſt material; and I hope I have made it appear, that the Error in the *Teſte* of this Writ can neither be amended by Common Law, nor by the Statute Law. And that this Miſtake of a Day is not only a Slip of the Clerk, but an Error in Judgment: And I humbly pray, there may be no Rule made for an Amendment.

MR. *Whitaker*. My Lord, I beg the Favour of a Word or two on the ſame Side: After ſo much has been ſaid for the Defendant, I ſhall only mention a Caſe or two, to ſhew that ſuch an Amendment as this has not been allow'd by the Statute of 8 *Henry* VI. *Cap.* 12. in any Civil Action between Party and Party.

28 *Hen.* VI. 3. There was an Action of Debt, and the Parties were at Iſſue. The *Venire* was return'd; upon which the Plaintiff had a *Habeas Corpora* with a *Niſi Prius*: And inſtead of ſaying in the *Habeas Corpora*, *in Placito Debiti*, it was made *in Placito Compoti*, &c. on Motion in Arreſt of Judgment. The Council for the Plaintiff deſir'd to amend this, after Verdict for the Plaintiff: The Court did indeed not give any Rule, as appears by that Book, only that they would conſider of it; but nothing was done further, as appears by that Book juſt after.

In the Caſe 34 *Hen.* VI. 20. In an Action of Debt brought by the Prior of St. *Bartholomew*'s, the Parties were at Iſſue, and a *Venire* return'd; and on the Return of the *Venire*, there were Twenty four Perſons return'd: But in making out the *Habeas Corpora*, the Clerk omits one of the Names of the Twenty four. This appear'd to be the Miſpriſion of the Clerk. He had the *Venire* and the Return before him; as the Clerk had here in the Caſe now before your Lordſhip. He had the Roll and the *Venire*; but this was held not to be amendable: And this was in few Years after the Statute of *Henry* VI.

I ſhall mention another Caſe in 2 *Siderfin* 7. 12. A Writ of *Capias ad faciend.* for a Debt, was made returnable a Day after the Term. It appear'd to the Court, the Attorney for the Plaintiff had given the Clerk that made the Writ, true and right Directions to make it returnable the laſt Day of the Term; but though it was his Miſpriſion, yet the Court would not amend it: So it is adjudg'd in that Caſe.

I ſhall not mention any more Caſes; but anſwer the Caſe of *Plume*, in *Palmer* 480. cited by the Queen's Council. I have had particular Occaſion to look into that Caſe this Term, in a Cauſe which hath been in the Paper this Term. We did ſearch for that Rule expreſs'd in *Palmer*'s Reports, in order to amend an Outlawry after Judgment, in an Action of Debt in the *Common Pleas*; but on producing that Rule, the Court of *Common Pleas* did not take it as an Authority to amend our Outlawry, which wanted an Amendment in the Return of the Exigent.

L. C. J. *Holt*. What was that Amendment?

Mr. *Whitaker*. *Ad Com. meum*, the Book ſays: And upon this, ſays the Book, they did grant a Rule, to award a *Certiorari* to the Coroner. The Rule mention'd in *Palmer* was ſearch'd for; and, as I am inform'd, my Client did produce it in the *Common Pleas*; and yet they would not let us amend our Outlawry: And my Client, for want of an Amendment of the Return of the Exigent, is likely to loſe an honeſt Debt by the Reverſal thereof.

The Council for the Queen have relied on the Statute of the 8th of *Henry* VI. that this Fault of the Clerk is amendable within that Statute. By the Books I have cited, the Miſpriſions of the Clerks, tho' in Civil Actions, have not been allow'd to be amendable. Above Two Hundred Years are paſt, before any Thing of this kind was done, to amend ſuch a Miſpriſion of a Clerk as this is, in Criminal Caſes.

How far the Queen's Council would go on with Amendments, I cannot tell: But in the Caſe cited by the Queen's Council, *Sampſon*'s Caſe, 1 *Rolls* 196. there was the ſame Miſtake of a want of Continuance; as in this Caſe. No Man can believe, the Clerk of Aſſize knew not what Days the Commiſſioners of *Oyer* and *Terminer*, and Gaol-Delivery did ſit, and continue their Seſſions on ſuch Commiſſions. And yet, on a Writ of Error to reverſe that Judgment (in *Sampſon*'s Caſe) being brought; the Court of *King's-Bench* would not amend this apparent Miſpriſion of the Clerk of Aſſize's want of Adjournment from Day to Day.

This Matter of Amending in Criminal Proceedings ſuch a Miſpriſion of a Clerk as this is that is now deſired, has not been thought of ſince the Time of the 8th of *Henry* VI. until now. And if the Queen's Council can ſhew no Preſident in all this Time, wherein ſuch an Amendment, even in a Civil Cauſe, by virtue of the 8th of *Hen.* VI. hath been; much leſs in a Criminal Caſe. I humbly hope, your Lordſhips will not let them amend this Writ of *Diſtringas*.

MR. *Parker*. My Lord, Mr. *Mountague* has ſpoken fully to the particular Caſes that have been offer'd on the other Side; therefore I will not go thro' them again: But I beg Leave to take notice of ſome General Heads, from which they have argued, and to which moſt of their Caſes are reducible; and to diſtinguiſh them ſhortly from the preſent Caſe.

1. In the firſt place, I take it, that the Caſes of Captions of Indictments, removed hither by *Certiorari*, and amended the ſame Term they are brought in, come not up to the preſent Caſe. For the *Certiorari* commands the Return, not of a Copy of the Indictment, but the very Record it ſelf: And the Indictment return'd, is, in Judgment of Law, the individual Parchment that was in the Court below. And ſo it is in Writs of Error: Except Writs of Error to the Court of *King's-Bench* in *Ireland*; and in that Caſe, the Books take notice, that only a Tranſcript is to be ſent, by reaſon of the Hazard of loſing the Original by the Danger of the Seas: And in caſe the Tranſcript arrive here ſafe, it is then ſaid to become, in Conſideration of Law, the very Record. And tho' it be found expedient, for the Convenience of keeping the Records, and is now become the General Practice in other Caſes, to make a Tranſcript in another Parchment, and file that; yet if in Tranſcribing there be a Miſtake made, your Lordſhip will amend it, if it be diſcover'd in the ſame Term:

For in truth, that's not amending the real Indictment, but only amending the Return of the Juſtices to whom the *Certiorari* was directed; and providing that a falſe Indictment be not foiſted in amongſt the Records, inſtead of the true. Which cannot juſtify the mending the very Writ it ſelf; the Thing prayed in the preſent Caſe.

2. Their Caſes of Amendments of Judgments in the ſame Term they are given, and ſo of other Inrollments of what's done in Court, will not make any Thing in this Caſe. The Reaſons given in thoſe Caſes, are, That the whole Term is, in Judgment of Law, but one Day: And the Judgments and Determinations of the Court are, that whole Day, in the Breaſt of the Court. And theſe being only Amendments of what themſelves do in Court, which is not compleat till the Term be ended; they are not ſo tied up by the Clerk's haſty Entry of it, but that the Thing may be alter'd as they ſee Cauſe. But this is not applicable to a Writ which has paſs'd the Seal of the Court, and thereby receiv'd all the Sanction it can have, and has then iſſued out to a proper Officer, and is by him return'd back to the Court. The Term is, in the Judgment of Law, but one Day, with reſpect of what is the Act of the Court, and paſſes perfectly in the Court. But it is impoſſible to ſay, without manifeſt Abſurdity, that the Term is to be conſider'd as but one Day, in reſpect of a Writ that is iſſued out one Day in the Term, to command Jurors to appear at another; or that the Day when the Officer comes into Court, to give an Account of his Obedience to a Writ, is the very Day of iſſuing it. And therefore a Diſtinction is to be made between Things done in Court, which are incompleat during the Term; and the Court's giving Directions to an Officer out of Court by Writ, which is perfect, and gone out from them in order to be obeyed.

3. I ſhould think likewiſe, that the Caſes they have mention'd, of the Favour allow'd the Crown, do not come up to this Caſe; becauſe, tho' in Suits for the Recovery of Right, there be great Favour allow'd to the Crown; and by the Statutes of Amendments and *Jeofails*, much Indulgence is given to the Subject, *for the Recovery of Right*; yet it is not ſo in Proſecution of Criminals, which is a Matter *ſtricti Juris*: And no Argument can be drawn from the Favour ſhewn in one Caſe, to infer, that the like Favour is to be allow'd in the other; for they ſtand on quite different Grounds.

4. I think, with Submiſſion, in the next place, that the Inſtances of Amendments of Proceſs, where nothing is done upon it, but barely to entitle the Party to ſome Proceſs farther; as of a *Capias*, in order to an *Exigent*, &c. will not come up to this Caſe, where the Writ is executed and returned, and the Tryal had upon it.

In the Caſe of *Rogers* and *Bird*, that was cited on the other Side, 3 *Cro.* 572. there was a *Venire Facias* returnable *Die Sab. prox. poſt Octab. Trin.* but on the Roll, it was awarded returnable *Cro. Trin.* And becauſe that was the Authority for making it out, it was amended in the Return; becauſe the Tryal was not had upon it, only it was return'd in order to the *Diſtringas*. But *Popham* there expreſly ſays, that if the Tryal had been upon the *Venire Facias*, it were erroneous, and would not have been amendable.

Mr. J. *Powel.* Where is that, Sir?

Mr. *Parker.* 3 *Cro.* 572. There is likewiſe the Caſe of 34 *H.* VI. 20 *Brook*'s Amendments, *Placit.* 10. There were Twenty four Jurors return'd upon the *Venire Facias*, and in the *Hab. Corp.* one of them omitted: And there the Opinion of the Court was, That they ſhould make out a new *Hab. Corp.* And tho' there it was plainly the Miſtake of the Clerk, that mention'd only Twenty three, inſtead of Twenty four; yet the Court was of Opinion that it could not be amended, but they muſt begin again where the Fault was made. 19 *H.* VI. 39. A Juror was return'd upon the *Venire Facias*, by the Name of *J. Hod*; and in the *Diſtringas* he is named *J. Hord*; and upon him the Sheriff return'd *Nihil*, &c. And there was a new *Habeas Corpus* awarded. Which Caſes ſeem to prove, that where there is ſomething done upon the Proceſs, more than a mere formal Return, that it is not amendable within the Statutes of *Edw.* III. and *Hen.* VI. which were both of them made before theſe Caſes.

5. In the next place, I beg Leave to obſerve, That there is a Difference between ſuch Caſes as have been cited, where the Thing was really done right, but by Miſtake enter'd wrong; and this Caſe, where really it was not done right. As where upon a *Diſtringas* a right Juryman is really ſworn, but ſet down by a wrong Name, the Name ſhall there be amended; becauſe the Thing done was really right, and only the Mention of it wrong. But in this Caſe it cannot be ſaid, that the *Diſtringas* was really taken out right. The Writ was awarded the 23d of *October*, on which Day they would have it bear *Teſte*: But it is not pretended that it was really taken out till the next Day, when it now bears *Teſte*. - - - - And as to what has been already offer'd, that the *Niſi Prius* ought to be awarded *in Præſentia Partium*; and therefore not upon any other Day than the 23d, when the *Venire Facias* was returnable, and the Parties in Court: I might here, I hope not improperly, add this farther; That that muſt be underſtood, that the making of the Writ ſhould be in the Preſence of the Parties: For the Entry upon the Roll, tho' commonly called an Award of the Writ, is really an Entry of a Writ ſuppoſed to be then actually made; it is not ſo properly a Direction to the Clerk to make a Writ, as an Entry or *Memorandum* upon the Roll, or a Recording that there is a Command to the Sheriff, to diſtrein the Jurors to appear at a certain Day, *&c.* And therefore if the *Niſi Prius* is to be awarded in the Preſence of the Parties, the Writ is to be made in their Preſence.

Mr. J. *Powel.* Do you mean, that they ſhould be in the *Crown-Office*?

Mr. *Parker.* The Writ is in Judgment of Law iſſued in Court, tho' actually wrote and ſealed in the Office; and if *Teſte'd* of that Day, is underſtood to be made in Court that Day; which is in Preſence of the Parties; that being the Day given 'em in Court, and their Appearance then enter'd. And we apprehend, that the Court does not command, by the Entry of the *præceptum eſt* in the Roll, but by the Writ. The Sheriff, who is abſent, cannot be commanded by the Roll, but by the Writ which is ſent to him: Therefore the Court then commands, when the Writ is made: And therefore the Entry upon the Roll, *præceptum eſt Vic.* is an Entry that there is ſuch a Command, which

which this Writ, on which this Tryal was had, cannot be, becauſe it bears *Teſte* after. But this is only by the by: For however taking the Entry as an Award of the Writ, yet the Writ muſt be taken out as the Court awards it, and when the Court awards it; or elſe it is without Warrant, and void. Indeed if it ſhould in Fact be made at a ſubſequent Day, and not actually wrote and ſealed the ſame Day it is awarded, yet if it bear *Teſte* upon that Day, your Lordſhip will not enquire into that Matter: But finding ſuch a Writ was awarded, and that it appears by the *Teſte* to iſſue the ſame Day; will preſume it did really iſſue that Day, and that it is right. But the Writ being here awarded the 23d, and bearing *Teſte* the 24th; if it did not iſſue the 23d Day, to alter the *Teſte*, ſo as to make it appear to iſſue that Day, were to make it contrary to the Truth.

This we take to have ſome Reſemblance to the late Caſe of the Warden of the *Fleet*; where your Lordſhip was againſt altering the Day of bringing in the Record, when the Alteration would have been againſt the Truth of the Fact. And to make the Amendment here deſired, would be to make the Writ appear to have iſſued the 23d of *October*; when the Writ it ſelf imports it was the 24th; and this was the Truth of the Fact.

SIR *T. Powis.* My Lord, Having heard what has been ſaid on the other Side, I beg Leave to trouble you a little by way of Reply.

Mr. *Broderick* and Mr. *Mountague* make a Diſtinction, which they think will govern this Caſe. They ſay, that the Crown has a great many Privileges, beyond what the Subject hath, where the Caſe concerns Civil Rights: But they will not allow the ſame Privileges to the Crown, where there is a Criminal Proſecution. I know of no ſuch Diſtinction. For if this Privilege belongs to the Crown, in the Caſe of the Revenue; ſurely the reſtraining of Crimes is much more for the Publick Benefit: And by conſequence, the ſame Reaſon that gives the Crown a Privilege in a leſſer Matter, ought to carry it further in a greater Thing.

In the next place, they do admit, that all the Acts of the Court may be amended; as being in the Breaſt of the Court, during the ſame Term. And they deny not, but that the Judgment of the Court, which is the higheſt Act of the Court, may be revers'd, or any way alter'd or chang'd in the ſame Term, without any Danger of building Clock-Houſes. And can any one ſay, that if theſe higheſt Acts of the Court may be alter'd, that the Acts of their Clerks may not be alter'd? That the greater Things may be done, but not the inferior, when there is a pure Miſtake?

No Man can but think it ſtrange, that a Miſtake of a Clerk may not be alter'd; but a Miſtake even in the Judgment of the Court may.

We come next to another Diſtinction. They ſay, an Original Writ may be amended in the Caſe of the Crown; as in the *Quare impedit*, in *Blackmore*'s Caſe. For which they aſſign Two Reaſons: Firſt, It was a Writ of the Crown, for Recovery of a Civil Right; for it was a *Quare impedit*. And Secondly, The Judges obſerving the Fault in the Writ, did (as it ſeems) carry it to the Court of *Chancery*, and there it was amended. From whence they would infer, as if it were a new Writ. But that cannot be ſuppoſed; for it was agreed, that it was the ſame Writ amended, and not a new Writ.

Now ſee if that will not come to our Caſe. For if the Court of *Chancery* could amend a *Quare impedit*, as coming from thence; cannot this Court amend a Writ that comes from hence? Here we are in the Caſe of a judicial Writ that comes from hence; and therefore it may be amended here, as well as that could be amended in the Court of *Chancery*.

But the great Matters endeavour'd to be avoided, are the Two Acts of Parliament of *Edw.* III. and *Hen.* VI. for the Caſes cited: I will not go over them again. And I do believe it is very true, what theſe Gentlemen inſiſt on; That it has been the common Opinion, that theſe Acts, or other Acts of Amendments, do not extend to Caſes of the Crown. And generally ſpeaking it is right; becauſe all the later Acts of Amendments except Proſecutions on Penal Laws: And the Statute of *Henry* VI. has ſo many Exceptions in Criminal Matters, that a Miſtake might from thence ariſe, that all are excepted.

It is certainly true what my Lord Chief Juſtice *Vaughan* ſays, *fol.* 169, 170, and 419. That upon doubtful Words of an Act of Parliament, that are dark and dubious; an Ancient Interpretation, ſubmitted to for a long Time, is fit and reaſonable to be relied on in a doubtful Caſe. But a Thouſand Reſolutions, againſt a plain Act of Parliament, cannot prevail Tho' it would be good Reaſon, well to conſider ſuch a Law, and to weigh it well; but no ſuch Reſolutions can alter the Act.

Here are Two Acts of Parliament: That of *Edward* III. is in general Words of All: And how can any one ſay then, that it ſhall mean and extend only to Some?

As to the Act in the 8th of *Henry* VI. to ſay that the Words ſhall not go to every Thing that is not excepted, is to overthrow all Rules of Conſtruction. They have offer'd nothing againſt that Statute; but that it has been thought it did not extend to theſe Caſes.

The Caſe of *Siderfin* ſhews, that we do not advance a mere new Notion, with reſpect to that Act. Therefore I ſay, we have the Acts of Parliament on our Side; We have the Privilege of the Crown on our Side: The Award of the Roll is right, and with us; and the Error was purely the Miſtake of the Clerk: For no Man can think it otherwiſe.

We have this likewiſe on our Side, That we deſire it may be amended in the ſame Term. For as the Court can ſet right their own Judgment in the ſame Term, much more what is the Act and Miſtake of the Clerk.

Therefore we inſiſt upon it, That our Caſes we have cited, are of good Authority for us; and we hope we ſhall have an Amendment, if it be neceſſary.

Mr. *Attorney General.* MY Lord, we humbly hope, that notwithſtanding what theſe Learned Gentlemen have urged, our Aſſertions by Law and Authority will prevail; and that this Miſtake is amendable.

What has been ſaid before by Mr. *Broderick* and Mr. *Mountague*, they have laid it down for a Rule, That there is a great Difference between the Privileges belonging to the Crown in Matters of a Civil Nature upon the Statute; and Criminal Proſecutions: And that all thoſe Favours for the Crown, were only for Matters relating to the Right of the Crown in Civil Caſes, and not what

belongs to the Crown in its Politick Capacity. Tho' Mr. *Broderick* did not conſider: For ſure, by the Common Law, there was a greater Latitude for the Crown in Criminal Proſecutions, than for the Subject.

In Caſes of Treaſon, they had no Benefit of Council; and that was far more to their Diſadvantage, than in Civil Caſes. It's true, that Inconvenience has been regulated by the late Statute, That in the Caſes of Treaſon, the Party may have a Copy of the Pannel and Indictment. But you ſee what the Difficulties were formerly in Criminal Proſecutions for the People: All they had to do, was merely to plead Guilty or Not guilty. I think that anſwers their Objection as to that.

Now there is in the next place to be conſider'd, what Mr. *Mountague* ſays, That no Error in Proceſs was amendable by Common Law; and cites Lord *Coke* for it. He ſhould have gone on with that Citation; for it is certainly otherwiſe. 8 *Coke* 156, ſays, Their own Acts are amendable by the Common Law, in the ſame Term; but at the Common Law, the Miſpriſions of Clerks in another Term, were not amendable, But we are in the ſame Term; and ſure they are amendable before Judgment. And Lord *Coke* tells you, they are amendable in the ſame Term.

Now Mr. *Mountague* has gone a great way. He agrees, if it were a Miſ-award of the Roll, you would amend it, but not the Writ. Now for that the Law is quite contrary: If you are wrong in the Roll, you cannot ſet it right; but if it be in the Writ or Proceſs, you may amend it by the Roll. Now here the Roll is right; and we deſire the Writ may be amended by it.

If it had been in the Roll, I cannot tell whether we ſhould have applied to amend that. For if you have any Thing amiſs, you cannot amend it, but by ſomething to amend it by. But it may be amended in Caſe of the Crown, better than in that of the Subject. And tho' Mr. *Mountague* ſays, you may make uſe of them in Civil Caſes, but not in Criminal; yet we make uſe of this Argument, that the Crown has a Privilege more than the People. We rely on that; tho' Mr. *Mountague* ſays, that is not to be relied on.

In the next place, Mr. *Mountague* ſays, This is within none of the Statutes of Amendments, either of *Edward* III. or of *Henry* VI. And that my Lord *Coke* ſays, *fol.* 157, *b.* That the Statute of *Edward* III. does not extend to Pleas of the Crown. And therefore Mr. *Mountague*'s Opinion is, to go quite through, and exclude this Caſe from all the Statutes of Amendments.

Now I can give an Argument, why it ſhould not be amended by the Statute of *Hen.* VI. tho' by the Statute of *Edw.* III. it is amendable. But why is it not amendable by the Statutes of *Henry* VI. *Cap.* 12, and 15. which go further than the Statute of 14 *Edw.* III. does?

I do agree, there is an Objection againſt the Statute of *Edward* III. For there is the Word *Party*, which ſeems to imply Civil Caſes only. But even by that Statute, ſo ſoon as the Slip appears by Challenge, or any other way, it ſhall be amended. The Lord *Coke* might well on theſe Words make a Doubt, whether the 14th of *Edw.* III. did extend to amend Caſes relating to the Crown: But the Opinion of *Coke* in the Statute of 14 *Edw.* III. is abſolute; but the other of 8 *Hen.* VI. is with a Reaſon. And why is it? Becauſe it is excepted. Now they ſhould have ſhewn us ſome Reaſon, why the Statute of *Henry* VI. *Cap.* 12. ſhould not extend to Amendments in Caſes of the Crown.

And there is not that Objection to the Statute of *Hen.* VI. *Cap.* 15. For it follows the Words of the Statute of *Edw.* III. and ſays, *That no Man ſhall have*, &c.

Now Mr. *Mountague* ſays, the Exception was put in *ex abundanti*; and it may be intended they were but Inſtances of like Caſes. Now I have hardly ever heard, that Inſtances of Treaſon and Felony ſhould extend to other Caſes of an inferior Nature: There is no Reaſon to carry it further than what is expreſs'd. So that we think theſe Statutes ſtand for us; and are applicable to all Records, as well for the Crown, as any elſe.

Mr. *Mountague* ſays, They have the Opinion of all Ages againſt it. But, my Lord, I deny that; becauſe there were Exceptions in many Statutes before and after the Statutes of *Feofails*, that were not conſider'd: But when they come to be conſider'd, this muſt be determin'd by conſidering the Words of the Statute; and not by general Opinions, taken up without Conſideration.

There was in *Cro. Car.* 25. a Caſe on the Statute 32 *Hen.* VIII. where the Queſtion was, If Aſſignees of Copyhold Lands were within that Statute. And till a little before the *Revolution*, it was a received Opinion, that the Aſſignee of a Copyholder was not within the Statute of *Henry* VIII. And there is a Caſe in *Yelverton*, 223. wherein it was ſo reſolved: But when that Statute came afterwards to be conſider'd, it was ſettled here, and has prevail'd ever ſince, that the Statute did extend to *it*; tho' before it was the prevailing Opinion that it did not. And accordingly the Practice has ſince been. So that Opinions that paſs *Jub Silentio*, that is, without Conſideration, may be alter'd when they come to be ſtated and conſider'd. And therefore I hope this Point will not prevail.

My Lord, I agree that this Thing is of very great Conſequence: For if their Plea be allow'd, it will follow, that Criminals will eſcape for little Slips in all Caſes. And I know that even in Perjury, and other Crimes, few that have been convicted, but have got off, by reaſon of Errors in the Proceedings, tho' I have ſeen a great many convicted thereof. This is a great Inconvenience and Miſchief: And ſure Criminals are not to be the Favourites of the Law.

But as to theſe Proſecutions, there is another Conſideration; That it is more for the Honour of Juſtice, to have the Advantage to lay aſide this Slip, than to ſuffer a Criminal to eſcape. But however, every one muſt have Juſtice: And if we rely on the Statute of *Henry* VI. no Conſtruction can avoid it.

Then Mr. *Broderick* cites the Caſe of - - - - - - - - Where it is ſaid, that the Statutes of *Jeofails* do not extend to Caſes of the Crown. Now ſure that is not a Reaſon: It is contrary to all the Reaſons of Statutes. Where Statutes are to promote Juſtice, the Crown is bound as well as the Subject; it is for the Publick Good. Now Mr. *Broderick* has cited a Caſe againſt that; and that is in *Styles*, *fol.* 107. (*Vid.* Fol. 307.) the Caſe of *Theobalds* and *Newton*. There that Caſe was on the Statutes of 18 *Eliz.* and of 21 *Jac.* Now it's plain, they had no Conſideration of any Thing elſe: And why? Becauſe in Proſecutions on Penal Statutes, the Court often rely on Exceptions: But however the Authority goes no further, but they rely on the Excepti-

Exceptions. Now if they had ſaid it was excepted by the Statute of *Hen.* VI. and that all the Books go on it as excepted by that Statute; if they ſay it is excepted by the Statute of *Hen.* VI. would that be taken as an Objection to the Statutes of 18 *Eliz.* and 21 *Jac.*? No; it is a Miſtake.

He has alſo cited *Telverton, fol.* 60. *Brigg's* and *Thompſon's* Caſe. Now there was an Information on the Statute of 21 *Hen.* VIII. againſt a Clergyman, for Farming Lands; and a *Venire* was awarded returnable *ubicunque*: But the *Venire* it ſelf, and the *Diſtringas*, were made returnable *coram nobis*, &c. which was ſaid to be erroneous. An Exception was taken, and *per Cur'* Let it ſtay. But it appears not that it was conſider'd.

Theſe Authorities are no Authorities. The firſt is not within either of thoſe Statutes we are now upon: And the other was never determin'd by any Thing, as appears in the Caſe. And there is a great Difference between the Statutes on which they were founded, and our Caſe.

Mr. *Mountague* has gone a new way. He would have this to be not a Miſpriſion of the Clerk; becauſe he is afraid that a Miſpriſion is amendable: For the Clerk had enquir'd, whether the Writ ſhould be *Teſte'd* the 24th of *October*; ſo that he ſays it is a Forgetfulneſs, or Negligence, but not a Miſpriſion.

Now I would fain know what he means by that? Whether all Forgetfulneſs of the Clerks, is not a Miſpriſion of the Clerk? That is, any Negligence, whatever it be, it is the Miſpriſion of the Clerk. *Coke* ſays, it is a Miſpriſion of the Clerk, under the Word *Negligence*: And Negligence and Miſpriſion are by him frequently put for the ſame Thing. See 8 *Co.* 159. *b.* 160. *b.*

So upon one Part of it; that is, ſuppoſe the Clerk ſteal it away; he ſays, that is under the Word *Miſpriſion*; and an involuntary Negligence of the Clerk, is a Miſpriſion. So this Clerk's Negligence is a Miſpriſion, becauſe he did not look on the Almanack and the Roll. Theſe are Miſpriſions by the Statute of *Henry* VI.

As to the Caſes that have been cited, Mr. *Mountague* has anſwer'd but ſome of them.

As to that of *Percival* and *Godfrey*, *Siderfin, fol.* 43. he ſays, that was not ſuch an Amendment, but a Suggeſtion of the Roll. But if the Roll could amend that which is a ſtronger Amendment, to preſent a Verdict; the rectifying of that makes it ſtronger for us, than it would be otherwiſe.

He ſays, As to *Harvey*'s Caſe, he denies it to be Law: But I believe the Authority of the Judges is to be preferr'd before his Opinion.

And then for the next Caſe, *Parker* and *Curſon*, he queſtions that Opinion, becauſe not taken notice of by *Hughs*. Now I believe the Judges that reported it, did underſtand it better than he that abridg'd it. But whether he underſtood it or no, it alters not the Caſe.

And then for *Tufton*'s Caſe, he ſays it is a Civil Caſe. But, my Lord, it is a Criminal Caſe. A *Quo Warranto* is brought: They muſt plead Not guilty to the Uſurpation. So that theſe Caſes are under the ſame Conſideration as this is.

Then there is the Caſe of *King* and *Glover*: That was, where a Coroner was to amend an Inquiſition of Murther: But it was not proved that he did murther himſelf, *&c.*

Mr. *Mountague* admits, the Jury may amend Matters of Form: But in that Caſe, when it is brought into Court, it is not the ſame Verdict as before.

He cited the Caſe of - - - - - - and *Harvey*: But your Lordſhip gave him another Reaſon for that Caſe.

And for the Caſe of *Paul Tracy*, that Point was never determined.

L. C. J. *Holt*. The *Venire Facias* never mentions the Time of, *&c.*

Mr. *Att. Gen.* Now that is not within the Statute of *Henry* VI. So that we have nothing to do with it.

And as to the Caſe of *Dyer, fol.* that does not concern the Statutes of *Feofails*. And in *Fitzherbert*'s Caſe, the Court was of Opinion, they could not amend, by reaſon of the Exception. Whereby they ſhew plainly, they thought the Statutes would have extended to that Caſe, had it not been particularly excepted.

I do not obſerve any other Matter, but that of the *Niſi Prius*. If the Writ muſt be made out in the Preſence of the Parties; they ſay, that immediately, when the Perſons appear, the Writ is to be iſſued. But that is impoſſible, and contrary to Reaſon and Authority.

We think, on theſe Reaſons we have troubled you with, we have the Law on our Side. Only one Thing I muſt beg Leave to anſwer to what Mr. *Broderick* ſays as to *Percival*'s Caſe: It was a crying Thing, and it might be an extraordinary Judgment. Where Judgments are given, they are to go according to the Courſe of Law: Juſtice is to be done to all. And as no extraordinary Method is to be made uſe of againſt a Criminal, ſo none is to be uſed to ſave him.

My Lord, We think the Statute of *Henry* VI. does allow ſuch an Amendment as we deſire; and that no Statute does reſtrain it: And therefore, I hope, we ſhall be allow'd to amend this Error.

There is one Matter more. Lord *Coke*, in his 8th Report, 163. *a.* ſays, The Statutes of *Henry* VIII. and that of 41 *Eliz.* do not extend to Pleas of the Crown; becauſe they are excepted in the Act *Eliz.* and that of *Hen.* VIII. does not extend to 'em.

We agree with the Lord *Coke* in every Thing, that the King can't amend by that of *Hen.* VIII. tho' there is no Exception: And the Reaſon is, becauſe it ſpeaks only of Suits between Party and Party. And the other Statute of 18 *Eliz.* is not large enough, extending only to Treaſon or Felony, becauſe they only are excepted.

My Lord, We think we have my Lord *Coke*'s Authority with us, and even the very Words of the Act of 8 *Hen.* VI. And tho' this Caſe has not been ſo fully conſider'd before; yet we hope it will be conſider'd now; and that we ſhall be allow'd this Amendment.

Mr. *Broderick*. I thought not to have ſaid any Thing more: But becauſe I have been named two or three times by Mr. *Attorney*, I deſire - - - - -

Mr. *Att. Gen.* The Reply is ours.

Mr. *Broderick*. My Lord, I beg Leave to explain my ſelf in ſomething that has been miſunderſtood. I think I did not ſay what I am charged with. Mr. *Attorney* tells you I ſaid, that none of the Queen's Prerogatives extend to Criminal Proſecutions.

Mr. *Att. Gen.* I ſay, you ſaid, there is great Difference between Civil and Criminal Caſes: And that the Queen's Prerogative is intended only

ly of Amendments in Civil Caſes, but not applicable to Criminal Proſecutions.

L. C. J. *Holt*. Mr. *Eroderick* ſaid it did extend to Amendments in Civil Caſes, but not in Criminal.

Mr. *Eroderick*. And I do make a Difference between 'em. For in Criminal Proſecutions by the Crown, an Amendment can't be: But in the Caſe of a *Quare impedit*, which is a Civil Caſe, there it might.

Mr. *Att. Gen.* The Reply is ours; and they ought not to break in upon us.

L. C. J. *Holt*. If you will ſay any thing as to what has been miſtaken, you may. The Caſe of *Sherret* and *Talbot* is not to the Point: That was an Amendment, not in Behalf of the Crown, but of the Subject; and in a Civil Caſe. 'Twas in a *Quo Warranto*; wherein if the Subject take a limited Diſclaimer, and the Officer on the Roll enter a general Diſclaimer without Limitation, God forbid but that ſhould be amended. But then even on the King's Side, if the Original Indictment be right, and the Plea Roll be miſtaken; ſure the Plea Roll ſhall be rectified by the Indictment; and the Plea is to be made according to that.

The Caſes of *Tuſton* and *Harris* are ſtrong Caſes. In that of *Harris* there was an actual Tryal; and yet no Iſſue joined. He was indeed indicted as Criminal, and the Iſſue was enter'd; *& de hoc ponit ſe ſuper Patriam*, but without any Joinder thereupon: and ſo no compleat Iſſue. 'Tis true, in Capital Caſes, they are free to join Iſſue or not: But in other Criminal Caſes 'tis otherwiſe; there muſt be a Joinder. And as to the Caſe of *Tuſton*, that was an Amendment that went very far. That was an Information for Recuſancy againſt the Huſband and Wife, for Recuſancy of the Wife. The Wife comes in, and ſhe alone (whereas it ſhould have been the Husband and Wife) pleads Not guilty; and Iſſue join'd thereon: And it was mended by the Docket; for that was right. It has been held, that the Statute of *Henry* VI. did not extend to Criminal Matters; as Lord *Coke* (in *Blackmore*'s Caſe) is expreſly.

Mr. *Att. Gen.* But, my Lord, he gives the Reaſon of that Exception.

L. C. J. *Holt*. Now the 8th of *Henry* VI. has this Exception: And in *Stiles*, 304. no Mention is made of the Statute of 8 *Hen.* VI. but that was by reaſon they thought it would not help them. And then the Query is, Whether this Caſe be within that Exception, and (as in Civil Caſes) may be amended? But this is a Caſe of a different Nature; and I will not ſay any thing now in the Point of this Caſe, becauſe of the Conſequence: Tho' I ſuppoſe it is not excepted by the Statutes: And I believe you don't deſire our preſent Opinion.

Mr. *Att. Gen.* Yes, my Lord, I deſire the Opinion of the Court in this Caſe; and I think it is of great Conſequence to us to have it now.

L. C. J. *Holt*. If you inſiſt on it, I muſt ſee if I can form an Opinion; but I would willingly defer it.

Mr. *Att. Gen.* My Lord, I lay it before you with Submiſſion.

Mr. J. *Powel*. It is a new Thing, and taken up againſt the current Opinion. Perhaps they might take it on Lord *Coke*'s Opinion; and did not examine it, as they ſhould have done.

Mr. *Att. Gen.* My Lord *Coke* does not ſay ſo himſelf.

Mr. J. *Powel*. No: But becauſe he ſays it is excepted, they gave Credit to his Words, and did not examine into the Buſineſs: And I believe that was the Foundation of this Opinion. But if you think it is amendable in the ſame Term, becauſe the Court may amend their own Judgments the ſame Term; you muſt ſpeak to that Point.

I do not know that they can amend their own Judgment in this Term: Tho' indeed, if it be amendable at all, it is amendable this Term. Beſides, I ſhould make no Difficulty but that it is a Miſpriſion of the Clerk; and it was his Negligence not to do it by the Warrant. And if this were in a Civil Proceſs, I believe it might be amended in any other Term: But this being in a Criminal Matter; and the current Opinion being that none of the Statutes did extend to Criminal Matters, it ought to be well conſider'd; for the current Opinion is a great Thing.

Mr. *Att. Gen.* There is no doubt of it, it ought to be conſider'd: But it is fit for me to deſire your Opinion.

Mr. J. *Powis*. I believe theſe Statutes were never ſo ſcann'd before; and I believe this Matter has been more ſearch'd into now, than ever it has been before. But it has been the general Opinion, that none of the Statutes of *Jeofails* did extend to Criminal Caſes: That may ariſe, becauſe all the Statutes take in ſo large a Compaſs. All Indictments and Informations, and no doubt the latter Statutes, do not extend to ſuch Caſes: And the Opinion might ariſe from that.

But now this Statute of the 8th of *Hen.* VI. has Exception of Felonies and Treaſons, and none elſe; and you cannot extend the Exception further. It is a Caſe of Difficulty, but it ariſes from the common Opinion; otherwiſe we might give our Opinion now without Difficulty: For the Words are as clear as may be; and it is againſt Reaſon, to except Things that that Statute did not except. But being a Thing that is not ſo particularly confin'd to this Term, (for the Statute mentions nothing of Terms) if it be amendable, it may be amended in another Term.

But indeed, for Matter of Judgment, becauſe the Judgment muſt be in the ſame Term, in the Caſe of the Amendment, we may as well do it in this Term: And we may take ſome Time to conſider of it, and tell you what our Opinion is.

Mr. J. *Gould*. I ſhall not now ſay any thing in this Caſe, but reſerve my ſelf entirely till the Court give their Opinion.

But as to that Caſe you were citing, *Perry*'s Caſe, the Caſe was *Perry* and *Munday*; for I was of Council in the Caſe. There was an Information againſt *Perry* and *Munday* for forging a Bond: They laid their Forgery at *Sherburn*. The Publication was at *Dorcheſter*; and the *Venire* was *Dorcheſter*. The Verdict was for the King. They brought an Arreſt of Judgment afterwards; and the Queſtion was debated on the Statute of 16 and 17 of K. *Charles* II. whether this were not within the Statute. Now there they agreed, that that Information, becauſe at Common Law, was without the Purview of the Statute.

L. C. J. *Holt*. That was an Information upon a Penal Law. They queſtion'd whether it was within the Purview of the Statute; and they thought it was not help'd by any Statute. That ſhews the Opinion of the Lawyers: They thought it not within any of the Statutes of *Jeofails*; and the Verdict was ſet aſide.

Mr. *Bro-*

Mr. *Broderick.* Yes, my Lord: And the Court awarded a new *Venire Facias.*

L. C. J. *Holt.* There is a great Regard to be had to Practice. There were Great Men at the Bar at that Time; and they did not think at that Time that it was within the Statute.

As to what you ſay of Copyholds, it has indeed been held, that the Statute did not extend to an Aſſignee of Copyhold Lands, or to a Covenant on the Alienation of the Copyhold by Leaſe.

Mr. *Att. Gen.* It was here argued that.

L. C. J. *Holt.* It was my Opinion, that all Statutes extend to Copyholds, if it be for the Benefit of the Copyholder, and not one Jot to the Prejudice of the Owner: And therefore the Reſolution of *Jobbin*'s Caſe was that we went on. You muſt ſtay till the laſt Day of the Term.

Mr. *Att. Gen.* My Lord, I think we have ſhewn that it is amendable by the Statutes; and if not ſo, by the Common Law. And we have all Points with us.

Sir *T. Powis.* My Lord, I doubt it will be inſiſted on, that in another Term it cannot be amended.

L. C. J. *Holt.* Move us the laſt Day of the Term. It is certainly the Miſpriſion of the Clerk.

November 28. i. e. *The Laſt Day of* Michaelmas Term.

Sir *T. Powis.* My Lord, We come in the Caſe of the Queen and Mr. *Tutchin*, if your Lordſhip be ready to give your Opinion.

Mr. *Att. Gen.* Call Mr. *Tutchin.*

[*Who appeared.*]

L. C. J. *Holt.* I muſt deſire you to ſtay in this Matter till the Firſt Day of the next Term.

Mr. *Att. Gen.* My Lord, We did expect your Lordſhip would have given your Opinion now.

L. C. J. *Holt.* For my Part, I ſhould rather deſire Time till the next Term: But if you are not willing to ſtay till then, you muſt take ſuch an Opinion as we can give.

Mr. *Att. Gen.* I ſubmit to what your Lordſhip ſhall determine.

L. C. J. *Holt.* It may be, I may be then of the ſame Opinion I am now; but then I may defend my Opinion better. I would only put it off to the firſt Day of the next Term.

Mr. *Att. Gen.* My Lord, I have laid the Matter before you; and I acquieſce in what you ſhall think fit.

Sir *T. Powis.* Upon the Obſervation of *Blackmore*'s Caſe, where Lord *Coke* ſays, the Court cannot amend Miſpriſions of Clerks in Proceſs in another Term; if we have not Judgment this Term, we ſhall loſe that Advantage.

Mr. *Att. Gen.* There are Two Points in this Caſe: One is, that it is amendable by Common Law; the other, that it is not excepted by the Statute of *Henry* VI.

Now my Lord *Coke* ſays, Error in Proceſs is amendable in another Term. But we ſubmit to the Court: I preſs nothing.

Mr. J. *Powel. Coke* ſays ſo: But I believe no Man will ſay, that ever a miſtaſten Writ was amended in another Term. Therefore he muſt intend the ſubſequent Proceedings, or Proceſs: It may be the Proceedings of the Original Entry on their Award, that may be amended in another Term; and *Coke* muſt mean that. There have been Entries of Awards amended in another Term; but the Miſtake of a Writ was never amended in another Term, that I can find.

L. C. J. *Holt.* If we put it off to the next Term, and our Opinion ſhould be againſt the Amendment, he cannot be try'd in that Term.

Mr. *Att. Gen.* My Lord, I ſubmit it to you.

Mr. J. *Powel.* We cannot now give ſo full Reaſons; yet I have center'd my Opinion in the Caſe.

Mr. J. *Gould.* I was ſometime of Opinion, that it was amendable by the Statute; but really looking on the Caſes that have been cited, that is, the Caſes that are in Pleas of the Crown, it is not amendable by the Statute of *Henry* VI. I ſay, I formerly thought it might be amended by virtue of the Statute: But upon Peruſal of *Blackmore*'s Caſe, *&c.* it ſeems to alter my Judgment. But notwithſtanding, I hold, that at Common Law it may be amended. For what means all the Caſes that are now extant; the Caſes of Informations, as the Caſe of Sir *Humphry Bond*, &c.?

The Caſe cited by *Yelverton*, in 2 *Bulſtrode* 35. is very ſtrong. There were Two indicted for Felony, and found guilty. The Judge ſaw that it was in the ſingular Number, and ſtay'd Judgment: And they moved afterwards in another Term; and there, by the Judgment of Nine or Ten Judges, it was amended; and the Men were both hang'd.

Why now, it muſt be by the Statute Law, or by the Common Law, that it was amended in that Caſe. By the Common Law, I ſay, it is amendable.

There is a Caſe in *Raymond*'s Reports, 440. It is an Indictment on a Certificate of a Juſtice of Peace, that *Ingleſield* being a reputed Papiſt, had refuſed to take the Oath of Supremacy, *&c.* Upon Not guilty pleaded, the Jury found the Commiſſion *in hæc verba*, &c.

It was objected, That the Certificate was not found under Seal of the Juſtices, but only *in hæc verba*: And they did amend it.

This is the ſame Caſe. And I take it, that ſuch a Fault, as does not alter the Iſſue, nor the Tryal, or Crime, is a Thing that is amendable.

Now there is Sir *John Curſon*'s Caſe, in 2 *Cro.* It is a ſtrong Caſe. There is an Information againſt him and his Wife for Recuſancy. The Wife only pleaded Not Guilty. The Queſtion was, Whether this were right? And whether they ſhould amend it? And it was reſolved, that it ſhould be amended.

The Caſe in *Siderfin*, that is (1 *Siderfin*, 243.) the Caſe of *Percival* and *Godfrey*, I do not doubt, for my part, but it is amendable; and take it as ſtrong as this is. They were indicted for a Riot: A *Venire Facias* iſſued *Vicecomitibus Canterburiæ*; and it was return'd by One Sheriff. They examin'd into the Truth of the Caſe, and they found there was but One Sheriff: And the Queſtion was, whether this was amendable? And it was reſolved it ſhould be amended; and alſo that it was amendable at Common Law.

I muſt confeſs, I do not ſee that there is any Reaſon in the World againſt it. There is but only one Caſe that ſeems to be againſt it; that is the Caſe of *Theobald* and *Newton*, *Styles* 307. There indeed, by *Rolls* Opinion, it was not amendable,

ble, *&c.* But that is only a ſingle Opinion.

And as to the Caſe between the King, and *Read* and *Dawſon*, (it ſhould have been Two Caſes) there 'twas held, That the Statute of *Jeofails* does not extend to Informations of Intruſions; and yet it was ruled, that it ſhould be amended.

Indeed, my Lord *Hales*, in *Keble*, 191, 215. [He means *Twiſden*; *Vid. Keble*, 191, 198, 215.] did hold, that it was amendable within the Statute; and that the Amendment would ſtand in need of it: But it was ruled *Contra*; and that it needed not the Help of the Statute of *Jeofails*. And I muſt needs ſay, if the Caſe of *Bradley* and *Banks*, in 2 *Croke*, 283. and in *Yelverton*, 204. were not in the way, I think the Writ had been good enough; for it is a Continuance from Day to Day, tho' the *Teſte* is the 24th, and the Award the 23d.

Now in my Mind, an Award the 23d of a Writ the 24th, is a perfect Continuance. And the Caſe of *Bradley*, &c. as it is in 2 *Croke*, 283. does not contradict this; tho' indeed that Caſe of *Bradley*, as it is in *Yelverton*, is contrary; but that ſeems miſtaken. So that I do think, on the whole Matter, it is amendable at Common Law.

Note, Powis *accorded with* Gould, *that it was Amendable*; *but* Powel *argued* contra, *that it was not.*

L. C. J. *Holt*. I ſhould have been glad to have had Time till next Term, to conſider of this Matter: For tho' I am ſatisfied in my Opinion, yet perhaps I may not give others that Satisfaction concerning it, as I might have done if I had had a longer Time.

I am of Opinion, That this is not amendable, neither by the Common Law, nor by the Statutes.

Firſt, It muſt be admitted, that this is a Fault in the Writ, in a Point that is material: That is, The *Teſte*, which ſhould have been *Die Lunæ*, the 23d of *October*, and it is the 24th: For the 23d is the Day that the Defendant has in Court on the Return; and that being the Day he has in Court, the *Teſte* of the Writ to continue the Proceſs ſhould have been that very Day.

Now I do not underſtand what my Brother *Powis* ſays, That there is no Interval between one Day and another. I would fain know, if a Day be appointed for a Man to appear on; and then he has another Day given him, when he appears not: As, if a Man appears the 23d of *October*, and there is a Day given, the 24th; will not this be a Diſcontinuance? No queſtion but it is: Becauſe he being in Court the 23d, and having no Direction the 23d when to come again, he is out of Court. Then ſhall you give another Day behind his Back? That cannot be in Reaſon. His Day in Court is the 23d of *October*; and that Day he ſhould have another Day appointed. He has a Day in the Roll, but not in the Writ: That is iſſued behind his Back, the 24th; at which Time he is not in Court. Then if this be ſo, here is a Writ iſſued behind the Defendant's Back, and without any Award of the Court: For the Award is, *Die Lunæ Sancti Michaelis*, which is the 23d of *October*; then there is a *Præceptum eſt* that Day. Now when this Writ iſſues the 24th; is this Writ warranted by the Roll? No, it is not; but another Sort of Writ, different from that which the Court awarded: Therefore being another Writ than what was awarded; where is there any Authority for it? Or how can the Jury be diſtrein'd upon it?

The Writ that iſſued the 24th, is another Writ: For there is a material Varying between the Writ that iſſues, and the Award of the Roll; one is the 23d, the other is the 24th.

The Day of the Writ is material: And when it bears *Teſte*, it is in the Judgment of the Law a Writ of that very Day; as it was adjudg'd in the Caſe of *Owen verſ. Baily*, 17. *Ch.* 2. in a Trover and Converſion.

A Defendant, that is condemn'd in Debt and Damages, ſells his Goods *bona fide*, between the laſt Day of *Trinity Term* and the firſt of *Auguſt*. After he had ſold his Goods, the Plaintiff takes out a *Fieri Facias*, *Teſte'd* the firſt Day of *Trinity Term*; which was before the Sale, tho' taken out after; ſetting forth, That the 4th or 5th of *July*, he had ſeized theſe Goods in the Hand of the Vendee: Tho' the Writ was not taken out actually in *Trinity Term*, yet bearing Date then, and the firſt of *Auguſt* the Goods were ſold; yet the Writ being *Teſte'd* the firſt Day of *Trinity Term*, 'twas held not amendable; and that the Hands of the Vendee were bound by it.

Now this Writ here is, in the Judgment of the Law, iſſuing out of this Court the 24th of *October*. If we ſhould amend this, what Alteration ſhould we make? We muſt make it another Writ: For a Writ that iſſues out of this Court the 24th, cannot be a Writ that iſſues out the 23d; and if we amend it, we make it as different as poſſibly can be.

Now why ſhould we amend it? As we now take it, by the Statute of *Henry* VI. the Writ is good in it ſelf; but it is not, as the Court awarded it. The Meaning of the Statute was not to mend miſtaken Writs, but Miſtakes in Writs: The Statutes meant nothing but that. Not that you ſhould amend a Writ that was good in it ſelf, and fit it to your particular Purpoſe.

Now here is a Writ executed in the ſame Term: Yet to make this Tryal to be good, what muſt you do by this Amendment? You muſt make it to be another Writ: For you muſt make the Writ, even contrary to Truth, to be the 23d, which was the 24th: And therefore it cannot be made good; nor can the Tryal be made good. You would make it the 23d, where it is indeed the 24th; and ſo you would change the Nature and Subſtance of the Writ. Is not this a material Variance, and different from the Award of the Court?

Before the Statute of *Jeofails*, if it had been in a Civil Caſe, it is help'd by the Statute of the 8th of *Henry* VI. Becauſe it is a Diſcontinuance of Proceſs, it is help'd by that Statute; but that Statute extends not to this Caſe. I would fain know, whether there has been any Amendment, in any Caſe of this Nature, ſince the Statute of *Henry* the VIth? It's true, *Teſtes* of Writs have been often amended; but that was, where it was a void *Teſte*; as on a *Sunday*, or out of Term; or where it is impoſſible, as after the Return, *&c.* That is a void *Teſte*, if it bear Date on a *Sunday*, or in the Vacation.

In Civil Caſes it is amendable; becauſe it is the Fault of the Clerk by miſtaking a Day; as in making

making it on a *Sunday*, or in a Vacation-Time: There may be Reaſon for it; and it may be amended by the Statute of *Henry* VI. becauſe plainly a Miſtake of the Clerk. And on this Reaſon is that Caſe in *Yelverton*, 64. and the Caſe of *Bradley* and *Banks*, 204. There was a *Venire* returnable one Day; and the *Teſte* of the *Diſtringas* was of the ſame Date, and the ſame Day with the *Teſte* of the *Venire*; and that was held amendable, becauſe it is impoſſible you ſhall diſtrain before the Return of the *Venire*; and the *Diſtringas* bore *Teſte* the ſame Day with the *Venire*: So that the *Teſte* was repugnant to the Writ it ſelf; and therefore the Writ is naught in it ſelf, becauſe it was to diſtrain a Jury that was not ſummon'd. But the Law has always been, That if upon the Return of one Writ, there is to be another Writ awarded; that other Writ muſt be *Teſte'd* on the very Day upon which it was awarded, and the Return of the former.

And that Caſe of *Bradley* and *Banks*, in 2 *Cro.* and *Yelv.* is very ſtrong to this Purpoſe. There the Perſon came in on the Exigent, and pray'd *Oyer* of the Writ and all Meſne Proceſs: And therein appeared a Gap, the firſt Proceſs being returnable *Decimo ſexto Octobris*, and the Appeal being returnable *Quindena Sancti Michaelis*, that is, the 16th of *October*, were well. But the *alias Capias* goes out *Teſte'd* the 23d of *October*, which being Seven Days after the Return of the former, that was wrong; for it ſhould have born *Teſte* the 16th of *October*, then it had been right; but being the 23d, there was a Gap; and therefore it was held a Diſcontinuance.

And this is the Practice of the *Common-Pleas*, tho' not ſo much obſerved here in this Court, in Writs of Enquiry of Damages: But enquire of them in the *Common-Pleas*, and they will tell you, the ſubſequent Proceſs ought always to bear *Teſte* the Day of the Return of the former Writ. If you go to a *Capias*, either in Outlawry, or to diſtrain a Man; the Second *Diſtringas* is always *Teſte'd* the Day of the Return of the Firſt; and the Third is always *Teſte'd* the Day of the Return of the Second: And if it bear *Teſte* the next Day, all Proceſs is diſcontinued.

Ay, but you ſay, it is a Miſtake of the Clerk. It is ſo: But we are to judge of the Thing it ſelf, whether it is by way of Negligence, or for want of Skill. For ought I know, it may be for want of Skill, that it is *Teſte'd* another Day: But every Clerk does not know this. Nay, ſome have pretended to know, that it need not bear Date the Day of the precedent Writ's Return. Why then might it not be an Error in Skill? If he thinks it a right Writ, and ſays it muſt be *Teſte'd* the 24th, this is want of Skill; and then it is not amendable. And then this being a wrong Writ, the *Teſte* is material; and its being *Teſte'd* the 24th, is a Miſtake ſo material, that if it had been a Civil Caſe, I ſhould have been againſt the Amendment; and therefore much more in this Caſe, I think, it ought to be quaſh'd, and a new *Venire* awarded.

Mr. *Att. Gen.* If the Court decide it, I cannot tell what to ſay.

Mr. J. *Powis.* What have you to ſay?

Mr. *Att. Gen.* The Court is divided, and there it hangs.

L. C. J. *Holt.* I would not be underſtood otherwiſe than thus: I do not ſay, this Caſe is within the Statute; but I look on it to be ſo material a Variance, that it is not amendable.

Mr. *Att. Gen.* The Court being divided in their Opinion, I know not any Rule to ſtop Judgment.

Mr. J. *Powis.* I know not how far it may go in Criminal Caſes. That which ſway'd with me, was, to ſee ſo many bold Amendments in many Caſes; that went with me very far; and which were ſaid to be done by Common Law.

What I ſaid as to coming the next Day, I did not rely on it; tho' it did ſeem to alleviate the Thing. But I was ſo tender in the Caſe, that I did think it might be better to have a new Tryal. I have held, in my Opinion, with my Lord Chief-Juſtice *Holt* and Mr. Juſtice *Powel* a great deal. I was tender before in the Point: And I do join with my Lord Chief-Juſtice *Holt* and Mr. Juſtice *Powel*, that there ought to be a new Tryal, and a new *Diſtringas*.

Mr. *Att. Gen.* With a Rule, I ſubmit; but without a Rule, I would have ſigned Judgment.

Mr. *Mountague.* My Lord, We move to ſet aſide this Tryal, becauſe it is irregular.

Mr. *Att. Gen.* If you make a Rule, we need not diſpute it.

Mr. J. *Powel.* Judgment goes of courſe, unleſs you ſtop it.

Mr. *Att. Gen.* There is no Rule to ſtop it: And then I can ſign my Judgment.

Mr. *Mountague.* My Lord, Tho' the Court can make no Rule for an Amendment, becauſe the Judges are divided about that Point; yet I humbly conceive, your Lordſhip, and the reſt of the Judges do agree, that the Writ, as it now is, is naught; and therefore I hope, you will let us have a Rule to ſtay Judgment.

L. C. J. *Holt.* Mr. *Attorney*, They have been moving to have a new Tryal.

Mr. *Att. Gen.* 'Twould be a Breach of Duty in me, not to ſign my Judgment, if you don't make a Rule while it is under Conſideration.

L. C. J. *Holt.* Here was Leave given to move in Arreſt of Judgment; and there is no Rule for ſigning Judgment.

Mr. *Att. Gen.* There is no Rule to ſtop it.

Mr. *Mountague.* What is the Rule that was made upon my firſt Motion?

Clerk reads, *Die Martis proximo*, &c.

Mr. *Mountague.* We take it, that tho' the Court be divided about the Amendment; yet ſince there can be no Amendment, the Writ being naught, we ought to go to a new Tryal.

Mr. J. *Powel.* By all means, go to a new Tryal.

Mr. J. *Powis.* It is in a Caſe that was never ſo much look'd into before.

Mr. *Att. Gen.* If we muſt have a new Tryal in this Caſe, we are in a worſe Caſe than I thought we were; for we are to begin Proceſs again. But if a Rule be made, we muſt ſubmit.

Mr. *Mountague.* There was a Rule made at the Side Bar, upon my Motion there, That all Things ſhould ſtay.

Mr. *Att. Gen.* That was not a Place to move for a Rule.

L. C. J. *Holt.* That is to ſtay *in ſtatu quo* they were then. There is no Rule for Judgment to ſtay.

Mr. *Att. Gen.* If on Motion to arreſt Judgment, the Judges of the Court are divided, I have heard it ſaid, that Judgment may be enter'd.

Mr. J. *Powis.* I ſaid at the beginning, I was inclinable to have a new Tryal.

L. C. J. *Holt.* I know not what you mean. You ſaid, you were inclinable to have it amended: I would have it amended, if I had followed my Fancy.

Mr. J. *Powel.* If my Brother has changed his Opinion, he may: For we have been arguing, that we may change our Judgments.

L. C. J. *Holt.* You have any Time to-day to move it again. Put us in mind of it: I may change my Mind too, it may be.

Mr. J. *Powis.* I judge not how it may go in Criminal Matters: But all are of Opinion, that it ſhould not ſtand as it does.

L. C. J. *Holt.* The Court is divided that it ſhould be amended; but not that it is well as it is: And that is Mr. *Attorney*'s Motion, to alter what is to be amended.

Mr. J. *Powel.* Mr. *Attorney* makes no Motion, for a Rule; but would have it ſtay as it does.

L. C. J. *Holt.* That it may remain *in ſtatu quo.*

Mr. *Att. Gen.* If you cannot agree in your Judgment, I ſubmit it to you, whether I may not enter Judgment for the Queen, tho' it be not amended.

Mr. *Mountague.* We hope Mr. *Attorney* ſhall not be permitted to ſign Judgment in this Caſe: For tho' 'tis true, that there can be no Amendment, becauſe the Court is divided; yet I do not apprehend that it is right as it is.

Mr. *Att. Gen.* If the Court be divided, no Rule can be made.

Mr J. *Powis.* Let there be a new Tryal.

Mr. *Mountague.* Mr. *Attorney*, The Court would have a new Tryal: And I think you had better do ſo.

Mr. *Att. Gen.* I want none of your Directions.

Mr. *Mountague.* I may take notice of what the Judges ſay.

L. C. J. *Holt.* And he will make uſe of what we ſay, as far as is convenient for him.

Mr. *Att. Gen.* But Mr. *Mountague* muſt not pretend to give Direction what I am to do.

Mr. *Mountague.* I don't give you Directions; but I hope I may take notice of what the Court ſays.

L. C. J. *Holt.* Mr. *Attorney*, We believe you don't want their Advice.

Mr. *Att. Gen.* But they are very ready to give it.

Mr. *Mountague.* I only took notice to Mr. *Attorney*, how far the Court was agreed: And only moved, that the Rule, which I did conceive was pronounced by the Court, might be taken.

Mr. *Att. Gen.* You moved to no Purpoſe.

Mr. *Mountague.* I take it, that Mr. Juſtice *Powis* is for a new Tryal.

Mr. J. *Powis.* Yes, I am ſo. It is a nice Caſe, and has never been conſider'd fully before.

Mr. *Mountague.* I hope now we have done.

Mr. *Att. Gen.* If I hear what Rule the Court makes, I ſhall ſubmit.

Mr. *Mountague.* I hear, the Pleaſure of the Court is, that the Rule ſhall be for a new Tryal.

L. C. J. *Holt.* You muſt have a new *Venire Facias.*

Mr. *Att. Gen.* That cannot be, with Submiſſion: A new *Venire* we cannot have.

L. C. J. *Holt.* You muſt have a new Tryal. The Jury have given their Verdict; whereas they appeared to a wrong Writ, and ſo the former Tryal is not warranted.

Mr. *Att. Gen.* I think they are warranted to appear by the Return of the *Venire*; and that we muſt go back but where the Fault is, which is only but where the *Diſtringas* is made out: So that a *Diſtringas de novo* is to be for the ſame Jury. But I will meddle no more in it, without particular Order.

L. C. J. *Holt.* Do what you will; we will give you no Direction. We quaſh this Tryal.

Sir T. *Powis.* My Lord, If you quaſh this Tryal, then we are to begin again.

Mr. *Att. Gen.* If the Court is of Opinion that there ought only to be a new *Diſtringas* iſſued, and we can go back no further; I am afraid we ſhall never come right.

Mr. J. *Powel.* The Difficulty is in right awarding the *Diſtringas*, becauſe it does not bear Date with the Return of the *Venire.* But then conſider where you are: If you bring him on a new Tryal, he can challenge any one that has given a Verdict before.

L. C. J. *Holt.* It is a *Diſtringas* to ſummon that Jury, but it is without *Teſte:* And that Jury having given their Verdict, they are not to ſerve again.

Mr. *Att. Gen.* I am ſure, according to Authorities, they muſt begin where the Fault was.

L. C. J. *Holt.* I ſhould have thought the *Venire de novo* had been proper: For this *Diſtringas* bearing *Teſte* out of Time, and that being erroneouſly executed, there ought to be a new *Diſtringas*, which is to be founded on a new *Venire.*

Mr. *Att. Gen.* If you do quaſh this Tryal, I ſuppoſe your Lordſhip will make ſome Award for a new one.

L. C. J. *Holt.* We leave it to you.

Mr. *Att. Gen.* I cannot enter it.

Mr. J. *Powel.* We muſt grant a *Venire de novo*; which we cannot do without quaſhing this Verdict; and that is the way to try him again.

Mr. *Att. Gen.* My Lord, I am far from thinking I can alter your Rule; but I can't tell how to follow it.

L. C. J. *Holt.* What we do is *ex abundanti*, more than we are bound to. We can leave you to do what you can: The taking out the *Venire* and *Diſtringas*, are Things of courſe.

Mr. *Att. Gen.* I think there is a Neceſſity to explain my Meaning. I don't pretend to direct what you muſt do; but you muſt direct what is to be done: I cannot award a *Venire.*

L. C. J. *Holt.* It is taken out of courſe. You may award that as well as the firſt, if it may be done.

Mr. *Att. Gen.* How can that be done, ſeeing you quaſh the *Diſtringas*?

Mr. J. *Powel.* That is the Award of the Court, and does not hinder you from taking out a new *Venire.*

Mr. *Att. Gen.* I cannot do it without the Court. When you quaſh this, you muſt award another.

L. C. J. *Holt.* We do award it.

Mr. *Att. Gen.* I remember in the Caſe of *Fitzwalter*, when they quaſh'd the Tryal, they order'd a new one ſhould be had, *&c.*

L. C. J. *Holt.* If we make an Award, and you don't like it, you will not comply with it: Therefore we leave you to take it out as you will.

Mr. *Att.*

Mr. *Att. Gen.* You muſt order a new *Venire*; I cannot award a new one elſe.

L. C. J. *Holt.* You muſt have a *Venire Facias.*

Mr. *Att. Gen.* That muſt be the Judgment of the Court then: For if I award it, it muſt be by Order of Court.

Mr. J. *Gould.* You had better declare *de novo.*

Mr. *Att. Gen.* I am fearful of what I do. I hope the Court will diſcharge me.

L. C. J. *Holt.* When a Tryal is quaſh'd, and ſet aſide for any Irregularity of the Tryal, that Jury is diſcharg'd: All the Pannel is diſcharg'd, and there muſt be a new Pannel.

Mr. *Att. Gen.* How will that appear?

L. C. J. *Holt.* If it appear that the *Diſtringas* did not iſſue as it ought, every Thing ſhall be enter'd at large on the Rule: That the *Diſtringas* did not iſſue till the 24th of *October*; therefore they will conſider, that the Verdict ſhall be ſet aſide.

Mr. *Att. Gen.* And that we ſhall have Leave to go to a new Tryal.

L. C. J. *Holt. Preſumptum eſt.*

Mr. *Att. Gen.* If you pleaſe to make the Rule then, I ſubmit.

L. C. J. *Holt.* We will adviſe how to make the Rule.

Note, *This and the following Argument ſhould have been inſerted* Pag. 678. *before that of Mr. Serj.* Darnel; *and that of Mr.* Parker ante P. 689. *ſhould have been plac'd before Mr.* Whitaker's, ibid.

Mr. *Attorney General.* MY Lord, Becauſe this Matter has been preſs'd with ſo much Warmth, I muſt beg Leave to obſerve ſome few Things, in Anſwer to what has been ſaid.

This is a Thing that not only concerns this ſingle Proſecution, but it concerns all the Proſecutions for the Crown; and in all Caſes, not only Criminal, but Civil. And, my Lord, if the Statutes of Amendments extend not to any other Caſes but what they urge, the Caſe of the Crown is worſe than that of the Subject. It is worthy of Conſideration, what Things are amendable by Common Law; for if the Crown be left to the Mercy of the Clerks, it cannot but be of very ill Conſequence. Therefore I hope we may take the Benefit of the Common Law.

My Lord, I would beg Leave to recite ſome few Preſidents, to ſhew how the Common Law formerly ſtood. And the firſt I ſhall take notice of, is the Preamble of the Statute, 32 *Hen.* VIII. *Cap.* 30. There it is ſaid, The ſtaying of Judgment after the Verdict, is a great Scandal to the Common Law, and the Miniſters of the ſame. And, my Lord, there is another Thing to be conſider'd; That admitting the Common Law ſtood as it did before, there is a great Difference between the Proceedings of the Crown at the Common Law, and Civil Caſes. The Crown had many Privileges at Common Law, which the Subject had not. And it will found very harſh, that the Crown ſhall be left without thoſe Helps by the Statutes of Amendments, when ſo many of the inferior Subjects did not want the Help of them. For it is impoſſible this ſhould not be thought of in Parliament, that ſome Care ſhould be taken for the Crown in thoſe Matters where it needed.

Now there is, in all our Books, Notice taken of a greater Privilege that belongs to the Crown, than to the Subject. There ſhall not be a Demurrer to the Evidence in the Caſe of the Queen, without her Council's Aſſent; yet in the Caſe of a Subject, there may be a Demurrer to the Evidence. So the Crown may either inſiſt on a Demurrer, or wave it, and take Iſſue at Pleaſure.

There is this likewiſe: Before Judgment, in a Criminal Caſe, the Queen may amend, but the Subject not.

Alſo by *Hardreſs Reports*, *fol.* 504. before Judgment, no Diſcontinuance may be in the Queen's Caſe, altho' the Iſſue was tried. The Attorney takes Iſſue to one Part; and it is pleaded, that this is a Diſcontinuance to the other. Now there can be no Diſcontinuance before the Verdict. And that Book goes further, and ſays, That the want of Continuance in that Caſe, cannot be objected before Judgment, *&c.* And in 2 *Buls*, 35. an Indictment is ſaid to be amended even after Verdict.

Now there is great Reaſon, that ſuch Miſpriſions in Writs at the Queen's Suit ſhall be amended by the Common Law. And in *Fitzherbert's Abridgment*, *Tit. Amendment*, *Placita* 22. if the King bring any Writ which wants Form, *&c.* it ſhall be amended. But it is otherwiſe in the Caſe of the Subject. So ſays 8 *Coke* expreſly, *fol.* 156. An Original Writ is not amendable in the Caſe of a common Perſon, but it is amendable in the Caſe of the King.

Now it has been the conſtant Practice, that theſe Privileges have been preſerved to the Crown. The Queen may at any time amend her Information after Tryal, but a Subject cannot.

Theſe Privileges have been preſerved to the Crown, even at the Day of Tryal: And many Miſtakes of Clerks, in Informations and Indictments, have been ſo amended. This is a Right of the Crown by the Common Law.

In the next place, my Lord, I would obſerve, what is the Matter we are going to amend. It is not what alters the Party's Defence. It alters not the Iſſue, or Tryal; nor is it any Thing that tends to his Prejudice: And by the Common Law, that may be amended, which is not a Prejudice to the Party.

The Defendant has a Day given by the Roll; and the ſame Day the *Diſtringas* is awarded, he appeared: Every one muſt own, there was no Prejudice to him, whether the *Diſtringas* be of one *Teſte* or another. 'Tis true, there is the Year-Book, 20 *Hen.* VI. *fol.* 18. which is alſo in *Brook's Abridgment*, *Tit. Amendment*, *Placit.* 4. There was a *Miſnomer* in the *Capias* and ſubſequent Proceſs, and in the *Exigent*: And the Court held, that the *Capias*, &c. might be amended, but not the *Exigent*; becauſe of the Prejudice, if one might be outlaw'd on ſuch Proceſs, to which he never appear'd; and therefore it might not be amended for that Reaſon. But this Caſe ſtands clear of all Objections of that kind. He had a Day to appear, and make his Defence: He came in, and did appear accordingly; and no Prejudice happen'd to him.

Now, my Lord, as to the Exception they make, I muſt beg Leave to ſay, it can be of no weight. I agree, the Award of the *Diſtringas* muſt be according to the Writ of *Venire*: But, with Submiſſion, I obſerve not the Neceſſity that the *Diſtringas* ſhould be *Teſte'd* the ſame Day. No Authority

of Law requires it, and by Reaſon it ſhould be otherwiſe. For ſuppoſe the Award is made by the Court the firſt of *January*, the Clerk has all that Day at leaſt to make it. For after the Court has made the Award, the Award is to be drawn up and delivered to the Clerk to make the Writ, and it cannot be ſuppoſed to be made at the ſame Time as the Award is. The Court awards one Day, and the *Diſtringas* is made the next Day, which is as proper and convenient a Time as can be; I ſee nothing in the Reaſon of the Thing againſt it.

My Lord, the Authorities they cite, that where Proceſs iſſues another Day, and not the ſame 'tis awarded, do not prove it a Diſcontinuance; and many Caſes are otherwiſe; as an Award to give notice of Tryal, *&c.* Alſo there is the Book of *Fitzherbert's Natura Brevium* 20 *G. & Brook Title Diſcontinuance* 59. which ſays, if the Plaintiff does not aſſign Error the ſame Term, then it is a Diſconttinuance. Now tho' a Writ of Error is returnable at a Day certain, yet he has all that Term to aſſign Error; but if he omits it a whole Term, it is a Diſcontinuance.

My Lord, I do not ſee but this is a regular Proſecution on a Writ not liable to Exception. There is another Book, 21 *Ed.* IV. that ſays, There ſhall be the ſame Day given to the Jury by the *Diſtringas*; but I ſee not the Neceſſity that the *Teſte* ſhould be that Day. *Brook Diſcontinuance* 53. At the Return of the *Venire Facias* the Defendant was eſſoyn'd, and the *Eſſoyn* adjourn'd: Now the *Habeas Corpus* ſhall have the ſame Day as the *Eſſoyn* had by Adjournment, and ſo not the ſame Day with the Return of the *Venire*; for, ſays the Book, you ſhall continue the *Venire* to the ſame Day of Adjournment; but that does not ſhew that the Proceſs ſhall be iſſued that Day, but rather the contrary. Now in this Caſe there is all done that is neceſſary, the Proceſs is continued, the Jury is adjourn'd to that Day that it is by the Roll, the Parties are continued to that Day. I know no Caſe that ſhews a Neceſſity of the Writ bearing Date the ſame Day, but one, and that, I think, is againſt them: 'Tis the Caſe of *Bradley* and *Banks*, in *Yelverton* 204. and that was in an Appeal, and that it was ſo, there was a Diſcontinuance in an Appeal, if there be any Time between the Return and the *Capias*, tho' the Defendant hath appear'd, yet all the Proceſs are diſcontinued; for in that Caſe the *Teſte* ought to be the ſame Day as the Proceſs was. Now if that were a general Rule, it would be againſt us; but that was founded on a ſpecial Reaſon and does them no Service. For all Appeals are to be without Intermiſſion, and if they are intermitted any Time the Appeal is loſt; for the Common Law is not alter'd by the Statute of *Glouceſter*, therefore there can be no Imparlance after Appeal; for if an Imparlance be thereon, it is a Diſcontinuance, and therefore that Caſe will be of no Authority to them.

But there is a Caſe in *Crook. Eliz.* (*N. B.* The Caſe intended ſeems that of *Rogers* vers. *Bird. Cro. Eliz.* 572. *ſed vide ib.* 433. *contra.*) where this Proceſs is taken notice of as good, and that is, that the Proceſs is the very next Day. There a *Venire Facias* was awarded *Craſt. Trin.* the *Diſtringas* was iſſued the Day after, and by that it ought to be ſo; and the Return was amended, and the Proceſs was the next Day after the Return. Now that being ſo particularly ſtated, ſeems to be an Authority that it may be ſo.

L. C. J. *Holt.* How does it appear to be a Day after?

Mr. *Att. Gen.* The *Venire Facias* was *Craſt. Trin.* the *Diſtringas* was *Die Veneris*, &c. which was the Day after. (*Quære* Cro. El. 433.)

Mr. *Broderick.* In a Criminal Caſe it is not allow'd.

Mr. *Att. Gen.* I do not tell you whether it was a Criminal or a Civil Caſe, but the Exception was taken notice of, and it was amended; but this I only premiſe. Now my Lord, with great Submiſſion, I don't know that there is any Neceſſity (it being a Proceſs at the Suit of the Crown) to have it *Teſted* on any Day certain; for it ſeems to be well on any Day. If it be in the ſame Term, and notice having been given to the Jury, and they and the Party appearing thereon, I cannot ſee why it may not be well. In Criminal Caſes the Courſe of the Court is to amend Errors (of Form) in Indictments and Informations the very Day of the Tryal, and that has always had its Weight in Criminal Proſecutions; but, with Submiſſion, if it be not right, it is to be made right; if it be a Miſtake of the Clerk it may be amended. If you award a Writ it is the Clerk's Duty to make it out; and if he miſtakes in Form or varies from his Inſtructions, *&c.* all theſe Matters are amendable by the Common Law, and therefore need not the Aid of any Statute. But I cannot give up that neither; for the Crown has certainly the Benefit of the Statutes of Amendments, and I think *Coke* is of that Opinion too, on the Statute of 14 *E.* III. That Statute is general, and to ſay it comes only to Cauſes between Party and Party and not to Cauſes of the Crown, I cannot underſtand, for there is nothing in it that leads that way. And yet becauſe it ſpeaks of Cauſes between Party and Party, this Rule has been laid down that it extends not to the Crown; this Rule has indeed prevailed: But where a Statute is in general, and the End of it is to ſuppreſs Fraud, according to all the Rules laid down for expounding Statutes, the Crown ought to have the Benefit of it. It is to take off the Scandal of the Law, and the Miniſters thereof, as the Statute 32 *H.* 8. ſays. Now the Statute of 14 *E.* 3. is general, that by the Miſpriſion of a Clerk no Proceſs ſhall be annulled or diſcontinued by miſtaking a Letter or Syllable, but as ſoon as it is perceived it ſhall be amended. Now I think there is no Reaſon to be given why it ſhould not extend to Proceſſes of the Crown as well as of the Subject, unleſs they thought the Subject only wanted it. I do not underſtand why a general Law may not extend to the King, as well as the Subject. Now as this Statute is general, I mean the Statute of *E.* III. ſo there is the Statute 16, 17. *Car.* II. *Cap.* 8. which is likewiſe general, and yet it has been always taken to concern the Crown, as well as the Subject. And why not one Statute as well as the other I cannot conceive. Now my Lord, we are not without good Opinion that the Benefit of the Statute 16 and 17 C. II. does belong to the Crown. 'Twas the Opinion of the L. C. J. *Hale* in the Caſe of the Lord *Fitzwater* there the *Venire* was directed to one Place, when it ſhould have been to two; and the Queſtion was, whether this could be help'd by the Statute of 14 *Car.* 2. He adher'd to that Opinion, and the Jury thereupon gave their Verdict. It was indeed ſet aſide; but Judge *Hales* always abode by that Opinion. And ſo is firſt *Syderfin* 148. The King againſt *Wright*. There it is ſaid the Statute of *Jeofail* does extend to it; and even by the Rule in *Blackmore's* Caſe the Statute does extend to it; For there ſays my Lord *Coke*, that Statute does not extend to Appeals, or Indictments, Pleas of the Crown or any Proceedings thereon, for they are excepted. That is his Opinion, where they are excepted, it does not extend to them. Now all Pleas

of the Crown are not excepted, but only Appeals, Indictments, &c. And therefore Informations on particular Statutes are not excepted. Now on the reading of the Act, no Pleas of the Crown are excepted, but only Appeals and Indictments; therefore my Lord *Coke*'s Opinion muſt be, that that Act extends to all Things that are not excepted therein, and conſequently to this Caſe. In *Dyer fol.* 153. there is indeed another Queſtion, whether it be a Diſcontinuance in the King's Caſe on the Statute of 32 *H.* VIII. (*Vide* Dyer 353.)

Now if he make a Quæry on that Statute, I cannot imagine why he ſhould not have doubted in other like Caſes. But when he came after to *Fol.* 346, 347. In an Information on the Statute of Uſury, the Book ſays the miſconveying of Proceſs and the misjoining of Iſſues, are amendable by the Statute of *Jeofails*, and accordingly Judgment was given againſt the Defendant, notwithſtanding divers Errors in the Proceedings; ſo that the Judges were of Opinion in that Caſe that the Statute did extend to Caſes of the Crown.

L. C. J. *Holt*. The Judges there did not directly conſider the Statute of *Jeofails*, 'twas but an Opinion *obiter*.

Mr. *Att. Gen.* Theſe are the Words of the Book, *Tandem propter Statutum de* Jeofailes *que parle de miſconveying de Proceſs*, &c. Judgment was given againſt the Defendant. But I ſhall have Occaſion afterwards to take notice, that a great deal of the Practice of the Courts goes on the amending of the Returns. That Statute is for amending of Returns, and I think we are within the Statute, or if not, That the Common Law will help us: But be that as it will, we are now on the firſt Point, and I think it is amendable by the Common Law; and I think I can give you an Account of much greater Amendments made by the Court at Common Law, than this which we now ask. Now for *Blackmore*'s Caſe, if we had left it there, we might have done it by that Caſe; for it appears by the 8th *Rep.* 156 *b* without doubt there were Amendments by Common Law; and my Lord *Coke* gives Inſtances of it. Now I yield it was there in a Civil Caſe; but I think no Man can pretend that at the Common Law there were any Rules to diſtinguiſh between Caſes of the Crown, and Caſes of the Subject, unleſs the Crown had a much greater Power to amend than the Subject had, and that ſo it was, appears by many of our antient Books. And there are Authorities in the Statute Law likewiſe that the Crown could amend further than the Subject. For *Coke* in *Blackmore*'s Caſe ſays, That Variance of the Writ from the Original was amendable by the Common Law, and any Part of the Record in the ſame Term; for that during the Term it is in the Breaſt of the Judges but Miſpriſions of Clerks in another Term in Proceſſes were not amendable by the Court. But I ſhall plainly ſhew, that Miſpriſions of Clerks were amendable at Common Law in Caſes of the Crown; and this is prov'd by all the old Authorities. The old Books ſay they ſhall be amendable in the ſame Term, and we are now within the ſame Term, and ſo hope we ſhall be deliver'd from that Queſtion. Now that Rule of my Lord *Coke*, and the Reaſon of it, extends to Criminal Caſes as well as Civil, and both Caſes are within the Power of the Court to amend. For if a Fine be ſet within the Term, the Court may in the ſame Term amend it or diſcharge it. This is allow'd to be in the Power of the Court by the Common Law in the Caſe of the Crown. In *Trinity* Term, *vide* 4 *Mod.* 395. between the King and *Walcot*, there was an Error in the Writ of Attainder, and and an Exception was taken, and it was amended in the ſame Term. For the Court finding the Form of Entry to be erroneous, they did the ſame Term order the Record to be razed, and made a Rule for the next Term; and this was done by the Power of the Court at Common Law. For while the Proceſs and the Record is in the Breaſt of the Court, they have a Power by the Common Law to make a new Judgment.

My Lord, the next Matter I would obſerve is, That all Miſpriſions of Clerks or their Aſſiſtants in the Caption of the Judgment, may be amended in the ſame Term. For that there is *Saunders Reports fol.* 209. *Faulkners Caſe*. If an Indictment be miſtaken in the Stile of the Court, &c. the Court may amend any Thing to make the Caption right, firſt *Syderfin* 259. King againſt *Glover*, and this was to amend a material Point. There is the like Caſe in 2d *Croke*. Theſe are Criminal Caſes. It was an Inquiſiton taken *apud* ---- it was not ſaid *in Portibus* Londini. The Clerk of the Peace was order'd to amend it. And in *Jones*'s *Rep. Stafford*'s Caſe, firſt Abridgment 196. there was an Error in the Reverſion of an Attainder. The Certificate was, that he was arraign'd the 18th of *March*, and convicted the 20th of--- In that Caſe Judge *Barclay* was of Opinion it might be amended by Common Law, and the Lord *Coke* agreed; but Judge *Jones* was of another Opinion, and he gave it for a Reaſon, eſpecially where the King had ſignified his Pleaſure of deſiring it; and afterwards it was not amended; but two Judges were of Opinion it might be amended. In *Palmers Rep.* 480. in *Plums* Caſe, there was an Indictment in *Eſſex*, and it is *Exactus eſt ad Comitatum*, without *meum*, and a *Certiorari* was awarded to the Coroners, to certify whether it was exact *ad Com. meum*, and amended accordingly. So 7 *E.* IV. 15. The *Niſi Prius* was *Menſ. Mich.* and the Roll was *Quinden Mich.* and that was amended. Now this ſeems likewiſe to be warranted by the Statute of *E.* III. and whether that Statute extend to it or not, yet the other Statutes extend to all.

For the old Books, I would only trouble you with ſome Caſes that were before the Statutes of Amendments; and there 'tis plain, both as to Civil and Criminal Actions, it was the ſame Thing. For in both Caſes it was frequently amended; ſo in 5 *E.* III. 25. an Entry of a Continuance was miſtaken, and it was amended by the Court: So in the Caſe of *Chamber* againſt *Barrow* ---- 430. there was a *Scire Facias* obtain'd, and it was returnable *Sexto* and the Entry is *Septimo*. This upon a Demurrer was objected, and that all was thereby diſcontinu'd; it was anſwer'd, the Court might do it at all Times by the Common Law, and this may be amended by the Common Law.

My Lord, this is an expreſs Authority for us, that the Proceſs is amendable at any Time before the End of the Term, and the Judgment is in the ſame Term. In the Book 9 *Ed.* 3. *Placita* 3. The Default in Proceſs may be amended at any Time before Judgment; wherever the Roll is contrary to the Writ, it ſhall be amended by it. After Iſſue joined, the *Diſtringas* was awarded, where no *Tales* was awarded; the Clerk found the Award of the *Venire Facias*; and there it is ſaid it is amendable, being in the Breaſt of the Court.

So *Bro. Title Amendm. Placita br.* The original was in *Suſſex*, and the Proſecution in *Eſſex*; yet 'twas held amendable, and no Diſcontinuance. Theſe are all by Common Law. So 40 *Ed.* III. *Placita* 13. and *Brooks Amend. Placita* 17. There was a Writ iſſued againſt Three: Two appear'd; and one

made

made Default; againſt whom Proceſs iſſued, and the next Day he appear'd; and this was amended becauſe it was amendable by Common Law. Likewiſe *Fitzherberts Amendment* 6. There was a Variance by the Default of the Defendant, and it was amended, and it was after a Default. So 39 *E.* 3. In the Record it was---and in the *Niſi Prius* it was---- and it was amended. Now there is a modern Caſe, *Croke Eliz.* 222, 256, &c. in the *Venire* one of the Jurors was called *Samuel Sutton*, and in the *Diſtringas Saul*; but it appearing to be the Miſpriſion of the Clerk, and that the Writ was right, they held it was amendable by Common Law. And *Brook's Amend. Placita* 27. the Count or Declaration was *ad damnum* an Hundred Pounds, the *Niſi Prius* was to the Damage only of an Hundred Shillings, and the Court ordered the *Niſi Prius* to be amended, as being only the Miſpriſion of the Clerk. Now that goes a great Way, for the *Teſte* there had no Writ to try it; but yet that is adjudged to be amendable. And ſo in that Book *Placita* 24. and in divers other Places. So that it hath been always obſerved in common Practice as amendable, as being *Vitium Clerici*, *Brooks Placita* 26 and 29. *Fitzherbert* 16, 17 and 29. Theſe are all Caſes at Common Law, and ſo far will juſtify the Amendment in our Caſe. And in *Fitz. Amend.* 43. There is a Caſe to ſhew that where there is a Prejudice of the Party an Error may be amended, a *Diſtringas* is return'd, where there was a Default in the *Teſte* and the Jurors Names. The *Teſte*, &c. was amended, for they took it before the Roll was made up. There is another Caſe the 40th of *E.* III. the Proceſs was diſcontinu'd after the Appearance of the Defendant, and it was amended. There is likewiſe 44 *E.* III. (For I meddle not with thoſe ſince the Statutes of Amendments.) There was a Writ awarded againſt *M.* and *G.* the Proceſs was againſt *M.* only; and afterwards it was amended; and there it is ſaid both the Roll and the Writ may afterwards be amended, and they were amended accordingly.

My Lord, I cite theſe Caſes to ſhew that Amendments were made by the Common Law, and the Statutes cannot make any Alteration, tho' they ſhould not extend to the Crown. I believe there are not in the old Books many Inſtances of Proceedings by Information; but that ſeems a great Argument to me, that this Nicety that hath crept into theſe Proceedings are not by Common Law; in our old Books they are very little taken notice of; but it ſeems theſe Exceptions were not taken then, if they had we ſhould have found them; but the Books are quite otherwiſe. Now if the Amendments were allowed at Common Law, I believe none can diſtinguiſh and ſay, That it ſhall not be amended in our Caſe, for I think they cannot be diſtinguiſhed.

There are ſome other Modern Caſes wherein greater Things have been done. Firſt the Caſe of Sir *John Aſhly*, that has been cited (*ante* 677.) that it is an Amendment of a Judgment that was entred by Diſclaimer. In the *Niſi Prius* it was right, but all was left out in the Judgment. And it was objected that it was not amendable, becauſe it was not in the ſame Term, and that none of the Statutes of Amendments extended to ſuch Caſes; yet upon Examination it was amended, becauſe it was only a Miſpriſion of the Clerk by miſtaking his Book, there it was thought to be in the Power of the Court by Common Law to do right. Then in the Reverſal of the Attainder of the Lord *Stafford*, there were Proceedings in Court fourteen or fifteen Years; but by Neglect of the Clerk there were no Footſteps of any Thing appear'd, and yet there was a Rule for a Record to be made, whereby there was a Judgment of Reverſal enter'd. Now this Court did think they had a Power to ſet the Records right, and they gave them leave to make a Record, in order to make a Reverſal of that Attainder; and if it may be done againſt the Crown, no doubt it may be done for the Crown, for that it is but ſetting Things right. There have been other Caſes cited, as *Harris's* Caſe in *Cro. Jac.* 502. *poſt* 704. and that was a very extraordinary Amendment. It was an Indictment for a Nuſance. Not Guilty was pleaded indeed, but the Clerk who entred it join'd not Iſſue, and the Verdict was againſt the Defendant, and no Iſſue join'd; that was omitted; but the Return was allow'd. Now if we had done ſo, we ſhould have had a great Noiſe about it. But here the Court allow'd an Amendment to be made; and it was amended, as being done by the Clerk's Negligence, and this in the Time of another Clerk: And theſe Words were inſerted for it.

And it was ſaid, if ſuch Faults ſhould not be amended, many Courts would be deprived of their Juriſdiction. And I am ſure, if the Courts will not amend theſe Matters, it will overturn many Tryals.

There is another Caſe: 'Tis in *Crooke James*, 529. *Parker verſ.* Sir *John Curſon & Ux.* And that was a Tryal at Bar. The Iſſue was enter'd, *Et prædict. Johannes Curſon & Magdalena veniunt, & prædicta Magdalena dicit, quod non eſt inde culpabilis; & de hoc ponit ſe ſuper Patriam, & Attornatus Domini Regis ſimiliter.* After the Tryal at Bar, it was amended by the Docket; and there it was only, *Quod J. Curſon, Mil. & Magdalena Ux. ejus, placitant non Cul.* which was only a ſhort *Memorandum*: Which, I think, goes a great way further than that we labour for.

There is that Caſe too, 1 *Siderfin* 243. between the King and *Godfrey*. There the Award was *Vicecomitibus*, when it ſhould have been *Vicecomiti*; for there was but one Sheriff: But upon Examination, they found it was the Miſpriſion of the Clerk; and they ſet it right.

L. C. J. *Holt*. They indeed ſet it right; but how? Not by Amendment: But it was inſerted as a *Memorandum* on the Roll, that there was but one Sheriff.

Mr. *Att. Gen.* My Lord, With Submiſſion, that's as well: For we do not do ſo much; for that was done after the Tryal.

L. C. J. *Holt*. There was no altering the Writ.

Mr. *Att. Gen.* If we ſhould ask the Court to alter what we did before the Tryal, it would be ſaid we ſhould have mov'd it before, and not after. Now to enter that after the Tryal, was much more than we ask.

There is another Caſe which had the Opinion of the Court, the Caſe of the Warden of the *Fleet*; where you were of Opinion, to amend, *&c.*

L. C. J. *Holt*. It is not amended yet.

Mr. *Att. Gen.* My Lord, I cite it as an Authority, that you would have amended it, if you had any Thing to amend it by.

L. C. J. *Holt*. I did not tell you what I would have done.

Mr. *Att. Gen.* My Lord, I was not in Court, but I heard it was ſo. If it was not, I was miſinformed. There was a Commiſſion taken out againſt him, as being guilty of ſeveral voluntary Eſcapes; and a Day was given to appear at the *King's Bench* the 8th of *January*. The Appear-

ance was the 20th of *January*; but the Record was not enter'd it ſelf till the 3d of *February* following; ſo that there was a perfect Diſcontinuance.

This was not ſeen at firſt; but on Conſideration of the Court, they found it out; and the Council moved the Court to ſet it right. The Court made a Doubt of their Power; but they enquir'd when it came in, whether in Time or not; and what Minutes were for it. It ſeems, the proper Minutes were not to be found. Now that being ſo, it would be ſtrange for the Court to make any Amendments, without any Copy to amend by. If the Clerk's Man had come in, and produc'd the Minutes, I take it, the Senſe of the Court was, that they would amend it; tho' that was agreed to be a Diſcontinuance.

Now I cite that Caſe, not that you did amend it; but would have done it, if you had any Thing to amend it by: And there was a Diſcontinuance of the Party. Now if they could have amended that, this may be done here for a much better Reaſon. There was a Diſcontinuance, both before and after the Tryal. I think we have much ſtronger Reaſon for Amendment, than was in that Caſe: Tho' I muſt ſay, as to that Caſe, the Bar were of Opinion, that the Clerk might have enter'd it as on that Day, and ought to have done it; and therefore they thought it was amendable. And if that were true, no queſtion it was amendable. But however the Opinion of that Caſe was, it is an Argument to me, that the Court would have amended it, had they any Thing to amend it by: For it was the Opinion of this Court it is amendable. But I think that Caſe is no Authority for them: And whether that be done by the Help of the Statute or no, is not material: And the Court would have amended it, if it had been the firſt Day of the Term.

This I take to be the Opinion of the Court; and that they did not amend it, becauſe they had no Authority to amend it by.

There is one Matter more, which is, That this Slip is the Fault of the Clerk: For that the Miſteſting of the Writ is the plain Act of the Clerk; and in all the Caſes it has been held, Acts of the Clerk to be amendable by the Common Law: And for that there are a Thouſand Caſes. This is in Point of Law.

I would beg Leave to cite a few Authorities in *Crooke*'s *Eliz.* 'Twas agreed, a *Venire Teſte'd* out of Term, is a Miſpriſion of the Clerk.

L. C. J. *Holt*. There are Abundance of the like Caſes.

Mr. *Att. Gen.* I believe a Thouſand, therefore I will not cite them.

We ſubmit it to your Lordſhip, whether it be right, and wants no Amendment: Or if it be not right, whether it be not amendable by Statute or Common Law. And I hope we ſhall have the Benefit of the Verdict.

Note, *The following Argument ſeems to be made by Sir* T. Powis, *and is here miſplaced.*

MY Lord, If the *Diſtringas* needs an Amendment, we pray, on the Behalf of the Queen, that it may be amended. And therein we think we are very proper.

1. The Award upon the Roll is right; which is the Warrant to the Clerk for the making out the *Diſtringas*. And if the Award be right, which is the Warrant for the Writ, but the Writ is wrong, and that only in the Date; it is merely the Miſtake and Miſpriſion of the Clerk, and ought to be amended.

1. It is amendable by the Common Law.
2. It is amendable by Statute.

That there were Amendments at Common Law before any of the Statutes of *Jeofails*, cannot be denied.

My Lord *Coke* ſays ſo expreſly: And ſo was the Opinion of the Court in *Blackmore*'s Caſe, in the Eighth Report, *fol.* 156, 157. which is the great Caſe of Amendments.

That Book ſays, *fol.* 156. *b.* Without queſtion, at Common Law, the Default of Entry of a Continuance, or of an Eſſoign, (which was the Miſpriſion of the Court it ſelf in the Form of the Entry) was amendable by the Court. And the Objection here is, that there is a Diſcontinuance: And the Inſtance there given from the Caſe in 5 *Ed.* III. *fol.* 25. is very conſiderable; where, after a *Venire Facias* iſſued, and an Award, *Quod jurat ponitur in reſpectum*, in the Entry whereof there was a great Miſtake of the Parties, which made a Diſcontinuance; and yet amended at the Common Law.

The Inſtances of Amendments at Common Law out of the Old Books are many. 22 *Edw.* III. *fol.* 7 *b.* and 10. *a.* where a Diſcontinuance was amended. 29 *Edw.* III. *fol.* 32. *b.* a *Habeas Corp. Jurator.* amended. 7 *Hen.* VI. 29. *Broke*, *Tit. Amendment*, 32. 4 *Hen.* VI. 16. *b.* By which Books it appears, that the Judges had Power to amend in many Caſes at the Common Law, in the Caſe of a common Perſon. And if in the Caſe of a Subject, much more in the Caſe of the King: For by the Common Law, the King had many Privileges and Advantages in Legal Proceedings, which a Subject had not: And the King, in his Suits, hath many great Prerogatives. The King may plead one Title, and afterwards wave it, and plead another. He may wave a Demurrer, and afterwards take Iſſue. And many other Privileges belong to the Crown, of this Nature, which a Subject hath not.

And particularly, in the Matter of Amendments by the Common Law, the King had a Privilege, which a Subject had not.

An Original Writ was not amendable for a Subject at the Common Law, but in the Caſe of the King it was.

Therefore in *Blackmore*'s Caſe, *fol.* 156. *b.* it is ſaid, That if a *Quare impedit* be ſued forth on the Behalf of the King, and the Writ is *præſentere* inſtead of *præſentare*; it may be amended in the Caſe of the King, after Exception taken; but not ſo in the Caſe of a Subject.

And ſo in *Fitz.* Amendment, 12, 19, 22. ſeveral Amendments at Common Law, eſpecially in the Caſe of the King.

Another Advantage which we have in this Caſe, is, That we are in the ſame Term wherein the *Diſtringas* was awarded and made forth.

And in the ſame Caſe of *Blackmore*, *fol.* 156, *b.* 157, *a.* it is ſaid, That at the Common Law, the Judges may amend as well their Judgment, as any other Part of the Record, in the ſame Term. For during the Term, the Record is in the Heart or Breaſt of the Court, or of the Judges, and not in the

the Roll: But in another Term, by the Common Law, Miſpriſions of Clerks in Proceſs were not amendable by the Court; for in another Term, the Roll is the Record. So ſays that Book.

But here we are in the ſame Term: And it is the Miſpriſion of the Clerk in Proceſs, and in the making out a judicial Writ, which is in the Power of this Court, as iſſuing out from hence; whereas Original Writs iſſue out of *Chancery*: And Judicial Writs are often amended, where Originals are not. *Vide* Brook's *Amendments*, 20, 22. Owen, 62.

2. If this is not amendable by the Common Law, it is amendable by Statute.

The firſt Statute of Amendment was 14 *Edw.* III. *Cap.* 6. which extended to Miſpriſions of Clerks, in a Letter, or a Syllable, too much or too little. And in 40 *Edw.* III. the Judges were ſo nice, as to doubt whether they might amend a Word; becauſe the Statute ſpoke of a Letter, or a Syllable. And when ſome of the Judges went to the Houſe of Lords, to know whether by this Act they might amend a whole Word; they were look'd upon as unreaſonably ſcrupulous, and had an Anſwer accordingly.

Now here is nothing to be amended but a Figure: And this Statute being general, ſeems to extend to our Caſe.

But the Statute we rely upon, is the Statute of 8 *Hen.* VI. *Cap.* 12. and *Cap.* 15. which is the great Statute of Amendments; and which hath Words very full and general, extending to enable the Court to amend, as well for the Crown as the Subject. For the Words are general in the Beginning, and ſtrengthen'd by an Exception of Indictments of Treaſon, and Felony, and Outlawries thereupon: For the Rule is, *Exceptio firmat Regulam, in Caſubus non exceptis.* This Information is not one of the Caſes excepted; and therefore we may more ſtrongly conclude, that it is within the Purview of that Act.

If this Act did not extend to Pleas of the Crown, to what Purpoſe was that particular Exception inſerted? And yet, I know not how, an Opinion hath been taken up, that this Act doth not extend to Criminal Cauſes. To many Criminal Cauſes it doth not extend, by reaſon of the Exception: And therefore, perhaps, for want of a cloſe and ſtrict Obſervation, the Opinion obtained, that it extended to none. But a poſitive Law is not ſo to be born down. 'Tis true, all the later Statutes of *Jeofails*, in the Time of *Henry* VIII. and ſo downwards, do not extend to Informations, by reaſon of expreſs Exceptions, or plain Words: But this Statute of *Hen.* VI. is full for us, and we pray the Benefit of it.

It is not merely a new Motion, that this Statute of *Hen.* VI. doth extend to ſuch like Caſes with this; becauſe I ſhall cite ſome Caſes of Amendments in Criminal Proſecutions, in ſome of which this Statute hath been taken notice of.

As I have cited ſome old Authorities for Amendments in Caſes of the Crown, ſo I ſhall cite ſome Caſes of more modern Authority for that Purpoſe.

2 *Cro. fol.* 502. *Harris*'s Caſe. An Indictment for a Nuſance was proſecuted againſt *Harris*; and a Tryal was had, and a Verdict againſt him. Afterwards it was removed by *Certiorari*; and upon View of the Record, it was found, that no Iſſue was joined: For the Clerk of Aſſize had omitted to enter the Iſſue, and ſo the Verdict was without an Iſſue. And upon Motion, the Court of *King's Bench* order'd it to be amended; for it was the Default of the Clerk. And this was done divers Years afterwards, and in the Time of another Clerk of Aſſize. And it was order'd, that the Clerk of Aſſize which then was, (for the former was removed) ſhould amend it; which was done by inſerting theſe Words, *Et Richardus Warer* (who was the former Clerk of Aſſize) *qui pro Dom. Rege ſequitur ſimiliter*, &c. And it was there ſaid by the Court, That if ſuch Faults ſhould not be amended, many Tryals upon Indictments ſhould be overthrown.

There is another Caſe in the ſame Book: 'Tis in 2 *Cro. fol.* 529. *Parker verſ.* Sir *John Curſon & Ux.* It was an Information againſt Sir *John Curſon* and his Wife for Recuſancy; and the Iſſue was, *Quod præd. Magdalena dicit, quod ipſa non eſt inde culpabilis; & de hoc ponit ſe ſuper Patriam, & Attornatus Domini Regis ſimiliter.* Upon a Tryal at Bar, a Verdict was given againſt the Defendants. It was afterwards moved in Arreſt of Judgment, that here was no Iſſue joined; for it was only the Plea of the *Feme Covert*, and no Iſſue joined, or Plea pleaded for the Husband. And yet in *Regnard*, the Docket was right, which was the Warrant for the Roll; and the Omiſſion of the Husband was the Miſpriſion of the Clerk: Therefore it was amended in ſo material a Part, even in another Term.

Another Caſe is in *Cro. Car. fol.* 144. Sir *Humphry Tuſton*'s Caſe. A *Quo Warranto* was brought againſt the Corporation of *Maidſtone*, for claiming divers Liberties. Judgment was enter'd by Diſclaimer; and it was intended to have been only a ſpecial Diſclaimer of all Privileges, by Pretence of a Charter bearing Date 17 *Jac. Regis*: But the Clerk in entring the Judgment had omitted thoſe Words, *Virtute vel Prætextu Literar. Patent. geren. dat. Anno decimo ſept. Jac. Regis:* But upon Examination, the Court finding that it was merely the Miſpriſion of the Clerk, the Court was of Opinion that it was amendable by the Common Law, as well in the King's Caſe, as in the Caſe of a Common Perſon; and in another Term too; for ſo it was, and it was amended accordingly.

There is a Caſe in *Siderfin, fol.* 243, 244. The King *v. Percival, Godfrey, & al.*

Upon an Indictment for a Riot and a Battery, and Not Guilty pleaded; a *Venire Fac.* was awarded *Vicecomitibus* of the City of *Canterbury*; and upon a Tryal at Bar, a Verdict was given againſt the Defendants: And it was moved in Arreſt of Judgment, that the *Venire Fac.* and other Proceſs, was directed *Vicecomitibus* of *Canterbury*, and the Return was made by one Sheriff only; but the Court amended it, by endorſing upon the Writ that there was but one Sheriff of *Canterbury*. And this Amendment was made by the Common Law, and not by the Statutes of *Jeofails*; altho' it was ſaid at the Bar, that it was amendable within the Statute, becauſe it was not a Caſe within any of the Exceptions; it being an Information at the Common Law. And the Caſe of *Sherington* and *Talbot* was cited, and the Book of 39 *Hen.* VI. 40. for the ſame Purpoſe.

Upon

Upon the whole, we think, ſince the Matter objected was merely the Miſpriſion and Negligence of the Clerk, that it is amendable by the Common Law; becauſe the Award upon the Roll is right: Or if not by the Common Law, it is amendable by the Statute of 8 *Hen.* VI. ſince this is not a Caſe excepted out of it. And if this Statute extends to it, there are infinite Authorities for amending the wrong *Teſte* of a *Diſtringas*, in Civil Cauſes, between Party and Party: As where the *Teſte* hath been of a Day impoſſible, or upon a *Sunday*, or before the Iſſue joined, and the like.

The Books are ſo full of thoſe Inſtances, that it is to no Purpoſe to cite them.

And laſtly, We have this Advantage for an Amendment, That we are in the ſame Term wherein the Miſtake was made by the Clerk; and therefore I pray it may be amended.

The Tryal of Captain THOMAS GREEN, *and his Crew, before the Judge of the High Court of* Admiralty *of* Scotland. *Publiſh'd by Authority.*

THE Lords of Her Majeſties Privy Council having taken * Precognition of the Grounds of the Information againſt Captain *Thomas Green*, and others of his Crew; they thought fit, and ordered, That the ſaid Captain *Thomas*, &c. ſhould be put to a Tryal upon the Crimes informed, before the Judge of the High Court of *Admiralty*. As alſo, the Lords of the Privy Council thought fit at the ſame Time, to appoint Aſſiſtants to the *Procurator-Fiſcal* of the High Court of *Admiralty*, for the better ordering and carrying on of the ſaid Tryal, according to the Tenor of their Act following.

* *Examination beforehand.*

AT Edinburgh, *the Thirteenth Day of* February, 1705 *Years. Committee* * *anent Captain* Green *and his Crew*, † Sederunt *Lord* Chancellor, *Marquis of* Anandale, *Earls of* Haddingtoun, Leven, Ruglen, *Lords* Yeſter, Belhaven, *Treaſurer*. Advocat, *Theſaurer-Deput, Anſtruther, Sir* John Home, *and* Ormiſtoun *Younger. It's the Opinion of the Committee, That my Lord Chancellor ſhould write to Court, for Remiſſions to* Charles May, *Chyrurgeon*, Antonio Ferdinando, *Cook's Mate*, Antonio Franciſco, *Captain's Man*, George Haines, *Stewart*, George Glen, *Quarter-Maſter*, Alexander Taylor, *Fore-Maſt-Man: And that the Tryal againſt Captain* Green *and his Crew, ſhould be purſued before the* Admiral-Court; *and that Aſſeſſors ſhould be named to the Judges, and Aſſiſtants to the Procurator-Fiſcal.*

* *about.* † *preſent.* * *Treaſurer.*

Sic ſubſcribitur,

TWEEDALE, *Cancel.* J.P.C.

The above-Report of the Committee, * *anent Captain* Green, *Commander of the Ship the* Worceſter, *being upon the Day and Date of* † *thir Preſents, read in Preſence of the Lords of Her Majeſties Privy Council, and the* * *ſamen was Voted and* † *Approven. And the ſaid Lords did thereby Nominat and Appoint Sir* James Stuart, *Her Majeſties Advocat, Sir* David Dalrymple, *and Mr.* William Carmichael, *Her Majeſties Sollicitors; Sir* Patrick Home, *Sir* Gilbert Eliot, *Mr.* Alexander Mackleod, *and Mr.* Francis Grant, *to be Aſſiſtants to Mr.* Alexander Higgins, *Procurator-Fiſcal to the High Court of* Admiralty, *in proſecuting the Libel and Indictment to be given at his Inſtance, againſt the ſaid Captain* Green *and his Crew, before the ſaid Court, to the final End and Deciſion thereof. And the ſaid Lords declared, That they would next Council-Day name Five of their own Number, to be Aſſeſſors to the Judges of* Admiralty, *during the Dependance of the aforeſaid* * *Proceſs: And recommended to the Lords of* † *Theſaury, to pay the Lawyers that are employed to be Aſſiſtants accordingly.*

* *about.* † *theſe.* * *ſame.* † *approved.*

* *Tryal.* † *Treaſury.*

Extracted by me,

GILB. ELIOT, Cl. Sti. Concilii.

Whereupon the Judge of the High Court of *Admiralty* did preſent to the Lords of Council a Petition; 'That ſince the Tryal was order'd to be 'made before him, of the foreſaid Crimes inform-'ed againſt Captain *Green* and his Crew; and that 'the Matter appear'd to be of great Importance; 'he might have, according to Cuſtom in the like 'Caſes, Aſſeſſors appointed and joined with him, 'by the Authority of Council, for his Aſſiſtance 'in the ſaid Tryal. Whereupon the Lords of Her Majeſties moſt Honourable Privy Council did Nominate and Appoint, the Earl of *Loudoun*, Lord *Belhaven*, Lord *Arniſtoun*, Sir *John Home* of *Blackadder*, and *John Cockburn* younger of *Ormiſtoun*, to be Aſſeſſors to the foreſaid Judge; and aſſiſt and vote with him in the Tryal, at the *Procurator-Fiſcal*'s Inſtance againſt Captain *Thomas Green*, Commander of the Ship the *Worceſter*, and others of his Ship's Crew, before the ſaid High Court of *Admiralty*; for their being guilty of *Piracy, and other Crimes*; and that to the final End and Deciſion thereof; as an Act extracted and ſigned by the Clerk of Council, extant in the Records of the ſaid High Court, bears.

Follows the Court of Juſticiary of the High Court of *Admiralty*, with the whole Tryal, as it proceeded before the Judge of *Admiralty*, and the Aſſeſſors above appointed.

CURIA JUSTICIARIA *ſuprem æ Curiæ Admiralitatis tenta in Prætorio, vel novâ Seſſionis Domo Burgi de* Edinburgh, *quinto die Menſis Martii*, 1705. *per Judicem dictæ Curiæ, & per Honoratiſſimos Viros*, Joannem *Comitem de* Loudoun, Joannem *Dominum de* Belhaven, *Dominos* Robertum Dundas *de* Arniſtoun, Joannem Home *de* Blackadder, & Joannem Cockburn *de* Ormiſtoun, *Aſſeſſores*.

Curia legitime affirmata.

The ſaid Day, the ſaid Earl of *Loudoun*, Lord *Belhaven*, *&c.* produced the Act of her Majeſty's Privy Council above-mentioned, appointing them to be the Aſſeſſors to the ſaid Judge.

Thereafter the ſaid Aſſeſſors took the Oath of Allegiance and ſigned the ſame, with the Aſſurance, and took the Oath *de fideli adminiſtratione*, and were thereupon admitted and received.

Intran.

Captain *Thomas Green*, Commander of the Ship called the *Worceſter*, now in *Bruntiſland* Harbour.

Captain *John Madder*, chief Mate of the ſaid Ship.

John Reynolds, ſecond Mate of the ſaid Ship.

Thomas Linſtead, Aſſiſtant to the deceas'd *Super-cargo* of the ſaid Ship.

James Burn, Boat-ſwain of the ſaid Ship the *Worceſter*.

James Sympſon, Gunner.

Andrew Robertſon, Gunner's-Mate.

John Brucklie, Seaman.

George Kitchen, Seaman.

Henry Keigle, Carpenter.

Samuel Urlines, his Mate.

George Haines, Stewart of the ſaid Ship.

Daniel Stringman, Cook.

Samuel Wilcocks, Chyrurgeon's Mate.

George Glen, Seaman there.

Henry Barnes, Seaman there.

Alexander Taylor, Seaman there.

And *John Bannantyne*, Seaman there.

All of them Indicted and Accuſed at the Inſtance of Mr. *Alexander Higgins*, Advocate Procurator-Fiſcal to the High Court of Admiralty, for the Crimes of *Piracy*, *Robbery* and *Murder*, in Manner mentioned in the two ſeveral Indictments raiſed againſt them * thereanent, and and whereof the † Tenor follows: Captain *Thomas Green*, Commander of the Ship called the *Worceſter*, now in *Bruntiſland* Harbour, Captain *John Madder* cheif Mate of the ſaid Ship, *John Reynolds* ſecond Mate of the ſaid Ship, *Thomas Linſtead* Aſſiſtant to the deceas'd *Super-cargo* of the ſaid Ship, *James Burn* Boat-ſwain of the ſaid Ship, *James Sympſon* Gunner of the ſaid Ship, *Andrew Robertſon* Gunner's Mate, *John Brucklie* Seaman there, and *George Kitchen* Seaman there, all Priſoners; You, and * ilk one of you are accuſed and indicted at the Inſtance of Mr. *Alexander Higgins*, Advocate Procurator-Fiſcal to the High-Court of Admiralty, of the Crimes of *Piracy*, *Robbery* and *Murder*, in manner after-mentioned, *viz.* That by the Law of GOD, the Laws of Nations, of this, and of all well-govern'd Realms, the Crimes of *Piracy*, *Robbery* and *Murder*, are prohibited, under all higheſt Pains; and that by the Laws of this Realm, the ſaid Crimes are prohibit under Pain of Death, and † eſcheat of Moveables. *Nevertheleſs* it is of Verity, that Captain *Thomas Green*, Commander of the Ship called the *Worceſter*, now in *Bruntiſland* Harbour, and his Crew, are guilty, * Art and Part of the ſaid Crimes, or one or other of the ſame, in ſo far as the ſaid Captain *Thomas* or his ſaid Crew, having ſailed from *England*, in the ſaid Veſſel the *Worceſter*, upon Pretence of Merchandizing towards the *Eaſt-Indies*; the foreſaid Captain, and his ſaid Crew belonging to the ſaid Veſſel, did, upon one or other of the Days of the Months of *February*, *March*, *April* or *May*, in the Year 1703. rencounter, or meet with another Ship or Veſſel, ſailed by its own Men or Crew, upon the Coaſt of *Malabar*, near *Calecute*; and the ſaid Veſſel bearing a red Flag, and having *Engliſh* or *Scots* aboard, at leaſt ſuch as ſpoke the *Engliſh* Language; the ſaid Captain *Thomas Green* and his Crew, after ſome * Intercommuning with them, did, without any Lawful Warrant, or a juſt Cauſe, attack the ſaid other Veſſel, or Ship, while expecting no ſuch Treatment; and invading her firſt by their Sloup, which they had manned with Guns and other Arms for that Purpoſe, they fell upon the ſaid other Veſſel in an Hoſtile manner, by ſhooting of Guns and otherways; and after ſome Time ſpent in Fighting againſt her by their Sloup, and partly by the approaching of the ſaid *Thomas Green*'s Ship the *Worceſter*, they overcame, and Boarded the ſaid other Veſſel, and having ſeized their Men, they killed them, and threw them overboard, and then carried, or cauſed carry away the Goods that were aboard the ſaid other Veſſel, to their ſaid Ship the *Worceſter*; and then diſpoſed upon the ſaid Ship, by ſelling her aſhore on the ſaid Coaſt. Which Crime, being a wicked Piracy committed by Surprize in Parts ſo remote, and probably with all the Caution the Committers could uſe for concealing thereof, and for preventing Diſcoveries, comes now to be diſcovered in the ſeveral Parts and Circumſtances of the Action, and by ſuch as were preſent thereat; which being all conjoyn'd, does make up and infer the foreſaid Crime objected, and are as follows, *viz.* That the foreſaid Rencounter and Fight betwixt Captain *Green* and his Crew, and the ſaid Veſſel the *Worceſter*, and the foreſaid other Veſſel taken by her, hapned on the ſaid Coaſt as above: *Likeas*, at the ſame Time, one or more of the ſaid Ship the *Worceſter*, her Crew being on Shore, and at ſome diſtance from the Sea, heard the ſaid Shooting, which brought the ſaid Perſons to the Shore, where they, at leaſt the Chyrurgeon of the ſaid Ship the *Worceſter* one of them, ſaw her riding at a good diſtance from the Shore upon her Birth (as they ſpeak) and having the other Ship at the Stern, as it were tyed or towed to her, as being the Veſſel they had maſter'd or overcome, as ſaid is. *Likeas*, the ſaid Chyrurgeon did ſee the Boat belonging to the ſaid Ship the *Worceſter* coming aſhore from her, and the Chyrurgeon † demanding at ſuch of the Crew as were in her, what had brought them aſhore: They anſwer'd that they had been *Busking*, (a Sea-Term uſed for fitting and trimming a Ship for fighting) and they had Drunk, Spilt or Staved all their Water, and they were

** Concerning the ſame.*

† Contents.

** Every one.*

** Of contriving and Acting.*

** Diſcourſe.*

† asking.

were come for a new Supply: And when a little Time thereafter the ſaid Chyrurgeon went aboard the ſaid Ship the *Worceſter*, he perceived the Deck thereof lumber'd and cover'd, and in a confus'd Manner, with Balls, Boxes and Goods; whereof when he asked the Reaſon, *John Madder*, one of the * Pannels, and a principal Actor in the Engagement, anſwer'd, *Damn you, what have you to do to enquire, meddle with your Plaiſter-Box.* And when the Chyrurgeon went down to his Station and Cheſt, he called for one of the Blacks *Antonio Ferdinando*, and one *Duncan Mokay* now Dead, and another in order to dreſs them; but when he asked what way they came by their Wounds, they declined to anſwer; whereupon the Chyrurgeon refuſing to dreſs them, if they would not tell him how they got their Wounds, the ſaid *John Madder* came to the Chyrurgeon in a Paſſion, and asked what was his buſineſs to ask ſo many Queſtions, when he did ſee the Wounds ſo plain before him, calling him a Block-head for not dreſſing them; and at length the Conteſt was ſo warm betwixt the ſaid *Madder* and Chyrurgeon, that *Madder* charged him to ask no more Queſtions, and he charged the Men wounded, not to anſwer a Word: And further order'd him back to the Shore, which the Chyrurgeon was forced to comply with; where the Chyrurgeon meeting with *Franciſco de Olivera* the † Linguiſter, asked him whether he ſaw any of the *Worceſter*'s Men that had carried the foreſaid Ship ſo taken into *Keilon* River, and the Linguiſter anſwered, that he had not, but that they were ſome of the *Worceſter*'s Company, who as ſoon as they had brought her in and made her faſt, took their Boat and went directly on Board: The Ship taken being carried into *Keilon* River as ſaid is, where ſhe was left with her Yards and Top-maſts down, all unrigged: And the ſaid Linguiſter told the Chyrurgeon further, that one *Coge Commodo* complained he had bought the ſaid Ship taken too dear; whereby it appears that the ſaid Ship taken by Violence, was ſold in manner aforeſaid. *Likeas*, for further Evidence of the ſaid Piracy, ſince the Time that *John Reynolds* one of the Pannels was ſeized with the reſt, for his Acceſſion thereto, there was found a Letter wrote to him by one *Sarah Newlands*, bearing Date *January* the 6th, wherein ſhe tells him, *That tho' he had been baſely wicked, yet ſhe ſhould be ſorry to hear he were guilty of any thing that might bring him to the Gallows; and therefore adviſes him to confeſs; adding, that in his own Letter which ſhe had ſeen, he ſays, That ſome of their Men had baſely confeſſed* (which ſays he) *implies that they were guilty.* And when *Reynolds* was queſtioned upon his Letter, he acknowledged that he had wrote a Letter to his Wife the ſaid *Sarah*'s Siſter, which had occaſioned her writing the ſaid Letter to him; and thereupon he produced the Copy of the ſaid Letter to his Wife, which agrees with what *Sarah* ſays, as the ſaid Copy and *Sarah*'s Letter both put in the Clerk of the Admiralty's Hands, to be ſeen by the Pannels, bear. *And further*, *George Haines* one of the Crew of the ſaid *Worceſter*, ſince his coming to *Scotland*, and when at *Bruntiſland*, being ask'd by one *James Wilkie* Taylor, † Burgeſs of *Edinburgh*, ſome Day in *October* laſt, about his Brother *Andrew Wilkie*, who went Chyrurgeon in Captain *Drummond*'s Ship, if ever the ſaid *Haines* had ſeen the ſaid *Andrew Wilkie* in his Voyage, he flew in a Paſſion, and ſaid, *what Devil was his concern with Captain* Drummond? Upon which *James Wilkie* forbearing a little till he ſhould be calmer, asked the ſaid *Haines*, whether he had heard or ſeen any *Scots* Ship coming to or from the *Eaſt-Indies* during their Voyage? *Haines* anſwered, that when they were upon the Coaſt of *Malabar*, a *Dutch* Ship informed them, that one Captain *Drummond*, Commanding a *Scots* Ship, and having a Sloop in Company, was turned Pirate. Upon which *Haines* and they manned their Ship to be in readineſs, but ſaw him not; only a little thereafter *Haines* added, that he had in his Cuſtody, the Time the ſaid Ship the *Worceſter* was ſeized, which he would not have fallen into the Seizer's Hands for twice the Value of the Ship, but that he had thrown it over-board; adding further, that there was ſtill in the Ship what would never be found by the Seizers, unleſs they pulled her Board from Board, tho' he knew where the Thing lay. *Likeas*, when after the ſaid *James Wilkie* departed, one *Anna Seaton* in *Bruntiſland*, did at his Deſire further enquire at *Haines* about Captain *Drummond*'s Ship; he anſwered, that he ſaw they had a Deſign to pump him, but that they ſhould not be the wiſer of him: At all which Paſſages, *Kenneth Mackenzie* * Indweller in *Cannongate* was a preſent Witneſs. And the ſaid *Anna Seaton* did further tell the ſaid *Kenneth Mackenzie*, that when ſhe expoſtulat with *Haines* for his being in Paſſion, as ſaid is; he anſwered, that he knew more of Captain *Drummond* than he would tell at that Time; and that if the ſaid *Andrew Wilkie* was with Captain *Drummond*, he would not be ſeen again. *And further*, the ſaid *Anna Seaton* heard the ſaid *Haines* own and declare their ſaid Wickedneſs; and ſhe and *William Wood*, one of the Gunners of her Majeſty's Artillery, with one *John Henderſon* † Writer in *Edinburgh*, being in *September* laſt, in *Anna Seaton*'s Mother's Houſe, after having drunk one Health or two; the ſaid *Haines*, who was there preſent, fell in a Melancholy Fit, and expreſs'd himſelf, *That it's a Wonder, that ſince we did not ſink at Sea, GOD doth not make the Ground to ſwallow us up for the Wickedneſs that has been committed during the laſt Voyage, on Board of that* Old Bitch Beſs, pointing to Captain *Green*'s Ship. And further, the ſaid *Haines* ſaid, That if what the ſaid *John Madder* had done in the ſaid Voyage were well known, he deſerved as much as his Uncle *Madder* met with at *Amſterdam*, who was there burnt in Oil, for attempting to burn their Ships. And when at another Time, the ſaid *Anna Seaton* told *Haines*, that ſhe had an old Sweet-heart who went away with Captain *Drummond*, and would gladly hear ſome Tidings, whether he was dead or alive; the ſaid *Haines*, who was then a * Suiter to *Anna Seaton*, aſſured her, ſhe would never ſee him again, if he was in *Drummond*'s Ship. And for a further Confirmation of the Truth of the ſaid Piracy, when a Commitee of Council was ſent to *Bruntiſland*, to cauſe ſearch and unload the ſaid Veſſel, it was found by the Skippers and Seamen employed, that the Goods aboard her were not ſtow'd as Merchant Goods uſed to be, but were found in the Hold in ſuch Confuſion, as if taken by Piracy, and no otherways. *Likeas*, when the ſaid Ship the *Woreſter* was ſeized, the ſaid *John Madder* being queſtioned about Captain *Drummond*'s Ship, he took out of his Pocket, or at leaſt ſhew'd in his Hand, the Seal of the *African* Company, which he could never lawfully have got. By all which, they

* *Perſons indicted.*

† *Interpreter.*

† *Citizen.*

*Inhabitant.

† *Clerk for Law Buſineſs.*

* *Sweet-heart, or Wooer.*

they being joyned and connected together (as a Diſcovery of ſuch a Wickedneſs practiſed in ſuch remote Parts, and ſo induſtriouſly and obſtinately endeavour'd to be concealed, deſerves to be) the ſame in all the Points and Circumſtances thereof, at leaſt ſuch, and ſo many of them as are † relevant, and are offered to be proven by a cumulative Probation, do plainly amount to ſuch a plenary Evidence, as may fully convince all impartial Men, that the foreſaid Captain *Green* and his ſaid Crew, are all and each of them guilty, Art and Part, of the foreſaid Crimes of *Piracy*, *Robbery* and *Murder*, or one or other of them above charged; which being found by a Verdict of an † Aſſize before the Judge of the Admiralty, and the Lords Aſſeſſors appointed by the Lords of the Privy Council, the forenamed Perſons, and each of them, ought to be puniſh'd by Sentence of the ſaid Court, with the Pain of Death, and Confiſcation of their Moveables, to the Example and Terror of others, to do or commit the like in Time coming.

† *Sufficient to bear an Indictment.*

† *Jury.*

Additional Concluſion to the Indictment, at the Inſtance of Mr. Alexander Higgins *Procurator-Fiſcal to the Court of Admiralty, againſt Captain* Green, *&c.*

viz. THAT the Concluſion of the ſaid Indictment given on *Saturday* the ſeventeenth Inſtant, bearing the Pain of Death, and of Eſcheat and Confiſcation of Moveables, ſhould extend to the Eſcheat and Confiſcation of the ſaid Ship and Cargo, by reaſon of the foreſaid Crime and Piracy; and that the ſaid Captain *Thomas Green*, &c. ſhould anſwer to the foreſaid Concluſion, as thus explained, and extended to the Confiſcation of the ſaid Ship and Cargo, as in Caſe of Piracy, the 5th of *March*, which is the Day of † Compearance aſſigned to the ſaid Pannels, or at leaſt upon the 6, 7, 8, or 9 Days of *March* thereafter, as the true Import, or at leaſt a clear Conſequent of the foreſaid Crime and Indictment given thereupon: The Liſt of Witneſſes and * Aſſizers remaining the ſame, as ſubjoined to the foreſaid principal Indictment. *Sic ſubſcribitur ALEXANDER HIGGINS.*

† *Appearance.*

* *Jurors.*

HEnry *Keigle* Carpenter in the Ship called *Worceſter*, now in *Bruntiſland* Harbour, *Samuel Urlines* his Mate, *George Haines* Steward of the ſaid Ship, *Daniel Stringman* Cook of the ſaid Ship, *Samuel Wilcocks* Chyrurgeon's Mate, *George Glen* Seaman there, *Henry Barnes* Seaman there, *Alex. Taylor* Seaman there, and *John Bannantine* Seaman there, all of Captain *Thomas Green* Commander of the ſaid Ship his Crew; You, and ilk one of you, are accuſed and indicted at the Inſtance of Mr. *Alexander Higgins* Advocate, Procurator-Fiſcal to the High Court of Admiralty, of the Crimes of *Piracy*, *Robbery* and *Murder*, in manner after-mentioned, *viz.* That by the Law of GOD, the Laws of Nations, of this, and of all other well-governed Realms, the Crimes of *Piracy*, *Robbery* and *Murther*, are prohibite under all higheſt Pains: And that by the Laws of this Realm, the ſaid Crimes are prohibite, under Pain of Death, and Eſcheat of Moveables. *Nevertheleſs*, it is of Verity, that Captain *Thomas Green*, Commander of the Ship called the *Worceſter*, now in *Bruntiſland* Harbour, and his Crew, are guilty, Art and Part, of the ſaid Crimes, or one or other of the Seamen, in ſo far as the ſaid Captain *Thomas*, or his ſaid Crew, having ſailed from *England* in the ſaid Veſſel the *Worceſter*, upon pretence of Merchandizing towards the *Eaſt-Indies*, the foreſaid Captain and his ſaid Crew belonging to the ſaid Veſſel, did upon one or other of the Days of the Months of *February*, *March*, *April*, or *May*, in the Year 1703. rencounter and met with another Ship or Veſſel, ſailed by its own Men or Crew, upon the Coaſt of *Malabar* near *Calecute*; and the ſaid Veſſel bearing a red Flag, and having *Engliſh* or *Scots* aboard, at leaſt ſuch as ſpoke the *Engliſh* Language, the ſaid Captain *Thomas Green* and his Crew, after ſome intercommuning with them, did without any lawful Warrant, or juſt Cauſe, attack the ſaid other Veſſel or Ship, while expecting no ſuch Treatment; and invading her firſt by their Sloop, which they had manned, and furniſhed with Guns and other Arms for that Purpoſe; They fell upon the ſaid other Veſſel in an hoſtile Manner, by ſhooting of Guns and otherways; and after ſome Time ſpent in fighting againſt her by their Sloop, and partly by the approaching of the ſaid *Thomas Green*'s Ship the *Worceſter*, they overcame, and boarded the ſaid other Veſſel, and having ſeized their Men, they killed them, and threw them over-board, and then carried, or cauſed carry away the Goods that were aboard of the ſaid other Veſſel to their ſaid Ship the *Worceſter*, and then diſpoſed upon the ſaid Ship, by ſelling her aſhore on the ſaid Coaſt. Which Crime being a wicked Piracy, committed by Surprize in Parts ſo remote, and probably with all the Caution the Committers could uſe for concealing thereof, and for preventing Diſcoveries, comes now to be diſcovered in the ſeveral Parts and Circumſtances of the Action, and by ſuch as were preſent thereat: Which being all conjoyned, does make up and infer the foreſaid Crime objected, and are as follows, *viz.* That the foreſaid Rencounter and Fight between Captain *Green* and his Crew, and the ſaid Veſſel the *Worceſter*, and the foreſaid other Veſſel taken by her, happen'd on the ſaid Coaſt as above: *Likeas*, at the ſame Time, one or more of the ſaid Ship the *Worceſter*, her Crew being on Shore, and at ſome Diſtance from the Sea, heard the ſaid ſhooting, which brought the ſaid Perſons to the Shore, where they, at leaſt the Chyrurgeon of the ſaid Ship the *Worceſter* one of them, ſaw her riding at a good Diſtance from the Shore upon her Birth (as they ſpeak) and having the other Ship at her Stern, as it were tyed or towed to her, as being the Veſſel they had maſter'd or overcame, as ſaid is. *Likeas*, the ſaid Chyrurgeon did ſee the Boat belonging to the ſaid Ship the *Worceſter* coming aſhore from her, and the Chyrurgeon demanding at ſuch of the Crew as were in her, what had brought them aſhore: They anſwer'd, that they had been *Busking* (a Sea-Term uſed for fitting and trimming a Ship for fighting) and that they had drunk, ſplit or ſtaved all their Water, and they were come for a new Supply; and when a little Time thereafter the ſaid Chyrurgeon went aboard the ſaid Ship the *Worceſter*, he perceived the Deck thereof lumber'd and cover'd, and in a confuſed Manner, with Balls, Boxes and Goods; whereof when he ask'd the Reaſon, *John Madder* one of the Pannels, and a principal Actor in the Engagement, anſwered,--- *Damn you, what have you to do to enquire, meddle with your Plaiſter-Box.* And when the Chyrurgeon went down to his Station and Cheſt, he called for one of the Blacks *Antonio Ferdinando*, and one *Duncan Mackay* now dead, and another in order to dreſs them; but when he asked what way they came by their Wounds, they declined to anſwer:

Where-

Whereupon the Chyrurgeon refuſing to dreſs them, if they would not tell him how they got their Wounds; the ſaid *John Madder* came to the Chyrurgeon in a Paſſion, and asked what was his Buſineſs to ask ſo many Queſtions, when he did ſee the Wounds ſo plain before him? Calling him a Blockhead for not dreſſing them. And at length the Conteſt was ſo warm betwixt the ſaid *Madder* and Chyrurgeon, that *Madder* charged him to ask no more Queſtions; and he charged the Men wounded not to anſwer a word: And further, order'd him back to the Shore; which the Chyrurgeon was forced to comply with. Where the Chyrurgeon meeting with *Franciſco de Olivera*, their Linguiſter, asked him, whether he ſaw any of the *Worceſter*'s Men, that had carried the foreſaid Ship ſo taken into *Keilon* River? And the Linguiſter anſwered, that he had not; but that they were ſome of the *Worceſter*'s Company, who as ſoon as they had brought her in, and made her faſt, took their Boat, and went directly on Board: The Ship taken being carried into *Keilon* River, as ſaid is, where ſhe was left, with her Yards and Top-Maſts down, all unrigged. And the ſaid Linguiſter told the Chyrurgeon further, That one *Coge Commodo* complained he had bought the ſaid taken Ship too dear: Whereby it appears, that the ſaid Ship taken by Violence, was ſold in manner foreſaid.

Likeas, for further Evidence of the ſaid Piracy, ſince the Time that *John Reynolds*, one of the Pannels, was ſeized with the reſt, for his Acceſſion thereto; there was found a Letter wrote to him by one *Sarah Newlands*, bearing Date the 6th of *January*; wherein ſhe tells him, That tho' he had been baſely wicked, yet ſhe ſhould be ſorry to hear he were guilty of any Thing that might bring him to the Gallows: And therefore adviſes him to confeſs; adding, That in his own Letter, which ſhe had ſeen, he ſays, that ſome of their Men had baſely confeſſed; which, ſays ſhe, implies, that they were guilty. And when *Reynolds* was queſtioned upon his Letter, he acknowledged that he had wrote a Letter to his Wife, the ſaid *Sarah*'s Siſter, which had occaſioned her writing the ſaid Letter to him: And thereupon he produced the Copy of the ſaid Letter to his Wife, which agrees with what *Sarah* ſays; as the ſaid Copy, and *Sarah*'s Letter, (both put in the Clerk of the *Admiralty*'s Hands, to be ſeen by the Pannels) bear.

And further: George Haines, one of the Crew of the ſaid *Worceſter*, ſince his coming to *Scotland*, and when at *Bruntiſland*, being asked by one *James Wilkie*, Taylor, Burgeſs of *Edinburgh*, ſome Day in *October* laſt, about his Brother *Andrew Wilkie*, who went Chyrurgeon in Captain *Drummond*'s Ship; if ever the ſaid *Haines* had ſeen the ſaid *Andrew Wilkie* in his Voyage? He flew in a Paſſion, and ſaid, *What Devil was his Concern with Captain* Drummond? Upon which, *James Wilkie* forbearing a little, till he ſhould be calmer, ask'd the ſaid *Haines* again, Whether he had heard or ſeen any *Scots* Ships, coming to or from the *Eaſt-Indies*, during their Voyage? *Haines* anſwered, That when they were upon the Coaſt of *Malabar*, a *Dutch* Ship inform'd them, That one Captain *Drummond*, commanding a *Scots* Ship, and having a Sloop in Company, was turn'd Pirate: Upon which *Haines* ſaid, they mann'd their Sloop to be in Readineſs, but ſaw him not: Only a little thereafter *Haines* added, that he had in his Cuſtody the Time the ſaid Ship the *Worceſter* was ſeized, which he would not have fallen into the Seizer's Hands for Twice the Value of the Ship; but that he had thrown it overboard. Adding further, That there was ſtill in the Ship what would never be found by the Seizers, unleſs they pull'd her Board from Board, tho' he knew where the Thing lay.

Likeas when after the ſaid *James Wilkie*'s Departure, one *Anna Seaton* did, at his Deſire, further enquire at *Haines* about Captain *Drummond*'s Ship; he anſwered, That they had a Deſign to pump him, but that they ſhould not be the wiſer of him. At all which Paſſages, *Kenneth Mackenzie*, an Indweller in *Cannongate*, was a preſent Witneſs. And the ſaid *Anna Seaton* did further tell the ſaid *Kenneth Mackenzie*, That when ſhe expoſtulat with *Haines* for his being in a Paſſion, as ſaid is; he anſwered, That he knew more of Captain *Drummond* than he would tell at that Time: And that if the ſaid *Andrew Wilkie* was with Captain *Drummond*, he would not be ſeen again.

And further, The ſaid *Anna Seaton* heard the ſaid *Haines* own and declare their ſaid Wickedneſs. And ſhe, and *William Wood*, one of the Gunners of Her Majeſties Artillery, with one *John Henderſon* Writer in *Edinburgh*, being in *September* laſt at *Anna Seaton*'s Mother's Houſe; after having drunk a Health or two, the ſaid *Haines*, who was there preſent, fell in a melancholy Fit; and expreſs'd himſelf, *That it's a wonder that ſince we did not ſink at Sea, God doth not make the Ground to ſwallow us up, for the Wickedneſs that has been committed during the laſt Voyage on Board of that* Old Bitch *Beſs*; pointing to Captain *Green*'s Ship. And further, the ſaid *Haines* ſaid, That if what the ſaid *John Madder* had done in the ſaid Voyage were well known, he deſerved as much as his Uncle *Madder* met with at *Amſterdam*; who was there burnt in Oyl, for attempting to burn their Ships. And when, at another Time, the ſaid *Anna Seaton* told *Haines*, That ſhe had an old Sweetheart who went away with Captain *Drummond*; and would gladly hear ſome Tidings, whether he was dead or alive: The ſaid *Haines*, who was then a Suitor of *Anna Seaton*'s, aſſur'd her, ſhe would never ſee him again, if he was in *Drummond*'s Ship.

And for a further Confirmation of the Truth of the ſaid Piracy; when a Committee of Council was ſent to *Bruntiſland*, to cauſe Search and unload the ſaid Veſſel; it was found, by the Skippers and Seamen employ'd, that the Goods aboard her were not ſtowed as Merchant Goods uſed to be; but were found in the Hold in ſuch Confuſion, as if taken by Piracy, and no otherways. *Like as* when the ſaid Ship the *Worceſter* was ſeized, the ſaid *John Madder* being queſtion'd about Captain *Drummond*'s Ship; he took out of his Pocket, or at leaſt ſhewed in his Hand, the Seal of the *African Company*; which he could never have lawfully got.

By all which, they being joined and connected together, (as a Diſcovery of ſuch a Wickedneſs practiſed in ſuch remote Parts, and ſo induſtriouſly and obſtinately endeavour'd to be concealed, deſerves to be) the ſamen, in all the Points and Circumſtances thereof; at leaſt ſuch, and ſo many of them as are relevant, and are offer'd to be proven by a cumulative Probation; do plainly amount to ſuch a plenary Evidence, as may fully convince all impartial Men, that the foreſaid Captain *Green* and his ſaid Crew, are all and each of them guilty, Art and Part, of the foreſaid Crimes of *Piracy*, *Robbery* and *Murder*, or one or other of them above charged. Which being found by a Verdict

of

of an Aſſize before the Judge of the *Admiralty*, and the Lords Aſſeſſors appointed by the Lords of Privy Council; the forenamed Perſons, and each of them, ought to be puniſh'd by Sentence of the ſaid Court, with the Pain of Death, and Confiſcation of their Moveables; to the Examples, and Terror of others, to do or commit the like in Time coming.

Additional Concluſion of the Indictment, at the Inſtance of Mr. Alexander Higgins, *Procurator-Fiſcal to the Court of* Admiralty, *againſt Captain* Tho. Green, &c.

Viz. THAT the Concluſion of the ſaid Indictment given on *Saturday*, the Seventeenth Inſtant, bearing the Pain of Death, and of Eſcheat and Confiſcation of Moveables, ſhould extend to the Eſcheat and Confiſcation of the ſaid Ship and Cargo, by reaſon of the foreſaid Crime of Piracy: And that the ſaid Captain *Thomas Green*, &c. ſhould anſwer to the foreſaid Concluſion, as thus explained, and extended to the Confiſcation of the ſaid Ship and Cargo, as in the Caſe of Piracy, the foreſaid Fifth of *March*, which is the Day of * Compearance aſſigned to the ſaid Pannels, or at leaſt upon the 6th, 7th, 8th, or 9th Days of *March* thereafter; as the true Import, or at leaſt a clear Conſequent of the foreſaid Crime and Indictment given thereupon: The Liſt of Witneſſes and Aſſizers remaining the ſame, as ſubjoined to the foreſaid principal Indictment.

* *Appearance.*

Sic ſubſcribitur,
ALEXANDER HIGGINS.

PURSUERS.

Mr. *Alexander Higgins*, Procurator-Fiſcal.
Sir *James Stuart*, Her Majeſties Advocat.
Sir *David Dalrymple*, and Mr. *William Carmichael*, Her Majeſties Sollicitors.
Sir *Patrick Home.*
Sir *Gilbert Eliot.*
Mr. *Francis Grant.*
Advocats.

Procurators in DEFENCE.

Sir *David Cunningham.*
Sir *David Thoirs.*
Sir *Walter Pringle.*
Mr. *David Forbes.*
Mr. *George Alexander.*
Mr. *John Spotſwood.*
Mr. *John Elphinſton.*
Advocats.

The *Procurator-Fiſcal* declared judicially, he * paſſed from *Samuel Urlines*, Carpenter's-Mate of the Ship the *Worceſter*, *Henry Barnes* Seaman, and *Daniel Stringman*, Cook of the ſaid Ship; whereupon they were diſmiſſed from the Bar.

* *had nothing againſt.*

Alexander Higgins.

Her Majeſties Advocat for the Purſuers craved, that the † Dyet againſt Captain *Thomas Green* and others, contained in that Indictment with him, might be continued.

† *Time of Proſecution.*

It was objected by the Pannel's Procurators, that the Dyet could not be continued againſt them; being contrair to the Act of Parliament *for preventing wrongous Impriſonment*, and contrair to an expreſs Clauſe therein.

It was replied for the Purſuers, that the Act of Parliament is opponed; which only requires the Dyet of the Tryal to be fixed within Sixty Days after Intimation, which was done; but then allows to the Purſuers to inſiſt, and to the Judge to determine by a final Sentence, within Forty Days, if before the Lords of Juſticiary, and Thirty Days, if before any other Judge.

*Which Objection, with the Anſwers and Replies made thereto, being conſidered by the Judge and Aſſeſſors, they * repelled the Objection, and continued the Dyet againſt the ſaid Captain* Green *and others, contained in the Indictment againſt him, till* Wedneſday *next at Nine of the Clock; and ordained the Pannels to be carried back to Priſon.*

* *rejected, or over-rul'd.*

JAMES GRAHAM, *I. P. A.*

It was alledg'd by the Procurators for the Pannels, that the Crime † libelled being alledg'd to be committed upon the Coaſt of *Malabar*, and by *Engliſhmen*; they ought to be remitted to be tried in *England*; and cannot be judged by the Judge of the High Court of *Admiralty* and Aſſeſſors, who are not Judges competent.

† *indicted.*

The Procurator-Fiſcal and Purſuers Procurators anſwer'd, That they opponed the Act of Parliament, 1681. which founds the Admiral's Juriſdiction in the Caſe libelled: Declaring expreſly, *That the High Admiral hath the ſole Privilege and Juriſdiction in all Maritime and Sea-faring Cauſes, Foreign and Domeſtick, whether Civil or Criminal whatſoever, within this Realm; and over all Perſons, as they are concerned in the ſame: And that he is His Majeſties Lieutenant and Juſtice-General upon the Seas*, &c.

*Which * Alledgeance and Anſwer, with the other Replyes and † Duplices, being conſidered by the Judge and Aſſeſſors; they repelled the Alledgeance in reſpect of the Anſwer; and found that the Judge Admiral and Aſſeſſors are competent and proper Judges, to † cognoſce and determine in the Caſe and Crimes libelled.*

* *Allegation.* † *further Anſwer.* † *inquire into.*

JAMES GRAHAM, *I. P. A.*

THE Grounds of the Indictment, at the Inſtance of the Procurator-Fiſcal, againſt *Henry Keigle*, *George Haines*, *Samuel Wilcocks*, *George Glen*, *Alexander Taylor*, and *John Bannantyne* here preſent, being fully debated *vivâ voce*; The Judge of the High Court of *Admiralty* and Aſſeſſors continue the Dyet, at the ſaid Mr. *Alexander Higgins*'s Inſtance, againſt the ſaid *Henry Keigle*, and other Pannels above-named, till *Tueſday* the 13th Inſtant, at Nine a Clock in the Forenoon; and ordain both Parties to give in their * Informations betwixt and that Time; the Purſuer to give in his betwixt and

* *Pleas, or Briefs.*

Thurſday next, at Twelve a Clock of the Day; and the Pannels to give in theirs betwixt and *Saturday* next, at Twelve Afternoon thereafter; in order to be recorded in the Court-Books: And ordains the Aſſizers and Witneſſes to attend then, and at the other Dyet upon *Wedneſday* next, againſt Captain *Green* and others, * ilk Perſon under the Pain of One Hundred *Merks*; and the Pannels to be carried back to the reſpective Priſons.

* *every.*

JAMES GRAHAM, I. P. A.

CURIA JUSTICIARIA, *Supremæ Curiæ Admiralitatis tenta in Prætorio, vel nova Domo Seſſionis Burgi de* Edinburgh, *ſeptimo Die Menſis* Martii, 1705. *per Judicem dictæ Curiæ, & per Honoratiſſimos Viros*, Joannem *Comitem de* Loudoun, Joannem *Dominum de* Belhaven, *Dominos* Robertum Dundas *de* Arneſtoun, Joannem Home *de* Blackadder, *&* Joannem Cockburn *de* Ormiſtoun, *Aſſeſſores.*

Curia Legitimè Affirmata.

Intran.

Captain *Thomas Green*, Commander of the Ship called the *Worceſter*, now in *Bruntiſland* Harbour.
Captain *John Madder*, Chief Mate of the ſaid Ship.
John Reynolds, Second-Mate of the ſaid Ship.
Thomas Linſteed, Aſſiſtant to the deceas'd *Super-Cargo* of the ſaid Ship.
James Burn, Boatſwain of the ſaid Ship.
James Simpſon, Gunner.
Andrew Robertſon, Gunner's-Mate.
John Bruckley, Seaman.
George Kitchen, Seaman.

All of them indicted and accuſed at the Inſtance of Mr. *Alexander Higgins*, Advocat, Procurator-Fiſcal to the High Court of *Admiralty*; for the Crimes of *Piracy*, *Robbery* and *Murder*, in manner mentioned in the Indictment raiſed againſt them thereanent, before inſert in the Court holden the Fifth of *March* Inſtant.

PURSUERS.

Mr. *Alexander Higgins*, Procurator-Fiſcal.
Sir *James Stuart*, Her Majeſties Advocat.
Sir *David Dalrymple*, and Mr. *William Carmichael*, Her Majeſties Sollicitors.
Sir *Patrick Home.*
Sir *Gilbert Eliot.*
Mr. *Alexander Mackleod.*
Mr. *Francis Grant.*
Advocats.

Procurators in DEFENCE.

Sir *David Thoirs.*
Sir *Walter Pringle.*
Mr. *David Forbes.*
Mr. *George Alexander.*
Mr. *John Elphinſton.*
Mr. *John Spotſwood.*
Advocats.

The Grounds of the Indictment at the Inſtance of the Procurator-Fiſcal, againſt Captain *Green* and other Pannels here preſent, and the Reaſons why *John Reynolds*, one of the Pannels, who is a Witneſs cited in the † Exculpation, at the Inſtance of the other Pannels, ſhould be tried firſt upon the Libel, to the effect, that if * aſſoilzied, he may be adduced as a Witneſs for the ſaid other Pannels in the foreſaid Exculpation, being debated *viva voce.* The Judge of the High Court of *Admiralty*, and Aſſeſſors, continue the Dyet at the ſaid Mr. *Alexander Higgins* Inſtance, againſt the ſaids hail Pannels, till *Tueſday* the Thirteenth Inſtant, at Nine a Clock in the Forenoon: And ordains both Parties to give in their Informations betwixt and that Time; the Purſuer to give in his betwixt and To-morrow; and the Pannels to give in theirs betwixt and *Saturday* thereafter, in order to be recorded in the Court-Books: And ordains the Aſſizers and Witneſſes to attend with ilk Perſon, under the Pain of Two Hundred Merks; and the Pannels to be carried back to Priſon.

† *Plea of Defence.*

* *abſolv'd, or acquitted.*

JA. GRAHAM, I. P. A.

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* INFORMATION

* *Plea, or Brief.*

For Mr. *Alexander Higgins*, Procurator-Fiſcal of the High Court of *Admiralty*:

AGAINST

Captain *Thomas Green*, Commander of the *Worceſter*, and his Crew and Complices.

THere being Two † Libels raiſed before the High Court of *Admiralty*, and the Lords Aſſeſſors appointed by the Lords of Privy Council, both at the Inſtance of the ſaid Mr. *Alexander Higgins*; but the firſt againſt *Henry Keigle*, Carpenter in the Ship called the *Worceſter*, now in *Bruntiſland* Harbour; *Samuel Urline*, his Mate; *George Haines*, Stewart of the ſaid Ship; *Daniel Stringman*, Cook in the ſaid Ship; *Samuel Wilcocks*, Chyrurgeon's Mate; *George Glen*, Seaman there; *Henry Barnes*, Seaman there; *Alexander Taylor*, Seaman there; and *John Ballantyne*, Seaman there: And the Second againſt the ſaid Captain *Thomas Green*, Commander of the ſaid Ship the *Worceſter*; Captain *John Madder*, Chief Mate of the ſaid Ship; *John Reynolds*, Second Mate of the ſaid Ship; *Thomas Linſteed*, Aſſiſtant to the deceas'd Supercargo of the ſaid Ship; *James Burn*, Boatſwain of the ſaid Ship; *James Simpſon*, Gunner of the ſaid Ship; *Andrew Robertſon*, Gunner's Mate; *John Brucklie*, Seaman there; and *George Kitchen*, Seaman there; all Priſoners.

† *Indictment.*

Both the Libels being the ſame, the Tenor thereof prefixt to the Information is *verbatim* conform to the Indictments on the preceding Pages, in the Court holden the Fifth of *March*, 1705. and whereto this refers.

When the * haill foreſaids Pannels were brought to the Bar, and the ſaids Libels read againſt them; the Procurator-Fiſcal declared, That he inſiſted firſt upon the firſt Libel, *viz.* againſt the ſaids *Henry Keigle*, Carpenter,

* *whole.*

penter, *Samuel Urlane*, *George Haines*, *Daniel Stringman*, *Samuel Wilcocks*, *George Glen*, *Henry Barnes*, *Alexander Taylor*, and *John Ballantyne*; and after ſome Debate moved by the Pannels Procurators, that the Pannels having uſed the Method preſcribed by the Act of Parliament, to bring themſelves to a Tryal within ſixty Days, they ought now all of them to be inſiſted againſt; and it being anſwered, That all that the Act of Parliament required was, That a Day ſhould be fix'd for the Tryal within ſixty Days after the Charge given for that Effect, the ſame was done, and alſo the whole Pannels ſo far inſiſted againſt, that their Libels were read, which fully ſatisfies that Part of the Act; and that as to further inſiſting, proſecuting and concluding, the Act of Parliament allowed fourty Days further before the Commiſſion of Juſticiary, and thirty Days before any other Inferior Judicature: So that the Procurator-Fiſcal might very well proceed againſt theſe contained in the firſt Libel this Day, and continue theſe contained in the ſecond Libel till the next Court Day. The Lord High Admiral repelled the foreſaid Alledgeance made for all the Pannels, and allowed the Procurator-Fiſcal to inſiſt againſt theſe in the firſt Libel, the foreſaid 5th of *March*, and continued the Dyet againſt theſe in the ſecond Libel, till the 7th of the ſaid Month.

It was then alledged for theſe in the firſt Libel, No Proceſs, in regard the Crimes charged were libelled to have been done in the *Eaſt Indies* in *Malabar*, far without the *Scottiſh*-Seas, nor was there any Accuſer either of the Owners of the Ship and Goods, or of the neareſt of Kin of the Perſons alledged, Murder'd; ſo that the Admiral was incompetent to this Tryal; For the *competentia fori* (*Competency of the Court*,) † in Criminals, being founded either in the *locus delicti*, (*the Place where the Crime was committed*) or in the *locus domicilii* (*the Place of Habitation* of the Pannels,) or in the *locus originis* (*place of Birth*) neither of theſe could be ſubſumed upon in this Caſe: The Pannels *Engliſhmen* and Strangers, and the Crimes libelled to have been committed in the *Eaſt-Indies*, as ſaid is. And * *eſto*, that the Crime of Piracy may be tryed any where, where the Pirates are found, yet that is only where the accuſed are notoriouſly ſuch. And farther, tho' the Pannels could be accuſed here in *Scotland*, yet they could be only accuſed before the † Commiſſion of Juſticiary, and not before the High Admiral, whoſe Juriſdiction extends no further than the Seas within the Compaſs of Her Majeſty's Sovereignty.

† *Criminal Caſes.*

* *allowing.*

† *Court for Criminal Caſes.*

To all which it is anſwer'd by the Purſuer. 1. That tho' the Competency of the Judge in Criminals be ordinarily ſaid, to be found either *in loco delicti*, (the Place where Crime was committed) or *in loco domicilii* (Place of Habitation of the Delinquents,) or *in loco originis* (the Place of their Birth) yet there is a ſuperior Conſideration, and that is the *locus deprehenſionis*, (Place where they were taken,) where the Criminal is found and deprehended, which doth ſo over-rule in this Matter, that neither the *locus domicilii* (Place of Habitation,) nor the *locus originis*, (Place of Birth,) doth * found the Judges Competency, *niſi ibi reus deprehendatur*, (except the Criminal be apprehended there.) And ſo it is that here the Pannels were and are deprehended, which happening in the Cauſe of Piracy, a Crime againſt the Law of Nations, and which all Mankind have an Intereſt to purſue, wherever the Pirates can be found; the Procurator Fiſcal's Intereſt to purſue is thereby manifeſt, and the Pannels being here deprehended, cannot decline the Admiral's Juriſdiction as incompetent. 2. As to what is alledg'd, that the Pannels are not libelled to be habitual and notorious Pirates, but on the contrary, had and do produce a Commiſſion, which frees them of that Suſpicion.

* *Juſtify or make good.*

It's anſwered, That Piracy being † libelled, as to the Particular charged, even habitual Piracy is thence preſumed; but a ſingle Act of Piracy libelled doth both give the Purſuer a ſufficient Title and Intereſt, and likeways founds the Admiral's Juriſdiction, in reſpect the Pannels charged for Piracy are here found. And 3. The Lord High Admiral is moſt proper for this Cognition and Tryal, becauſe by the Act of Parliament, 1681. he is declared to be * Juſtice-General upon the Seas, which albeit it be limited inwardly towards the Land, yet outwardly is not limited; ſo that the Lord High Admiral is there declared to have the ſole Juriſdiction in all Maritime and Sea-faring Cauſes, Foreign and Domeſtick, whether Civil or Criminal, within this Realm, and over all Perſons, as they are concerned in the ſame, which as to the Seas and all Maritime Crimes whatſoever, makes the High Admiral Juſtice-General, as ſaid is, without Limitation; and therefore it is in vain for the Pannels to pretend, that if their Cauſe be cognoſcible here, it muſt at leaſt be tryed before the Commiſſion of Juſticiary, ſince the Lord High-Admiral is in this Caſe fully veſted with the Juſtice-General's Power; and as for what may be the Cuſtom of *England*, it doth not concern, nor can be any Rule for us.

† *mentioned in the Indictment.*

* *Lord Chief Juſtice.*

And the Lord High Admiral and Aſſeſſors having * adviſed the Debates, they repelled the Declinator †, and found the Court competent.

* *conſidered.*

† *declining the Juriſdiction of the Court.*

Thereafter it was alledged for theſe in the firſt Lybel, That they were conveened*, as having been of Captain *Green*'s Crew, and his Complices in the Crimes libelled; ſo that he being their Commander and Captain, they could not be put to anſwer, unleſs the Captain himſelf were inſiſted againſt; ſeeing firſt, it was obvious, that he being their Commander and Captain, ought firſt to be anſwerable. And 2. That they being under his Command, could not be charged for any Thing alledged done by them as his Crew, unleſs he were firſt tryed, ſeeing that he might have Defences both for himſelf and them, which probably they could not make for themſelves.

* *Summoned or brought to the Bar.*

To which it was anſwered by the Purſuer, That the Captain and his Crew were not * conveened for any Thing alledged acted by him as their Captain, and by them as his Crew, but were all conveened as Complices and *ſocii*, (i. e. *Fellow-Criminals*) and Partakers of the foreſaid wicked Crimes of Piracy, Robbery and Murder; which Crimes as they could be warranted by no Commiſſion or Character the Captain did or could pretend, ſo could they be as little warranted by their Condition of being ſubject to him as his Crew; for here the ſaying holds, That they were all *hic ſocii & facinus quos inquinat æquat*, i. e. *(they were Fellows in this Caſe, and being defiled with the ſaid Crime, were in that reſpect equal.)* As alſo the other Maxim, That † Wrong has no Warrant; and therefore, ſeeing that neither the

* *brought before the Court.*

† *Injuſtice.*

Captain's

Captain's Character, nor their Condition as his Crew, could be pretended as a Defence either to him or them; and that the Libel of the foreſaid Crimes did charge them all, as being *Socii*, and together involved therein; and that without Queſtion, in the Caſe of ſuch an Accuſation for ſuch horrid Crimes, every one muſt anſwer for himſelf; the Alledgeance could not be * reſpected. Beſides that it was evident, that if Captain *Green*, and theſe in the Second Libel, were all confeſſing and pardon'd; yet the firſt Libel againſt theſe of his Crew therein contained, would ſtill lawfully proceed; and Captain *Green* himſelf, and thoſe joined with him in his Libel, might be made uſe of as Witneſſes againſt theſe contained in the firſt Libel. By all which it was evident, that the Tryal ought to proceed againſt theſe in the firſt Libel, without reſpect to the foreſaid dilatory Defence. This being the dilatory Defence objected againſt the firſt Libel, and anſwered above; and the † peremptory Defences againſt both Libels being common and coincident, for the more clear Method; the dilatory Defence proponed alſo for theſe contained in the Second Libel, with the Anſwers thereto, are hereunto ſubjoined.

* *regarded.*

† *poſitive.*

The Dilatory then propoſed for Captain *Green*, and others, (in the Second Libel) was, The foreſaid *John Reynolds* was convened and † impannelled with him; whereas it was acknowledged by the Purſuer, that *Reynolds* was aſhore the Time of the Piracy, and other Crimes libelled to have been committed by Captain *Green*, and the reſt of his Complices; whereby *Reynolds* appeared, even by the Purſuer's Acknowledgment, to be innocent. Like as Captain *Green*, and the other Pannels, had raiſed an * Exculpation, and therein had cited *Reynolds* for a Witneſs: So that according to the Method practiſed in Criminals, Captain *Green* and the other Pannels had good Ground to demand, that *Reynolds* might be firſt tried, and ſo purged from being *Socius Criminis*, (*a Fellow Criminal*) and put in † Caſe to be a Witneſs, for the Captain and the other Pannels to prove their Grounds of Exculpation. For there could be nothing more reaſonable, as it was alſo ordinary, than that when a Purſuer did raiſe a Libel againſt ſeveral Perſons, (whereof ſome were innocent, and might be Witneſſes for the other Criminals and Pannels) theſe other Pannels might juſtly crave, that ſuch as they alledged to be innocent, might be firſt tried and purged, and ſo made capable to be Witneſſes; ſince otherways any malicious Purſuer might include both the Defenders and all their Witneſſes in one Libel: And thus by making the Witneſſes *Socii Criminis* (*Fellow Criminals*) in the Libel, prejudge the Defenders of all their Evidences and Defences.

† *indicted.*

* *a Form of Law for vindicating any Perſon.*

† *Condition.*

To which it was anſwer'd for the Purſuer, That he acknowledged, that when ſuch a Courſe was taken, to include both Actors and Witneſſes in one Libel, with a Deſign to make the Witneſſes (which the Actors were to uſe) *Socii Criminis*, (*Fellow Criminals*) and ſo to deprive the Actors of their Defence, and the Probation thereof; theſe Actors might, and were allowed to † condeſcend upon thoſe whom they intended to uſe as Witneſſes, and at the ſame Time to propoſe a Ground of Exculpation for them; and ſo crave that they might be firſt tried upon the foreſaid Ground, to the effect that if thereupon acquit, they might be in Caſe to be Witneſſes. But this could never be pretended to by any of the Pannels: For an antecedent Tryal of ſuch of their *Socii* as they alledged were innocent, and to be their Witneſſes, unleſs at the ſame Time the Pannels did condeſcend upon the Ground of their Innocence, or upon the Ground of their Exculpation, whereupon they deſired them to be firſt tried: For otherways there could be nothing more groundleſs, and (in effect) manifeſtly tending to elude all Criminal Proceeding againſt Complices of the ſame Crime, than to allow any of them at random to crave others to be firſt tried; and ſo the Tryal to proceed of one ſingle Perſon after another, until all ſhould be † aſſoilzied. Whereas the true and plain Method was, and is, That the Purſuer inſiſts againſt ſuch as he pleaſes, either ſingly or jointly; and unleſs ſome * Speciality be alledged, why the Tryal of one ſhould proceed before the Tryal of another, it never was, nor could be left to the Arbitriment of the Pannels. And thus it was practiſed in all the Inſtances alledged by the Pannels, of trying ſuch as were impannelled for *Socii Criminis*, (*Fellow Criminals*) to be firſt purged, in order to be Witneſſes; *viz.* That the ſame was never allowed, unleſs ſome Ground of Exculpation was poſitively alledged for clearing of their Innocence. And therefore, unleſs Captain *Green*, and the other Pannels, will poſitively offer to prove, that *Reynolds* (whom they would have firſt tried) was *alibi*, (*elſewhere*) and not preſent in the Action; their Arbitrary Demand of having him tried in the firſt place, without any Reaſon aſſigned, cannot be regarded. Which Debate being heard, the Lord High Admiral and Aſſeſſors † ſuperſeded to give Anſwer, until the Defenders ſhould give in their other Defences, and all ſhould be informed upon together.

† *acquitted.*

* *Special Cauſe.*

† *delay'd.*

Theſe being the Preliminary Defences, ſeparately proponed by the Perſons convened in the Firſt and Second Libels; the following Defences were proponed in common, by the Defenders in both Libels.

And 1. That the Libel was informal and inſufficient, as being too general and indefinit. And 2. That it did not * condeſcend upon Day and Place. And 3. That the Qualifications whereupon the Relevancy appeared to be founded, were wholly † irrelevant. And 4. That the Additional Concluſion was groundleſs and unwarrantable.

* *name.*

† *inſufficient, or not to be ſuſtain'd.*

And as to the firſt of theſe Defences, it was alledged, That the Libel was informal and inſufficient, as being too general and indefinit; not condeſcending upon the Name and Deſignation of the Ship * wrongouſly attacked, nor upon the Perſons and Deſignations of theſe alledged to be murdered, nor upon the Quantity and Quality of the Goods alledged to be robbed and ſpoiled: All which ought to be done, ſeeing that Criminal Libels ought to be certain, and not general and indefinit; whereby alſo the Defenders might be prejudged of Defences, that might ariſe to them upon a par-

* *wrongfully.*

a particular Condeſcendance. As for Example; if the Name and Deſignation of the Ship were condeſcended on, they might prove the ſame Ship to be yet exiſting: And ſo of the Perſons alledged murdered, they might prove them to be yet alive: As alſo, that the Goods alledged robb'd, were yet extant, and lawfully diſpoſed on by their Owners.

To which it was anſwered by the Purſuer, That he oppones his Libel, which was libelled as definitly as the Thing would allow: For it being libelled, that the Pannels did, without any lawful Cauſe or Warrand, attacque a Ship ſailed by her own Crew, and having her own Cargo aboard, and that they over-maſter'd the ſaid Ship in hoſtile manner, and murder'd the Men, and robb'd their Goods. Theſe were certainly Crimes manifeſt in themſelves; and if the Pannels had acted them in ſuch manner, as to deſtroy the Ship and the Men, and embazled the Cargo, ſo as no farder Knowledge could be had thereof; it was only an Aggravation of their Villany and Wickedneſs, but could never hinder the Accuſation to proceed; ſeeing that whatever the Ship, or Men, or Goods were, it was certainly Piracy, Robbery and Murder, to attacque a Ship * hoſtilely, and to deſtroy the Men, and rob the Goods. And further, A Condeſcendance was not at all in this Caſe neceſſary, ſeeing that any ſuch Condeſcendance could be no Ground of Exculpation. For whether the Ship was of ſuch a Name and Deſignation, or of another; or whatever the Men and the Goods were, yet the Crime was ſtill the ſame; *viz.* To attack and invade a free Ship, without any Cauſe or Warrant, and to kill her Men, and rob her Goods.

† *In hoſtile manner.*

And furder; It's very well known in our Criminal Practice, that Robberies and Depredations are ſuſtained, albeit neither the Quality of the Goods nor their Owners be condeſcended on: And in effect, the Pannels their Defence of Indefinitneſs upon the Ground forefaid is ſuch, that if even in the Road of *Leith*, before Hundreds of Spectators from both Coaſts, one Ship ſhould attack another, and hoſtilely invading her, ſhould deſtroy her Men, ſeize her Goods, and ſink the Veſſel, without ſuffering either Veſſel, Men or Goods to be known; there could be no Criminal Libel upon it; becauſe forſooth, tho' Hundreds ſee the whole Action, yet it could not be more definitly libelled; ſave that the Commander and Crew of the one Ship attack'd the other hoſtilely, and deſtroyed her Men, and ſeized her Goods, and ſunk her without further Condeſcendance; which were moſt abſurd. And therefore, the Libel, as it's libelled, both as to Ship, Men and Goods attack'd, murdered and robbed, without any juſt Cauſe or Provocation, is both ſufficiently definit and moſt relevant

And whereas the Defenders alledged, this Indefinit libelled ſhould the rather be rejected, becauſe that the Pannels were cloathed with Commiſſion; which tho' they did not plead to exculpat the particular Charge brought againſt them, yet was always a Ground of Preſumption that they acted lawfully; unleſs the contrair were made appear, by a particular Condeſcendance.

It was anſwered, That nothing did charge the Pannels more home than the pleading of this Commiſſion; in ſo far as firſt, They neither could, nor durſt plead it, to exculpat the Piracy, Murder and Robbery charged. 2. It did not ſo much as make any Preſumption for the Pannels; becauſe the very Tenor of the Commiſſion obliged them to keep a particular Journal of whatſoever Veſſel they ſhould attack hoſtily; and their Journals were produced by themſelves, and no ſuch Thing appeared in their Journals. And therefore it was manifeſt, that their Pretence of a Commiſſion, is only the more wickedly to cover their Villany; ſince they can alledge nothing acted ſuitably to their Commiſſion, but that their own Journals † redargues them.

† *refutes.*

The Second Defence alledged by the Pannels in both Libels, was, That the Libel was ſtill defective and imperfect, wanting Day and Place; in ſo far as the Place was generally deſigned the Coaſt of *Malabar*, which is of a long and vaſt Tract; and the Day was one or other of the Days of *February*, *March*, *April*, *May*, which is indefinit, and as good as no Day. And Day and Place were not only requir'd to be condeſcended on by our Old Law * *Quon. attach*, but the Condeſcendance is alſo neceſſary for the Defender's Exculpation; ſeeing that if Day and Place were condeſcended on, he might then prove himſelf *alibi*, *(elſewhere)* and ſo elude the Libel, which now he cannot do.

* *a Book ſo called.*

To which it was anſwered, That the Condeſcendance in the Libel, as to Day and Place, is ſufficient; becauſe the Facts objected are thereby declared.

2. Day and Place are never eſſential to a Libel, except where either the Nature of the Crime, or its particular Specification requires it; for then indeed it muſt be diſtinctly and poſitively libelled. As if a Man either charge another, or aggravat his Crime, by its being a Breach of the LORD's Day; then the LORD's Day muſt be condeſcended on. Or if a Man libel another for beating, or drawing his Sword within the King's Palace; where the Place is alſo eſſential. But as to other Crimes, which of their own Nature are Crimes at all Times; for what can the Mention of Day or Place ſignify in ſuch Crimes, as at all Times, and in every Place, are Crimes without Exception. And ſuch are the Crimes libelled. But,

3. If it be ſaid, that the Condeſcending on Day and Place, is neceſſary to afford the Defender his juſt Exculpation of *alibi*, *(being elſewhere)*: It's anſwered, That in that Caſe, the Defender may put the Purſuer to condeſcend on Day and Place, for proving his Exception of *alibi*, *(being elſewhere)* as ſaid is. But then, in common Senſe and Law, it muſt be upon this Condition; That the Defender acknowledge the Crime charged to have been committed; and only endeavours to exculpat himſelf by offering to prove *alibi*, *(being elſewhere)* and that more pregnantly than the Purſuer offers to prove his Indictment. For what Senſe or Reaſon is there, that the Purſuer ſhould be put to condeſcend poſitively on Day and Place, in Crimes that are Crimes at all Times, and every where; unleſs it be for this very Reaſon, that the Defender acknowledging the Crime, offers to purge himſelf by the Exception of *alibi*, *(being elſewhere)*? And therefore, ſince Day and Place are libelled in ſuch a juſt Latitude, as may declare the Facts and Crimes charged; and that the Defender, on the other hand, doth not acknowledge the Facts and Crimes themſelves, and offer to clear themſelves by the Exception of *alibi*, *(being elſewhere)* there needs no further Condeſcendance. And this is the conſtant Opinion of Lawyers, and the perpetual Cuſtom of our Practique.

The

The Third Defence proponed for the Pannels, was, as to the Qualifications of the Libel, That they were no ways relevant, nor could be regarded to infer the Concluſion of the Libel, in as much as, 1. There was here no *corpus delicti*, viſible Effect or Subject of the Crime, offered to be proven, which is always neceſſary, and principally where the Crime is offered to be proven *per preſumptiones & indicia*, by Preſumptions and Tokens: For there *cum conſtat de corpore delicti*, when the Subject of the Crime is viſible, this ſuſtains the Preſumptions, and gives the *indicia*, Tokens or Signs, their juſt Weight.

To which it was anſwered, That the Pannels Procurators appear to be in a Miſtake, either as to what is the *Corpus delicti*, the Subject of the Crime, or as to what is meaned by it: And for clearing of this Point, it is to be conſidered, that Crimes are of two Natures, ſome *cum effectu permanente*, with permanent Effects, as the killing of a Man, or the burning of a Houſe; in which Caſes, the dead Body, and the Rubbiſh, are permanent Effects: But other Crimes have no ſuch permanent Effects, as treaſonable Plottings, Falſhoods, Blaſphemies, and the like, where indeed there is no ſuch *corpus delicti*, Subject of the Crime, as in the former Crimes; but here all the Crime conſiſts *in facto & animo*, in the Fact and Way of doing it; and the Fact, tho' tranſient, yet if *doloſe*, unjuſtly done, makes the Crime. And therefore, according to this Diſtinction, the *corpus delicti*, Subject of the Crime, is never requiſite to be proven, but in the foreſaid Crimes that leave permanent Effects; and neither then alſo, unleſs the Crimes be libelled with theſe Effects: For if it ſhould be libelled, for Example, that a Murderer not only killed, but burned the Body to Aſhes, or drowned it in the Sea, there would be no farther need to prove this *corpus delicti*, Subject of the Crime, but only to prove the Fact of killing, and killing *doloſe*, unjuſtly, in which indeed the Eſſence of the Crime conſiſts. And thus in Confeſſions, as well as in Libels; if a Man confeſs a Murder, and yet the Body murdered no where appears; then the Confeſſion is not raſhly to be laid hold upon, becauſe it may proceed from Deſign, or Melancholy: But yet even in this Caſe, that the Confeſſion ſhould bear not only the Murder, but the deſtroying of the Body murdered, by Fire or Water, as ſaid is, then all the Enquiry would be, whether the Fact of Murder be proven or not? Which Things, if applied to our preſent Caſe, where it is expreſly libelled, not only that the Pannels invaded the Ship by Piracy, but that they threw the Men murdered over-board into the Sea, and alſo ſold the Ship; all the Enquiry that remains is, whether this Fact was ſo done or not? And the Libel is moſt relevant, tho' neither Ship or Men appear. And yet farther, if the Pannels Procurators will ſtill be ſo * graſſier as to require a *corpus delicti*, Subject of the Crime, when it's expreſly libelled, that the Effect of the Delict was deſtroyed and put out of the way, they may ſatisfie themſelves, that the Goods robbed are ſtill extant, and were found on Board of Captain *Green*'s Ship: And therefore 'tis plain, that in this Caſe, and to ſuſtain the *Indicia*, Tokens and Qualifications libelled on, there needs no farder either Condeſcendance or Proof of the *corpus delicti*, Subject of the Crime, which was induſtriouſly deſtroyed.

* *Dull or unreaſonable.*

But, Secondly, It was objected, That all the Qualifications are inſufficient and remote, and at beſt but probable: Whereas the known Rule is, that Crimes muſt be proven either *per Teſtes*, by Witneſs above Exception, or *per documenta clariſſima*, very clear Proofs, or *per indicia indubitata*, undoubted Tokens: None of which hold in this Caſe; for as for the *Indicia*, Tokens, there is not one of them, but take the ſame ſingly, as the hearing of Shooting on the Shore, the ſeeing the Ship *Worceſter*, having another lying at her Stern, the Boats coming aſhore for Water, and the Crew ſaying, *they had been a Busking, & ſic de cæteris*, and ſo of the reſt; but take them ſingly, and they may all have a good and innocent Conſtruction: Nor can it be ſaid, that jointly they become ſtronger, and fortifie one another, as ſingle Arrows eaſily broken when apart, yet cannot be broken in a Sheaf, becauſe that all the Qualifications and *Indicia*, Tokens in the Libel, with the foreſaid Conſtructions, may be put upon them, the Conſtructions will ſtill take off the Face; beſides that, it's well known, that there are ſome *Indicia* only *probabilia*, ſome Tokens only probable, and that the Law requires *Indicia indubitata*, undoubted Signs; it being ſtill the ſafer ſide to ſpare doubtful Innocents, than to condemn only preſumed and probable Guilt. To all which is to be added, That it's the common Opinion of Doctors, that Preſumptions can ſcarce ever conclude *ad pœnam ordinariam*, to ordinary Puniſhment, but at the moſt only *ad pœnam arbitrariam*, to Puniſhment at Pleaſure of the Judge: And *Mackenzie* in his * *Criminals*, ſays, " Preſumptions are " only founded on *may be's*, which may " not be; and to allow Crimes to be " proven by Preſumptions, would leave Judges to be " Arbitrary". So that the common Opinion runs againſt Preſumptions. But,

* *A Book ſo called.*

To all this it's anſwered, That yet it is clear Law, that Crimes may be proven *per indicia indubitata*, by undoubted Tokens, which in Law are no more than violent Preſumptions, *quæ fidem extorquent*, that force a Belief: But the Truth is, that in this Caſe the Purſuer hath not only *indicia indubitata*, undoubted Tokens, but likewiſe poſitive Witneſſes, and alſo Documents in Writing; which all being conjoyned, do make a ſatisfying Evidence, and fix a clear Conviction; which is the utmoſt Deſign of Probation. But Secondly, it's moſt certain, both in Law and † Praticque, that many Crimes are only diſcovered and proven *per preſumptiones & indicia*, by Preſumptions and Tokens; and that the Doctors in ſeveral Crimes, eſpecially theſe more atrocious, as Treaſon, Piracy, Forgery, and the like, where Wickedneſs endeavours moſt induſtriouſly to hide it ſelf, do allow and approve Probation *per Indicia*, by Tokens, as moſt neceſſary for the puniſhing of theſe Crimes. It were needleſs to multiply the Citations both from the Law and Doctors, that might be adduced in this Caſe, as *l.* 3. §. 2. *D. de Teſtib.* where the Reſcript bears, *Quæ argumenta ad quem modum probandæ, cuique rei ſufficiant nullo certo modo ſatis definiri poteſt*: " The Ar- " guments to be us'd, and the Manner of proving " every Thing ſufficiently, can't certainly be defin'd and ſoforth: And ſo concludes, *Non utiq; ad unam probationis ſpeciem cognitionem ſtatim alligari debere, ſed ex ſententia animi tui, te æſtimare opportere, quid aut credas aut parum probatum tibi opinaris. Item, l.* 22. *cod. ad legem Corneliam de falſis, ubi falſi examen inciderit tunc acerima fiat indago, argumentis teſtibus ſcripturarum collatione, aliiſque veſtigiis veritatis*, &c. " You are not to be tied in taking Cognizance of a " Matter to one Method of Probation, but you " muſt act according to your own Judgment, and " conſider what you are to believe, and what you " think not fully prov'd. *Item*, &c. when the Fal- " ſhod of a Thing is to be enquired into, then a " moſt

† *Practice.*

" moſt ſtrict Search is to be made, by Arguments, " Witneſſes, comparing of Hands, and other Signs " of Truth, *&c.* By which Law it's plain, that *Indicia & Preſumptiones*, Tokens and Preſumptions, have place, and may make full Faith; and how can it be otherwiſe, ſince firſt, it is certainly the Intereſt of Mankind that Crimes be puniſhed. 2. It's no leſs certain, that Crimes endeavour to cover themſelves. 3. That Proof or Probation is only to make an Evidence for Diſcovery. 4. That the End and Standard of this Diſcovery, and of all Probation, is the ſatisfying Conviction of the Judge that has Power to puniſh. Now if moſt Crimes be committed without Witneſſes, and yet do otherways appear certainly to be committed; and if this Certainty ariſe from Preſumptions, and be withal ſatisfying, it is juſt the ſame as if the Crime was proven by many Witneſſes. And thus *Matheus de Criminibus*, *Tit. de Probationib. cap. 6. per totum*, and *Gail. lib. 2. Obſ.* 149. *Numb.* 9. where he reaſons moſt juſtly upon Probation by Preſumptions, where there is a Difficulty by reaſon of the Want of Witneſſes; and ſtill brings the Matter to this true Period, That whatever way Faith be fully made to the Judge, either *per Teſtes*, or *per Indicia*, or *per Preſumptiones*, either by Witneſſes, Tokens, or Preſumptions, the End of Probation is attained, and ſo the Evidence ſufficient.

The Procurators for the Pannels alledged, That this were to make Judges too Arbitrary; but tho' it hath indeed been the Care of all Lawyers to prevent Arbitrarineſs, yet it's moſt certain, that where Evidence doth only riſe as Providence offers, and Circumſtances concur, the Arbitriment of the Judge muſt take Place, and the Safety of Mankind doth preciſely lie here in the Integrity and Diſcretion of the Judge, helped indeed by ſome Rules of Law, but no ways bounded or fix'd to preciſe Rules, which the Matter will not bear. And therefore we ſee, that even in the moſt certain Manner of Probation, *viz.* by Witneſſes, and the higheſt Law of it, *that in the Mouth of two or three Witneſſes ſhall every Thing be eſtabliſhed*: There is ſtill an Arbitriment inſinuate, as to the Diſcretion of the Judge, or otherways the Law would not have ſaid, two or three, but would have fixed the Number preciſely; whence it is moſt certain, that in all Probation there is an Arbitriment of Diſcretion, and that tho' this Arbitriment may be bounded by ſome Rules, yet the ultimate and true Standard of all Probation, is the ſatisfying Conviction of the Judge, according to his beſt diſcerning.

Theſe Things then premiſed, *viz.* That a Proof may be ſufficient, *per Indicia & Preſumptiones*, by Tokens and Preſumptions, the Application to the preſent Caſe is plain; for where the Procurators for the Pannels would take off the Qualifications, as ſeparately inconcludent, and at beſt probable, it is clearly captious; it being certain, that many *indicia*, Tokens, conjoined and connected, as in this Caſe, may make a ſufficient Evidence, and that here *quæ non proſunt ſingula multa juvant*, i. e. " Thoſe Things " which taken ſingly, are of no Effect, yet many " of 'em together are. And thus, if firſt the Probation that ſhall be offer'd, of the Hoſtile invading the other Ship, by the Pannels be laid down and thereto added, the Surgeon's Declaration of other Circumſtances, with all the other Qualifications in the Libel, they will certainly force a Faith and full Perſwaſion upon all rational Men, tho' ſeparately they cannot have that Weight; one Witneſs proves not, yet two prove, and in ſome Caſes two are ſcarce ſufficient, but three are beyond Exception. If then even in Witneſſes there be a mutual and fortifying Concurrence, the ſame muſt alſo be admitted in Preſumptions *& Indicia*. So that upon the whole, the Purſuer craves no more, than that every Man that hears this Libel, and ſhall hear its Proof, lay himſelf fairly open, without any Prejudice to the Light ariſing naturally from the Matter it ſelf, and its Circumſtances, and the Proofs and Confirmations thereof, as they are ſet down in the Libel; and if he do not wilfully reſiſt, he will certainly be ſatisfied to a full Conviction. There are indeed hidden Crimes, and ſuch as are ſaid to be of * difficil Probation, and the moſt atrocious, as Treaſon, Aſſaſſinations, Piracy, Forgery, are ordinarily moſt hid; and Doctors ſay with Reaſon, that their Preſumptions ought to be examined, *acerrima indagine*, with the ſtricteſt Scrutiny; but all this ſhould be far from impreſſing any with the Prejudice, as if a ſatisfying Evidence may not be found in theſe Caſes. And therefore ſince all pleaded by the Purſuer, is, that firſt his complex Probation *per Teſtes & Indicia*, by Witneſſes and Tokens, may be fairly received. 2. That concurring and coming together, they may be allowed their juſt Weight. And 3. That if that juſt Weight, and the Evidence that attends it, be ſatisfying, it may be held as concludent. It's clear as the Sun-Light, that no Stretch is intended, but Juſtice fairly proſecuted; and tho' in this Caſe of ſuch an extraordinary Crime, and where ſo much Evidence appears, the Purſuer might even, according to the Claim of Right, preſs the Supplement of Torture, yet he contents himſelf to inſinuate, that tho' this may be both juſt and neceſſary, yet he is hopeful, the Force of his Evidence may otherways prevail.

* *Difficult.*

The Fourth Particular is the additional Concluſion; but as to that Concluſion, it is ſo natural in it ſelf, and ſo well fortified by the Authority of Doctors, and ſo certain, not only in the Caſe of Counterband, but even of other forbidden Goods, that nothing needs be added; for ſince every Pirate is preſumed to have the Ship and all in it at his Command, as his own; and ſince the Ship is certainly the Inſtrument, as well as the Goods are preſumed to be the Effect of his Piracy, it follows naturally, that the Confiſcation of both Ship and Goods ſhould be a Part of the Pains concluded.

In reſpect whereof, &c.

Here follows the Laws, and ſome other Quotations uſed in the Debate, where they are alſo *Engliſh'd* in their proper Places.

L. 2. §. 2. *Ejuſdem quoq; Principis extat reſcriptum ad Valerium verum de excutienda fide teſtium, in hæc verba: Quæ argumenta ad quem modum probandæ cuique rei ſufficiant, nullo certo modo ſatis definiri poteſt, ſicut non ſemper, ita ſæpe ſine publicis monumentis cujuſque rei veritas deprehenditur, alias numerus teſtium alias dignitas & auctoritas, alias veluti conſentiens fama confirmat rei de qua quæritur fidem, hoc ergo ſolum tibi reſcribere poſſum ſummatim, non utique ad unam probationis ſpeciem cognitionem ſtatim alligari debere, ſed ex ſententia animi tui, te æſtimare oportere, quid aut credas aut parum probatum tibi opinaris.* —— ' The true Reſcript of that Prince to ' *Valerius*, about enquiring into the Credibility of ' Witneſſes, is alſo extant as follows. What Argu- ' ments are ſufficient to prove any Thing, cannot ' certainly be determin'd; for tho' not always, yet it ' many times happens, that the Truth of a Matter

'is found out without publick Monuments. Sometimes the Number, sometimes the Dignity and 'Authority of the Witnesses, and at other times 'common Fame confirms the Truth of the Thing 'in Question. I can only therefore enjoin you, in 'short, that in your Enquiry, or Examination into 'a Matter, you are not to be tied to any one Sort 'of Proof; but you must judge according to your 'own Conscience, what you think to be prov'd, 'or not prov'd to you.

L. 22. C. ad Legem *Corneliam* de falsis. *Ubi falsi examen inciderit, tunc acerrima fiat indago argumentis, testibus, scripturarum collatione, aliisque vestigiis veritatis: Nec accusatori tantum quæstio incumbat, nec probationis ei tota necessitas indicatur; sed inter utramque personam sit Judex medius: Nec ulla interlocutione divulget quæ sentiat; sed tanquam ad imitationem relationis, quæ solum* audiendi *mandat officium, præbeat notionem: Postrema sententia, quid sibi liqueat, prodituras:---*' When you 'are to enquire into the Falshood of Evidence, you 'must make the strictest Inquisition that's possible, 'by Arguments, Witnesses, comparing of Hands, 'and other Signs of Truth. Neither must the Accuser only be question'd, or the whole Charge of the 'Proof be laid upon him: But the Judge must act 'an indifferent Part betwixt the Plaintiff and Defendant; and by no means divulge his Opinion, 'but give both Parties the Hearing, and at last pronounce according to his own Judgment.

Matthæus de Criminibus, *Lib.* 48. *Dig. Tit.* 15. de Probationibus, *Pag.* 675. *Itaque si cum uno illo Teste nulla concurrant argumenta, nequaquam audiendus erit; sed cum* Paulo *dicendum in Lege* duo 30 d. *de Testam. tut. non Jus deficit, sed Probatio. At si argumenta alia concurrant, audiendus: Non enim necesse est unum Crimen, uno & eo Probationis genere ostendi, veluti testibus tantum vel tabulis, vel argumentis. Possunt & diversa genera ita conjungi, ut quæ singula non nocerent, ea universa tanquam grando reum opprimant.* L. 3. Sect. 3. ejusdem d. de Testib. *Hoc est, quod aliis verbis dicitur plures Probationes imperfectas posse conjungi.-----*' Therefore if with that one Witness 'there be no concurring Arguments, he is not at 'all to be regarded: But we must say with *Paulus, in Lege duo* 30 *d. de Testam. tut.* The Law 'is not defective, but the Proof. But if other Arguments concur, he is to be regarded: For it is 'not necessary that one Crime be made evident by 'one manner of Proof only; as by Witnesses, by 'Writing, or by Arguments only: For several 'Sorts of Proof may be so conjoin'd, that those 'which taken alone, would not affect the Criminal, yet being put all together, come upon him, 'and overwhelm him like a Storm of Hail. *L.* 3. Sect. 3. *of the same D. concerning Witnesses*; 'That 'is, as it is expressed in other Words, Several imperfect Proofs may be join'd together.

Gail. Obs. 66. Num. 12. P. 416. *Et regulariter Testes singulares plenam Fidem faciunt, quando aliquid in genere probandum est; puta* Titium *esse infamem aut furiosum, quo licet singulares sint respectu actuum, tamen si ratione finis conveniant, integrè probant.-----*' And regularly single Witnesses make full Proof, when any Thing is to be 'proven in general; for instance, that *Titius* is an 'infamous Person, or a Madman: For tho' the 'Witnesses be single in respect of the Acts, yet if 'they agree in the End, the Proof is full.

It may be easily granted, that *regulariter Indicia debent esse indubitata, ad condemnandum reum:* 'That regularly Presumptions ought to be uncon'trovertible, when a Criminal is to be condemn'd 'upon them. But at that same Time it must always be owned, that there are Crimes excepted from the Rule, by the general Opinion of the Doctors; such as *Crimen Læsæ Majestatis, & Crimen Assassinii*, Treason and Assassination; of which last sort, the Crime of Piracy is the most atrocious. And therefore *Giurba, in Consil.* 22. *Num.* 5. saith, *Sed Assassinii qualitas homicidio adjecta, novam constituit Delicti Speciem:-----* The Quality of Assassination added to Murder, forms a new Sort of Crime. *Num.* 17. *In Assassinio omnia procedant quæ in Crminibus exceptis:---* In Assassination, all Things are to proceed as in excepted Crimes. And *Num.* 18. *Assassini Crimen, ob illius Atrocitatem, æquiparatur Crimini Læsæ Majestatis:---*The Crime of Assassination, because of its Atrociousness and Enormity, is made equal to Treason. And then *Num.* 22. he concludes, That *in Probatione Assassinii, probabilia sufficiunt Argumenta:----* In the Proof of Assassination, probable Arguments are sufficient. And *Mascard, de Probationibus, Conclus.* 1228. *Num.* 77. *In Crimine Assassinii probabilibus Argumentis probari potest*: Assassination may be prov'd by probable Arguments. And *Num.* 78, 79, 80, and 83. he names the other atrocious Crimes, where the like Probation is sufficient; and in that same Conclusion, *Num.* 51. *Quod ex multis Indiciis simul junctis, resultat plena Probatio etiam ad quem criminaliter condemnandum:----* Many Presumptions joined together, make full Proof to condemn any Man in a Criminal Case. And *Quæst.* 8. *Num.* 8. *Probatio per Evidentiam omnibus est potentior, & inter omnes ejus generis major est illa, quæ fit per Testes de visu:---*Proof by Evidence is the strongest of all Proof, and especially by Eye-witnesses. And *Conclus.* 831. *Num.* 4. *Probatio per Conjecturas & Indicia, in his quæ difficilia sunt probatu, & clandestinè committuntur, habentur pro evidenti & clara Probatione:---* Probation by Conjectures and Presumptions, in Things hard to be proven, and clandestinly committed, are held to be good and evident Proof.

Carpzovius, Quæst. 223. Num. 57. *Secus tamen Res se habet, si plura Indicia concurrant & conjunctim reum aggravent, quorum unumquodque per testem singularem probetur; nam una Præsumptio aliam juvat, plurimaque Indicia conjuncta fidem faciunt:----* But the Matter is otherwise, if many Presumptions concur, and load the Defendant; of which any one may be prov'd by a single Witness: For one Presumption strengthens another; and many of them join'd together, make Proof.

And in the Tryal of *John Swintoun* for Murdering of his Wife, there was no direct Proof by Witnesses; but the Libel being qualified, the Proof was by a young Girl of 14 or 15 Years, who left *John Swintoun* and his Wife alone in the House, and went to the Smith's Shop, to enqnire for Letters; but returning, found the Door shut, and therefore went away for a little Space; and then coming back and knocking, her Master opened, and she perceived some Red, like Blood, upon his Shoes. And when she came in, she found her Mistress dead in the †Spence; which was all she could say. And then another Man declared, that he saw *John Swintoun* go from his House to a *Stank, and there wash his Shoes. Which *Indicia*, Presump-

† *Buttery.*

* *Ditch.*

tions,

tions, being joined with the Proofs of their ill Agreement, and frequent Quarrellings before, did determine the * Assize. And tho' it was strictly objected, that *in the Mouth of Two or Three Witnesses, every Thing should be established*; and that in the aforesaid Case there was no direct Witness at all, far less Two or Three; and that even the aforesaid Circumstances were only proven by single Witnesses; yet the Assize found that Evidence in the Presumptions and † *Indicia* laid together, that they brought in their Verdict *proven*; and *Swintoun* thereafter confessed, and was executed.

* *Jury.*

† *Tokens.*

And in effect, unless that *Indicia* and Presumptions be sustained, and even single Witnesses for proving these several Presumptions and *Indicia*; which is called a *Cumulative Probation*, when all the Witnesses and Testimonies concur *in idem Crimen, & ad eundem Finem*, in the same Crime, and to the same End; Crimes, and these the most atrocious, would escape unpunished.

And therefore, upon the whole, it is most certain, when Presumptions, Qualifications, and † *Indicia* concur, and make a full persuasive Evidence; the Probation should be held for as fully sufficient, as the most direct Witnesses; since all that the Witnesses can do, is only to make full Faith in the Matter, which may be otherwise supplied, as said is.

† *Tokens.*

As to the Additional Conclusion, it may be * noticed, that *Molloy, de Jure Maritimo, Lib.* 1. *Cap.* 3. *Sect.* 19. *Pag.* 60. saith, That when a Merchant procures Letters of Mark or Reprize, and then delivers the Commission to Persons to endeavour a Satisfaction; if such Persons commit Piracy, the Vessel is forfeited without Controversy.

* *observed.*

INFORMATION *for Captain* Thomas Green, *Commander of the* Worcester, *Captain* John Madder, *his Chief Mate, and others; against* Mr. Alexander Higgins, *Advocate, Procurator-Fiscal of the High Court of* Admiralty.

THE said Captain *Thomas Green*, Captain *John Madder*, and others belonging to the Ship called the *Worcester*, being pursued at the Instance of the said Mr. *Higgins*, Procurator-Fiscal, before the High Court of *Admiralty*, and the Lords Assessors appointed by the Privy Council; for the Crimes of Piracy, Robbery and Murder, conform to Two Criminal Indictments, raised at the Instance of the said Fiscal. The Case being fully pleaded before the Honourable Judges of *Admiralty*, and the Lords Assessors; both the Accuser and Accused were ordained severally to inform, as Use is in such Cases.

The Criminal Indictments being holden as repeated, which * coincide both as to the Conclusion, and *Media concludendi*, way of concluding; and denied it is needless to repeat some preliminary Defences that were proponed, seeing it seemed just to the Honourable Court to repel the same: And therefore the Pannels proceed to their Defences, whereupon they were ordained to inform. These are of Two Sorts; First, * Dilator; and Secondly, † Peremptor.

* *are the same.*

* *for putting off, or delay.*

† *Positive.*

And first, it was proponed for *Henry Keigle*, Carpenter, and others of the Pannels in the same Indictment with him, That they could not be put to answer, unless the Captain himself were first insisted against; because they being his Crew, and under his Command, they could not be charged with any Thing done by them, unless he were first tried.

It was answered for the Pursuer, That they were not * convened for any Thing alledged acted by their Captain, and by them as his Crew; but that they were convened as *Socii*, Fellow Criminals, and Partakers of the Crimes libelled; which could be warranted by no Commission nor Character the Captain did, or could pretend to: And that they were all charged as being *Socii*, Fellows, and involved together in one Crime; and so every one must answer for himself.

* *call'd to the Bar.*

It was replied for the said *Henry Keigle*, and the other Pannels with him, That the Pannels are libelled against as the Crew of the *Worcester*, under the Command of Captain *Thomas Green*; and that under his Command they did attack a Ship, *&c.* So that they are here libelled only as Complices, and Accessaries to the Crime alledged; and therefore, according to the Principles of Law, the principal Delinquent ought to be first try'd; especially where the Captain was in Custody, and might be brought to his Tryal; and that by the Commission produced under the Great Seal of *England*, superscribed by King *William*, the said *Thomas Green* was cloathed with a Power, authorizing him to attack and suppress Pirates, which is a Military Power, and consequently implies an Authority and Command over the Crew of the Ship, to give ready Obedience in all these Matters: So that the poor Pannels, who are of the Crew, have all Reason in the World to contend, That the Captain, whose Actings in these Matters they could hardly well debate, should first pass the Tryal upon the Crimes alledged; who might, by Virtue of his Commission, and otherways, † exculpate, and defend himself against the Crimes libelled; and consequently, all the Crew that were in Subjection under him.

† *vindicate.*

This Defence the Pannel might perhaps plead, to a further Extent to absolve them entirely; but at present they conceive, it can hardly be denied, the Captain should first undergo the Tryal. And there is a great Difference betwixt *Socii Criminis*, Fellow Criminals, which are either independent upon one another, or if associate under one Head, as *Banditti* and Pirates usually are, (which is an illegal and unwarrantable Authority taken up) and Persons accused as *Socii Criminis*, Fellow Criminals, who by Legal Authority are subjected to the Command of others: In which Case, if the Person trusted with the Authority, has transgressed, or abused it; if it does not plead an absolute Exemption from the Punishment of the Transgression, at least it should have this Effect, That the Head and Chieftain should be obliged first to his Defence; which it is hoped the Honourable Judges will find just and reasonable.

The

The other dilatory Defence, propoſed for the Captain and others in the Second Libel, was, That whereas *John Reynolds*, Second Mate, was convened and pannelled with him, as alſo ſome others, as *Socii Criminis*, Fellow Criminals, whom the Captain and other Pannels had cited as Witneſſes in their * Exculpation; it was both ordinary and abſolutely neceſſary, that theſe Perſons ſo cited for Exculpation, ſhould be firſt tried; to the end, that being purged of the Imputation of any Crimes, they might be capable to be Witneſſes, for proving the Defences of Exculpation, that the Captain and other Pannels did propoſe and inſiſt upon, for the Vindication of their Innocency.

* *Defence.*

It was anſwer'd for the Fiſcal, That he owned, when both * Actors and Witneſſes were included in one † Libel, of Deſign to deprive the Actors of their Defences; the Actors might, and were allowed to condeſcend upon thoſe, whom they intended to uſe as Witneſſes: But then at the ſame Time, they were obliged to propoſe a Ground of Exculpation for them, and ſo crave that they might be firſt tried upon the foreſaid Ground; otherways they could not, without ſuch a ſpecial Condeſcendance, * intervert the Form of Tryal. And there could be nothing more groundleſs, tending to elude all Criminal Proceedings againſt Complices of the ſame Crimes, than to allow any of them at random to crave others to be firſt tried; and ſo the Tryal to proceed of one ſingle Perſon after another: Whereas the true and plain Method were, that the Purſuer inſiſt againſt ſuch as he pleaſes, either ſingly or jointly. And unleſs ſome † Specialty be alledged, why the Tryal of one ſhould proceed before the Tryal of another; it never was, nor could be left to the Arbitriment of the Pannels. And therefore, unleſs the Captain will offer to prove, that *Reynolds*, and others whom they would have firſt tried, were *alibi*, elſewhere; their arbitrary Demand of having them tried in the firſt place, without any Reaſon, cannot be regarded.

* *Actors.* † *Indictment.* * *alter.* † *Special Cauſe.*

It was anſwered for the Captain, and the other Pannels, That their Demand upon this Point was moſt conſonant to Reaſon, Law and Form, in Criminal Procedures: That Exculpation, which tends to the Proof of Innocence, and Freedom from Guilt, was moſt favourable; becauſe it is ſtill preſumed, till the Crime be proved. And therefore it is, that Witneſſes who are not regularly admitted for proving of a Crime, becauſe of ſome Exception, will be allowed to prove the Defender's Innocence. And upon this Account it is, that ſeveral Things in Form are remitted in Exculpation: And there is nothing more material for Defence of Perſons accuſed, againſt the Proſecutor, (who ordinarily is prejudged and prepoſſeſs'd) to guard them againſt all the indirect Methods that may be taken by the Purſuer; to preclude the Accuſed from the uſual Means of proving of their Defences, than what is now demanded. And ſince none can be more proper Witneſſes for proving a Pannel's Defence, (as for Inſtance, *Moderamen inculpatæ Tutelæ*, *i. e.* the Rule of blameleſs Self-Defence, as Perſons ſaid to be preſent) therefore a violent Purſuer might, in ſuch a Caſe of Deſign to preclude the Pannel from his Defence, cite thoſe preſent as acceſſary. Upon which Account it is, that both Reaſon and Law provides, that if the Pannel does offer to prove a relevant Defence, by the *Socii Criminis*, Partakers of the Crime accuſed with him; the Purſuer muſt neceſſarily firſt proceed to the Tryal of theſe *Socii*, Partakers, who otherways would have been led as † habile Witneſſes; to the end, that being purged, they may be yet habile.

† *Legal, or good.*

This is ſo plain in Reaſon, and has been look'd upon as the •conſtant Practice in all Criminal Procedures in the Juſticiary Courts of *Scotland*, that it is admired the Fiſcal ſhould make any Oppoſition to it.

He ſo far owns in his Pleading, that it is Form and juſt upon the Matter; but would ſhift it in this particular Caſe, unleſs the Pannels would alledge and * found upon a particular Ground of Exculpation, and offer to prove and inſtruct the ſame, as that their *Socii*, Companions, cited as Witneſſes, were *alibi*, elſewhere; but this is altogether without Foundation. For in all criminal Proſecutions, the Accuſed are not put to prove their Defences, becauſe the denying of the Libel is a Defence ſufficient of it ſelf; and if the Libel be not proved, the Pannel goes free by the Rule *Actore non probante abſolvitur reus*, the Plantiff failing in his Proof, the Defendant is abſolv'd. ſo that when there are Perſons accuſed as *Socii Criminis*, Fellow-Criminals, who might be very habile Witneſſes for exculpating the reſt, if they did not lie under the Imputation, when their Tryal is firſt required, that they may be purged of the Imputation, there is no Neceſſity to propone for them any ſpecial Defence, * elideing the Libel; ſeeing the very Denial of the Libel is enough, and their Innocence is preſumed, except Guilt be proved. And if the Fiſcal will have the Captain, and the other Pannels, to condeſcend upon what Ground their other *Socii*, Companions, cited as Witneſſes, ſhould be acquit; they need ſay no more, but that they ought to be acquit, becauſe the Libel is not true. And is there not the ſame Reaſon to acquit Pannels, becauſe the Libel is not proved; and conſequently, to render them habile Witneſſes for other Perſons accuſed, as if the ſaid Perſons were acquit upon a Defence proponed, elideing the Libel; whereby it plainly appears, the Anſwer given is ſtrained, and does mightily increaſe the Suſpicion againſt the Fiſcal, that he has indicted the Witneſſes cited by the Captain, and the other Perſons in their Exculpation, of Purpoſe to preclude them from their Means of Defence; and the rather, that the Pannels appeal to the Honourable Judges, if it was not owned by the Purſuer in the Debate, that Mr. *Reynolds* was aſhore at the Time of the pretended Attack; beſides that, the Libel bears the Chyrurgeon, and others of the Crew, were aſhore the Time of the pretended Action, which frees the Pannels of all Calumny. There can be innumerable Inſtances given before the High-Court of Juſticiary in criminal Matters, that where there are ſeveral Complices indicted, if any of them have Grounds of Exculpation, which they can prove by others of the Pannels, their Tryal proceeds firſt. This is plainly aſſerted as unconteſted by Sir *George Mackenzie*, in his Book of the Laws and Cuſtoms of *Scotland*, in Matters Criminal, *Tit. Excul. Par.* 9. nor does he make any Diſtinction, or requires that any ſpecial Defence ſhould be condeſcended upon for purging *Socii Criminis*, the Fellow-Criminals, to render them habile Witneſſes. The Rule is plain in the Proſecution of † Delicts, before Civil Courts, in order to repair Da-

* *inſiſt upon.*

* *Making void the Indictment.*

† *Crimes.*

mages

mages, that if more Persons be cited, as *Co-rei ejusdem delicti*, guilty of the same Crime, and that some of them are necessary Witnesses for proving the Defences proponed for others; the Proof must first proceed against these. And so it was found by the Lords of Session the 24th of *February*, 1662, *Mackartney* against *Irving*, much more ought it to be in criminal Cases, as lately in the Case of *Ross* of *Auchnacloich* against Captain *Monre*, before the Lords Justiciary. Nor is there any Inconvenience from what is alledged, that this should tend to elude all criminal Proceeding against Complices, and occasion the lengthning out of the Tryal, to proceed to one single Person after another; for as no Time is to be grudged in the Enquiry of such Matters, which concerns the Life of Man, so the Pannels do not propone this preliminary Defence to protract or delay the Tryal, and therefore are satisfied, that not only *Reynolds*, but their other *Socii*, Companions, indicted, who are likewise cited in their Exculpation, go to the Tryal at one and the same Time. The Captain, and other Pannels with him, do plainly argue thus; Either *Reynolds*, and the other Persons cited in the Exculpation, are guilty or not; if they be guilty, it ought to be found so, for till that be, they are presumed innocent; if not guilty, what Law or Reason is there to preclude them from being Witnesses for the Captain, and the other Pannels Defence; or what Law is there that can oblige them to condescend upon, and propone a particular Defence elideing the Libel, when the Libel is not owned to be true, and that the Pannels have all denied the same? So it is hoped the Honourable Judges, and the Lords-Assessors, will not preclude them from the ordinary Privilege, which, hitherto, has not been denied to any Pannel.

For if this was allowed, a violent Pursuer might prevent Probation, and render it impracticable. For, suppose one Man kill another in Self-Defence, two Gentlemen walking can testify this; but to prevent the Probation of *inculpata tutela*, unblameable Self-Defence, they are cited as Parties; and they can prove by other two Persons, at a greater Distance, their *alibi*, being elsewhere, which when the Pursuer gets notice of, they are made Parties also; and so *in infinitum*. So that the said violent Pursuer might prevent all Probation, if the Defender were obliged to alledge *alibi*, being elsewhere, for the Witnesses of his Exculpation.

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*The * peremptory Defences proponed for the whole Pannels in both Libels, as totally excluding the same as ** Irrelevant, are as follows.*

* *Positive.* ** *Not good or sufficient in Law.*

1. THAT the Libel was irrelevant, as being general and indefinite, not condescending upon the Name, Designation, or any other Sign or Evidence, by which the Ship alledged to be seized might be particularly distinguished, nor yet the Persons Names alledged to be murdered, or to whom the Ship and Goods robbed did belong; which seemed to be absolutely necessary in all such criminal Indictments, not only as a Requisite in Form, but in Equity and Reason; without which, Persons accused should be in great Hazard from general and indefinite Libels, and precluded from their Means of Defence, which otherways are obvious, when the Accusation is certain, special, and pointed.

It was answered by the Pursuer, That he had libelled as definitely and closely, as the Thing would allow; for it being libelled, that the Pannels did, without any lawful Cause or Warrant, attack a Ship, sailed by her own Crew, and having her own Cargo aboard, and that they over-maltered the Ship, in an hostile Manner, and robbed the Goods: These were certain Crimes manifest in themselves, and if the Pannels acted them in such a Manner, as to destroy the Ship and the Men, and imbezzelled the Cargo, so as no further Knowledge could be had thereof, it was only an Aggravation of the Crime, and could not hinder the Accusation to proceed; nor was any * Condescendance here necessary for Exculpation: for of whatever Designation the Ship was, and whatever the Men and Goods were, yet the Crime was still the same; and that it was known in our Practice, Robberries and Depredations are sustained, albeit neither the Quality of the Goods nor Owners be condescended upon; and in effect, the Pannels Defence of Indefiniteness is such, that if in the Road of *Leith*, before hundreds of Spectators, one Ship should invade another, destroy her Men, seize her Goods, and sink the Vessel, whereby none of all these could be condescended upon, there could be no criminal Libel upon it, because of the Defence of Indefiniteness, which were most absurd.

* *Particular Instance.*

It was replied for the Pannels, That what was said, did not take off the Objection of the Indefiniteness of the Libel, which by our Form and Law can be the Ground of no criminal Accusation; for in all such Procedures, *debet constare de corpore delicti*, the visible Effect or Matter of the Crime ought to appear; that is, that such a Ship is taken by Piracy, such Men murdered, and the like. It is inconsistent with the Nature of a criminal Accusation, that Men should be alledged to be murdered, Ships seized, and these not condescended upon, and by our constant Practice it is so required: Nor can it be instanced, that ever any such indefinite Libel was sustained. There are no Questions whatsoever, that are more nice than these concerning the Life of Man, and therefore the *Englishman Coke*, 7 *Rep. Calvin*'s Case, observes, that an Indictment should be most curiously and certainly penned; and the † *Old Books of the Majesty*, requires several Things to be specially express'd, as the Names of the Parties, Day, Year, Place, Cause of Complaint, and Damage; and as it is necessary in Form, so this Form has been founded upon just Reason, for otherways these Inconveniences should plainly follow from general and indefinite Libels.

† *A Law-Book so called.*

First, A Person indefinitely accused of a Crime, as for Example, of Murder, without expressing the Person alledged to be murdered, can never be safe from any Absolution or Acquitment in Courts; for how can he oppone his * Sentence Absolviture to a special Accusation that afterwards may be raised, seeing he cannot make the one meet the other. And if Captain *Green*, and the other Pannels, shall be now † Assoilzied, this should not be a good Defence to them, neither in *Scotland* nor *England*, if they should be afterwards criminally pursued, for

* *His being acquitted by the Court.*

† *Absolved.*

for attacking a Ship, and murdering of Men, ſpecially condeſcended upon, becauſe it is not clear, that the preſent Indictment, as drawn, did concern theſe ſpecial Accuſations; and therefore Accuſations of that Nature ſhould be ſo ſpecial, as that afterwards the accuſed be not brought to any further Diſturbance. 2. The Reaſon why ſuch Accuſations ſhould be ſpecial and definite, is, That the Pannels be not precluded from the obvious Defences, that tend to elide the Libel; as here in this Caſe, if the Libel were ſpecial and circumſtantiate, and ſome Deſignation given of the Ship and Crew, it might be in their Power to prove the obvious Defence, that ſuch a Ship was at the Time libelled, in ſuch another Part of the World; that ſuch a Ship was either caſt away by Storm, or taken by Pyrates in ſuch a Place; or that the Ship is yet extant, and the Crew alive: From all which, the Pannels are precluded by a general and indefinite Libel; and therefore Law has fixed the Forms in theſe Caſes, that ſuch Accuſations be not vagrant and looſe.

It will not be denied, but that the Time and Place muſt be expreſs'd: The ſame Parity of Reaſon obliges to a ſpecial Condeſcendance of the Party injured, Damage ſuſtained, as relating to ſuch particular Perſons. And the above-cited Sir *George Mackenzie*, in his Title of Libels, and the Forms thereof, does ſet down, That if the Defender crave the Purſuer to expreſs the Day, becauſe he offers to prove *alibi*, being elſewhere; then the Judge ſhould force the Purſuer to expreſs the Day, or elſe the Defender would be precluded from proving his Innocence. The ſame Reaſon is, that the Purſuer here ſhould be particular, as to the Ship alledged to be ſeized, *&c.* becauſe the Pannel might offer to prove that that Ship was *alibi*, elſewhere, at the Time: And many more Defences ariſe from the condeſcending upon the *Corpus delicti*, the viſible Effect of the Crime, than from the Circumſtance of either Time or Place. And this is not laid down conditionally, that theſe are not the Requiſites of a Criminal Indictment; except firſt the accuſed propone their Defence, *verbi gratia*, *alibi*, for inſtance, elſewhere: But it is laid down as a Rule, That theſe are the Requiſites of all Criminal Libels; and the Reaſon given is, That the Pannels be not precluded from their Defences: So that it is not more * noticed, whether in this or that particular Caſe this Defect is prejudicial, becauſe Neceſſity has firſt induced the Form; and then this Form turns to be a Law in all ſuch Caſes. And the forecited Sir *George Mackenzie*, in the ſame Paragraph, thinks it ſo far a Requiſite of a Criminal Libel that the Crime ſhould be particularly † ſubſumed, that he brings it as an Argument why it ſhould be ſo, that it is declared by the 148th *Act Parl.* 12 K. *James* VI. That a Libel bearing common Regrating, or Foreſtalling, in the general, ſhall be relevant, without condeſcending on the Time or Way of committing the ſame: And therefore concludes, that ſeeing this was an Act diſpenſing with the regular way; *Exceptio firmat Regulam in non exceptis*, an Exception confirms the Rule in Things not excepted. And hence it is not a good Argument, that the Purſuer has libelled as definitely and cloſely as he could in the preſent Matter: For better an Inconvenience ſhould be ſuffer'd in a particular Caſe, than that a dangerous Preparative be laid down, of admitting indefinite and general Criminal Libels, whereby poor Pannels may be precluded from their Means of Defence. And this will ſerve to obviate the Argument drawn from a very infeazible Chance, ſuppoſed to fall out in the Road of *Leith*; which as proponed, will likewiſe be otherwiſe circumſtantiate as to a poſitive Probation, and not founded upon Conjectures and Preſumptions, as this Caſe is.

* *obſerv'd.*

† *inſtanc'd, or argued from.*

Nor can the Fiſcal altogether excuſe his indefinite Libel, ſeeing the Means was not wanting of his coming to the Knowledge of the Ship, if it be true what is libelled; ſeeing the Ship was not ſunk, but ſold to a particular Perſon; and by ſome Evidence of the Ship, the Crew might likeways have been known.

3. As Law and Form require ſuch Libels to be definite and ſpecial, ſo more eſpecially in this Caſe; becauſe Captain *Green* was clothed with a Commiſſion under the Broad Seal of *England*, which empower'd him to act in Hoſtility againſt all Pirates: And therefore a general and indefinite Libel, upon attacking and ſeizing a Ship in his Caſe, would ſeem very improper: For the Preſumption muſt run in his Favours, That if any Acts of Hoſtility were done by him, they muſt be preſumed in Proſecution of his Commiſſion. This is not pleaded as a ſeparate Defence, to elide the Libel; nor is it pleaded to have given him full Liberty to have ranged *impune*, with Impunity, but as a Specialty in this Caſe; that as it is a Defect in all Criminal Libels to be general and indefinite, ſo much more in this Libel, he being clothed with a Commiſſion, and having Power to † aſſail. And therefore the Preſumption runs in his Favours; except the particular Ship were condeſcended upon, known to be a Merchant and Trading Ship, and conſequently he out of his Duty in attacking the ſame. And therefore it is frivolous to object, that the Commiſſion obliged him to keep a particular Journal of whatſoever Veſſel he ſhould attack hoſtily; ſeeing the attacking of any Veſſel whatſoever is denied, and the Argument from the Commiſſion only preſſed to this End, That no indefinite Libel of attacking Ships, is relevant againſt a Perſon clothed with a Power to attack in certain Caſes; and which the Accuſer was ſo far convinced of, that for ſupplying that Defect in his Libel, he in his Pleading and Information, is pleaſed to condeſcend upon this ſpecial Qualification, and Mark of the Ship attacked, that ſhe was a free Ship; which therefore he is obliged to prove.

† *attack.*

The Purſuer was at the Pains to defend his Libels from an Objection, as if they had wanted Time and Place. The Pannels did indeed conjoin this with the other; That as the determining the Time and Place ſeem to be abſolutely requiſite; ſo likewiſe the Condeſcendance upon the particular Names, and Deſignations of the Ship and Perſon, both being equally and neceſſarily requir'd, that Pannels be not precluded from their juſt Defences. And the Time libelled comprehending the Space of Four Months, being too indefinite; it is likewiſe reaſonable in ſuch a Caſe, that the Accuſer ſhould be more ſpecial; which the Pannels humbly remit to the Honourable Admirals, and Lords Aſſeſſors.

The Second Peremptory Defence proponed for the Pannels, was, That this being a Libel founded upon ſeveral Qualifications and Preſumptions, the ſame was no ways relevant, to infer the Concluſion

ſion of the Libel. A Proof of Crimes from Preſumptions, is very hazardous: And hence it is, that ſome Foreign Nations do not condemn to Death upon *Indicia*, Tokens, but make them only Ground to * put to the Queſtion. And many Lawyers are of Opinion, that the ordinary Pain of Death is not to be inflicted upon a Proof ariſing from *Indicia*, Tokens, tho' never ſo pregnant. Of this Opinion is *Pharinacius*, a great Criminaliſt, and many others; and ſo is *Brunemanus*, *ad L. ult. Cod. de Prob.*

* *Torture.*

But in the next place, whatever the Diverſities of Opinions and Practices of Nations may be in this Point, yet it is certain, where *Indicia*, Tokens, are taken as a Proof, in order to Puniſhment by Death, they muſt be ſuch as amount to a full Proof, and leave no room for any Scruple or Doubt. This cannot be better expreſs'd, than in the Words of that Excellent Conſtitution of *Theodoſius* the Emperor, L. *ult. Cod. de Prob. Sciant cuncti accuſatores eam ſe rem deferre in publicam notitiam debere, quæ munita ſibi idoneis teſtibus, vel inſtructa apertiſſimis documentis, vel Indiciis ad Probationem indubitatis, & luce clarioribus expedita:* - - - - Let all Purſuers take notice, that when they bring a Matter into Publick Judgment, it ought to be ſupported by proper Witneſſes, or plain Proofs, or undoubted Signs and Tokens, as clear as the Sun at Noon. And it will plainly appear from the Libel, that the Qualifications therein narrated, are not ſuch *Indicia*, Tokens, as that Excellent Conſtitution requires; *indubitata*, undoubted, *apertiſſima*, *luce clariora*, moſt evident, clearer than Sunſhine. There muſt always Difference be made: Some have a probable Shew, and incline the Mind of the Judge; and yet cannot go the Length of a full Proof. L. 5. *in Principio Pand. de Pœnis* - - - - *Sed nec de Suſpicionibus debere aliquem damnare; ſatius enim eſt impunitum relinqui facinus nocentis, quam innocentem damnare:* Nor ought any Man to be condemn'd upon Suſpicion; for it is better that a guilty Man paſs unpuniſhed, than that an innocent Man ſhould be condemned. *Indicia & Præſumptiones*, Tokens and Preſumptions, have much eaſier Place, where *conſtat de Corpore delicti*, where the Subject of the Crime is viſible; becauſe this helps to ſuſtain the Preſumption, and gives indeed the *Indicia*, Tokens, their juſt Weight. But theſe, in ſuch a Caſe as this, *ubi non conſtat de Corpore delicti*, where the Subject of the Crime is not certain, are hardly receivable, ſeeing they want to be applied to a particular Crime.

This ſo neceſſary a Qualification of a Criminal Libel, *ut conſtet de Corpore delicti*, that the Subject of the Crime ſhould be viſible, the Purſuer endeavoured to evade, by diſtinguiſhing betwixt Crimes that are *cum Effectu permanente*, have permanent Effects, and ſuch as have no permanent Effects. In the firſt, the *Corpus delicti*, viſible Effect of the Crime, was neceſſary, not in the latter; and therefore † ſubſumes that in the Caſes libelled, there could be no permanent Effects; becauſe all are libelled to be deſtroyed, and put out of Reach: But plainly this Diſtinction is againſt the Purſuer; becauſe certainly Piracy, Robbery and Murder, are ſuch Crimes as have permanent Effects.

† *argues.*

By the *Corpus delicti*, Subject of the Crime, is not meant, that the Subject of the Crime muſt be ſo extant, as to fall under the Senſes; but that the Loſs ſuſtained is felt and known. As for Example: In the Crime of Murder, tho' the Body cannot be reached, yet the particular Loſs is known: It is notorious the Queen wants a Subject; Friends want a Relation, whom they can point out: In Piracy and Robbery, Merchants want their Ships and Goods: So that the Loſs is felt and known, tho' (*de facto*) the Subject cannot be pointed out. Whereas in this Caſe, no ſuch particular Evidences can be given: None can complain of any particular Loſs, either Queen or Subject. And this is the true Meaning of what is *Corpus delicti*, a Subject of the Crime. And whatever be the Import of the Objection againſt the Libel, yet it is certain, to alledge Qualifications as the Proof of a Crime, *ubi non conſtat de Corpore delicti*, where the Subject of the Crime does not appear, is moſt incongruous. And granting, as the Purſuer does further contend, that he has libelled a *Corpus delicti*, a Subject of the Crime; in ſo far as he has libelled a Criminal Fact, and Deed of Piracy, Robbery and Murder; which ſtill being general, is not that *Corpus delicti*, Subject of the Crime, that Law requires. Yet it was never heard, nor can there be any Lawyer whatſomever adduced, that owns the *Corpus delicti*, Subject of the Crime, can be made out by Preſumptions and Qualifications. When once it is known that a Crime is committed, it may be owned that *Indicia indubitata*, undoubted Tokens, ſuch as Law requires, may be a Ground to fix the Guilt upon particular Perſons; becauſe there the Certainty of a Crime committed, does negatively inforce and give weight to the Preſumptions adduced: But when it is not known that a Crime is committed, and that this is firſt to be made out; it is poſitively contended, this cannot be but by a poſitive Probation of concurring † habile Witneſſes: For Preſumptions may be apt to fix a Guilt, *quando conſtat de Corpore delicti*, when the Subject of the Crime appears, or that the Fact was done, but not before.

† *legal.*

In the Third Place, the Preſumptions libelled are very far from being of that nature, as to be concluding to a Conviction; and of that Certainty and Clearneſs as Law requires. All Probations in Criminal Caſes ſhould be infallible and certain; and if there be any Meaning put upon Preſumptions founded upon for proving a Crime, other than to infer a Crime; that is to be laid hold upon, according to the manifeſt Principles of Law and Humanity.

Now the Qualifications libelled, are either ſuch as not only can bear an obvious Senſe, different from what is impoſed, but even a probable one; or are ſuch as are vagrant Expreſſions and Hear-ſays, importing little or nothing, and cannot be applied to the Crimes libelled.

1. The Chirurgeon his having heard Shooting at a Diſtance, while in the mean time he ſaw no Engagement; can eaſily be applied either to Shooting from other Ships, or Shooting upon Salutation, *&c.*

2. That he did ſee the *Worceſter* riding in her Birth, and another Ship (as it were) towed to her Stern. 1. It is only Conjecture, being at ſuch a Diſtance. 2. It is improbable, becauſe it is not the ordinary way; and hazards the Ships falling foul of one another, in ſuch common Roads; which might be a Ground to the Chirurgeon's Miſtake at ſuch a Diſtance.

3. That

3. That he did see the Goods lying lumber'd upon the Deck when he came aboard. 1. It is usual in Coast-Trading, that the Goods are brought by Sloops, and so laid upon the Deck till they be stowed. 2. This might be occasioned by the Ship's drawing Water. And to what concerns the Word Busking, and bringing Water from the Shore, it is taken notice of in the Exculpation.

4. That when the Doctor enquired what was the occasion of the Goods lying in confusion, Captain *Madder* should have answered, *Damn you*, &c. might proceed from the said Captain *Madder*'s being in a Passion, and concerned for the Goods being damaged, and a Tarpauling-Temper, very usual among Seamen.

5. That the Chyrurgeon did dress two wounded Men; first, one is dead, another is not named in the Libel; and the *Black* as the other two also, might have got their Wounds by fighting among themselves, which is not unusual; and the rather, that they appeared unwilling to tell the Chyrurgeon, of purpose to conceal their Quarrel from the Captain.

6. As to what is alledged to have occurred betwixt the Doctor and the Linguister, *First*, It is only Hear-say; in the *second* Place, there might be a Ship sold to *Coge Commodo*, but not taken by Captain *Green*, and it is improbable he would have bought any Ship taken by Piracy upon that Coast.

7. What is libelled about *Reynolds* and his Sister, their missive Letters, is far from being any Qualification: For, *First*, *Reynolds*'s Letter is only a † Double. It is strained to put such a Gloss upon the Expression (*basely confess*) to imply a Guilt, and a Guilt confessed; seeing the Words may easily bear the Meaning of a false Accusation, and is explained by a subsequent Expression, That he would rather die innocent, than accuse any Man falsely; and in the beginning of the Letter, declares, he knew nothing of the Matter.

† *Copy.*

8. What relates to *Haines* his Intercourse with *Anna Seaton*, and others, are nothing but general and ambiguous Expressions, from which nothing can be gathered of the Crimes libelled, and infers no more, than that he was using some Stratagems to gain his Mistress.

And as to the Expression of the Wickedness committed aboard their Ship, it may easily relate to other Crimes, which are but too frequent in such Voyages; as also, as to what was done aboard after the Ship was in the Harbour; and as to the libelled Expression used by *Haines* against Captain *Madder*, as the same is general and indefinite, relating to no particular Crime, so this might arise from some particular Pique and Prejudice against Captain *Madder*: As to what follows * anent the Condition of the Cargo, when the Committee of the Council unloaded the Ship, it is sufficiently taken off in the Exculpation.

* *About.*

Lastly, As to what is libelled anent the *African* Company's Seal; *First*, It will not be pretended, that the Company were in use to give their Seal to any Ship whatsomever trading by their Commission. 2. If any had casually gotten the Seal, there are an hundred Ways whereby the same might have come to the *Worcester*'s Crew without Piracy. And 3. The Seal found aboard and which is lying in the Clerk's Hands, which has a Ship for its Crest, might have given occasion to this Mistake.

It being plain, that the Qualifications libelled, are not of that Import to give a full Conviction; the Pursuer's Argument adduced from the End of Probation, which is to find out the Guilt, and convince of the Truth, may be plainly taken off; that there is no such convincing Proof, as can fully and certainly determine any Judge, but, at most, resolves in a conjectural Proof, never to be admitted to take away the Life of Man.

The Pursuer allows, that if every one of the Circumstances should be taken separately, they would not be sufficient; but being taken jointly, and according to the Series of the Thing, they amount to a full Proof and Conviction; and this is the Nature of all cumulative Probations, which is not to be disjoined, *Quæ non prosunt singula multa juvant*: The Pursuer does likewise adduce Arguments and Authorities for a cumulative Probation to be of this Nature, that there needs not two concurring Witnesses for every Circumstance. In answer to which, the Pannels do still plead, there is a great Difference to be made betwixt Cases where previously *constat de corpore delicti*, the Subject of the Crime appears, and that Presumptions are only fixed upon to find out the guilty; and these Cases where in general a Crime is libelled, altho' Presumptions may be admitted in the first, yet never in the other, as is already observed. 2. In all Cases, Presumptions must be such as leave no room to doubt, and must not only have a Probability with them, but a concluding Certainty, which does not give ground to Suspicion, but plainly and firmly convinces; which Certainty cannot be inferred from the Qualifications libelled; all which either can bear a different Construction, or are such vagrant Hear-says, and indefinite Expressions, as amount to no certain and special Crime. 3. Such Presumptions cannot be conjoyned, which particularly taken, are either of small weight, or amount to very little, or that they can probably bear another Sense and Meaning, as has been demonstrated. And, 4. As to the Conjunction of a cumulative Probation, there is a difference to be made betwixt Crimes that are continued, and where the Proof may be had from the Reiteration of the Acts, and those other Crimes which consist only in Fact or Deed.

In the first, a cumulative Probation may be admitted; as in a Libel of Bribery, one Witness may be admitted for one Fact, another for another, and so a Third, which may conjoin, altho' there be not Two concurring for every particular Fact, if there be other concurring Evidences and Arguments: But where there is one positive Fact libelled, this does not so easily admit of a cumulative Probation, especially which is always to be taken along, where the Crime is not specified and determined, as in this Case, and that the *ipsum corpus delicti*, the Subject of the Crime it self, is still to be made out: So that the Texts of the Law, and Authorities made use of by the Pursuer, may be easily cleared, that either they relate to civil Cases, as *l.* 3. *par.* 2. *digest. de testibus*, where there must be a Preference of a Civil Right of the one to the other: Or if the Texts and Authorities relate to Crimes, the *Indicia*, Tokens, allowed by them, must be *indubitata & luce clariora*, undoubted, and clearer than Sun-shine; and presupposes a Crime committed, *& corpus delicti*, the Subject of the Crime, and tends only to fix the Guilt. And it is positively denied, that there is any Law, or Lawyers, allowing any cumulative Probation to prove a Crime in general, *ubi non constat de corpore delicti*, where the Subject of the Crime does not appear; and this is a Speciality in the Case of the present Pannels; and the Honourable Judges, and

Lords-Aſſeſſors, are earneſtly intreated to conſider it; which does really diſtinguiſh them from the other Caſes mentioned by Lawyers; all * *Crimes.* which relates to * Delicts actually committed, and that the Preſumptions deduced tend only to fix the Guilt: But when a Crime is alledged in general to be committed, and no ſpecial Condeſcendance upon what Subject, upon whom, and againſt whom, Preſumptions there are not ſufficient, without concurring habile Teſtimonies; even ſuppoſing ſuch a general indefinite Libel could be relevant, againſt which there are abundance of Arguments already given; for unleſs a Fact be proved, even Confeſſion is not ſufficient to fix a Guilt, as muſt be acknowledged by all; much leſs Preſumptions, except the Fact be once known.

The Grounds of Exculpation.

As the Pannels are confident, the Lords Judges will not find the Libels ſo general and ſo qualified, relevant to infer the Pains of Death; So for further clearing their Innocence, they offer the Grounds of Exculpation following, which are either inſtantly inſtructed, or offered to be proved.

And this may be laid down, which cannot be denied, that *Preſumptio non delicti excludit preſumptiones delicti*, the Preſumption of a Crime not committed excludes the Preſumption of a Crime; to which Purpoſe, *Carpz. Part.* 3. *Q.* 123. *Num.* 69. and in the ſame Place, in *dubio ſemper in mitiorem partem eſt preſumendum*, In a doubtful Caſe we muſt always take the more charitable ſide; where he cites Multitudes of Lawyers.

1. There is no reaſon to ſuſpect the Pannels of the Crimes libelled, being Perſons of entire Fame, without any Imputation as to their antecedent Life.

2. That they were under a Charter-Party, commiſſioned to a Trading Voyage, and Inſurance made upon Ship and Cargo, which does remove all Suſpicion of Piracy, ſeeing ſuch do ordinarily aſſociate, and out-rig themſelves for that end.

3. A ſtrong Argument of the Pannels Innocence as to Piracy, is, That they were upon their Voyage homeward, to make account to their Fraughters and Owners of their outward Cargo and Returns; of all which they have exact Journals and Accompts, and upon their coming to *Frazenburgh* gave Advice to their Owners of their Arrival, which was inſert in the Publick Prints from *London*, as is uſual, and likewiſe ſent a Packet over Land from *Frazenburgh* to the *African* Company in *Scotland*, from Mr. *Innes* their Correſpondent in the *Eaſt-Indies*, which is not to be ſuppoſed a Pirate would be entruſted with: Whereas, when ſuch turn Pirates, it is uſually for their own Profit, and ſo not only rob others, but begin firſt with their Owners, and are not found to return to make any ſuch Accounts; which is a ſtronger Proof of the Pannels Innocence, than any Circumſtance libelled to the contrary.

4. *Menocheus de preſumptionibus, lib.* 5. *Preſ.* 59. treating of the Preſumptions of Innocence, lays down two very pregnant, Firſt, That if the guilty Perſon could flee and did not, that very Preſumption waſhes away the Guilt; and gives account of a Caſe out of *Lucian de amicitia*, that *Antiphilus* and *Demetrius* being accuſed of Sacrilege, were diſmiſſed by the *Prætor*, becauſe when they could have fled, they did not. A ſecond, when the accuſed Party offers himſelf to the Judge, it is a ſtrong Preſumption of his Innocence, ſince the Innocent fear nothing, and the Guilty have always the Puniſhment before their Eyes: Both theſe favour the preſent Pannels; for the Rumour was ſpread, and came to their Ears ſome Weeks before they were impriſoned, and yet none of them offered to flee; and one *Ballantine* being at full liberty amongſt his Friends the Time of the * Incarceration of the reſt, did of his own accord offer himſelf to Priſon. * *Impriſonment.*

5. That the alledged Confeſſion made by the Chyrurgeon, muſt certainly labour under ſome Miſtake, becauſe, altho' he mentions the Attack to have been at *Callicut*, and that he heard the Ship was ſold at *Keilon*, which are at leaſt Fifty Leagues diſtant: And altho' he was aboard all the Time; yet he makes no mention how the Ship was brought along, or any Thing relating to it.

6. It is offered to be proven, that the *Black* who is alledged to be wounded in the Action, was not aboard Forty eight Hours before the *Worceſter* ſailed from the Coaſt of *Malabar*. And further, that the *Black* declared when he came aboard, that he got the Wound in his Arm by the Bite of a Snake. And further, it can be inſtructed by Chyrurgeons, that the Wound, as it well appears, is more probable to have been got that way than by Gunſhot.

7. Whereas it is libelled, That the Ship was attacked by the *Worceſter*'s Sloop upon the one ſide, and her coming up upon the other:

It is impoſſible a Piracy of that Nature could have been committed upon the Coaſt of *Malabar*, and not certainly known in *England* long before the Arrival of the Ship, ſuch is the exact Correſpondence, eſpecially as to ſuch Matters; nor could the Captain either have traded upon the Coaſt, or been received by the Factories and Governors there, if he had committed any ſuch Piracy; whereas it is offered to be proven, that after the Time libelled, he was aſhore kindly entertained, exchanging Letters with the Governor of *Anjango*, and had Inſtructions and Recommendation from thence to the Governor of *Fort-William* upon the Coaſt of *Bengal*, whither he was obliged to go for re-fitting his Ship, and ſtopping the Leak, which he could not conveniently do at *Malabar*, becauſe of the want of Timber, Cordage and Money to be taken up upon Bottomry.

8. It was aſſerted by the Fiſcal in the Time of the Tryal, that the Action laſted two Days and a half, which is a moſt improbable Story; for either the Night would have ſeparated them, or the Ship attacked might rather have run aſhore, than fall into the Hands of the Pirates.

9. That the Word *Busking*, libelled as a Term ſignifying a Ship preparing to fight, has a quite different Conſtruction in the ordinar Acceptation among Seamen, and ſignifies, bearing cloſe upon the Wind by a preſs Sail.

10. It is offered to be proven, that their Water was ſtaved on the Coaſt of *Malabar* in a Storm, and not by *Busking* as is libelled.

11. And to * redargue the Circumſtance libelled, that the Goods were not right ſtowed; it's acknowledg'd the Ship was ſix Months in a Harbour at *Bengal* after the libelled Engagement, and there loaded and unloaded: So that they had all opportunity to ſtow the Goods as they thought fit, and certainly they were ſtowed as ſuch Goods uſually are, which cannot be preſs'd without Damage. * *Refute.*

12. That

12. That the whole inward Loading does not amount to a Value beyond what might be reaſonably expected from the outward Cargo, in a Trading Voyage to theſe Places.

And *Laſtly*, That in *January* preceeding, the Time of the alledged Action, there was a Proteſt taken by the Pannels againſt the Governor of *Cochin*, for not allowing the Ship *Worceſter* to be refitted there, which ſhe extreamly needed before ſhe could return to *Europe*; and ſo was in no Capacity, either to fight or take a Ship, as is libelled, in the Months of *February*, *March*, *April*, or *May* thereafter; and was a Ship ſheathed with Lead, and therefore altogether unfit for ſuch Action; as alſo a ſlow Sailer, and has not the leaſt Mark of any Gunſhot upon her.

So that upon the whole Matter, The Qualifications libelled being ſo weak and conjectural, and the Preſumptions of Innocency ſo ſtrong upon the other Hand; it is confidently expected, that the Honourable Judges and Lords Aſſeſſors will reject the Libel, and let the Pannels go free; which they expect from the Juſtice of the Nation, and the † Humanity with which they are in uſe to treat all Strangers.

† *Courteſy.*

An ANSWER *to the Fiſcal's Citations: With the Counter-Citations for the Pannels.*

THO' the Doctors differ about the Force of Preſumptions, and the Effect of Probation, *ab Indiciis & Argumentis*, from Preſumptions and Arguments; yet they all agree, that Parallels drawn from Civil Cauſes to Criminal ones, are not univerſally to be admitted. Now the Fiſcal cites L. 3. §. 2. *de Teſtibus*, for evincing that Preſumptions, *Indicia & Argumenta*, Tokens and Arguments, are to be received.

This Law is taken out of the Fourth Book *de Cognitionibus*, written by *Calliſtratus*; the which Book only treats of Civil Caſes, as is manifeſt from the Title of that Book, diſpers'd in the *ff.* and * congeſted by *Labittus*, to which I refer. Wherefore this being a Reſcript of the Emperor *Hadrian*, in a Civil Cauſe, can never be applied in a Criminal one.

* *collected.*

The next Citation is, L. 22. *C. ad l. Cor. de falſis*, which is a Reſcript of the Emperor *Conſtantine* to the Governor of *Rome*, about a forged Writ. Now as the Law ſays, ſuch Forgeries can only be diſcover'd by † Collation of Writs, Arguments inferr'd from thence, and Witneſſes. And it is well known, that in our Law we have Two Ways of * Improbation; the Direct, and the Indirect. Now to apply that to the Crime of Robbery or Murder, which muſt be proven † *liquidiſſime*, and not by * Writs, ſeems very ‖ anomalous. Beſides, Crimes, according to their different Nature, muſt be diverſly proven; ſome by Ear-witneſſes, as Blaſphemy, Hereſy, Curſing of Parents, *&c.* Others by Eye-witneſſes; as Robbery, Murder, *&c.* And the Witneſſes competent for proving the one Crime, are not ſo in the other.

† *Comparing of Hands.*

* *Diſproving.*

† *moſt clear.*

* *Writing.*

‖ *irregular.*

The Third Citation is out of *Antonius Matheus de Criminibus*, *ad Lib. ff.* 48. *Tit.* 15. *C.* 3. *N.* 4. The Fiſcal cites the latter End of this Section; but omits to ſet down what the Author refers to in the *C.* 6. of that Title; the doing whereof will ſerve for an Anſwer. The Poſition is, *Unus Teſtis non eſt audiendus; at ſi Argumenta alia concurrant, audiendus eſt:* One Witneſs is not to be regarded; but if other Arguments concur, he is to be regarded. Now theſe *Argumenta* muſt be taken out of the *C.* 6. of that Title. *Argumentum nihil eſt aliud, quam Ratio quæ rei dubiæ facit fidem; & eſt vel neceſſarium, vel contingens. Neceſſarium, cujus Conſequentia neceſſaria eſt; veluti coiviſſe eam quæ peperit, furtum feciſſe, qui rem furtivam efferens deprehenſus eſt. Contingens, cujus Conſequentia probabilis eſt; veluti, cædem feciſſe, qui cruentatus eſt:* "An Argument is only a Reaſon which "proves a doubtful Thing; and is either neceſſa- "ry, or contingent. That is a neceſſary Argu- "ment, whoſe Conſequence is neceſſary: As for "inſtance, That ſhe who has brought forth a "Child, has certainly known a Man; or that he "who is taken in the Fact carrying off ſtoln "Goods, has certainly committed Theft. A con- "tingent Argument, is that whoſe Conſequence is "only probable: As for inſtance, That the Man "who is bloody, has committed Slaughter." The neceſſary Argument obtains in Criminal as well as in Civil Caſes; but the contingent one, which the Lawyers call a Preſumption, is not of ſuch Force. However, our Author is of Opinion, that *Contingentia Argumenta quanquam ſingula fidem non faciant, plura tamen conjuncta crimen manifeſtare poſſunt. Rem uno atque altero exemplo declarabimus. Occiſus eſt Calendis* Mævius: Titius *perempti inimicus fuit; eidem ſæpius non ſolum interminatus, ſed & inſidiatus eſt: Cum deprehenderetur iiſdem Calendis in loca cædis, cruentatus, cum gladio cruento, ad menſuram vulneris facto, toto vultu expallait; interrogatus, nihil reſpondit, trepidè fugit. Hic ſingula quidem Argumenta infirmiora ſunt, univerſa tamen cædis autorem* Titium *evidenter deſignant. Simile eſt illud,* Clodius *cum* Pompeia: *Nudus cum nuda reperti ſunt in eodem Cubili; preteriit id momentum quo turpitudo perfici potuit. Jam olim ille mulierem deperibat, ad ſtuprum per literas ſollicitaverat. Quis dubitet utrumque Adulterii damnare?* "Tho' contingent Arguments "ſingly by themſelves make no Proof; yet ſe- "veral of them join'd together, may make the "Crime evident. We ſhall make it plain by an "Inſtance or two. *Mevius* was kill'd on the firſt "Day of the Month: *Titius* was an Enemy to the "Perſon kill'd, and not only frequently threaten'd "him, but way-laid him. And when he was found "on that ſame Day of the Month in the Place "of Slaughter, bloody, with a bloody Sword, an- "ſwerable to the Dimenſions of the Wound; he "look'd as pale as Death: Being examin'd, gave "no Anſwer, but run away in a Fright. In this "Caſe, indeed, the Arguments ſingly conſider'd "don't ſay much; but taken all together, they "plainly prove *Titius* to have been the Author "of the Murder. What follows is ſuch another "Inſtance. *Clodius* and *Pompeia* were found naked "in the ſame Bed, but not in the Act; the Time "for that was paſt: But he had long courted the "Woman, and ſollicited her to Lewdneſs by Let- "ters:

" ters: Then who can make any Doubt to charge " them both with Adultery?" Now there being in the preſent Caſe no ſuch Preſumptions as theſe are; the Rules laid down by this Lawyer *Mathæus*, ſhew the Circumſtances libelled are not * relevant.

† *ſufficient.*

The Fourth Citation is from *Gail. L. 2. Obſ. 66. N. 12.* The ſetting down of the Title of the Obſervation, which is, *Jus venandi an Servitus ſit realis vel perſonalis*, Whether Hunting be a real or perſonal Service; and alſo the Apoſtile of the Section, which is, *In Materia Decimarum, teſtes ſingulares probant*; In Matter of Tythes, ſingle Witneſſes are good; does ſhew, that the Matter there treated is Civil, and not Criminal. And many Things are allowed in Civil Caſes, which are not in Criminal. *A. Mathæus ad* Lib. *ff.* 48. Tit. 15. *de Probationibus*, Cap. 2. Num. 1. *Quicunque Teſtes in Cauſis civilibus eſſe non poſſunt, iis nec in Criminalibus Teſtimonii dictio eſt. At non contra; quicunque in Cauſis civilibus audiuntur, ii etiam in criminalibus audiendi ſunt. Graviora enim criminalia Judicia civilibus ſunt, ideoque & Teſtium major delectus adhibendus eſt.* " Whoſoever " cannot be Witneſſes in Civil Cauſes, are not to " be admitted in Criminal Cauſes. But the contrary does not hold; *viz.* That whoever may " be Witneſſes in Civil Cauſes, may alſo be admitted in Criminal Cauſes: For Criminal Cauſes " are of more Weight than Civil Cauſes; and " therefore in Criminal Cauſes, we ought to be " more nice in the Choice of Witneſſes." And the Author illuſtrates this Doctrine, by Examples ſet down in that Chapter.

What has been ſaid, will ſerve to anſwer what is cited out of *Giurba*, and *Maſcardus*.

The Citation from *Carpzovius*'s Criminal Practicks, Q. 123. *N.* 57. is imperfectly excerpted: For I ſhall give no other Anſwer, than what is in the ſame Place, from *N.* 55, to *N.* 59. *Probantur etiam Indicia ad Torturam per unicum Teſtem, in caſu quo plura Indicia ſimul concurrunt, ſuper quibus Teſtes examinati diverſimodè deponunt; ac unus de uno, alter de alio, tertius etiam de alio teſtificatur: Tum enim omnium Teſtificatio ſimul juncta, veriſimiliter facit de Reo, qui propterea ſub Tormentis interrogari poteſt. Etſi enim hac de re non omni ex parte Interpp. conveniant, nec deſint qui Aſſertionem hanc ſimpliciter rejiciant: Teſteſque hoſce, ut ſingulares conjungendos non eſſe autument, eo quod ſinguli Teſtes haudquaquam fidem faciant. Veriſſimum tamen eſt, plures imperfectas Probationes in Cauſis capitalibus conjungendas eſſe ad plenam Probationem faciendam, quoad effectum torquendi: Quod communiter Dd. placuiſſe, licet namque unicum Indicium ab uno Teſte probatum, ſemiplenam Probationem & Fidem, ad Quæſtionem de Reo habendam non faciat: Secus tamen res ſe habet, ſi plura Indicia concurrant, & conjunctim reum aggravent, quorum unumquodque per Teſtem ſingularem probetur. Nam una Præſumptio aliam adjuvat; plurimaque Indicia conjuncta Fidem faciunt. Quod ipſum tamen non aliter accipi velim, quam hiſce tribus concurrentibus. Primò, Ut Teſtes ſint omni exceptione majores & idonei, ac Vitæ probatæ. Secundò, Ut deponant ſuper Indiciis proximis delicto, non etiam ſuper valde remotis Indiciis. Tertiò, Indicia ſuper quibus Teſtes iſti ſingulares deponunt ſunt plura, & talia quæ reddunt animum Judicis quaſi certum quod Reus deliquerit: Quorum alterutrum ſi deficiat, nullum in Jure habeant Effectum.* " Preſumptions make " Torture lawful, when there is but one Witneſs, in a Caſe where ſeveral Preſumptions concur, upon which Witneſſes being examined ſwear " in a different Manner, and one witneſſes as to " one Preſumption, another as to another, and a " third concerning a Third. Then all their Evidence being joined together, makes the Charge " againſt the Perſon probable, who therefore may " be examin'd by Torture. For tho' Interpreters " don't all agree in this Point, and that ſome of " them do abſolutely reject this Opinion, and think " theſe Teſtimonies are not to be joined, becauſe " ſingle Witneſſes don't make Proof; yet it is a " certain Truth, that in Capital Caſes ſeveral imperfect Proofs are to be joined together in order " to make a full Proof as to the Effect of Torture. " This is the common Opinion of the Doctors; for " tho' one Preſumption prov'd by one Witneſs, does " not make half Proof in order to examine the " Priſoner by Torture, yet the Matter is otherwiſe, if ſeveral Preſumptions concur jointly to " charge the Priſoner, of which any one may be proved by a ſingle Witneſs; for one Preſumption " ſtrengthens another, and many of them joined " together make up a Proof. But I would not " have this to be underſtood to be ſo, except when " thoſe three Things concur: 1. That the Witneſſes be above all Exception, proper in the Caſe, " and of a good Life. 2. That they ſwear as to " Circumſtances immediately relating to the Crime, " and not as to thoſe which are very remote. 3. " That the Preſumptions upon which thoſe ſingle " Witneſſes ſwear, be ſeveral and ſuch as in a " Manner may ſatisfy the Judge, that the Priſoner " is guilty of the Crime. But if any of thoſe " Things be wanting, they can have no Effect in Law.

The Preſumptions in *Swinton*'s Caſe were not in the Indictment, but in the Probation, and ſeem to have been very pregnant and near, whereas theſe libelled againſt Captain *Green* are moſt remote.

But to put this Matter in its true Light, the Honourable Judge and Aſſeſſors are deſired to remember, That Preſumptions never reſpect the Delict, or the *Corpus delicti*, but the Delinquent, and the Perſon of the Accuſed: For as *Menoch. de Preſumpt. L. 1. Q. 8. N. 2.* very well ſays, *Præſumptio verſatur circa id quod geſtum eſt, ſed ignoratur qualiter geſtum*; a Preſumption relates to the Thing done, but not to the Manner of doing it. Now, in the Opinion of all Lawyers, *Delictum debet eſſe manifeſtum*, a Crime ought to be manifeſt. *Julius Clarus, Sententiarum Lib. 5. Q. 4. Sciendum eſt autem quod in omnem Caſum nunquam debet Judex procedere ad aliquem actum, niſi prius illi conſtet Delictum ipſum fuiſſe commiſſum:* " But you muſt know, that " a Judge in no Caſe ought to proceed to any Act " of Court, except it appear to him before-hand " that the Crime was committed. And in that Place, illuſtrates this Doctrine by Examples, and the Authority of other Lawyers, to which I refer. His Sentiment in the End of that Queſtion being, *Et ubi conſtet Scelus non interveniſſe, ſilebit Proceſſus:* And where it appears that no Crime has been committed, Proceedings muſt ſtop.

So, that *ubi conſtat de delicto*, where the Crime is certain, the Doubt and Controverſy ariſes about the Delinquent, ſo as it is uncertain who is the Perſon guilty, or the Committer of this Crime, whether it be Robbery, Piracy, or Murder. Thoſe who admit of Probation, *per Indicia & Argumenta*, by Preſumptions and Arguments, diſtinguiſh theſe into *Proxima & Remota*, near and remote; and to each of them give a different Effect in Law. *Carpr Q.*

120.

120. *N.* 6. *Indicium definitur argumentum delicti perpetrati demonſtrativum, ſeu Indicativum. Idem,* 2. 121. *N.* 1. *Indicia propinqua ac certa, quorum unumquodque per ſe ſufficit ad Torturam. Hujus generis indicia non veriſimilia ac probabilia ſed certa, non levia aut perfunctoria ſed urgentia; non dubia aut æquivoca, quæ multipliciter interpretari queunt, ſed concludentia, & ad Delictum inferentia ſunt, & Crimini quaſi inhærent, ita ut iis apparentibus, nihil niſi Rei Confeſſio deeſſe videatur.* And *N.* 14. *& ſeqq. ut Indicium ſemiplenæ Probationis per ſe ſolum ſufficiens & Idoneum ſit ad Torturam, tria requiruntur,* 1. *Ut Teſtis ille unicus ſit omni exceptione major.* 2. *Ut hic Teſtis deponat de actu immediato, quod fieri intelligitur, ſi Teſtis ſuæ aſſertionis rationem per ſenſum corporeum rei convenientem reddat, quod nempe ipſemet Delictum ab accuſato perpetrari viderit vel preſens interfuerit. Quare, ſi Teſtis non de ipſo crimine deponat, ſed de aliquo actu ad delictum proxime accedente, Indicium ſufficiens non facit. Sicuti nec illius Teſtimonium idoneum ac ſufficiens eſt, qui deponit de Delicto quod in oculos cadit, & rationem reddit de alio ſenſu.* 3. *Ut Teſtis verbis dilucidis & indubitatis de Crimine teſtificetur.* "A Preſumption is defined to be a demonſtrative "or declarative Argument of a Crime committed. "2. 121. *N.* 1. Near and certain Preſumptions, "of which every one is ſufficient of it ſelf to ju"ſtify Torture. Preſumptions of this kind, ought "not to be likely or probable, but certain; not ſlight "or trifling, but urgent; not doubtful or equivocal, "that may admit of many Interpretations, but "concluding, really inferring the Crime, and ſo in"ſeparable from it, that thoſe Preſumptions ap"pearing, there ſeems to be nothing wanting but "the Confeſſion of the Criminal, & *N.* 14. and "following. To make the Preſumption of half full "Proof ſufficient to juſtify Torture, there are three "Things required. 1. That that one Witneſs be "beyond all Exception. 2. That the Witneſs "ſwear as to the immediate Act, which muſt be "underſtood, that the Witneſs give for the Rea"ſon of his Aſſertion, ſome bodily Senſe proper "to the Thing; as for Inſtance, that he ſaw the "Crime committed by the Priſoner, or was pre"ſent at the Time: Therefore if the Witneſs don't "ſwear concerning the Crime it ſelf, but concern"ing ſome Act that comes next to the Crime, it "is not a ſufficient Preſumption. So neither is his "Evidence proper and ſufficient, who ſwears con"cerning a Crime that is the Object of Sight, and "gives an Account of it from ſome other Senſe. "3. That the Evidence concerning the Crime be "in clear and not doubtful Expreſſions. After which our Author gives Examples; and it is to be obſerved, That theſe *Indicia*, Preſumptions, are requir'd in order to torture; for they are not, in this Author's Opinion, ſufficient to condemn, unleſs they be *Certiſſima, Indubitatiſſima, & Luce Meridiana Clariora*, moſt certain, undoubted, and as clear as the Sun at Noon, in which Caſe they have the Effect of a compleat Probation.

The *Indicia remota*, remote Preſumptions, which are alſo term'd, *Dubitata, Semiplena, quæ rem veram eſſe arguunt, non ſemper ſed plerumque tantum, unde etiam non dicuntur ſimpliciter certa indicia, ſed veriſimilia & probabilia, ſeu veluti certa Indicia*: "Doubtful, half full, which don't always "argue the Matter to be true, but almoſt always; "whence it comes, that they are not ſimply cal"led certain Preſumptions, but likely, probable, "or almoſt certain Preſumptions. And theſe cumulatively and in great Number concurring, may bring a Perſon to Torture, but never to Condemnation.

Now, by applying this general Doctrine to the Indictment, it is *Juris Incontraverſi*, uncontravertible Law, that the *Delictum*, Crime it ſelf, cannot be proven *per Indicia & Preſumptiones*, by Tokens and Preſumptions. And as to the Pannels, tho' a Delict Crime were proven *per Teſtes omni exceptione majores*, by unexceptionable Witneſſes, yet it will appear, That the Circumſtances libelled, do not deſerve the Name of *Indicia*, Preſumptions; and tho' they ſhould be allowed that * Compellation, yet they are *Remotiſſima*, very remote, and by Conſequence can have no Effect as to Condemnation.

* *Name.*

As to the additional Concluſion, that the Ship and Cargo ſhould be † eſcheated, the Fiſcal cites a wrong Place, and ſuppoſes the Caſe to be what it is not: But ſeeing he values Mr. *Molley*'s Authority ſo much, his Opinion in this Matter, as expreſs'd in the ſame Treatiſe, *C.* 4. §. 21, 22. is thus: By the Law *Marine*, if Goods are taken by a Pirate, and afterwards the Pirate attacks another Ship, but in the Attempt is conquered, the Prize becomes abſolutely the Captors, ſaving the Account to be rendred to the Admiral; and it is accounted in Law a juſt Caption of whatſoever may be got or taken from ſuch Beaſts of Prey, be the ſame in their own or in their Succeſſor's Poſſeſſion. But then an Account ought to be rendred to the Admiral, who may (if they happen to be the Goods of the Fellow Subject of the Captors, or of Nations in Amity with his own Sovereign) make Reſtitution to the Owner; the Coſts and Charges, and what other Things in Equity ſhall be decreed to the Captor, firſt conſidered and deducted.

† *Forfeited.*

§ 22 By the Statute 27 *Edward* III. *Cap.* 13. If a Merchant loſe his Goods at Sea, by Piracy or Tempeſt (not being wreck'd) and they afterwards come to Land, if he can make Proof they are his Goods, they ſhall be reſtored to him in Places guildable by the King's Officers, and Six Men of the Country.

This Law hath a very near Relation with that of the *Romans*, called *de Uſucapione*, or the *Atinian* Law; for *Atinius* enacted, That the Plea of Preſcription or long Poſſeſſion, ſhould not avail in Things that had been ſtollen, but the Intereſt that the right Owner had, ſhould remain perpetual: The Words of the Law are theſe, *Quod ſurreptum eſt, ejus rei Æterna auctoritas eſſet.* Where by, *Auctoritas*, Authority, is meaned *Jus Dominii*, the Right of the Proprietor remains perpetual, tho' a Thing be ſtole.

CURIA JUSTICIARIA *ſupremæ Curiæ Admiralitatis tenta in Prætorio, vel novâ Domo Seſſionis Burgi de* Edinburgo, *decimo tertio die Menſis Martii*, 1705. *per Judicem dictæ Curiæ, & per Honoratiſſimos Viros*, Joannem *Comitem de* Loudoun, Joannem *Dominum de* Belhaven, *Dominos* Robertum Dundas *de* Arniſtoun, Joannem Home *de* Blackadder, & Joannem Cockburn *de* Ormiſtoun, *Aſſeſſores.*

Curia legitime affirmata.

Intran.

Captain *Thomas Green*, Commander of the Ship called the *Worceſter*, now in *Eruntiſland* Harbour.

Captain

Captain *John Madder*, chief Mate of the ſaid Ship.
John Reynolds, ſecond Mate of the ſaid Ship.
Thomas Linſtead, Aſſiſtant to the deceas'd *Super-cargo* of the ſaid Ship.
James Burn, Boat-ſwain of the ſaid Ship.
James Sympſon, Gunner.
Andrew Robertſon, Gunner's-Mate.
John Brucklie, Seaman.
George Kitchen, Seaman.
Henry Keigle, Carpenter of the ſaid Ship.
George Haines, Steward of the ſaid Ship.
Samuel Wilcocks, Chyrurgeon's Mate.
George Glen, Seaman.
Alexander Taylor, Seaman.
And *John Bannantyne*, Seaman in the ſaid Ship.

All of them indicted and accuſed at the Inſtance of Mr. *Alexander Higgins*, Procurator-Fiſcal to the High Court of *Admiralty*; for the Crimes of *Piracy*, *Robbery* and *Murder*, in manner mentioned in the Two ſeveral Indictments raiſed againſt them thereanent, before inſert in the Court holden the Fifth of *March* Inſtant.

PURSUERS.

Mr. *Alexander Higgins*, Procurator-Fiſcal.
Sir *James Stuart*, Her Majeſties Advocat.
Sir *David Dalrymple*, and Mr. *William Carmichael*, Her Majeſties Sollicitors.
Sir *Patrick Home*.
Sir *Gilbert Eliot*.
Mr. *Alexander Mackleod*.
Mr. *Francis Grant*.
Advocats.

Procurators in DEFENCE.

Sir *David Thoirs*.
Sir *Walter Pringle*.
Mr. *David Forbes*.
Mr. *George Alexander*.
Mr. *John Elphinſton*.
Mr. *John Spotſwood*.
Advocats.

The Libels and Informations for both Parties being read over in Preſence of the ſaid Judge and Aſſeſſors, and in Preſence of the Pannels and Aſſizers.

The Judge and Aſſeſſors having adviſed both the Indictments purſued by Mr. *Alexander Higgins*, Procurator-Fiſcal of the High Court of *Admiralty*, againſt Captain *Thomas Green*, and the hail Pannels in both Indictments, with the foregoing Debate thereupon; they find, That *Keigle*, and the other Pannels in the firſt Indictment, cannot be delay'd in their Tryal, on Pretence that Captain *Green*, as their Commander, ought to be firſt diſcuſs'd; and therefore repel the firſt Dilatory Defence: And find, that *Reynolds* being libelled againſt as *Socius Criminis*, a Fellow-Criminal; and there being no Speciality, or particular Ground of Exculpation proponed, why he ſhould be previouſly tried; therefore * repel the Second Dilatory Defence proponed for Captain *Green*, and theſe in the Indictment with him; and repel the Objection againſt the † Generality of the Indictments, in regard of the Nature of the Crimes; and find the Crimes of Piracy, or Robbery, or Murder, as libelled, being proven by clear and plain Evidence, * relevant to infer the Pains of Death, and Confiſcation of Moveables: Reſerving the Conſideration of the Additional Concluſion of the Libels, until the Verdict of the Aſſize be returned; and repel the other Defences proponed for the Pannels; and remit the whole to the Knowledge of an Aſſize.

* *reject.*

† *General Terms.*

* *ſufficient.*

ROT. FORBES, I.P.A.

The Judge of the High Court of *Admiralty* and Aſſeſſors continue the Dyet at the ſaid Mr. *Alexander Higgins*'s Inſtance, againſt the foreſaid * hail Pannels, till To-morrow, being the 14th Inſtant, at Eight a Clock in the Morning; and ordains the Aſſizers and Witneſſes to attend then, † ilk Perſon under the Pain of 200 Merks; and the Pannels to be carried back to Priſon.

* *whole.*

† *each.*

CURIA JUSTICIARIA, *Supremæ Curiæ Admiralitatis tenta in Prætorio, vel nova Domo Seſſionis Burgi de* Edinburgo, *decimo quarto Die Menſis* Martii, 1705. *per Judicem dictæ Curiæ, & per Honoratiſſimos Viros*, Joannem *Comitem de* Loudoun, Joannem *Dominum de* Belhaven, *Dominos* Robertum Dundas *de* Arneſtoun, Joannem Home *de* Blackadder, & Joannem Cockburn *de* Ormiſtoun, *Aſſeſſores.*

Curia Legitimè Affirmata.

Intran.

Captain *Thomas Green*, Commander of the Ship called the *Worceſter*, now in *Bruntiſland* Harbour.
Captain *John Madder*, Chief-Mate of the ſaid Ship.
John Reynolds, Second-Mate of the ſaid Ship.
Thomas Linſteed, Aſſiſtant to the deceas'd *Super-Cargo* of the ſaid Ship.
James Burn, Boatſwain of the ſaid Ship.
James Simpſon, Gunner.
Andrew Robertſon, Gunner's-Mate.
John Bruckley, Seaman.
George Kitchen, Seaman.
Henry Keigle, Carpenter of the ſaid Ship.
George Haines, Steward of the ſaid Ship.
Samuel Wilcocks, Chyrurgeon's Mate.
George Glen, Seaman.
Alexander Taylor, Seaman: And
John Bannantyne, Seaman in the ſaid Ship.

PURSUERS.

Mr. *Alexander Higgins*, Procurator-Fiſcal.
Sir *James Stuart*, Her Majeſties Advocat.
Sir *David Dalrymple*, and Mr. *William Carmichael*, Her Majeſties Sollicitors.
Sir *Patrick Home*.
Sir *Gilbert Eliot*.
Mr. *Alexander Mackleod*.
Mr. *Francis Grant*.
Advocats.

PROCU-

Procurators in DEFENCE.

Sir *David Thoirs.*
Sir *Walter Pringle.*
Mr. *David Forbes.*
Mr. *George Alexander.*
Mr. *John Elphinſton.*
Mr. *John Spotſwood.*
Advocats.

* *Aſſize.*

* *Jury.*

Archibald Drummond Skipper in *Leith.*	∴ *James Marjoribanks*, Merchant in *Edinburgh.*
John Findlayſon, Skipper in *Borroſtounneſs.*	*Edward Marjoribanks* † of *Halyards.*
Mark Stark, Skipper there.	Sir *James Fleeming* of *Rathobyres.*
James Famiſon, Skipper in *Queenſferry.*	*James Gordon* Senior, and
John Mathie, Skipper in *Preſtounpans.*	*Robert Forreſt*, Merchants in *Edinburgh.*

Robert Innes,
Robert Walwood,
William Blackwood.
George Clark, and
William Neilſon, Merchants in *Edinburgh.*

The Aſſize lawfully ſworn, and no Objection of the Law in the contrary.

Mr. Alexander Higgins *the Purſuer, for Probation, adduced the Witneſſes after Deponing,* viz.

* *Appeared.* * COmpeared *Antonio Ferdinando* Cook's Mate of the Ship the *Worceſter*, which was commanded by Captain *Thomas Green*, aged twenty four Years, or thereby, unmarried; with Captain *George Yeaman*, Merchant in *Dundee*, ſworn Interpreter: And the ſaid *Antonio Ferdinando* being ſolemnly ſworn, ‖ purged of partial Counſel, examined and interrogate upon the Libels, or Indictments. And being interrogate if he believed in GOD, and if he was a Chriſtian: *Depones*, That he believes in GOD, and that he was born of Chriſtian Parents, and is a Chriſtian himſelf. And being interrogate upon the Indictment, *Depones*, That at *Callicoiloan* upon the Coaſt of *Malabar*, the Deponent did come aboard the Sloop belonging to Captain *Green*'s Ship called the *Worceſter*; at which Time the Deponent did enter to the Service of Mr. *Loveday* Purſer of the ſaid Ship; and the Deponent cannot be poſitive of the Time of his coming aboard, but believes it was about Two Years and a half ſince; and went in the ſaid Sloop from *Callicoiloan* to *Keilon*, from thence to *Cocheene*, and from *Cocheene* to *Calecut*, and from that to *Tillicherry*: And *Depones*, That upon the Coaſt of *Malabar* thereafter, he did ſee an Engagement betwixt the ſaid Sloop, the Ship the *Worceſter*, and another Ship ſailed by *White-men*, ſpeaking *Engliſh*, and the ſaid Ship did bear *Engliſh* Colours. And being interrogate by the † Pannels, what were the Colours the ſaid Ship did bear: *Depones*, That they were of White, Red and Black, like to theſe that the ſaid Captain *Green*'s Ship did bear; and that firſt the ſaid Captain *Green*, the Merchant and Mr. *Loveday* went aboard the ſaid Strangers Ship, and ſtayed for about the Space of a Glaſs, and then returned aboard the *Worceſter*, and then did man the Sloop of the ſaid Ship the *Worceſter*, with about Twenty Men, whereof were Captain *Green* himſelf, Mr. *Loveday*, and the Supercargo, the Carpenter and Gunner, and that the Gunner's Name was *James Simpſon*, whom the Deponent knows, and points to at the Bar; and that there were four Guns and two Pattereroes aboard the ſaid Sloop; and thereafter Captain *Madder* came aboard of the Sloop, and that they did engage the ſaid other Ship for the firſt and ſecond Days, and upon the third Day the ſaid Ship was boarded by thoſe in the Sloop, who when they came aboard, did take up thoſe of the Crew of the ſaid Ship from under Deck, killed them with Hatchets, and threw them over-board; and that Captain *Green*, Captain *Madder*, and *James Simpſon*, the Gunner, were three of theſe who went aboard and killed the Men: And *Depones*, That the Ship the *Worceſter* came up during the ſaid Engagement, and did fire at the ſaid Ship, but theſe in the *Worceſter* did not board her: And the Deponent believes, that the Men who were killed and thrown over-board, as ſaid is, were about ten in Number; and *Depones*, That there were but few Goods aboard the ſaid taken Ship, which were carried aboard the *Worceſter*, and amongſt the reſt he * minds of ſome *China* Root: And *Depones*, That the ſaid Ship which was taken, was ſailed by ſome of the Crew of the *Worceſter*, and carried to *Callicoiloan*, and there ſold, and that the ſaid Ship was not tied with a Tow to the Ship *Worceſter*: And the Deponent knows not what Men were killed aboard the Sloop or *Worceſter*, or if any were killed, but the Deponent himſelf was wounded in the Arm, and which Wound he now ſhews to the View of all. *Depones*, That Captain *Madder* told the Deponent, that if ever he did tell any Perſon, either white or black, of the ſaid Engagement, that he the ſaid Captain would kill the Deponent, and heave him overboard. *Depones*, That the Upper-Coat which the Deponent† preſently wears, was found aboard of the ſaid taken Ship, and which the Deponent has kept ſince that Time. *Depones*, That during the ſaid Engagement, *Haines*, *Bannantine*, *Bruckley*, *Wilcocks*, *Burn*, *Robertſon*, *Glen* and *Taylor*, eight of the Pannels, were aboard the Ship the *Worceſter*; and that *Keigle*, *Kitchen* and *Linſteed* were aboard the Sloop with Captain *Green*, *Madder* and *Simpſon*; and belives that *Reynolds* was then aſhore at *Callicoiloan*: And *Depones*, That the ſaid Ship was ſold to a King in *Malabar*, and that the Man who bought the ſaid Ship bears a *Malabar* Name, whoſe Servant is called *Coge Commodo*: And *Depones*, That the ſaid Engagement happened between *Tillicherry* and *Calecut*, upon the Coaſt of *Malabar*: And *Depones*, That he cannot poſitively tell how many Guns

* *Remembers.*

† *Priſoners.*

† *Now.*

∴ *Maſter of a Ship.* † Of, *before a Place, in the* Scots *Dialect, denotes the Place to be the Eſtate of the Perſon nam'd.*

‖ i. e. *Solemnly ſworn, that he would tell the Truth, and nothing but the Truth; that he had no Prejudice or Ill-will againſt any of the Priſoners at the Bar, that he got no good Deed, or Promiſe of good Deed, for giving Evidence againſt them, nor was ſuborned, adviſed, or directed how to ſwear, or what he ſhall ſay in this Tryal.*

Guns the taken Ship did bear, but thinks they were about Twenty, ſmall and great: And the Deponent believes, That the Engagement happen'd about a Month after the Deponent went aboard of Captain *Green*'s Sloop; and cannot be poſitive when the Ship the *Worceſter*, did engage the ſaid taken Ship, whether firſt, ſecond, or third Day: *Depones*, That the Engagement was by way of a running Fight: *Depones*, That he knows not who did ſail in the ſaid taken Ship to *Callicoiloan*. *Cauſa Scientiæ*, the way how he came to know this, the Deponent was aboard the ſaid Sloop during the Time of the ſaid Engagement, and ſaw and heard, as he has deponed; and this is the Truth, as he ſhall anſwer to GOD: *Depones*, He can write after the *Malabar* Character; and this Depoſition is alſo ſigned by the ſaid Captain *George Teaman*, the ſworn Interpreter.

Antonio Ferdinando.
Geo. Teaman.
ROB. FORBES.

COmpeared *Charles May*, Chyrurgeon of the Ship the *Worceſter*, Commanded by Captain *Green*, aged twenty ſix Years, or thereby, unmarried; who being ſolemnly ſworn, purged of partial Counſel, examined and interrogate upon the Libel: *Depones*, That he was aboard of Captain *Green*'s Ship the *Worceſter*, and went from *England* with her; that when the ſaid Ship went to the Coaſt of *Malabar*, the Deponent was ſet aſhore at the *Ibeck*, which is the Landing-Place, and from thence went up ſome Miles to *Callicoiloan*; and ſome Time thereafter, about a Fortnight, the Deponent did hear the Firing of Guns as at Sea, and did meet with *Coge Commodo*, who was Merchant to the ſaid Ship, and bought ſome Things from them, with *Franciſco de Olivera* the Linguiſter of the ſaid Ship, who had come that Day from the *Ibeck*, and that the Deponent asked him what mean'd the Shooting, and that the ſaid *Coge Commodo*, and *Franciſco de Olivera* anſwered the Deponent, *That the* Worceſter *had gone out, and was fighting at Sea with another Ship:* And *Depones*, That the next Morning the Deponent came to the Shore, where he did ſee the Ship the *Worceſter* riding in her Birth, that is, much about the ſame Place where ſhe had lyen before, and that the ſaid Place was about four Miles from the Shore: *Depones*, That there was then another Veſſel riding with the *Worceſter* at her Stern: *Depones*, That about ſome Time thereafter, in the ſame Morning, the Deponent did ſee the Long-Boat of the *Worceſter* coming to the Shore in a great Haſte, and that when the Boat landed, the Deponent asked the Men what was the Matter that brought them aſhore, it not being ordinar for Boats to come over the Bar, by reaſon of a great Sea: And the Men anſwered, That Captain *Madder* had ſent them aſhore for a *Pinguetta* (which is the Name of a certain kind of Boat) with Water, becauſe they had ſpilt and ſtaved all their Water aboard, and that there had been Busking all Night, which the Deponent underſtood, meant, that they had been at ſore Labour and Fatigue, as if their Ship had been driven from her Anchor, and bearing up again: *Depones*, That he did not ſpeak at that Time with the Men in relation to any Fight, but that the ſaid Men told him, they had brought a Ship in with them; and that the Deponent made no Stay at the Shore, but returned immediately to *Callicoiloan*, where his Patients were: *Depones*, That five or ſix Days thereafter, the Deponent went aboard the *Worceſter* for ſome Medicines which he wanted for the Uſe of his Patients; and that when he came aboard, the Deponent ſaw the Deck of the *Worceſter* lumber'd with Goods, and five or ſix Cheſts alſo, and ſome Bales of Goods; and that the Deponent did then ſay to Mr. *Madder* Senior, What have you got there? You are full of Buſineſs. And that Mr. *Madder* did then curſe him, and bid him go mind his Plaiſter-Box. And *depones*, That the Deponent was afterwards informed, that the Ship which was riding at Stern of the *Worceſter*, was ſold to *Coge Commodo*, the Ship's Merchant at *Keilon* River; and the ſaid Ship was brought there by a Part of the *Worceſter*'s Crew, who immediately left her ſo ſoon as they had brought her to an Anchor, or otherways fixed her. *Depones*, That the † Linguiſter likewiſe told the Deponent, That *Coge Commodo* complained, he had bought the Ship too dear; and that he ſaid, he had bought one the Year before cheaper, tho' Four times the Value. *Depones*, That ſome Time thereafter, the Sloop came down the Coaſt; and that *Antonio Ferdinando* was ſent aſhore to the Deponent at the *Ibeck*; and that the ſaid *Antonio Ferdinando*, the *Black*, was wounded in the Arm: And that the Deponent did take off the * Dreſſing of the ſaid Wound, and found it to be a Fracture; and that it look'd as if the Wound had been occaſioned by a Gun-ſhot. And that the Deponent asked the ſaid *Antonio Ferdinando*, the *Black*, who had dreſſed the Wound, or ſet his Arm? And that the ſaid *Black* did tell the Deponent, That he was ſet aſhore at *Cochin*, and there dreſſed by a *Dutch* Chyrurgeon. And *depones*, That ſome Time thereafter he went aboard the *Worceſter*, and called for the ſaid *Black*, and any other Perſons that were ill; and there came to him to his Cheſt, *Duncan Mackay*, and another, (which the Deponent thinks was *Edward Cuming*, but cannot be poſitive) and that theſe Perſons were alſo wounded; and that the ſaid *Black* was likeways there. And *depones*, That he did ask his ſaid Patients how they came by their Wounds? And that Mr. *Madder* hearing the Deponent ask Queſtions, he came to the Deponent, and bid him ask no Queſtions; and likeways diſcharged the Patients to anſwer the Deponent any Queſtions upon their Peril. And the Deponent then ſaid to Mr. *Madder*, that he had no Command over him; and that Mr. *Madder* anſwered, That he would go to one who had Command over the Deponent: And that the ſaid *Madder* went up accordingly; and thereafter returned, and ordered the Deponent immediately aſhore; and the Deponent was accordingly carried aſhore in the *Pinguetta*, that was lying by the Ship's ſide. *Depones*, That all this which the Deponent has before deponed upon, did fall out about the Months of *January* or *February*, 1703 Years. *Depones*, That while the Ship the *Worceſter* was going up the Coaſt of *Malabar*, Mr. *Linſteed*, one of the Crew, was left at *Keilon*, which was near Seven Leagues, or about Twenty one Miles from *Callicoiloan*; and that the ſaid *Linſteed* was left there with one Mr. *Hammond*, to take care of ſome Part of the Cargo which was to be put aboard of the Ship. *Depones*, That he did not ſee the ſaid Mr. *Linſteed* at *Keilon*; but only heard that he was left there, and remained there, as the Deponent heard, till the Ship came back. And *depones*, That the Shooting which the Deponent heard

† *Interpreter.*

* *Plaiſter.*

heard, was before the Ship came back, as he has already deponed. And *depones*, That thereafter, during the Voyage, he never heard the Crew, or any of them, talk of their taking a Ship. *Depones*, That whilſt the Deponent heard the ſaid Shooting, Mr. *Loveday* and Mr. *Otlay* were aſhore at *Callicoiloan*: And *depones*, That when the *Worceſter* ſailed from *England*, the Crew was about 35 or 36 in Number. *Depones*, That while the Deponent was aboard, the Ship went no further up than *Callecut*: And *depones*, That the Reaſon how he knows Mr. *Hammond* and Mr. *Linſteed* were aſhore at *Keilon*, was, that he heard the *Supercargo* deſire the ſaid Perſons to go aſhore, and take care of ſome Part of the Cargo. And *depones*, That he was but Two or Three Hours aboard after he heard the *Supercargo* give the ſaid Order; and ſaw not the ſaid Two Perſons (*Hammond* and *Linſteed*) go aſhore. And *depones*, That it was in the Ship the *Worceſter*'s going up the Coaſt of *Malabar*, that the Deponent heard the Shooting. *Depones*, That upon that Coaſt the Ship ſprung a Leak, and did from thence ſail to *Bengal*, in order to have the ſame helped: And *depones*, That he knows not how many Leagues there was betwixt the Place where the Leak ſprung, and *Bengal*; but that it was about Five Weeks Sailing. *Depones*, That he knows not the Reaſon, why the Ship was not brought into ſome Place on the Coaſt of *Malabar*, for being refitted. *Depones*, That when the Deponent came aboard from *Callicoiloan*, that the Ship weighed Anchor, and ſailed to *Cochin*, and from that to *Callecut*, and thereafter came back the ſame way. *Depones*, That there were ſome Goods put aboard the Ship from *Callecut*, but none at *Cochin*, as the Deponent remembers. And further *depones*, That when the Deponent returned, he found Mr. *Hammond* and Mr. *Linſteed* aſhore at *Keilon*. *Cauſa Scientiæ patet*: The Way how he comes to know this is evident. And this is the Truth, as he ſhall anſwer to GOD.

Charles May.

ROBERT FORBES.

COmpeared *Antonio Franciſco*, Servant to Captain *Thomas Green*, Commander of the Ship the *Worceſter*, aged 22 Years, or thereby, unmarried; with Captain *George Yeaman*, Merchant in *Dundee*, his Interpreter: And the ſaid *Antonio Franciſco* being ſolemnly ſworn, purged of partial Counſel, examined and interrogat upon the Libel purſued by the Procurator-Fiſcal, againſt the ſaid Captain *Green*, and the other Pannels; *Depones*, That the Deponent believes there is a GOD; and his Miſtreſs at *Pegu* cauſed baptize him a Chriſtian; and he owns the Chriſtian Religion: And he came to the Service of Captain *Green*, at *Delagoa*. *Depones*, That upon the Coaſt of *Malabar*, while the Deponent was aboard of the *Worceſter*, he heard ſome Shooting of Guns from aboard the *Worceſter*, to the Number of Six, or thereby: And that the Deponent in the mean Time was chained and nailed to the Floor of the Fore-Caſtle in the ſaid Ship; and he heard no Shooting from any other Ship. *Depones*, That Two Days after the Deponent heard the ſaid Shooting, he ſaw ſome Goods brought aboard the ſaid Ship the *Worceſter*; and which *Antonio Ferdinando*, the other *Black*, told the Deponent, were brought from another Ship which they had taken: And likewiſe the ſaid *Black* told the Deponent, that at the ſame Time Captain *Madder* had given ſome Rack, *id eſt*, Brandy to the Men. And at the ſame Time, the other *Black* told the Deponent likeways, That there were Ten Men of the Crew of the taken Ship killed, when ſhe was taken. And that the ſaid *Black* did let the Deponent ſee a Plaiſter on his Arm, upon which he ſaid he had got a Wound by a Shot, while in the Sloop taking the other Ship: And that he told the Deponent, that the ſaid Ship was taken by the Sloop belonging to the *Worceſter*: And that the Deponent neither heard of, nor did ſee any other wounded Men. *Depones*, That he does not know where they were ſailing, after he heard the Shooting; but he was told by the other *Black*, that they were ſailing to *Callicoiloan*: And the ſaid other *Black* did forbid the Deponent to tell any Perſon whatſomever of the ſaid Engagement. And the Deponent does not remember how long it is ſince he heard the ſaid Shooting of Guns. And *depones*, That *Antonio Ferdinando*, the other *Black*, told the Deponent all theſe Matters upon the Coaſt of *Malabar*: And that the ſaid *Antonio* came aboard the Ship the *Worceſter*, when they were going to *Bengal*. And *depones*, That while he was chained to the Fore-Caſtle, he knows not who were aboard, or who were aſhore: And that he was ſo chained for the Space of Two Months; and that he was ſo chained to the Fore-Caſtle about Ten Days before he heard the ſaid Shooting: *Cauſa Scientiæ patet*. *Depones*, He cannot write.

This Oath ſigned by the ſaid Captain *George Yeaman*, the Deponent's Interpreter.

George Yeaman.

ROBERT FORBES.

COmpeared *James Wilkie*, Taylor, Burgeſs of *Edinburgh*, aged Twenty five Years, or thereby, Married; who being ſolemnly ſworn, purged of partial Counſel, examined and interrogat upon the Libel purſued by the Procurator-Fiſcal, againſt Captain *Green*, and the other Pannels; *Depones*, That in *October* laſt, after Captain *Green*'s Ship was brought into *Bruntiſland*, the Deponent went over to *Bruntiſland* with his Mother, with a Deſign to learn ſome News, or to get ſome Notice of a Brother of his, *Andrew Wilkie*, who had gone along with Captain *Drummond* to the *Eaſt-Indies*: *Depones*, That after the Deponent and his Mother came to *Bruntiſland*, they went to Mrs. *Seaton*'s Houſe; where the Deponent fell in Company with *George Haines*, whom the Deponent preſently * points in the Pannel; and after ſome Diſcourſe, the Deponent asked the ſaid *George Haines*, Whether or not, in his Voyage, he had ſeen Captain *Drummond*? At which the ſaid *Haines* fell in a Paſſion, and ſaid, *D--n me, what have I to do with Captain* Drummond? *Depones*, That the Deponent ſeeing *Haines* in ſuch a bad Humour, forbore for ſome Time to ſpeak about his Brother or Captain *Drummond*: But after that they had taken ſome Cups about, and that the Deponent thought *Haines* in a better Mood, the Deponent asked the ſaid *Haines*, If he had not heard of, or ſeen any *Scots* Ship coming to or from the *Eaſt-Indies*? *Depones*, That *Haines* then ſaid, *That while their Ship was upon the Coaſt of* Malabar, (*where*

* *now ſhews at the Bar.*

(where they had taken in a Black, *whom* Haines *pointed to, and had by him at the Time) a* Dutch *Ship informed them, That one Captain* Drummond, *commanding a* Scots *Ship, was turned Pirate; and that thereupon they manned their Sloop, and made themſelves ready, in caſe they ſhould have been attack'd.* But *Haines* added, *That they did not ſee the ſaid Captain* Drummond. *Depones,* That the ſaid *Haines* did likeways ſay, *That he had in his Cuſtody, at the Time the Ship the* Worceſter *was ſeized in the Road of* Leith, *that which he would not have fallen in the Seizers Hands for twice the Value of the Ship.* And *depones*, That the ſaid *Haines* likeways added, *That he threw it overboard after the Ship was ſeized*; ſaying, *Let them ſeek it now in the Bottom of the Sea. Depones,* That while the Deponent was diſcourſing with the ſaid *Haines* about the Worth of the Ship; the ſaid *Haines* ſaid to the Deponent, That it would not be found to be ſo rich as it was expected: But that there was ſtill in the Ship that which would never be found by the Seizers, unleſs they pulled her Board from Board: And that the ſaid *Haines* ſaid, He knew very well where that Thing lay. *Depones,* That his Mother having gone to the other Room to Mrs. *Seaton,* the Miſtreſs of the Houſe; ſhe deſired the ſaid Mrs. *Seaton* to enquire of *Haines* concerning her Son, the Deponent's Brother; and that Mrs. *Seaton* ſaid, That *Haines* was a * Suiter of *Anne Seaton*, her Daughter, who would be more proper to enquire that of *Haines:* And that the next Morning *Anne Seaton* declared, in Preſence of *Kenneth Mackenzie*, that *Haines* had ſaid to her, *He found they had a Deſign to pump him; but that they ſhould not be the wiſer of him: Tho' what he had ſaid, he had ſaid*; but would ſay no more at that Time. *Cauſa Scientiæ patet.* And this is the Truth, as he ſhall anſwer to God.

* *courted.*

James Wilkie.

ROBERT FORBES.

COmpeared *Kenneth Mackenzie*, † Indweller in *Cannongate*, aged Twenty ſeven Years, or thereby; Married: Who being ſolemnly ſworn, purged of partial Counſel, examined and interrogat *ut ſupra*: *Depones,* That in the Month of *October* laſt, when the Ship the *Worceſter* was lying in *Bruntiſland* Harbour, the Deponent was in Widow *Seaton*'s Houſe with *George Haines*, (whom he now points to in the Pannel) and *James Wilkie*, and heard the ſaid *James Wilkie* ask the ſaid *Haines* about Captain *Thomas Drummond*'s Ship; at which the ſaid *Haines* fell in a Paſſion; but the Deponent going out of the Room, heard no more what paſs'd. And *depones,* That the ſame Night, the Deponent heard Mrs. *Wilkie* intreat the ſaid Widow *Seaton*, to endeavour to get an Account, from any of Captain *Green*'s Crew, of her Son, who had gone Doctor aboard of the ſaid Captain *Drummond*'s Ship: And having returned next Morning, the Deponent heard *Anne Seaton*, Daughter to the ſaid Widow *Seaton*, tell, That *Haines* had ſaid to her, that they had a Deſign to pump him; but what he had ſaid, he had ſaid. And that he the ſaid *Haines* told the ſaid *Anne Seaton*, when ask'd by her, why he fell in a Paſſion at the mentioning of Captain *Drummond*? That he anſwered, That he knew more of the ſaid Captain *Drummond*, than he would tell. *Cauſa Scientiæ patet.* And this is the Truth, as he ſhall anſwer to *GOD.*

† *Inhabitant.*

Kenneth Mackenzie.

ROBERT FORBES.

COmpeared *William Wood*, one of the Gunners of Her Majeſty's Artillery, aged Fifty three Years, or thereby; Married: Who being ſolemnly ſworn, purged of partial Counſel, examined and interrogat *ut ſupra*; *Depones,* That the Deponent was in Company with *George Haines*, at *Bruntiſland*; and that one *John Henderſon*, * Writer in *Edinburgh*, was likeways preſent. *Depones,* That the ſaid *George Haines*, and the reſt in Company with the Deponent, having drunk pretty warmly, the ſaid *George Haines* fell in a melancholy Fit; and *John Henderſon* having ask'd the Reaſon, the ſaid *Haines* expreſs'd himſelf thus: *It is a wonder that ſince we did not ſink at Sea, that God does not make the Ground open and ſwallow us up when we are come aſhore, for the Wickedneſs that has been committed during this laſt Voyage, on Board of that Old Bitch* Beſs; pointing to Captain *Green*'s Ship. And *depones,* That thereafter he went a walking with the ſaid *George Haines* in the * Links of *Bruntiſland*; and the Deponent happening to tell the ſaid *Haines*, that Captain *Madder*'s Uncle was burnt in Oyl, for attempting to burn the *Dutch* Ships at *Amſterdam*; the ſaid *George Haines* did thereupon tell the Deponent, *That if what Captain* Madder *had done, during this laſt Voyage, were as well known, he deſerved as much as his Uncle had met with. Cauſa Scientiæ patet.* And this is the Truth, as he ſhall anſwer to GOD.

* *Clerk for Law-Buſineſs.*

* *Sands.*

William Wood.

ROBERT FORBES.

COmpeared *John Henderſon*, Writer in *Edinburgh*, aged Twenty Years, or thereby; Unmarried: Who being ſolemnly ſworn, purged of partial Counſel, examined and interrogat *ut ſupra, Depones,* * *conformis precedenti* (viz. *William Wood*) *in omnibus*; except as to what happen'd betwixt the ſaid *William Wood* and *George Haines* in the Links of *Bruntiſland*, in relation to Captain *Madder* and his Uncle. *Cauſa Scientiæ patet.* And this is the Truth, as he ſhall anſwer to GOD.

* *as* William Wood *in every thing.*

John Henderſon.

ROBERT FORBES.

COmpeared *Anne Seaton*, Indweller in *Bruntiſland*, aged Nineteen Years, or thereby, Unmarried: Who being ſolemnly ſworn, purged of partial Counſel, examined and interrogat *ut ſupra, Depones,* That ſhe was preſent with *George Haines*, one of Captain *Green*'s Crew (whom ſhe points at the Bar) in *Bruntiſland*, at the Time when Mrs. *Wilkie* and her Son were there: That Mrs. *Wilkie*

Wilkie desired the Deponent to endeavour to learn if *George Haines* knew any Thing of Captain *Drummond*, because the said Mrs. *Wilkie* had a Son that went along with him. *Depones*, That she the Deponent did accordingly enquire at *Haines*, but he denied that ever he saw the said Ship, or knew any Thing of her. *Depones*, That she was likewise present with *George Haines*, when *William Wood*, one of Her Majesty's Artillery, and *John Henderson*, were in Company with him, and that at that Time, *George Haines* in a melancholy Fit expresst himself thus: *It's a wonder, that since we did not sink at Sea, that we are not swallowed up with the Ground ashore, for the Sins committed on board of Captain* Green's *Ship.* And *Depones*, that he likewise added, *during the last Voyage.* And *depones*, that *Haines* said to the Deponent, *That he knew more of Captain* Drummond *than what he would express at that Time: Depones*, That the said *George Haines* told the Deponent, *That when the Ship was seized in* Leith *Road, he had aboard with him that which he would not have had to fall in the Seizers Hands for twice the Value of the Ship, but that he threw the same over-board: Depones*, That she never talked with *Haines* about an old Sweet-heart that she had aboard of Captain *Drummond*'s Ship, nor did the said *Haines* say to the Deponent, *That she would never see him again*: And *depones*, That she never heard *Haines* say, *That there was yet aboard of the said Ship what would not be found unless she were pulled Board from Board:* And *depones*, That when the Deponent was enquiring of *Haines* about Mrs. *Wilkie*'s Son, that he said, *That she designed to pump him as Mr.* Mackenzie *had done before. Causa scientiæ patet.* And this is the Truth as she shall answer to God.

Anne Seaton.
ROBERT FORBES.

COmpeared Captain *John Brown* Skipper in *Leith*, aged 40 Years, or thereby, married, who being solemnly sworn, purged of partial Counsel, examined and interrogate *ut supra: Depones*, That he went aboard the Ship the *Worcester* when the Goods were unloaded, by Order of the Lords of the Committee of Privy-Council, and saw the Hatches which were fast and sealed, opened: *Depones*, That on the Larboard-side of the Ship, the Goods were much damaged, and that few or none of the pack'd Goods were numbered or marked, which is customary; and the Deponent himself never received any Goods but what were marked, that he might know to whom they belonged: *Depones*, That the Goods aboard the said Ship, were regularly enough stowed: And being interrogate * for the Prisoners, whether or not it be customary that Goods be marked or numbered where there is a *Supercargo* aboard: *Depones*, That it is always customary, whether they belong to ten, or one Man: And being interrogate for the Pannels, whether or not the Reason why the Goods wanted Mark or Number, might be, because that the Goods were much damaged, and the Pepper spoiled and heated: *Depones*, That where the Goods or Pepper was spoiled, the Bales were all rotten to Pieces, but where the Pepper and other Goods were entire, there were Bales and Packs which wanted both Numbers and Marks: And being likewise interrogate by the Pannels, whether or not there were some Packs and Bales that had a common Ship-mark, and some who had only the Vestige † thereof, being near worn out: *Depones*, That there were a great many who had a common Mark, and that it was plain and obvious, and that there were others who had no Mark at all, and that the most Part wanted Marks altogether, and that there were two or three Bales which had the Vestige of a Mark. *Causa scientiæ:* The Deponent ‖ witnessed the unloading of the said Ship, at the Desire of the Lords of the Committee of Privy-Council, and saw, and knows as he has deponed. And this is the Truth as he shall answer to GOD.

* *On behalf of the Prisoners.*

† *Sign.*

‖ *Was witness to.*

John Brown.
ROBERT FORBES.

COmpeared *Archibald Hodge* Skipper in *Leith*, aged 40 Years, or thereby, married; who being solemnly sworn, purged of partial Counsel, examined and interrogate *ut supra: Depones*, That he was aboard the Ship the *Worcester* in *Bruntisland* Harbour, when the Committee of Privy Council came to rummage her, and saw Goods unloaded from aboard: *Depones*, That the most Part of the Goods wanted both Number and Marks, which is no wise common or regular in any Ship that ever the Deponent has seen: But the Deponent did never see any *East-India* Ship unloaded before. *Causa scientiæ patet.* And this is the Truth, as he shall answer to GOD.

Archibald Hodge.
ROBERT FORBES.

COmpeared *John Glen* Goldsmith, Indweller in *Leith*, aged 43 Years, or thereby, married, who being solemnly sworn, purged of partial Counsel, examined and interrogate *ut supra: Depones*, That the second Day after the Ship the *Worcester* came to *Leith* Road in Summer last, the Deponent went aboard the said Ship, and about Twelve a Clock of the Day, the Deponent was in the Cabin with Captain *Madder* and one *Hammond*, now in *England*, as the Deponent is informed; at which Time the said Captain *John Madder* took a Seal out of his Pocket, and asked the Deponent, what he thought of the *Scots African* and *Indian* Companies Arms, and at the same Time gave the Deponent the said Seal in his Hand, to which the Deponent did look, and found thereon the St. *Andrew*'s Cross, a Dromedary, or Camel, with a Castle on the Back of it, and a Ship with a Rising-Sun above the Helmet, and two wild Men as Supporters, and that the said Seal, to the best of the Deponent's Memory, was near the Bigness of an *English* Half-Crown, and had an Handle of *Lignum-vitæ*. And being interrogate if aboard the said Ship he did see the Impression of the said Seal upon any Paper: *Depones negative.* And further *Depones*, That the Seal now exhibited in Court, was not the same which Captain *Madder* did show to the Deponent; and whereupon he has deponed as above. *Causa scientiæ patet.* And this is the Truth, as he shall answer to GOD.

John Glen.
ROBERT FORBES.

The Probation being ended as above, and the * Aſſize ordained to encloſe, ſome of the Aſſizers moved, that that Part of the Judges and Aſſeſſors † Interloquitor, whereby they find the Crimes of Piracy, or Robbery, or Murder, as libelled, being proven by clear and plain Evidence, ‖ relevant, *&c.* to be explained as to theſe Words, *being proven by clear and plain Evidence*, if the ſame did require, that the ſaid Crimes of Piracy, or Robbery, or Murder, ſhould be proven by two or three Witneſſes, directly proving the foreſaid Crimes: Or, if it were only required, that the Crimes of Piracy, or Robbery, or Murder, as libelled, being proven by a clear and plain Evidence, as to the cumulative and concurring Preſumptions, whereby the ſame were alledged to be inferred, altho' two concurring Witneſſes ſhould not be found as to every ſeveral Preſumption, were ſufficient: The ſaid Judge and Aſſeſſors declared their Meaning to be in the Terms of Law, *viz.* That tho' there were not a direct Probation of the Crimes libelled, *per idoneos Teſtes, vel inſtructa apertiſſimis documentis*, by proper Witneſſes, or made good by plain Proofs; yet if the Crimes did appear by the Qualifications and Circumſtances, as they were libelled, to be made out *per indicia ad probationem indubitata & Luce clariora*, by undoubted Preſumptions as clear as Sun-ſhine, albeit every Circumſtance and Qualification were not proven by two direct Witneſſes, the ſame ſhould be held for a clear and plain Evidence.

* *Jury ordered to withdraw.*
† *Sentence or Opinion.*
‖ *Sufficient to bear a Tryal.*

Thereafter, according to the Cuſtom obſerved in Criminal Courts and Proceſſes, That the Advocates for the Purſuer, and for the Pannels, are allowed ‖ *hinc inde* to ſpeech the Aſſize, and reſume and lay before the Aſſizers, the Libel, with the Interloquitor paſt thereon, and apply the Probation led for proving thereof on the one Part, and on the other to reſume the Defences for the Pannels, and to take off as much as poſſible, the Weight of the Probation for their Defence and Exculpation; Sir *David Dalrymple* her Majeſty's Solicitor, one of the Aſſiſtants to the Procurator-Fiſcal in this Criminal Purſuit, ſpoke to the * Aſſize in Manner following.

‖ *On both ſides, in their Turns to ſpeak to the Jury.*
* *Jury.*

Gentlemen of the INQUEST,

YOU have before you Indictments againſt the Pannels upon very atrocious Crimes, and theſe Indictments have been ſuſtained relevant, as libelled by the Honourable Judge-Admiral, to be proven by clear and plain Evidence. But for your further Satisfaction, at the Deſire of ſome of your own Number, made openly in Court, the Judges have declared, That by theſe Words, *Plain and clear Evidence*, they do not confine the Aſſize to two concurring Witneſſes, but have left to you what Evidence is neceſſary to make Faith according to the Nature of the Crime, to your Conviction.

Your Buſineſs then, *Gentlemen*, is to apply or compare the Probation with the Indictment, and to return your Verdict diſtinct, concerning what you think proven or not.

It is a Happineſs, that this Truſt is in the Hands of Perſons ſo diſcerning and faithful, and therefore the leſs needs to be ſaid, either for clearing the Nature of the Crime, the manner of the Diſcovery, or for ſumming up the Evidences: But to comply with the Cuſtom of ſuch Tryals in this Kingdom, and for preventing the Miſtakes into which the Lawyers on the other Part, ſeem to lead you: Forgive me if after a * Sederunt of Twelve Hours ſpent in † leading of the Probation, I detain you a little longer in Recapitulating what has paſt, with ſome few Obſervations, I hope not improper, before ye ‖ encloſe.

* *Hearing.*
† *Giving in the Evidence.*
‖ *Withdraw.*

As to the Crimes contained in the Indictment, it is obvious how heinous they are, and how hateful they render the Perſons who are truly guilty in the Eye of the Law: A Pirate is in a perpetual War with every Individual, and every State, Chriſtian or Infidel. Pirates properly have no Country, but by the Nature of their Guilt, ſeparate themſelves, and renounce on the Matter, the Benefit of all lawful Societies: They are worſe than ravenous Beaſts, in as far as their fatal Reaſon gives them a greater Faculty and Skill to do Evil: And whereas ſuch Creatures follow the Bent of their Natures, and that promiſcuouſly, Pirates extinguiſh Humanity in themſelves, and prey upon Men only, eſpecially upon Traders, who are the moſt innocent. The Crime of Piracy is complex, and is made up of Oppreſſion, Robbery, and Murder, committed in Places far remote and ſolitary. And indeed if GOD had not, in a moſt wonderful way, brought the Crimes whereof the Pannels ſtand accuſed, to Light, they might have eſcap'd unpuniſhed in this World, to their own eternal Deſtruction, and to the great Loſs of ſuch who may be amended, or prevented by the Example of their Puniſhment. But altho' the Abuſes now complained of, happened in the vaſt Ocean, and at no leſs diſtance than the *Eaſt-Indies*, and that the Actors were tied by obvious Reaſon to Secrecy on their own Account, and were bound by a † regulous Command, not to reveal or anſwer Queſtions: And beſides all theſe, it is moſt probable there was a moſt impious Oath interpoſed, as uſes to be in ſuch Caſes, and which has more Force to reſtrain Men of ſuch deſperate Principles and Practices, than all the Ties of Religion or Nature: Yet GOD, in his Providence, has let in Light upon theſe dark and cruel Crimes, as it were by meer Accident: For I preſume, you are not ignorant, that the firſt Notices of this Matter proceeded from Words which were dropt in Paſſion, or expreſs'd by the Weight of Guilt, concerning the Wickedneſſes which have been done aboard the *Worceſter* during the laſt Voyage. Theſe, and ſome other Grounds of Suſpicion which appeared upon better Enquiry, were the Occaſion of the Information given to the Government, and how cautious the Lords of Her Majeſty's moſt Honourable Privy-Conncil, have been in examining the Matter before any Proſecution was appointed, I perſuade my ſelf, that you and the whole Nation know, and are ſatisfied. And now that the Probation has been ſolemnly led in Preſence of this Court, and of the great Number of all Qualities who have been preſent; I doubt not, it will appear to you and all Men, who will ſuffer their Reaſon to act freely, that theſe Informations have been but too well founded.

† *Arbitrary Command of their Captain.*

The Indictment, as it concerns the Facts libelled, conſiſts chiefly of two Parts. The firſt concerns a Murder and Piracy happening upon the Coaſt of *Malabar.*

Malabar. The ſecond concerns Circumſtances which help to give Light to that Piracy, and which Circumſtances have happened ſince the Arriving of the *Worceſter* into this Country.

As to the firſt, *Gentlemen*, You have a Teſtimony of the firſt Witneſs *Antonio Ferdinando*, who depones, *He came aboard of the* Worceſter *upon the Coaſt of* Malabar, *and that about a Month after, he ſaw an Engagement betwixt the Sloop belonging to the* Worceſter, *and another Ship ſailed by* White-Men, *ſpeaking* Engliſh, *and bearing ſuch Colours as Captain* Green's *Ship did bear*; *and that the Captain and ſome others of the* Worceſter's *Crew, went aboard the Stranger's Ship, and ſtayed about the Space of a Glaſs*; *that upon their return to the* Worceſter, *the Sloop was mann'd out with twenty Men, of which Number were the Captain himſelf, with* Madder, Simpſon, Keigle, Kitchen, *and others*; *that the Sloop was mounted with* 4 *Guns and* 2 *Patteraroes*; *that the Sloop engaged the Stranger's Ship, and that there was a running Fight for* 3 *Days, during which Time the* Worceſter *came up and fired at the ſaid Ship, and that upon the third Day, the ſaid unfortunate Ship was taken*, (and what is fearful even to repeat) *The Crew being about Ten, were murdered and thrown over-board*; *that the Goods were brought aboard of the* Worceſter, *and the taken Ship was ſailed with a Part of the* Worceſter's *Crew to* Callicoiloan, *and there ſold to* Coge Commodo; *that the Deponent himſelf was wounded, the Scar of which Wound was ſhown to you*, Gentlemen, *and the Court*; *and that he was commanded to keep Secrecy under the higheſt Peril, and that the very Upper-Coat which he wears* (and in my Judgment, appears to be *Scots* * Rugg) *was a Part of the Spoil.*

* *Coarſe Cloath.*

As to this Teſtimony, *Gentlemen*, There are ſeveral Things very obſervable, ſuch as the † Stayedneſs, Simplicity and Conſtancy of this Witneſs, who, in many Examinations before the Council, and Committee of Council, has uniformly given the ſame Account which he has now deponed before this Honourable Court; not in the ſame Form of conceived Words, but materially the ſame, tho' the ‖ Interrogators have been changed: And I think, it adds to the Weight of his Teſtimony, that ye are Witneſſes how it was * emitted, while he was under heavy Sickneſs, and forced to lie down at the End of the Table.

† *Solidity.*

‖ *Queſtions.*

* *Given.*

2. It is obſervable, that this Witneſs *Antonio Ferdinando* had no acceſſion to the diſcovering of this Matter, nor was at all an Informer: But the Matter being enquired into, he did plainly and honeſtly acknowledge from the Beginning, as he has now deponed: Neither was the Story firſt told at *Leith*, nor ſince the Pannels arriving in our Harbours: But it appears by the Teſtimony of *Antonio Franciſco* the other *Black*, (who ſhews a great Inclination to favour Captain *Green* and the Pannels) that *Ferdinando* gave him the ſame Account in ſubſtance upon the Coaſt of *Malabar*: And this is further confirmed by *Stringman* the Cook, who told in ſeveral Examinations before the Council, that ſhortly after the ſaid *Stringman* came aboard on the Coaſt of *Bengal*, *Ferdinando* who was his Mate, gave him the like Account of the Story: So that it is morally evident, that this Account of the Crime was not invented with any View of a Trial againſt the Captain and his Crew.

3. It is worthy your Notice, that Captain *Green* had been aboard of the unfortunate Ship taken, as a Friend, and had Opportunity to ſpy, that the Crew being but about ten, were too weak to man or defend a Ship of 20 Guns, which, no doubt, emboldned him to undertake the Wickedneſs complained of.

It is obſervable, That the ſeveral Parts of *Ferdinando*'s Teſtimony are fortified by concurring Proofs. As firſt, by the Books found aboard, it appears, that the Sloop was furniſhed with Arms in the Month of *February* libelled, and that the Arms were ſuch as the Teſtimony mentions. 2. He ſhows you the Scar of his Wound upon his Arm; and as he depones, that he got it in the Engagement, ſo the Chyrurgeon depones, *That he not only ſaw it, but that ſhortly after the hearing of the Shooting, he had taken the* * *Dreſſing from off the Wound, and found it a Fracture, and that it look'd like a Gun-ſhot, and that the* Black *came to his Cheſt a few Days thereafter to have it dreſt aboard.* 3. The Teſtimony of *Ferdinando* is alſo confirmed by the Depoſitions of *Franciſco* and Mr. *May*, as to two very notable Articles, *viz. The bringing of the Goods aboard about that Time*: And by the Teſtimony of the ſaid Mr. *May*, as to the Ship taken riding at the Stern of the *Worceſter*. 4. Captain *Madder*'s ſevere Commands for obſerving of Secrecy, is not only deponed upon by *Ferdinando* the firſt Witneſs, but alſo by *May* the Chyrurgeon, very circumſtantially: When Mr. *May* asked an innocent Queſtion, as one ſhould think, upon ſeeing the Deck lumbered with Goods, Mr. *Madder* anſwers, curſing him, and bids him mind his Plaiſter-Box. When *May* goes to his Cheſt, there came three Men to be dreſſed of their Wounds, of which the *Black* was one. *May* asks them how they came to be wounded, but *Madder* had followed, and commands Silence on their Peril; but Mr. *May* perſiſting in his Enquiry, *Madder* goes to the Commander, and brings a poſitive Order to anſwer no Queſtions: Thus *Ferdinando* and *May* concur as to the Command of Silence. Now, I put it to your Conſciences, *Gentlemen*, if ye think this Myſtery was uſed to cover a common Accident; or, if rather you are not ſatisfied, that, joyning the Teſtimony of *Ferdinando* with the Wounds, and the Silence ſo rigorouſly impoſed, the Goods brought aboard, the riding of the taken Ship at the Stern of the *Worceſter*, they do not evince the Certainty of the Piracy and Murder libelled, as far as the Nature of the Thing can admit.

* *Plaiſter.*

To theſe, *Gentlemen*, Ye would be pleaſed to join in your Obſervation, That it is owned and demonſtrated, from the Books taken aboard of the *Worceſter*, that there ſprung a Leak in the ſaid Ship on the Coaſt of *Malabar*; and that it had been moſt natural for the Pannels to have carried their Ship to *Goa*, or to *Surat*, which was within Ten Degrees Sailing, or thereabouts; yet the Pannels did chuſe, rather than continue on that Coaſt, to run along in a leaky Veſſel, a dangerous Courſe, round the *Peninſula*, and the Iſland *Keilon*, to the Bottom of the Bay of *Bengal*, a Courſe of about Seven or Eight Hundred Leagues. But that Fatigue and Riſque was ſmall, when compared with the Danger of repairing their Ship on a Coaſt, where their Crimes might be more eaſily diſcovered. 2. It is remarkable, that the Books found aboard, and now lying before you, contain the full Inſtructions given to Captain *Green* and his Company, from their alledged Owners, which have

ſome-

something myſterious from the very Beginning. I have had little * Occaſion to peruſe them, having ſeen them this Morning for the firſt Time. But one Thing I could not but † notice, That in the Inſtructions, one Article contains a Cypher, in which the Captain or Supercargo was to correſpond with their Owners. And altho' this Cypher ſeems to be nice, and well enough deviſed at firſt to cover the Correſpondence from any ordinary Curioſity; yet ſo great Anxiety has been ſhown concerning this Cypher, that the Freighters ſend a Letter after the Ship; adding an Inſtruction, That beſides the Character to be uſed, there ſhould be this further Diſguize added, That the laſt Letter of the preceding Word ſhould be always repeated before the firſt Letter of the next Word; of which, for Illuſtration, the Letter contains an Example, giving Direction how Letters ſhould be addreſs'd to the Writer himſelf. But neither was this Caution ſufficient: For next Day another Letter is written, relating ſtill to the Cypher; and wherein the Writer expreſly adviſes, that the Letters from the Ship ſhould not be directed to himſelf, but to a Scrivener living in - - - -*Street*, *London*; and that they ſhould not be ſubſcribed. Why all this Myſtery? The Correſpondence muſt be in Cypher; and this Cypher exquiſite and refin'd: And yet the Letters to be addreſs'd to a Third Perſon, obſcure, for what I know. They were not to contain any Addreſs or Subſcription, which ſhould either diſcover the Writer, or the Perſon to whom he writes. Fair Trading requires no ſuch Affectation.

* *Opportunity.* † *obſerve.*

But further, you will be pleaſed to take notice, That the outward Cargo for a Ship of 200 Tuns, and 20 Guns mounted, ſailed with 36 Men, was in Value but 999 *l.* 17 *s.* 2 *d.* Sterling; which appears by the * Document produced by themſelves, for inſtructing their Entry at the *Cuſtom-Houſe*; and that too, for the moſt part, Arms. I have not ſo much Experience in Matters of Trade; but to me it ſeems very ſtrange, that a Voyage ſo exceedingly hazardous and expenſive, ſhould have been undertaken with ſo ſmall † Means. And theſe Things, in the very undertaking of the Voyage, being joined with the ſhrewd Evidences of the Crimes, whereof theſe Pannels ſtand accuſed, ſeem to be of very great weight: And where ſuch * Fineneſs occurs in the Entry, and the Effects are ſo Tragical, in ſuch an Enquiry; I hope, I ſhall be forgiven by every body, having laid them before you with as much Tenderneſs to the Freighters (with whom I have nothing to do) as poſſible.

* *Voucher.* † *Stock.* * *Cunning.*

As to the Second Part of the Libel, I mean theſe Circumſtances which concur to give Light to the Crimes chiefly libelled; there is alſo ſufficient Evidence. The firſt of theſe Circumſtances, is what concerns Mr. *Reynolds*, one of the Pannels. The Indictment bears, That there was a Letter found, writ to him by his Wife's Siſter, in Return to one of his writ to his Wife; wherein his ſaid Siſter adviſes him to confeſs; adding, That in his own Letter, which ſhe had ſeen, he ſays, *That ſome of their Men had baſely confeſs'd*; which implied, that they were guilty. And *Reynolds* being queſtioned upon this Letter, produced the Copy of his Letter to his Wife, which occaſioned his Siſter's writing to him, agreeing with this Letter. Theſe you have before you.

I am not ignorant, that *Ferdinando* (the firſt Witneſs) ſays, *He believes* Reynolds *was aſhore*: But the Teſtimony as to that is not poſitive; neither is it, in my Judgment, ſufficient to take off the Acceſſion to the Crime, or † Art and Part libelled; ſince the ſaid *Reynolds* was of the ſame Crew, and did not ſeparate himſelf from them; and it is moſt preſumable, had his own Share of the Booty. Beſides, it's plain from the Letters, he was conſcious to the Truth, which (he ſays) *was baſely confeſs'd*: And it is of little weight, what has been offer'd as a Gloſs; *viz. Baſely confeſs'd*, is as much as if he had ſaid, *falſly told Stories*. For in the ordinary way of ſpeaking, to *confeſs*, is to *tell true*; and the Adverb *baſely*, implies no more than if he had ſaid, that they had ungenerouſly confeſſed; tho' it be indeed rather a Duty, whatever Mr. *Reynolds* thinks.

† *Contriving and Acting.*

The next obſervable Circumſtance is what concerns *George Haines*: As to whom, by laying together the Teſtimonies of *James Wilkie*, *Kenneth Mackenzie*, *William Wood*, *John Henderſon*, and *Anne Seaton*, you will find it proven, That upon asking a Queſtion about *Drummond*'s Ship, *Haines* fell in a Paſſion; by the Depoſitions of *Wilkie* and *Kenneth Mackenzie*. 2. That *Haines* ſaid, *That when the Ship the* Worceſter *was ſeized in the Road of* Leith, *he had that in his Cuſtody, which he would not have fallen in the Seizers Hands for twice the Value of the Ship; and that he threw it overboard*; is proven by the Teſtimonies of *James Wilkie* and *Anne Seaton*. 3. That *James Wilkie*'s Mother employ'd *Anne Seaton* to enquire of *Haines* concerning her Son, who had gone Doctor to *Drummond*'s Ship; is proven by the Teſtimonies of *Wilkie* and *Seaton*. And *Kenneth Mackenzie* depones, That he was preſent when the ſaid *Anne Seaton* gave an Account of what had paſs'd betwixt her and *Haines*; and that ſhe told, that *Haines* ſaid, *They had a Deſign to pump him*: And that being ask'd why he fell in a Paſſion at the mentioning of Captain *Drummond*? He anſwered, *That he knew more of Captain* Drummond *than he would tell*. And *Anne Seaton* concurs with *Mackenzie* as to theſe Particulars. 4. That *Haines*, in a melancholy Fit, * burſt forth in theſe, or like Words, *It's a wonder that ſince we did not ſink at Sea, God does not open the Earth, to ſwallow us up at Shore, for the Wickedneſs committed during the laſt Voyage, in that old Bitch* Beſs; (pointing to Captain *Green*'s Ship) is proven by the concurring Teſtimonies of *William Wood*, *John Henderſon*, and *Anne Seaton*. And 5. That *Haines* ſaid, *If what Captain* Madder *did during the laſt Voyage, were as well known as what his Uncle undertook at* Amſterdam; *he deſerv'd as much as his Uncle met with; which was, to be boil'd in Oyl*; is only atteſted by *William Wood*. Nor does every minute Circumſtance need a concurring Probation.

* *broke out.*

Having thus laid before you the Indictment and Probation, conjoining theſe Proofs; which, I am confident, to all impartial Men, will appear clear and plain Evidence of the Crimes of which theſe Pannels are accuſed; I ſhall take Liberty, in the next place, to precaution you againſt certain Inſinuations, which the Pannels Lawyers have diſcover'd when the * Probation was a leading.

* *Evidence was giving in.*

I need

I need be at little Pains to convince you, that the firſt Witneſs, tho' a *Black*, is a legal Witneſs; ſeeing that, upon full Debate, has been already determined by the Honourable Judges. And indeed, beſides that, he is not only a Man, but a Chriſtian, and adduced for proving a Crime covered, committed at Sea, which is more ſolitary than any Deſart at Land. His Teſtimony had ſuch a diſtinguiſhable Air of Truth and Sincerity, as made him not only a legal Witneſs, but a very material and probative one. But the Pannels Lawyers would fain have obſerved ſome Inconſiſtency in his Teſtimony, and betwixt it and that of Mr. *May*'s: *For*, ſay they, Ferdinando *depones, that he came aboard Two Years and a half ago; and that the Action happen'd about a Month after he came aboard*; ſo that it muſt have been in the Month of *November*, 1702. and not in the Months of *February*, *March*, &c. 1703. But ye were Witneſſes, that the *Black* did not depone poſitively as to the Time of his coming aboard, but ſaid it was about Two Years and a half ago; and that the Engagement was about a Month after. Both theſe Deſignations of the Time admit a Latitude: And he was ſo cautious, that he ſtopt again before he ſigned his Oath; until it was told him, that it could not be otherways underſtood.

But then they urge, That he depones, that the Engagement happen'd betwixt *Tillicherrie* and *Callecut*, upon the Coaſt of *Malabar*; yet Mr. *May* depones, that he heard the Shooting at *Callicoiloan*; which, ſay they, being at ſuch a vaſt Diſtance from *Tillicherrie*, was impoſſible.

But theſe Gentlemen do not obſerve, that the Engagement continued for Three Days; and that it is expreſly deponed, there was a running Fight during that Time: So that tho' the Beginning of the Attack might have been betwixt *Tillicherrie* and *Callecut*, yet it might have continued along the Coaſt.

Neither is it of more Moment what theſe Gentlemen obſerve, that the Strangers Ship attacked might have in Three Days got off: Becauſe it appears, ſhe was attacked and purſued by the Sloop, which was a light Veſſel; and the Ship it ſelf attack'd was weakly mann'd, having but about Ten Men aboard, and a Ship of 20 Guns.

But it may poſſibly be further urged, That the *Black* deponed, that Mr. *Loveday* and Mr. *Linſteed* were aboard the Sloop; whereas Mr. *May* depones, That Mr. *Linſteed* was left at *Keilon*; and that he heard him order'd to go aſhore before, and ſaw him taken into the Ship ſome Time afterwards.

But neither is there any Inconſiſtency in this Particular, betwixt theſe Two Oaths: For Mr. *May* depones, that when the Ship came upon the Coaſt of *Malabar*, he himſelf was put aſhore: And altho' before he was put aſhore he heard *Linſteed* and *Hammond* ordered aſhore, yet he did not ſee them go; ſo that *Linſteed* might have continued in the Ship notwithſtanding. Or, in the next place, let us ſuppoſe that *Linſteed* had once gone aſhore; does it from thence neceſſarily follow, that he did not come aboard again, till the Doctor ſaw him taken up? Certainly it does not; for Mr. *May* continued a very long Time aſhore. But now granting what theſe Gentlemen ſo earneſtly deſire, that *Ferdinando* had been miſtaken as to ſome ſuch Circumſtance; can that overturn his Teſtimony? The Thing happening upwards of Two Years ago: The Subject was an Engagement at Sea; perhaps the firſt Fighting ever he was Witneſs to: And the Confuſion which, for the moſt part, is incident to the firmeſt Spirits in their firſt Adventures, might excuſe this Witneſs, if in a * minute Circumſtance he had miſtaken; ſeeing his Oath, as to what is material and eſſential, is moſt pregnantly † aſtructed, as has been already ſaid.

* *ſmall.*

† *ſupported.*

It may be likeways obſerved, That it was very much urged for the Pannels, that *Ferdinando* came aboard the Ship at *Anjango*, only Two Days before the Ship parted from the Coaſt of *Malabar*: But tho' that were true, it would be little to the Purpoſe: For it is evident by his own Depoſition, that at firſt he enter'd to the Service of Mr. *Loveday*, the Purſer; and that he came aboard of the Sloop at *Callicoiloan* with *Loveday*; and the Sloop was the chief Inſtrument made uſe of in the Piracy libelled.

It is not unlikely, that the Lawyers on the other ſide will amuſe you with Obſerves upon Mr. *May*'s Teſtimony; as that he is but a Witneſs * *de auditu*, not having been preſent at the Action: But in this they are again miſtaken; for, as I take it, a Witneſs *de auditu* is ſuch an one, who repeats at ſecond-hand: As if Mr. *May* had deponed, that another Perſon had told him he had heard Shooting. But ſince our Hearing is as much to be depended on as our Seeing, in what concerns the proper Object of the Ear; Mr. *May*'s Teſtimony, which chiefly conſiſts of what he heard and ſaw himſelf, is not in the Senſe of Law *de auditu*. Mr. *May* depones he heard the Shooting; and the next Day that he came down, he ſaw the *Worceſter* riding, with another Ship at her Stern; and that he ſaw ſome of the Crew come aſhore in a Boat; and that they told him that they had brought in a Ship; and that *Coge Commodo*, or the *Linguiſter*, told him he had bought the Ship. He ſaw and handled the *Black*'s Wounds: He was Eye and Ear-witneſs to *Madder*'s threatning, and impoſing a rigorous Silence. In all this there is nothing properly *de auditu*; for that the Seamen told him they had brought in a Ship, did not depend barely upon their telling, but upon theſe Circumſtances, that they were the Perſons brought it in; and that the Ship was riding under his Eye, at the Stern of the *Worceſter*. And juſt ſo what he heard from *Coge Commodo*, and the *Linguiſter*, being upon the Place, and ſeeing the Ship under his Eye, is not to depone only *de auditu*, but has as much Evidence, as is neceſſary to create a full Certainty in the Mind of any reaſonable and indifferent Perſon.

* *by hearſay.*

As for the other Circumſtances, I beg Liberty to forewarn you, *Gentlemen*, That every Thing material is proven; and that even as to the leaſt Circumſtance, there is ſome Evidence. That the Goods were not regularly marked, as is ordinar in fair Trade, is proven by the Oaths of * Skippers: That the Seal of the *African Company* was ſeen in the Hand of Captain *Madder*; is deponed by *Glen*, a Seal-Cutter, who could not well be miſtaken in a Matter of that kind. And in like manner, that there was ſomething aboard of the *Worceſter*, which would not be found, tho' they ſhould tear her Board from Board; is deponed by *James Wilkie*. None of theſe Circumſtances are abſolutely without Evidence: And the reſt of the Libel, both what is eſſential, and even

* *Maſters of Ships.*

as to leſſer Circumſtances, is diſtinctly and plainly proven.

To conclude, *Gentlemen*, As, on the one Hand, you are to be very tender of admitting that for a Proof, in a Caſe of Life and Death, which ought not to be admitted; ſo you muſt be careful not to reject ſuch Evidence, as muſt convince the whole World, that theſe unhappy Criminals are guilty of the cruel and atrocious Crimes libelled. Take the Matter in its whole *Series*: The affected Darkneſs in the Entry to the Undertaking, a Correſpondence in Cypher, wherein the Parties were neither to be mentioned on the Cover, nor in the Letters, nor were they to ſubſcribe. That the Cargo was inconſiderable, and chiefly compoſed of Arms, not to the Value of a Thouſand Pounds Sterling. And it ſeems almoſt ridiculous, that a Ship of 200 Tuns, with 20 Guns mounted, ſailed by 36 Men, ſhould be ſent to the *Eaſt-Indies* upon an ordinary Adventure, with ſo invaluable a Cargo: And join with that the Evidence of the Murder and Robberies, mentioned in the Indictment. Conſider how much Light the Providence of GOD has diſcover'd in ſo dark a Crime, committed in a Place ſo diſtant and ſolitary; and I am confident, you will conclude with me, That the Murder and Piracy is proven.

The Advocats for the Pannels did alſo on their Part * ſpeech the Aſſize, by reſuming the Defences for the Pannels, and for taking off the Weight of the Probation led againſt them, and by alledging what could be further ſaid for their Exculpation and Defence. But theſe Speeches having been made * *extempore*, *& viva voce*, albeit the Advocats for the Pannels were deſired, at the Printing of this † Proceſs, to give in to be printed a full Copy of what they had ſaid in Defence to the Aſſize; yet they declined to do the ſame.

* *ſpeak to the Jury.*

* *off-hand, by word of mouth.*

† *Trial.*

The Judge of the High Court of Admiralty and Aſſeſſors ordain the * Aſſize preſently to incloſe, and to return their Verdict upon *Friday* next, being the Sixteenth of *March* Inſtant, at Ten a Clock in the Forenoon; and the † hail Fifteen Aſſizers to be preſent, each under the Pain of Three Hundred Merks, and continue the Dyet till that Time: And ordain the Pannels to be carried back to the reſpective Priſons.

* *Jury to withdraw.*

† *whole.*

ROBERT FORBES, I. P. A.

CURIA JUSTICIARIA, *Supremæ Curiæ Admiralitatis tenta in Prætorio, vel nova Domo Seſſionis Burgi de* Edinburgo, *decimo ſexto Die Menſis* Martii, 1705. *per Judicem dictæ Curiæ, & per Honoratiſſimos Viros*, Joannem *Comitem de* Loudoun, Joannem *Dominum de* Belhaven, *Dominos* Robertum Dundas *de* Arneſtoun, Joannem Home *de* Blackadder, *&* Joannem Cockburn *de* Ormiſtoun, *Aſſeſſores.*

Curia Legitimè Affirmata.

The ſaid Day, the Perſons who paſs'd upon the Aſſize of Captain *Thomas Green*, Commander of the Ship the *Worceſter*; Captain *John Madder*, Chief Mate of the ſaid Ship; *John Reynolds*, Second Mate; *Thomas Linſteed*, Aſſiſtant, Supercargo; *James Burn*, Boatſwain; *James Simpſon*, Gunner; *Andrew Robertſon*, Gunner's Mate; *John Bruckley*, Seaman; *George Kitchen*, Seaman; *Henry Keigle*, Carpenter; *George Haines*, Steward; *Samuel Wilcocks*, Chirurgeon's Mate; *George Glen*, and *Alexander Taylor*, Seamen; *John Bannantine*, Seaman; returned their Verdict in Preſence of the ſaid Judge and Aſſeſſors; whereof the Tenor follows.

Edinburgh, the 14th of *March*, 1705. The * Aſſize having incloſed, did chuſe Sir *James Fleming*, of *Rathobyres*, to be their † Chancellor; and *William Neilſon*, Merchant in *Edinburgh*, to be their Clerk: And having conſider'd the Two Indictments purſued at the Inſtance of Mr. *Alexander Higgins*, Procurator-Fiſcal of the High-Court of *Admiralty*, againſt Captain *Thomas Green*, Commander of the Ship the *Worceſter*; Captain *John Madder*, Chief Mate of the ſaid Ship; *John Reynolds*, Second Mate; *Thomas Linſteed*, Aſſiſtant, Supercargo; *James Burn*, Boatſwain there; *James Simpſon*, Gunner; *Andrew Robertſon*, Gunner's Mate; *John Bruckley*, Seaman; *George Kitchen*, Seaman; *Henry Keigle*, Carpenter; *George Haines*, Steward; *Samuel Wilcocks*, Chirurgeon's Mate; *George Glen*, and *Alexander Taylor*, Seamen; *John Bannantine*, Seaman; with the Debate upon the ſaid Indictments; and the Judge of *Admiralty* and Aſſeſſors, their Interloquitor, and Explanation thereupon, with the Depoſition of Witneſſes adduced by the Purſuer * thereintil: *They, by Plurality of Votes, find, that there is one clear Witneſs as to the Piracy, Robbery, and Murder libelled; and that there are accumulative and concurring Preſumptions proven, for the Piracy and Robbery ſo libelled: But find, that* John Reynolds, *Second Mate of the ſaid Ship, was aſhore at the Time of the Action libelled.*

* *Jury having withdrawn.*

† *Foreman.*

* *in the Cauſe.*

Sic ſubſcribitur,

Ja. Fleming, * Chancellor.
Will. Neilſon, Clerk.

* *Foreman.*

Thereafter Mr. *David Forbes*, Advocate, produced a † Procuratory from the Company of *Scotland* trading to *Africa* and the *Indies*, to him the ſaid Mr. *David Forbes*. In the Terms whereof the ſaid Mr. *David Forbes* Proteſted, and took Inſtruments. The Tenor of both Procuratory and Proteſt is as follows, *viz.* The *COURT* of *DIRECTORS* of the *Company* of *Scotland*, trading to *Africa* and the *Indies*, Conſidering, That the Ship the *Worceſter* and her Cargo is by Sentence of the High Court of Admiralty, found liable by way of Reprizal to the ſaid Company, for Reparation of the Damages ſuſtained by them, thro' the wrongous Seizure of the Ship the *Annandale*, and the Delay and Denial of Juſtice in *England* concerning the ſame, Conform to the ſaid Companies * Proceſs of Declarator of Reprizal, bearing a Concluſion of † Roup and Sale of the ſaid Ship the *Worceſter* and her Cargo, for Reparation of the Company's ſaid Damages,

† *Power.*

* *Tryal.*

† *Selling to the higheſt Bidder.*

as

as the Judge Admiral's ſaid Sentence, dated the third of *March* inſtant bears. And conſidering likewiſe, that the additional Concluſion of the Criminal Indictment, raiſed at the Inſtance of Mr. *Alexander Higgins* Procurator-Fiſcal of the ſaid High Court of Admiralty, againſt Captain *Thomas Green*, late Commander of the ſaid Ship the *Worceſter*, and his Crew, for Piracy, Robbery and Murder, bears over and above the Confiſcation of their Eſcheat, Moveables in general, That the ſaid Ship and Cargo in Special ſhould be likewiſe confiſcated to Her Majeſty's Uſe: The ſaid Court of Directors do therefore, by theſe Preſents, give full Power, Warrant and Authority to Mr. *David Forbes* Advocate, to appear for them, and in their Name and Behalf, and in Behalf likewiſe of Mr. *Roderick Mackenzie*, their Factor in the ſaid Proceſs of Repriſal, to the * Behoof of the ſaid Company, to proteſt againſt the ſaid additional Concluſion of the ſaid Criminal Indictment, with all that has followed, or may follow thereupon, that the ſame may not in the leaſt prejudge the ſaid Company of the Benefit of their Right and Intereſt in the ſaid Ship the *Worceſter*, and her Cargo, as ſhould accord. In Teſtimony whereof, theſe Preſents are by Warrant of the ſaid Court of Directors, ſigned by their Preſident for the Time, and Counter-ſigned by the ſaid Company's Secretary at *Edinburgh*, the twelfth Day of *March*, One Thouſand ſeven Hundred and five Years. *Sic ſubſcribitur*,

* *Uſe.*

FRANCIS SCOT. *P. C. D.*

By Order of the ſaid Court ROD. MACKENZIE *Secretary to the ſaid Company.*

Follows the PROTEST.

EDINBURGH, 16 March, 1705.

I *The above Mr.* David Forbes, *Do hereby Proteſt in the Terms of the above Mandate, and thereupon I take Judicial Inſtruments in the Hands of Mr.* Daniel Hamilton, *Clerk of Court, and require the Members of Court as Witneſſes.* Sic ſubſcribitur,

DAVID FORBES.

* *On the contrary.* *Her Majeſties Advocate Proteſted in the contrair.* *

Which Proteſtations, the Judge of the High Court of Admiralty, *&c.* admitted and allowed them to be recorded.

† *Time of Trial.* The Judge of the High Court of Admiralty and Aſſeſſors, continue the † Dyet till *Wedneſday* the Twenty one of *March* Inſtant at Ten a-Clock in the Forenoon: And ordains the Pannels to be carried back to their reſpective Priſons.

CURIA JUSTICIARIA *ſupremæ Curiæ Admiralitatis tenta in Prætorio, vel novâ Domo Seſſionis Burgi de* Edinburgo, *vigeſimo primo die Menſis Martii* 1705. *per Judicem dictæ Curiæ, & per Honoratiſſimos Viros*, Joannem *Comitem de* Loudoun, Joannem *Dominum de* Belhaven, *Dominos* Robertum Dundas *de* Arniſtoun, Joannem Home *de* Blackadder, *&* Joannem Cockburn *de* Ormiſtoun, *Aſſeſſores.*

Curia legitime affirmata.

Intran.

Captain *Thomas Green*, Commander of the Ship called the *Worceſter*.
Captain *John Madder*, Chief-Mate of the ſaid Ship.
John Reynolds, Second-Mate of the ſaid Ship.
Thomas Linſteed, Aſſiſtant to the deceas'd *Super-Cargo* of the ſaid Ship.
James Burn, Boatſwain of the ſaid Ship.
James Simpſon, Gunner.
Andrew Robertſon, Gunner's-Mate.
John Bruckley, Seaman.
George Kitchen, Seaman.
Henry Keigle, Carpenter of the ſaid Ship.
George Haines, Steward of the ſaid Ship.
Samuel Wilcocks, Chyrurgeon's Mate.
George Glen, Seaman.
Alexander Taylor, Seaman: And
John Bannantyne, Seaman in the ſaid Ship.

The Judge of the High Court of Admiralty and Aſſeſſors, having conſidered the Verdict of * Aſſize returned againſt Captain *Thomas Green* Commander of the Ship called the *Worceſter*, now in *Bruntiſland* Harbour, Captain *John Madder*, chief Mate of the ſaid Ship; *John Reynolds*, ſecond Mate of the ſaid Ship; *Thomas Linſteed*, Aſſiſtant to the deceas'd *Supercargo* of the ſaid Ship; *James Burn*, Boatſwain of the ſaid Ship; *James Sympſon*, Gunner; *Andrew Robertſon*, Gunner's-Mate; *John Bruckley*, Seaman; *George Kitchen*, Seaman; *Henry Keigle*, Carpenter of the ſaid Ship; *George Haines*, Steward of the ſaid Ship; *Samuel Wilcocks*, Chyrurgeon's Mate; *George Glen*, Seaman; *Alexander Taylor*, Seaman; and *John Bannantyne*, Seaman in the ſaid Ship; upon the ſixteenth Day of *March* inſtant; whereby it is found proven, that there is one clear Witneſs as to the Piracy, Robbery and Murder libelled; and that there are accumulative and concurring Preſumptions proven from the Piracy and Robbery ſo libelled: And that *John Reynolds* ſecond Mate of the ſaid Ship was aſhore at the Time of the Action libelled; they in reſpect thereof, by the Mouth of *John Park* † Dempſter, * *Decern* and *Adjudge* the ſaid Captain *Thomas Green*, *John Madder*, *James Simpſon*, *Henry Keigle*, and *George Haines* to be taken to the Sands of *Leith*, within the Flood-mark, upon the firſt *Wedneſday* in *April* next, being the fourth Day of the ſaid Month, betwixt the Hours of Eleven a-Clock in the Forenoon and Four a-Clock in the Afternoon, and there to be hanged upon a Gibbet till they be dead. And * ſicklike, *Decern* and *Adjudge* the ſaid *George Glen*, *Alexander Taylor*, *Andrew Robertſon*, and *George Kitchen*, to be taken to the Sands of *Leith*, within the Flood-mark upon the ſecond *Wedneſday* of *April* next, being the Eleventh Day of the ſaid Month, betwixt the

* *Jury.*

† *One that pronounces Doom.*

* *Decree.*

* *In like Manner.*

Hours of Seven and Twelve a-Clock in the Forenoon, and there to be Hanged upon a Gibbet till they be dead. And alſo, *Decern* and *Adjudge* the ſaid *James Burn*, *John Bruckly*, *Samuel Wilcocks*, *John Bannantine*, and *Thomas Linſteed*, to be taken to the Sands of *Leith*, within the Flood-mark, upon the third *Wedneſday* of *April* next, being the Eighteenth Day of the ſaid Month, betwixt the Hours of Eleven a-Clock in the Forenoon, and Four a-Clock in the Afternoon, and there to be hanged upon a Gibbet till they be dead: And ordain all their Moveables, Goods and* Geer, and particularly the Ship *Worceſter* and Cargo to be † Eſcheat, and in-brought to Her Majeſty's Uſe; reſerving to all Perſons pretending Right to the ſaid Cargo, or any part thereof, their reſpective Claims and Pretenſions to be inſiſted in and diſcuſs'd before the High Court of Admiralty as accords, which is pronounced for ‖ Doom; and † Abſoilzie the ſaid *John Reynolds*.

* *Eſtate.* † *Forfeited.* ‖ *Sentence.* † *Abſolve.*

JAMES GRAHAM *I.P.A.*

The Judge of the High Court of Admiralty and Aſſeſſors, recommend to the Lords of Her Majeſty's Privy Council, to give a Reprieve to *Thomas Linſteed* Aſſiſtant Supercargo of the Ship *Worceſter*; and deſire that their Lordſhips would recommend him to Her Majeſty for Her Gracious Pardon.

JAMES GRAHAM *In preſentia Aſſeſſorum.* In preſence of the Aſſeſſors.

Follows ſome Confeſſions and Declarations emitted by ſome of Captain Green's *Crew, which are here ſet down according to their Dates, and as they were freely made in the Preſence of the Perſons therein mentioned, and are only here ſubjoyned not as any Part of the* * *Proceſs, but for the further Satisfaction of all that ſhall be pleaſed to read the Premiſſes.*

Trial.

Edinburgh, 16th March, 1705.

DECLARATION *by* Thomas Linſteed, *emitted in Preſence of Sir* James Steuart *Her Majeſty's Advocate, hereto ſubſcribing with the ſaid* Linſteed.

THomas *Linſteed* declares, That being in the Ship the *Worceſter* as Aſſiſtant to the *Supercargo*, when the Veſſel came to *Callicoiloan*, upon the Coaſt of *Malabar*, which was about the Beginning of the Year 1703. Mr. *Hammond* and he were ſent aſhore to look after the Goods they had ſold, and the Returns they expected at *Callicoiloan* and *Keilon*; That the Ship the *Worceſter* left *Callicoiloan* with her Sloop in *January* 1703. for to go to *Callecut*, and other Places up that Coaſt; but within five or ſix Days after the Ships parting, there came in Fiſher-Boats to *Callicoiloan*, who told them that their Ship the *Worceſter* had had an Engagement at Sea, and that it was the Sloop that firſt attack'd the Veſſel, and that they fought until they were out of ſight of the Fiſhermen, who could give no further Account of it. But thereupon the Declarant and Mr. *Hammond* wrote and ſent a Meſſenger either to *Cocheene* or *Callecut*, to know what was become of the *Worceſter*; and that they got a Return after ſome Days, that they ſhould mind their Buſineſs, and not concern themſelves with any Thing that *Callant* the *Supercargo* did aboard. That ſome Days thereafter, the Declarant met with *Coge Commodo* in the *Ibeck* of *Keiton*, who told him, that he had bought a Ship, and he took the Declarant aboard; that the Veſſel was about 100 Tons, and did bear about twelve or thirteen Guns, and that ſhe appeared to be of the Country Build. And *Coge Commodo* ſaid, he had bought her from the Pirates of *Cota* or *Burgara*, which are two little Pirating Towns on either ſide of a River on the Coaſt of *Malabar*; but when the Declarant came to *Keilon*, the *Dutch* and *Portugueſe* there told him, that that Veſſel which *Coge Commodo* had bought was brought in in the Night Seaſon by ſome of the Crew of the *Worceſter*, and that her Top-maſt was taken down, and her Sails taken off, and the Yards lower'd; and that the *Dutch* and *Portugueſe* made no more reckoning of it, becauſe 'tis what is ordinary on that Coaſt. That the Declarant and Mr. *Hammond* ſtayed, for two or three Months after their parting from the Ship, at *Callicoiloan* and thereabouts, until the Ship the *Worceſter* came back to the Road of *Callicoiloan*, and that there he went aboard: That when he went aboard, he told them what he had heard, but they gave him no Account of the Action; nor could he learn more of it. That the Doctor was aſhore at *Ibeck* while the Ship was at Anchor at *Callicoiloan*, and that at that Time the Declarant was gone up to *Callicoiloan*, and knows no more of the Doctor's being aſhore. That the Sloop with Mr. *Loveday* and others aboard did firſt come back to *Callicoiloan*, and advertiſed the Declarant and Mr. *Hammond* to be in readineſs, for the Ship was coming back; and that when ſhe came back they went aboard, and the Declarant went aboard at *Anjango*, from whence they ſailed to *Bengal*. And this the Declarant declares to be a Truth. *Cauſa ſcientiæ patet.*

T. Linſteed.
JA. STEWART.

Edinburgh, 27 March, 1705.

IN Preſence of Mr. *James Graham* Judge of the High Court of Admiralty, *George Haines* one of the Crew of the *Worceſter*, being deſirous to make a Confeſſion of what he knew in relation to the Crimes for which he and the reſt of the Crew are purſued; *Declared*, That when the Ship the *Worceſter* was in the Downs, the Declarant received a Letter from a Friend in *London*, telling him, that it was ſurmiſed in *London* that their Ship was going out upon ſome ill Deſign; and that he had likeways another Letter from his Father to the ſame Purpoſe, and heard the Gunner *James Sympſon* ſay, he had alſo another of the ſame Nature. The Declarant *declares*, that thereafter he uſed all his Endeavours to get aſhore, and accordingly he having got leave to ſee ſome Friends aboard the *Fleet-Frigat* that was then riding in the *Downs*, he got into her Long-Boat that was then going aſhore, but ſome of the Frigat's Crew having got notice where the Declarant was, after he went aſhore, they came to him, and having drunk with him to ſome Pitch, perſuaded him to go aboard of his

his own Ship again; and the Declarant was accordingly carried aboard, in one of the Boats belonging to the Town of *Deal*. And ſome Time thereafter, the Declarant deſigned likewiſe to have got into a Man of War, riding hard by their Ship; but Mr. *Callant*, the Supercargo, came after him, and brought him back: And the Declarant believes the Name of the Man of War was the *Salisbury*. That the Ship *Worceſter* ſailed from the *Downs* the 8th of *March*, 1702. in the Morning. That in the Month of *June*, or *July* thereafter, the Ship arrived at *Delagoa*, where their Sloop was built of Timber, and other Materials which they had brought from *England* aboard the Ship. That having ſailed from *Delagoa*, ſome few Days before they came upon the Coaſt of *Malabar*, he heard ſome of the Crew, and particularly *John Eruckley* the Cooper, talk of turning Pirates, and perſwading others of the Crew to go in with them. That when they came upon the Coaſt of *Malabar*, and had been there about a Month, they endeavoured to take a large Country Boat; and for that end, the Sloop endeavour'd to get betwixt the ſaid Boat and the Shore, that ſo the Ship might come up with the ſaid Boat; but there being ſeveral Hands aboard, and the Boat having Fifty Oars, out-ſailed both Ship and Sloop, and got off. *Declares*, That *Coge Commodo* was aboard the Ship the Time of the aforeſaid Chaſe; and that he drew his *Sabre*, and encouraged the Crew of the *Worceſter*. *Declares*, That hereafter the Ship and Sloop ſailed for *Cochin*, with a Deſign to have cleaned both at that Place; (the Sloop being much ſpoil'd with Worms) but the Governor would not allow them to be cleaned there; and therefore they went up to *Callecut*, where the Sloop was cleaned and refitted, and mann'd with about Eight Men, and Two Guns, Two Patteraroes, and other ſmall Arms and Ammunition put aboard; and then the Sloop alone ſailed up towards *Tillicherry*, and ſtayed away from the Ship about Eight Days. *Declares*, That the Sloop took no Goods along with her when ſhe went out; but when ſhe returned, ſhe had aboard Eight Hogſheads of *Rack* and knows not how ſhe came by them. But *John Roberts*, one of the Crew who had been with the Sloop at that Time, was very melancholy after his Return; and the Declarant having a *Coco-nut* full of *Rack* in his Hand, deſired *Roberts* to take a Part; but he would not, and went down to his Hammock mightily concern'd: And afterwards told the Declarant, that the Reaſon of his Concern and Melancholy, was, That he was acceſſary to the cutting off of ſome Mens Heads at *Sacrifice Rock*, betwixt *Tillicherry* and *Callecut*. *Declares*, That the Sloop did ſail by her ſelf from *Callecut* thereafter; and the Ship followed down to *Callicoiloan*, and did there meet with the Sloop: And having diſcover'd a Ship coming as from the *Southward*, the Sloop was under Sail, and made to get in betwixt the ſaid Ship and the Offing, that ſo ſhe might not get to Sea: And the Ship coming nearer to the *Worceſter*, in which the Declarant was at the Time; the *Worceſter* ſlipt her Anchors, and made towards the foreſaid Ship, and at length came up with her, and fired a ſharp Shot, to cauſe her come to; which ſhe did accordingly, by bracing her Head-ſails back to the Maſts; and that thereafter ſhe was boarded. *Declares*, That the Ship was about Seventy Tuns Burden, and ſquare-ſterned, and painted in the Quarters with Red and Yellow; and that ſhe had a Main Deck, and a Quarter Deck, and a little Fore-Caſtle, and was of the *Indian* Build: And that there was in the Ship, when boarded, about Twelve or Fourteen Men, all white, and ſickly, as the Declarant clearly perceived before the Ship was boarded. But when the Declarant was endeavouring to know of what Country the Men were; *Edward Carry*, one of the *Worceſter*'s Crew, knock'd him down with a Hand-ſpike into the Midſhip Hitch: But he afterwards heard amongſt the Crew, that the Men of the taken Ship were *Britons*. *Declares*, That he knew not what became of the Men which were aboard of the taken Ship, not having been able to come above Deck, with the Stroke which he received from *Edward Carry*, and whereof he yet bears the Mark: But declares, that the Sloop went off before he came above Deck, and ſtayed away for Three or Four Days; and that the Declarant thereafter heard the Men were put into the Sloop. And what was done with the ſaid Men of the taken Ship he cannot tell; but doubts not they were murdered and made away, becauſe they could not be put aſhore at any Place at hand on that Coaſt; there being *Engliſh* and *Dutch* Factories all along the Coaſt, very near each other. *Declares*, That theſe of the Crew who went with the Sloop from the Ship at that time, were Mr. *Loveday*, *Thomas Calcute*, *Andrew Roberiſon*, Gunner of the Sloop, *John Roberts*, *Edward Carry*, *Duncan Mackay*, *Alexander Taylor*, and *Antonio Ferdinando* the *Black*; but cannot be poſitive who beſides were there. *Declares*, That the next Evening after the Action, the Ship which was taken the Day before, was carried in by ſome of the Crew to *Callicoiloan*, and ſold to *Coge Commodo* for 1500 *Rupies*: And that the Goods of the ſaid taken Ship were ſome Bales and Matts of *China Roots*, and Four Cheſts of Copper; which Cheſts were ſold afterwards at *Bengal*, to a *Bannion* Merchant named *Tagodas*. *Declares*, That ſome Days after the Action, the Declarant was ſent aſhore with a Letter to the *Supercargo*; and that he then heard that *Coge Commodo*, to whom the Ship was ſold, was a great Aſſiſter of all Pirates, and was very ſerviceable to *Kidd* and *Avery* when upon that Coaſt, and bought of their Goods, as the Declarant was credibly informed of the People on that Coaſt. And *declares*, That the Time the Declarant was on Shore, the *Supercargo*, Mr. *Linſteed*, *Reynolds*, *Hammond*, and the Doctor were aſhore. And the Declarant did likeways ſee *Antonio Ferdinando*, the *Black*, at the *Ibeck* of *Callicoiloan*, who complained of a Wound in his Arm. *Declares*, That after the Action, and before the Declarant went aſhore, the Doctor, *Charles May*, came aboard from the *Ibeck* of *Callicoiloan*; and ſeeing the Cheſts which had come out of the taken Ship upon the Deck, he asked Captain *Madder*, What did all that Lumber upon the Deck? And that *Madder* anſwer'd him with a Curſe, and told him to *mind his Plaiſter-Box, and ask no Queſtions*. *Declares*, That while the Ship was upon the Coaſt of *Malabar*, ſhe ſprang a Leak in the Strake next the Keel, which made the Crew to pump conſtantly: However, they went not into any Place upon the Coaſt of *Malabar*, to refit her, but ſailed to *Bengal*, which was about Five Weeks Sailing; and there the Ship was refitted, not only of the Leak, but of an Hurt which the Ship got in the Action, in the *Plank*, betwixt the Midſhip's Crupper and the Cheltree, and a new Plank put in, in the Larboard ſide, where the Hurt was. *Declares*, That the Declarant did keep a Note, by way of Journal, during the Voyage, which contained the

Subſtance of what he now declares in relation to the above Particulars: And that when the Ship was ſeized in the Road of *Leith*, he heaved the ſame over-board, leſt it ſhould have fallen in the Seizers Hands. *Declares*, That he would have emitted this Declaration and Confeſſion ſoonet, but that he was always made believe by Captain *Green*'s Agents, that the Defences made for the Crew, would certainly bring them off: *And if they did all agree in one Mind, and keep cloſe Mouths, there would be no Fear; for nothing could be otherways proven, that could do them Harm.* And *declares*, That *Wilcocks*, the Chirurgeon's Mate, told the Declarant, that he ſaw a Letter from the Owners of the *Worceſter*, in *London*, to Captain *Green*; which bore, *That altho' the Crew were condemned in* Scotland, *they had Pardons ready to ſend down for them.* And this the Declarant was likeways informed of from the Carpenter's Wife.

George Haines.
JA. GRAHAM.

Edinburgh, 28 *March*, 1705.

IN Preſence of Sir *Robert Forbes*, Judge of the High Court of *Admiralty*, * compeared *George Haines*, one of the Crew of the Ship the *Worceſter*, and declared that he now adds to his former Declaration; That after the Ship therein mentioned was ſeized, he ſaw the Men which were therein killed and murdered with Pole-Axes and Cutlaces, and ſaw their dead Bodies put into the Sloop, and thereafter thrown over-board: And, to the beſt of the Declarant's Knowledge, the ſaid Men ſo killed were *Scotſmen*; the Declarant having heard them ſpeak the *Scots* Language. And further *declares*, That the ſaid Ship then ſeized, was underſtood by the Crew of the *Worceſter* to have been Captain *Drummond* his Ship; and particularly he heard Captain *Madder*, *John Bruckley*, and the deceas'd *Edward Carry* ſay ſo. And further adds, that he would have emitted what is above before this Time, but was afraid leſt his mentioning the Ship ſo ſeized to belong to Captain *Drummond*, and the Men aboard of the ſame to have been murder'd, might have render'd the Government offended, and obliged them to deal hardly with the Declarant. And this he declares to be Truth, as he ſhall anſwer to GOD.

* *appeared.*

George Haines.
ROB. FORBES.

Edinburgh, 31 *March*, 1705.

IN Preſence of Mr. *James Graham*, Judge Admiral; *John Bruckley*, Cooper of the Ship *Worceſter*, being deſirous to make a Confeſſion of the Crimes, whereupon he and the reſt of the Crew were purſu'd; *declares*, That ſome Time after the Ship the *Worceſter* came upon the Coaſt of *Malabar*, that ſhe and the Sloop gave Chaſe to a Country Boat, which eſcaped by reaſon of her Oars. That afterwards the Ship and Sloop ſailed in Company to *Cochin*, where they were denied Acceſs to clean; and therefore they thereafter ſailed to *Callecut*, where the Sloop (which had been ſpoiled by the Worms) was hal'd upon the Shore, and clean'd, and thereafter was mann'd with about 10 Men, and 2 Guns, 2 Patteraroes, with other ſmall Arms put aboard. From *Callecut*, the Sloop was order'd to ſail towards *Tillicherry*, but there was no Goods ſent along; and in about Six or Eight Days thereafter, the Sloop came back in Chaſe of another Ship. *Declares*, That when the Ship the *Worceſter* ſaw the Sloop in Chaſe of the other Ship, ſhe ſlipt her Anchors, and made out to Sea to meet them. *Declares*, That he ſaw the Sloop board the ſaid Ship towards Night; and that the Long-Boat was after order'd to be mann'd, and Captain *Madder* went along in the Long-Boat. *Declares*, He does not know what became of the Men who were on Board the taken Ship; but that the Declarant did ſee they were white Men. And the Reaſon why he knows not what became of the Men, is, that the Declarant was never on Board the taken Ship; and that the Sloop which had boarded the Ship, was ordered away next Morning; and he doubts not but the Men were alongſt which were taken out of the Prize Ship. *Declares*, That the Ship which was taken, was mann'd with ſome of the *Worceſter*'s Crew, and ſailed alongſt with the *Worceſter* till they came to *Callicoiloan*, where they found the Sloop. *Declares*, That whilſt the *Worceſter*, with the other Ship, came in ſight of the Sloop, the Sloop weighed Anchor, and ſtood to the Offing; ſo that the taken Ship came into *Callicoiloan* betwixt the Sloop and the *Worceſter*; and all Three came to an Anchor together. *Declares*, That after they came to an Anchor, the taken Ship rode under the Stern of the *Worceſter*, and was thereafter ſent into *Callicoiloan* River, and ſold to *Coge Commodo*, as the Declarant ſuppoſes. *Declares*, That thereafter the Declarant was ſent aſhore for Water to the *Ibeck* of *Callicoiloan*, where he met with Doctor *May*; and that he ſent on Board a *Pinguetta*, with Water, according to his Orders. *Declares*, That ſome time after they came to an Anchor before *Callicoiloan*; and before the Declarant was ſent aſhore for Water as above, they ſaw a Ship at Sea coming from the *Southward*; that the Sloop was under Sail at that Time, being a cruiſing about: That ſhe ſailed towards the Sea, and bore down the Ship towards the *Worceſter*. That the *Worceſter*, when the Ship came near, ſlipt from her Anchors, and made towards the Ship; which thereafter was boarded, firſt by the Sloop, and then by the *Worceſter*, about Ten or Eleven a Clock in the Forenoon. *Declares*, That there was both *Whites* and *Blacks* on Board that Ship, and moſt part *Whites*; but the Declarant did not know what became of them; but that the Sloop went off in a few Hours after the Engagement, and did not return till after Two or Three Days. That the Declarant does not know what became of that Ship; but *declares*, that he was in a *Mooriſh* King's Houſe, with about Six of the Crew; and that that King was *Coge Commodo*'s Maſter, who had bargained for one of the taken Ships; the Declarant cannot be poſitive which: And that at the ſame Time the Supercargo, who was along with them, preſented the King with a ſmall Fowling-Piece. *Declares*, That the Declarant ſtayed aſhore, trimming the Casks, for about Six Weeks thereafter: And does not remember at preſent any more of the Affair. And *declares* he cannot ſign but by this Mark.

✠
JAMES GRAHAM.

Edin-

Edinburgh, 3 April, 1705.

IN Preſence of Sir *Robert Forbes*, Judge of the High Court of *Admiralty*, compeared *John Bruckley*, one of the Crew of the Ship the *Worſter*; and *declares*, That he adheres to his former Declaration, emitted before Mr. *James Graham*, Judge Admiral, the Thirty firſt of *March*. And now adds, That the Men which were aboard the Ship, which was ſeized before *Callicoiloan*, were for the moſt part *White* Men; and the Declarant heard them ſpeak the *Engliſh* Tongue, being in Number about Twelve or Fourteen. And *declares*, That Captain *Madder* was in the Sloop, and one of thoſe that boarded the ſaid Ship; and that the Men were put into the Sloop, and carried away to the *Northward* in the Sea; and the Declarant never heard any more of them. And that the Goods aboard the taken Ship were brought into the Ship the *Worceſter*, and conſiſted of *China Root*, and Four Cheſts of Copper; which Cheſts were ſold at *Bengal*, to a *Bannian* Merchant. And further adds, That the Men ſeized in the taken Ship were killed after they were put into the Sloop, and before they were carried to the Sea *Northward*. And further adds, That immediately after the Action was over, the Declarant did hear the Supercargo, *Callant*, Captain *Madder*, *John Roberts*, and *Edward Carry* ſay, *That the ſeiz'd Ship was Captain* Drummond's *Ship, belonging to the* Scots African *Company*. And adds, That when the *Worceſter* ſailed from the *Downs*, the Declarant did not know where the Ship was bound; but heard it frequently ſaid, they were going upon a Diſcovery. And *declares* this is the Truth, as he ſhall anſwer to GOD. And *declares* he cannot write, but by this Mark.

+

ROBERT FORBES.

APPENDIX.

THE foregoing Account of the Trial of Captain *Green* and his Crew, being taken † cloſly from the Records of Court; and the uſual Form of the Court being to Hear and Diſcuſs Objections againſt the Witneſſes, before they be examined, *viva voce*, without any written Debate; it is therefore thought fit here to add the Objections that were made againſt the Witneſſes, and the Anſwers given thereto, with the Interloquitors paſs'd thereon; that there may be nothing wanting to the Reader's full Information.

† *exactly.*

And firſt, It was objected againſt *Antonio Ferdinando*, the Cook's Mate, That he could not be a Witneſs, becauſe of his Poverty; he not being worth (as the Stile of the Court is) the *Queen*'s * *Unlaw*, that is, Ten Pounds *Scots*, in caſe he ſhould tranſgreſs: And ſo, according to the Law of this Kingdom, was to be rejected. 2. That he was not a Chriſtian, and therefore could not be received as a Witneſs againſt Chriſtians, ſpecially in a Purſuit that reached their Lives and Fortunes. Nor could he indeed be ſuppoſed to have the juſt Knowledge of the Religion of an Oath.

* *Fine.*

To which it was anſwer'd, 1. That tho' the Standard of Ten Pounds *Scots*, ſettled by the Law and Cuſtom of this Kingdom, as to the Quality of Witneſſes, might well be refuſed in a Tryal of Crimes of this Nature againſt the Law of Nations, and which were to be tried accordingly; yet the Matter of Fact was falſe; *Antonio Ferdinando* being worth more than Ten Pounds *Scots*, by the very Wages due to him; and which, by the Pannels own Books, were atteſted to be Fifteen Shillings *per Menſem*, whereof, to this Hour, he hath got no Payment. 2. *Antonio Ferdinando* was a Chriſtian, as he himſelf owned from the Beginning; and that he was born of Chriſtian Parents: Like as it's known, that ſuch Names are only given to Chriſtians. Beſides, tho' his not being a Chriſtian might be a † *Prejuge* againſt him, yet it could be no juſt Exception againſt his Teſtimony as a Witneſs; ſince he both profeſs'd the Knowledge of GOD, and the Conſcience of an Oath, as he had often declared.

† *Objection.*

The Judge and Aſſeſſors having conſider'd the foreſaid Objections and Anſwers, they repel the Objections in reſpect to the Anſwers, and allow the Witneſs to be admitted.

2. It was objected againſt *Antonio Ferdinando*, That he was not worth Ten Pounds *Scots*; and had indeed nothing; beſides, that he was no Chriſtian, but a Servant or Slave to Captain *Green*; and alſo had no Religion.

To which it was anſwer'd, 1. That tho' Ten Pounds *Scots* be the Rate of Witneſſes in our *Scots* Law; yet, as hath been ſaid, this Rule cannot * vie in the Caſe of the Crimes libelled, committed againſt the Law of Nations in remote Parts, *& in alto Mari*, in the deep Sea; which made the Crimes to be Crimes excepted. And it's known to be the Rule and Privilege, as to Crimes atrocious and † occult; and therefore excepted to exempt even the Witneſſes from the ordinary Qualifications. Nor was *Antonio Ferdinando* to be reckon'd no Chriſtian; ſince, 1. He bears a Chriſtian Name; and next declares, that a Chriſtian Miſtreſs he had in *Pegu*, who gave him to Captain *Green*, did firſt procure him to be Baptized and Chriſtned. And 3. He profeſſes the Knowledge of the True GOD. Nor, being a Chriſtian, can he be reckon'd any longer a Slave.

* *bear.*

† *hidden.*

But upon the whole, As to theſe Two, and the whole other Witneſſes; the Nature of the atrocious Crime againſt the Law of Nations, with the Manner of their having been committed, and the Endeavours uſed for their Concealment, ought principally

cipally to be remembred; since thereby, in the Opinion of all Lawyers, they become Crimes excepted: And that it is the known Privilege of Crimes excepted, to relax from the ordinary Rules, and to proceed on such Evidence, as the Matter doth afford, the Substance of the Probation being only observ'd.

The Judge and Assessors having considered the foresaid Objections and Answers, they repel the Objections, in respect of the Answers, and allow the Witness to be admitted.

3. It was objected against *Anne Seaton*, that she could not be a Witness, because a Woman.

To which it was answered, that in Crimes where the Probation proceeds not upon *Testes requisiti*, but such as Providence offers, even Women are admitted. But 2. It's the general Opinion and Practice over all, that in Crimes atrocious, occult and excepted, a Woman is never refused.

The Judge and Assessors having considered the foresaid Objection and Answer, they repel the Objection, in respect of the Answer, and allow the Witnesses to be admitted.

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* Excerpts *out of the Instructions and Letters found in Captain* Green's *Books, to which Sir* David Dalrymple's *Speech to the Jury relates.*

* *Extracts.*

IN the Instructions or Orders given by the Freighters of the *Worcester*, Captain *Thomas Green* Commander, to Mr. *Robert Callant* Supercargo there occurrs one Article in these Words,

We would have you write us by all Opportunities, especially from Sinde, *by any Ships bound from thence to* Persia; *And for the greater Secrecy, especially of the Letter to be sent to* Mauritius *for us, here under is an Alphabet for you to write us by; Your Subscription must be in common* English, *directing all such Letters to Captain* Thomas Bowrey *in* Well-close-Square, London.

(*Nota*, At this Place the whole Alphabet is insert distinctly, and above each Letter a different Character is set down, to be used in Place of the Letters of the Alphabet.)

When your Cargo for England *is provided, or near compleated, then we would have you sell the Sloop for what you can get, and invest the Produce in Goods for* England.

And lower amongst the same Orders in another Article are these Words,

You must engage the Master of the Sloop not to let any Letter from himself or any other be sent to England, *but only our Letter, in which you may insert the Names of any Dead; and for the Care and Secrecy of those who go in the Sloop, in case no Letter or News comes to* England, *but our Letter concerning our Business, then we will on the return of the Ship give the Master and Crew one Month's Pay* Gratis, *and they shall also have their Shares of the Benefit promised the Ship's Company for the* Whale *Fishing.*

By a Letter dated *London*, 3 *February* 170½, from Captain *T. B----y* to Mr. *Callant*, the said Captain advises him in these Words;

For the greater Security of our Affairs, when you write by the Alphabet in your Instructions. I would have you carry the last Letter of each Word to be in the room of the first Letter to the next Word, as for Example.

Captain Thomas Bowrey, Sir wee are all well.
Captai nthoma sbowre yſi rwe ear eal lwell.

Make no Title (as is usual) to begin your Letter, nor no Date, nor Compliment, no Name at last; But let all be comprehended in the Lines of your Letter, so as to make no distinction, and make but one Paragraph of all your Letter, and if any Men dead, set their Names immediately after your own Name subscribed to the Letter, all in Characters before directed, and please to keep this as Directions therein.

By another Letter from the said Captain *T. B----y* to the said Mr. *Callant*, dated *London*, 16 *February* 170½, he adds concerning the foresaid Cypher in these Words,

On further Consideration, I think, I have committed an Error in my Letter to you Yesterday, it being wrote in it as, viz.

Captai nthoma sbowre yſi rwe ear eal lwell.
That is, Captain Thomas Bowrey, Sir we are all well.

Now, I doubt the naming any Name in the beginning, or making any Compliment there, may be a Means to find the Key of the Alphabet, therefore pray strike out of the Letter I sent you yesterday, as above done, and begin directly with your Business, following the Directions given you. And whereas you are ordered to direct your said Letter to me, I would not have you mention my Name in the Subscription, but direct the said Letter to Mr. Nicholas Pope *Scrivener, in* Nicholas Lane. London, *to pay* 5 l. *to the Bearer as in your Instructions.*

The Tryal of ROBERT FEILDING, *Esq;*

Die Mercurii quarto Decembris, Anno Regni Annæ Reginæ, *quinto, Annoq; Dom.* 1706.

AT *the Sessions-House in the* Old Baily, *This Day came on the Tryal of* Robert Feilding, *Esq; for Felony, in Marrying Her Grace the Dutchess of* Cleaveland; Mary Wadsworth, *his First Wife, being then alive. The Court being sat, proceeded in this manner.*

Clerk of Arraignment. SET *Robert Feilding* to the Bar. (*Which was done.*)

Clerk

Clerk of Arr. *Robert Feilding*, hold up thy Hand. *(Which he did.)*

Clerk of Arraignment. ROBERT Feilding, *you ſtand indicted by the Name of* Robert Fielding, *late of the Pariſh of St.* James's, *within the Liberty of* Weſtminſter, *in the County of* Middleſex, *Eſq; For that you, on the Ninth Day of* November, *in the Fourth Year of Her now Majeſty's Reign, at the Pariſh aforeſaid, in the County aforeſaid, took to Wife one* Mary Wadſworth, *Spinſter, and the ſame* Mary Wadſworth, *then and there had for your Wife; and that you the ſaid* Robert Feilding, *afterwards, viz. on the Twenty Fifth of the ſame Month of* November, *in the Year aforeſaid, at the Pariſh of St.* Martins in the Fields, *in the ſaid County, did feloniouſly take to Wife the moſt Noble* Barbara *Dutcheſs of* Cleveland, *(the ſaid* Mary Wadſworth, *his former Wife, being then living); againſt the Peace of our Sovereign Lady the Queen, her Crown and Dignity, and againſt the Form of the Statute in that Caſe made and provided.*

How ſay'ſt thou, *Robert Feilding*, art thou Guilty of this Indictment, or not Guilty?

Feilding. Not Guilty.

Clerk of Arr. *Culprit.* How wilt thou be tryed?

Feilding. By God and my Country.

Cl. of Arr. God ſend thee a good Deliverance.

Cl. of Arr. Call the Jury. Mr. *Feilding*, if you except to any of the Jury, you muſt do it before they are ſworn.

Feilding. I do not challenge any of them.

The Jury ſworn, *viz.*

Francis Chapman,	*Edward Boſwell,*
Thomas Moody,	*John Mills,*
Peter Levigne,	*Richard Hazzard,*
Hugh Merchant,	*Samuel Chace,*
Joſeph Devenish,	*Thomas Yeomond,*
Edward How,	*John Johnſon.*

Proclamation made, That if any can inform the Queen's Juſtices, and the Queen's Council, of any the Matters the Priſoner ſtands charged with; let them come forth and they ſhall be heard.

Mr. *Raymond, the Queen's Council.* My Lord, and you Gentlemen of the Jury, I am, in this Caſe, Council for the Queen. The Priſoner at the Bar, *Robert Feilding*, ſtands indicted, That he on the Ninth Day of *November*, in the Fourth Year of Her now Majeſty's Reign, *&c. (the Indictment repeated)* To which Indictment he has pleaded not Guilty, and put himſelf on God and his Country, which Country you are. I hope if we prove the Indictment, you will find him guilty.

Sir *James Mountague.* My Lord and Gentlemen of the Jury, I am of Council with the Queen againſt the Priſoner, Mr. *Robert Feilding*, who ſtands indicted for taking to Wife *Barbara* Dutcheſs of *Cleveland*, after he had before marry'd one *Mary Wadſworth*, who is ſtill alive: This is a Crime that amounts to Felony; and tho' the Law doth not take away from him that ſhall be convicted thereof, the Benefit of his Clergy; yet, ſince it is ſuch a Crime as doth take away from the Priſoner the Aſſiſtance of Council, I ſhall only ſtate Matter of Fact, which is as followeth.

About a Year ago, or a little better, there was a young Lady left a Widow by Mr. *Deleau*, and reputed a great Fortune: Mr. *Feilding* thinking himſelf qualified for the greateſt Fortune, had a Deſign upon this Lady; and in *Auguſt*, 1705. he applied himſelf to one Mrs. *Streights* to conſult with her, and contrive ſome Method how he might have Acceſs to court this Widow. This Mrs. *Streights* had no Acquaintance with the Widow her ſelf, but knew Mrs. *Charlott Villars* was acquainted with her, and uſed to cut her Hair; ſo the beſt Thing they could think of at that Time, was to make Mrs. *Villars* their Friend, that by her Means he might have Admittance into the Lady's Company; for he did not queſtion if the Lady had but once a Sight of his very handſome Perſon, ſhe would have the ſame Affection for him, that he had met with from other Ladies, even on their firſt ſeeing of him. Mrs. *Villars* was promiſed 500 *l.* to bring this Affair about; and tho' ſhe doubted with her ſelf, whether ſhe could ever accompliſh it, yet by theſe Means ſhe might perhaps make a Penny of it to her ſelf; and thereupon ſhe promiſes Mrs. *Streights* to uſe her endeavour to ſerve the Major-General, meaning Mr. *Feilding*, tho' Mrs. *Villars* could not be ſure ſuch an Overture would be well received by Mrs. *Deleau*: Yet being acquainted with one *Mary Wadſworth*, a young Woman not much unlike in Perſon to Mrs. *Deleau*, ſhe imagined it would be no difficult Matter for her to ſet up the ſaid Mrs. *Wadſworth* to repreſent Mrs. *Deleau*; and accordingly it was done, and Mr. *Feilding* proved ſo intent upon the Matter, that he went in few Days to *Doctors-Commons*, to ſee for Mr. *Deleau*'s Will (and found thereby that Mrs. *Deleau* was left very conſiderable.) And that he might judge the better whether ſhe were truly the Fortune ſhe was repreſented to him, he took a Copy of the ſaid Will, and ſoon after went to Mrs. *Villars* and told her, That what Mrs. *Streights* had ſaid concerning Mrs. *Deleau*'s Fortune was true: And being very well ſatisfied with her Fortune, he was reſolved to get a View of her. Soon after, Mr. *Feilding* went to *Tunbridge*, and after two or three Days ſtay there, returned and called at *Waddon*, the Place where Mrs. *Deleau* reſided, with a Pretence to ſee the Houſe and Gardens, but in reality it was to ſee the Widow; he thought nothing elſe was then to be done, but to give the Lady a ſight of his handſome Perſon he deſigned to lay at her Feet; but it happened that the Lady would not be ſeen her ſelf, but her Servants were permitted to ſhow him the Gardens, and he fancied himſelf that he had had a Sight of Mrs. *Deleau* too; for a Kinſwoman of Mrs. *Deleau*'s looking out into the Garden while he was there, gave him the Sight of a Woman at the Window, and he preſently concluded it could be no body but Mrs. *Deleau* admiring Beau *Feilding*. About three Days after Mr. *Feilding*'s Return from *Tunbridge*, which was about a Fortninght after St. *Bartholomew-tide* laſt was Twelve-month, he told Mrs. *Villars* of his calling at *Waddon*, and that he had acquainted the Dutcheſs of *Cleveland* of the fine Gardens that were there, and he ſaid that her Grace had a great Deſire to ſee them, and therefore directed Mrs. *Villars* to go from her Grace to Mrs. *Deleau*, to ask the Favour of her to permit her Grace to ſee the Houſe and Gardens. Accordingly Mrs. *Villars* went down to *Waddon*; and Mrs. *Deleau* treated her very civilly, and told her, whenever her Grace pleaſed, ſhe ſhould ſee her Houſe and Gardens; but as ſhe was a Widow ſhe could not attend upon her Grace: But tho' the Dutcheſs was expected

after this, yet she did not go, for indeed she did not know any Thing of the Message. So the next Time Mr. *Feilding* attempted to see her, was at a Horse-Race at *Banstead-Downs*, whither he went for that Purpose, but did not see her. After this, or some Time before, he sent a Letter to Mrs. *Deleau*'s House, but the Servants when they saw the Name to it, knowing the Character of Mr. *Feilding*, threw it into the Fire.----- When Mrs. *Villars* found that the Dutchess of *Cleaveland* knew nothing of her being sent to *Waddon*, and that it was only a Contrivance of Mr. *Feilding*'s to get an Opportunity of seeing Mrs. *Deleau*, and that in Truth he had never seen her, she resolved to play Trick for Trick with him, and thereupon proposed the Matter to *Mary Wadsworth*, the Woman I beforementioned to be of her Acquaintance, but one that Mr. *Feilding* did not know, and one that would not worst her self much by such an Undertaking, whether it succeeded or not. Mrs. *Wadsworth*, upon the first opening of it, readily embraced the Offer, and thereupon Mrs. *Villars* went to Mr. *Feilding* and told him, she had proposed the Matter to the Lady (Mrs. *Deleau*) which she at first rejected, but at last did give a favourable Ear to it; and that she did not fear, but if Matters could be prudently managed, his Desires might be accomplished.----- A little before my Lord Mayor's Day last was Twelve-month, she told Mr. *Feilding* that she had at length obtained of the Lady the Favour of a Promise of an Interview, and that she was shortly to bring her to his Lodgings, but he must take care not to let her know they were his Lodgings, or to give her the least Cause to suspect he had any Thing to do there: Accordingly Mrs. *Villars*, the Evening of my Lord Mayor's Day, brought Mrs. *Wadsworth* in a Mourning Coach and Widow's Dress to Mr. *Feilding*'s Lodgings: He was not within at the Time they came thither, but being sent for, came in soon after, and was extreamly complaisant for some Time; but at length, tho' he had been cautioned not to let the Lady know they were his Lodgings, yet he could not forbear shewing her his fine Cloaths, and what Furniture he had; and in a little Time after sent for Mrs. *Margaretta* to sing to her; and pretended he was so extreamly taken with her, that nothing would satisfie him but being married that Night; but she, with a seeming Modesty, check'd his forward Behaviour, and made a shew of going away in displeasure; but before they parted, he prevail'd upon her to promise not to put off their Marriage longer than *Wednesday* Seven-night. My Lord, Mr. *Feilding* rightly judged by this Conversation what an Interest he had fix'd in the Lady, and looking upon himself to be sure of her, he actually went to a Goldsmith and bespoke a Ring, and directed himself what Posie should be engrav'd. When the Day came which had first been agreed on, sham Pretences were made, not to seem over-hasty in so serious a Matter, and the Marriage was put off till the *Friday* following, being the 9th of *November* last was Twelve-month; at which Time Mrs. *Villars* and the Lady came again to Mr. *Feilding*'s Lodging, where he received her with an extraordinary Transport of Joy, and the Marriage must immediately be proceeded on; but she for some Time framed several Put-offs, and at length made an Offer to have gone away; but Mr. *Feilding* by no Means would permit her to go, without making her his own, which he was resolved should be done presently; and to make all Things sure, he ran out and lock'd the Chamber-door to keep her and Mrs. *Villars* in, whilst he went for a Priest; and taking Coach immediately drove to Count *Gallas*'s, the Emperor's Envoy; when he came to his Gate, he enquired of the Porter for one *Francisco Drian*, that was stiled, *The Father in Red*, upon account of a red Habit he usually wore; but he not being within, Mr. *Feilding* asked for another Father; and one Father *Florence* was called to him, whom he acquainted with the Business he came about; but whilst he was treating with Father *Florence*, the Father in Red luckily came in, and Mr. *Feilding* immediately took him away with him in the Hackney-Coach to his Lodgings. My Lord and Gentlemen, we shall shew you that this Father in Red stay'd there about an Hour, and then went away.---- We shall shew your Lordship likewise, That Mr. *Feilding* and *Mary Wadsworth* supped together, and after Supper he was actually marry'd to Mrs. *Wadsworth*. And that this Marriage was consummate, we shall prove by several Particulars, *viz.* That clean Sheets were laid upon the Bed, and all Ceremonies performed that are usual upon such Occasions; and they actually went to Bed together, and lay together all that Night; and the next Day the Lady and Mrs. *Villars* went away, and as Mr. *Feilding* supposed, to *Waddon*, the Widow *Deleau*'s House; to which Place your Lordship and the Jury will find he directed his Letters to her afterwards, and in the Superscriptions stiles her the Countess of *Feilding*. To corroborate this Evidence we shall likewise prove to your Lordship, that about a Week after, he lay with her again at the very same Lodgings; and we can make it appear that he hath lain with her three several Times since this first Night, twice before, and once after his Marriage with the Dutchess of *Cleaveland*. My Lord, we shall shew you that he made her Presents, furnish'd her with Money, and treated her as his Wife, until the Cheat was found out, which was not till *May* after; and then finding how he had been served, that instead of marrying a Fortune of 60000 *l.* he had been imposed upon, and marry'd one not worth so many Farthings, he discarded her in great Wroth.

My Lord, we will call our Witnesses who will prove to your Lordship, step by step, how this Matter was brought about; and first we will begin with Mrs. *Villars*.

Mrs. Villars *sworn.*

Mrs. *Villars*. My Lord, there came one Mrs. *Streights* to my Lodgings and wanted to speak with me (it was *Bartholomew tide* was Twelve-month) but I was not at home; when I came home, they told me Mrs. *Streights* had been there, and left word that I was always out of the way when it was to do my self good; she said it would be Five hundred Pounds out of my way if I did not come to her. I met with her and Mr. *Feilding*, and being acquainted with Mr. *Feilding*'s Design upon Mrs. *Deleau*, he asked me whether I knew the Lady? I said I had no particular Acquaintance with her, but I used to cut her Hair: He told me that he was in Love with her, and asked me whether I could assist him in his Courtship? and whether a Marriage might be brought

brought about? I told him I could not tell, I did not know whether I had that Intereſt in the Lady as to be made ſerviceable in ſuch a Deſign. Mr. *Feilding* enquired very ſtrictly after her, and ſaid, he would try Means to come into her Company that he might gain her Acquaintance: Upon which we parted at that Time. - - - - And about Three Days after, Mrs. *Streights* came to my Houſe again, and ſaid, Mr. *Feilding* would ſpeak with me. I went to him; and he told me, he found that the Lady was worth 60000 *l.* as he had been told before. He asked me where it was ſhe liv'd? I told him, in *Copthal-Court*, near the *Change*. I told him likewiſe where her Country-Houſe was; That it was at *Waddon* in *Surrey*. Mr. *Feilding* told me, He would go to *Tunbridge*, and call by the way to ſee the Gardens; and by that means he might have an Opportunity of ſeeing Mrs. *Deleau*; which he did accordingly. I was ſent for again; and he told me he had ſeen the Gardens, and they were very fine: And that he ſaw the Lady through a Caſement; and that ſhe might have the more perfect View of him, he took divers Turns in the Garden, pull'd out his Watch, and ſet it by the Sun-Dial: And that he came round the Country, and almoſt murder'd his Horſes, to get a Sight of her. But he deſired to be in her Company, that he might have a full View of her. He deſired me to go to Mrs. *Deleau*, and tell her, that the Dutcheſs of *Cleveland* had heard a great Character of her Gardens, and was very deſirous to ſee them. - - - I went and acquainted Mrs. *Deleau* with it: She ſaid, ſhe would not refuſe a Woman of her Quality; but would take it as a great Favour, to ſhew her any Thing that belong'd to her: But deſir'd that it might not be that Week, but the Week following; becauſe ſhe was to ſee a Race on *Banſtead Downs*. I told Mr. *Feilding* this; and he made Anſwer for the Dutcheſs of *Cleveland*, and ſaid, The Dutcheſs was not well; and could not go to ſee the Gardens. When I found that Mr. *Feilding* did not ſend me from the Dutcheſs, but from himſelf; I was out of Countenance, that I ſhould innocently impoſe upon the Lady. Mr. *Feilding* told me, he would go and ſee the Race upon the *Downs*; and when he came back, he would ſend for me, and acquaint me whether he had ſeen the Lady. And when he came to Town again, he ſent Mrs. *Streights* to me, to come to him; and when I came to him, he told me he ſaw Mrs. *Deleau*, he believed, upon the *Downs*. Mr. *Feilding* made a Bow to them, and they to him. He ſaid, From thence he went to *Epſom*, and ſent a Letter to be deliver'd into Mrs. *Deleau*'s own Hands, by a Servant of his, not in a Livery. I think it was accordingly deliver'd. Mr. *Feilding* told me Mrs. *Deleau* read it, and ſaid it requir'd no Anſwer; and ſaid no more. Mr. *Feilding* ask'd me, whether I could not get a Letter to Mrs. *Deleau*? He ſaid, he was much in Love with her. I told him, I believ'd he was miſtaken; and that it was another whom he ſaw. - - - I perceiv'd that he had no Knowledge of Mrs. *Deleau*. - - - - I acquainted a young Woman (whom I ſuppoſed he might have ſeen) with his Inclination, (Mrs. *Wadſworth*): She ſaid, ſhe did not expect to be ſo happy; but wiſh'd it might be ſo. I engag'd to Mr. *Feilding* to do what I could to bring it about. - - - - There were divers Letters paſs'd between them till my *Lord Mayor*'s Day. Divers Preſents were ſent from Mr. *Feilding*, by me, to the Lady. The firſt Preſent was a Gold Apron, ſtruck with Green: That was the firſt Preſent Mr. *Feilding* ſent to Mrs. *Wadſworth*, whom he thought was Mrs. *Deleau* all the while; but it was Mrs. *Wadſworth*. I did not think Mrs. *Deleau*, who was a great Fortune, would agree to marry a Man of Mr. *Feilding*'s Character. Mr. *Feilding* kept ſending of Preſents and Letters from that Time, from the latter End of *Bartholomewtide*, to my *Lord Mayor*'s Day. He ſent her a Suit of white Sattin Knots, and Gloves, and other Things. He deſir'd I would bring her to his Lodgings on my *Lord Mayor*'s Day, at Night; which I did about Nine a Clock, in a Mourning Coach. Mr. *Feilding* was not at home, but came immediately. When he came in, he fell down upon his Knees, and kiſs'd her, and expreſs'd Abundance of fond Expreſſions. He asked her, *why ſhe ſtayed ſo long?* And *whether ſhe loved Singing?* He ſaid, He would ſend for *Margaretta* to come up. When ſhe came, Mr. *Feilding* bid her ſing the Two Songs which he lov'd; - - - which ſhe did: The one was, *Charming Creature*; and the other, *Ianthe the Lovely*. After which, Mr. *Feilding* ſent for Two Pints of Wine, and ſome Plumb-Cakes. He urg'd very much to marry her; but ſhe declin'd it, and made him a Promiſe to come to him the *Wedneſday* following. In the *interim* ſhe ſent him a Letter, to acquaint him ſhe could not come according to her Appointment; but ſhe would come to him on the *Friday* following, which was the 9th of *November*. Then he ſent her another Letter, to deſire her not to fail, but come to his Arms; and told her, That there wanted nothing but the Holy Father to join their Happineſs; for their Hearts were all one already. And when *Friday* came, Mrs. *Wadſworth* and I went to Mr. *Feilding*'s Lodgings again: He was not within; but came running into the Room in a little Time after with a great deal of Joy, and took Mrs. *Wadſworth* into his Arms, and ſaid, *Nothing could eaſe his Mind, but a Promiſe to make him happy, in Marrying him preſently.* - - - - He ſaid, he would fetch the Prieſt; but Mrs. *Wadſworth* refus'd his Propoſal, and would have diſſuaded him from going then; and deſired him to put it off till another Time, and would have gone away: But he would not hear of it; and ſaid, She had diſappointed him before; and that he repented he had let her go away before; but now he was reſolved to make her his own, before ſhe went away. Mr. *Feilding* then went for the Prieſt, and lock'd the Chamber-Door after him, and took the Key with him, for fear Mrs. *Wadſworth* ſhould go away; and order'd *Boucher* to let no body into the Dining-Room till his Return. Mr. *Feilding* returned in a little Time, and brought a Prieſt with him, in a long Red Gown lin'd with Blue, and a long Beard, and a Fur-Cap. Mr. *Feilding* told her, that this was the Holy Father that was to make them one. Mr. *Feilding* then ordered the Man to lay the Cloth, and fetch'd a Diſh of Pickles to Supper. - - - - At Supper Mrs. *Wadſworth* ſeemed cautious; and for fear the Prieſt ſhould not be in Orders, ſaid, *How ſhall I know that this is a Prieſt in Orders?* Mr. *Feilding* queſtion'd him. Then the Prieſt pull'd a Picture out of his Pocket, about the Bigneſs of a Crown-Piece; and told them, *That none but Prieſts had ſuch Pictures.* And that ſhe might be ſtill further ſatisfied, ſhe deſired another Token.

After this, *Boucher*, and the reſt of the Servants were order'd down Stairs. Then the Prieſt call'd for Water, Salt and Roſemary, to make Holy-Water. *Boucher* brought up Water and Salt, but could get no Roſemary. Mr. *Feilding* and I received it at the Dining-Room Door. Then Mr. *Feilding* lock'd the Door, and took the Key in the Inſide. Mr. *Feilding* ask'd Mrs. *Wadſworth*, Whether it ſhould be done in the Bed-Chamber, or Dining-Room? Mrs. *Wadſworth* agreed it ſhould be in the Bed-Chamber. There were none preſent, but Mr. *Feilding*, Mrs. *Wadſworth*, the Prieſt, and my ſelf. The Prieſt made Holy-Water, and bleſſed it: Then he ſet Mrs. *Wadſworth* at the right of Mr. *Feilding*: The Prieſt ſtood before them, and read the Ceremony in *Latin*, as I underſtood; and Mrs. *Wadſworth* ſaid, *She was not yet ſatisfied he was a Prieſt.* Then he laid down his Book, took from under his Gown a Piece of Silk like a Scarf, that was mark'd with a Croſs in the Middle; and ſaid, None but Prieſts us'd ſuch a Thing. Then Mrs. *Wadſworth* was well ſatisfied he was a Prieſt. Says Mr. *Feilding* to her, *Do you think, my Dear, that I would have any body to do this Buſineſs, but the Holy Father?* Mrs. *Wadſworth* was well ſatisfied till he came to that Part, *Wilt thou have this Woman to thy wedded Wife?* She deſir'd it might be ſpoke in *Engliſh* by him, as well as he could. He did ſo. He ask'd Mr. *Feilding*, *Whether he would have this Gentlewoman to be his wedded Wife?* He ſaid, *Yes, with all my Heart.* He asked the Lady then, *Whether ſhe would have this Gentleman for her Husband?* She ſaid, *Yes*, faintly: But, ſays Mr. *Feilding*, You don't ſpeak it ſo earneſtly as I do: You muſt ſay, *With all my Heart and Soul.* Which ſhe did. Then the Prieſt bleſſed the Ring, and gave it to Mr. *Feilding*, to put it on the Lady's Finger. He ſaid ſomething in *Latin*, but what it was I know not. Then we went into the Dining-Room. *Boucher* brought up Wine; and when all had drank, the Prieſt was diſcharged. Mrs. *Wadſworth* and I went into the Bed-Chamber, and I put her to Bed. Mr. *Feilding* called her his *Dear Wife, the Counteſs of* Feilding; and ſaid, He would make haſte and fly to her Arms. After I put her to Bed, he went to Bed to her; and order'd me to come into the Room to ſee them in Bed; which I did. I roſe the next Morning, and came to Mr. *Feilding*'s Room, where *Boucher* came ſoon after to light a Fire: Then I ſaw Mrs. *Wadſworth* in naked Bed with Mr. *Feilding*. Mrs. *Wadſworth* put on her Cloaths as ſoon as ſhe could; and a Hackney-Coach was call'd for her, and ſhe went away. At parting with Mr. *Feilding*, ſhe told him, ſhe did not know when ſhe could return; but about a Fortnight after, ſhe came again. There were Fires made in both Rooms, and Candles lighted up; clean Sheets upon the Bed, and every Thing prepared for her lying there. Mrs. *Wadſworth* went to Bed. Mr. *Feilding* did not come home till late that Night. I ſaw them that Night in Bed, and went into the Room the next Morning, and ſaw them in Bed again: She roſe, and went away as before. Mr. *Feilding* deſired her not to ſtay ſo long as ſhe had done before; for if ſhe did, he would come and fetch her. She promis'd him ſhe would return ſooner. Mr. *Feilding* kept ſending of Letters to her between Times, which was about Fifteen or Sixteen Days, till ſhe came to him again. He deſired her to come to him, and he would be at home to receive her. She accordingly came to him, after having given him notice of her coming. He was not at home when ſhe came; but ſhe went to Supper by her ſelf.---She had for her Supper ſome toaſted Cheeſe, a Pint of Wine, and a Bottle of Oat Ale. When he came home to her, he asked her, *Why ſhe did not ſend for ſomething better for Supper?* They went to Bed again, as before; and I ſaw them in Bed together. Mrs. *Wadſworth* got up in the Morning; Mr. *Feilding* treated her; and away ſhe went as before. Then Mr. *Feilding* kept writing to her, [*which Letters are inſerted in their proper Places*] and deſir'd her to come to him again, as being the laſt Night ſhe ſhould lie with him at his Lodgings; for he was going to leave his Lodgings for altogether, and be with her Grace the Dutcheſs of *Cleveland*. Mrs. *Wadſworth* came; but neither Mr. *Feilding* nor *Boucher* were at the Lodgings: But ſhe had not been there long, but *Boucher* came in, and ſaid, That he had brought his Maſter's Night-Gown and Slippers from the Dutcheſs of *Cleveland*'s.

Council. Mrs. *Villars*, You ſay, moſt of the Service was in a Language you did not underſtand.

Mrs. *Villars.* It was, my Lord---But one Part of it was in *Engliſh*. I heard Mr. *Feilding* ſay, *He would take this Lady to be his wedded Wife.*

Council. Who is that Lady?

Mrs. *Villars.* That Lady, Mrs. *Wadſworth*; pointing at her; (*She being in Court.*)

Council. What did you hear Mrs. *Wadſworth* ſay?

Mrs. *Villars.* I heard her ſay, *That ſhe took Mr.* Feilding *to her wedded Husband.*

Council. What did you obſerve elſe that was remarkable?

Mrs. *Villars.* I ſaw the Ceremony of the Ring performed. I ſaw the Prieſt bleſs the Ring with Holy-Water, and ſign himſelf with the Sign of the Croſs. The Prieſt held Mrs. *Wadſworth* by the lower Joint of the Finger, and put the Ring on.

Council. What is Mrs. *Wadſworth*'s Chriſtian Name?

Mrs. *Villars. Mary.*

Council. What did he ſay further, when he ſaid, *I take thee to be my wedded Wife?*

Mrs. *Villars.* He named no Name, but *I take this Lady*, &c.---The Prieſt ask'd him, *Whether he took her with all his Heart and Soul?* He ſaid, *I take her with all my Heart, and Soul, and Blood, and every Thing elſe.*

Council. What Time was this?

Mrs. *Villars.* It was *Bartholomewtide* was Twelve Months, as near as I can remember to the Time.

Council. Did Mr. *Feilding* tell you he had been at *Waddon?*

Mrs. *Villars.* Yes, he did; and ſaid, That he had ſeen the Lady thro' the Window, whence he fell in Love with her.

Council. Why was this Marriage kept private?

Mrs. *Villars.* Becauſe Mr. *Feilding* took the Lady to be Mrs. *Deleau.*

Juſtice *Powel.* How long was it before it was diſcover'd?

Mrs. *Villars.* It was not diſcover'd till the latter End of *May* laſt, or the Beginning of *June.*

Juſtice *Powel.* When was the Time Mr. *Feilding* was marry'd?

Mrs. *Villars.* It was the 9th of *November* was Twelve Months.

Council. What was the Reaſon why the Marriage was carry'd on ſo privately?

Mrs. *Villars.* The Reaſon was, becauſe Mrs. *Deleau* had a Father alive, who had in his Hands a Part of her

her Fortune; and for fear of diſobliging him, Mrs. *Wadſworth*, that went for Mrs. *Deleau*, was willing it ſhould be kept private.

Council. Can you tell the Reaſon of its being diſcovered?

Mrs. *Villars.* Mrs. *Wadſworth* ſent to Mr. *Feilding* for Money. - - - Then Mr. *Feilding* found he had not a Woman of that Fortune which he took her to be. When Mr. *Feilding* did find it out, he took Mrs. *Streights* into a Cloſet, at the Dutcheſs of *Cleveland*'s, and ſent for me there: Then Mr. *Feilding* wanted to have the Preſents returned. Mr. *Feilding* then beat me, and asked me whether that was a fit Wife for him? And then took a Thing made of Steel at one end, and a Hammer at the other end; and told me, If I would not unſay what I ſaid of his Marriage with *Wadſworth*, he would ſlit my Noſe off: And that he would get Two Blacks; the one ſhould hold me upon his Back, and the other ſhould break my Bones.

Juſtice *Powel.* One would have thought you ſhould have been afraid to have ſeen Mr. *Feilding*.

Mrs. *Villars.* My Lord, It was not till then found out.

Sir *James Mountague.* My Lord, I think ſhe hath clearly proved the Marriage; and that ſhe ſaw them Three times in Bed together, in the Space of Six Weeks after the Marriage.

Mr. *Feilding.* By what Name did Mrs. *Wadſworth* go?

Mrs. *Villars.* By no Name at all.

Mr. *Feilding.* Did I ever appear with her in Publick?

Mrs. *Villars.* No, never.

Mr. *Feilding.* What was the firſt Place I ſaw her in?

Mrs. *Villars.* The firſt Place you ſaw her, was at your Lodgings, laſt *Lord Mayor*'s Day was Twelve Months.

Mr. *Feilding.* My Lord, I deſire it may be asked her, how ſhe came to think that I ſhould ſend ſuch mean Preſents as ſhe hath mentioned, to a Lady of Mrs. *Deleau*'s Fortune? They were not at all ſuitable to Mrs. *Deleau*.

Juſtice *Powel.* Ay, Mrs. *Villars*, What ſay you to that? Mr. *Feilding* thinks it a very ſtrange Thing, that he ſhould ſend ſuch Trifles to a Lady of Mrs. *Deleau*'s Quality.

Mrs. *Villars.* He did think, at that Time, [illegible] he made his Addreſſes to Mrs. *Deleau*; and I am ſure ſuch Preſents were ſent; and he was really marry'd to her, and marry'd her for Mrs. *Deleau*.

Juſtice *Powel.* Mrs. *Villars*, Mr. *Feilding* deſires this Queſtion ſhould be ask'd you; When was the firſt Time you acquainted the Dutcheſs of *Cleveland* with this Matter?

Mrs. *Villars.* I will tell your Lordſhip. Mrs. *Feilding* that is now, told me, Mr. *Feilding* beat her at the Lodge at *Whitehall*, (I did not ſee the beating) and ſaid, ſhe ſhould have Occaſion to bring me upon my Oath, to prove that Mr. *Feilding* was marry'd to her the Ninth of *November*. I went with Mrs. *Feilding* to the Duke of *Grafton*, and told him, I was ſure he was marry'd the Ninth of *November* before.

Juſtice *Powel.* How long was it after the beating, before you and Mrs. *Feilding* went to the Duke of *Grafton*?

Mrs. *Villars.* It was about Three Weeks.

Juſtice *Powel.* Are you ſure it was before that Time that there was any Parting betwixt Mr. *Feilding* and the Dutcheſs of *Cleveland*?

Mrs. *Villars.* Mrs. *Feilding* acquainted me with it her ſelf, that the Beating was before the Difference between the Dutcheſs of *Cleveland* and Mr. *Feilding*.

Council. Altho' you did not ſee what paſs'd at *Whitehall*; Whether was this before the Difference between the Dutcheſs and Mr. *Feilding*?

Mrs. *Villars.* I believe it was about a Fortnight, or Three Weeks.

Mr. *Feilding.* How came it to paſs that it was not diſcover'd till now of late?

Mrs. *Villars.* It was not diſcover'd till ſhe ſent to Mr. *Feilding* for Money, about *May*, after the Marriage.

Juſtice *Powel.* Why did not you apply your ſelf to Mr. *Feilding* for the Reward?

Mrs. *Villars.* I was to have no Reward.

Mr. *Feilding.* Mrs. *Villars*, What Reward did the Dutcheſs of *Cleveland* promiſe you?

Mrs. *Villars.* I never ſaw the Dutcheſs of *Cleveland*; and I was never promis'd any Reward.

Juſtice *Powel.* Was you not to have had a Reward for helping Mr. *Feilding* to Mrs. *Deleau*?

Mrs. *Villars.* Mrs. *Streights* left ſuch word at my Lodgings; but I had no Promiſe of it from Mr. *Feilding*.

Sir *James Mountague.* My Lord, Mrs. *Villars* has given you ſo full an Account of every Thing I have open'd, that all that we have to do now, is to ſupport Mrs. *Villars*'s Evidence; and to make it appear to your Lordſhip, that ſhe is right in all theſe Particulars that ſhe tells you of. And the better to make our ſelves underſtood, we will go on, and give your Lordſhip an Account how theſe Things were carry'd on from Time to Time. But firſt we ſhall prove to your Lordſhip, How that after Mr. *Feilding* was thus marry'd to Mrs. *Wadſworth*, he did actually marry the Dutcheſs of *Cleveland*.

Mr. *Feilding.* My Lord, I do not deny my Marriage to the Dutcheſs of *Cleveland*.

Sir *James Mountague.* Then, my Lord, we will not trouble you with any Proof of that Matter, but go on with making out the Circumſtances of his Marriage with Mrs. *Wadſworth*; and we ſhall verify, in every Particular, Mrs. *Villars*'s Evidence. And firſt we ſhall prove, that he actually took a Copy of Mr. *Deleau*'s Will. For that call Mr. *Searle*. (*Who was ſworn.*)

Sir *James Mountague.* Mr. *Searle*, Give my Lord and the Jury an Account of what you know of Mr. *Feilding*'s coming to *Doctors Commons*, to ſee the Will of Mr. *Deleau*.

Mr. *Searle.* My Lord, I am Servant to Mr. *Cottle*, Proctor to the *Prerogative Office*. Mr. *Feilding* came to *Doctors Commons* about the Beginning of *Michaelmas Term*, 1705. and deſired me to ſearch, and ſee whether Mr. *Deleau*'s Will was come into the Office, or no. I look'd in the Kalendar, and found it was come in; and ſpoke to the Clerk, in whoſe Poſſeſſion it was, and he read it over to him; and he deſired a Copy of it, which I wrote out. Mr. *Feilding* came in Three Days after for it, but it was not done. I deſir'd him to come another Time; which he did, and had it.

Council. Who did he beſpeak it of?

Mr. *Searle.* He beſpoke it of me, and had the Copy of me.

Council. When was this?

Mr. *Searle.* It was about the Beginning of *Michaelmas Term.*

Sir *James Mountague*. The next Thing we ſhall prove, is, That Mr. *Feilding* was actually at *Waddon*, Mrs. *Deleau*'s Houſe: And we ſhall prove that even by Mrs. *Deleau*.

(*Who was ſworn.*)

Council. Pray, Madam, have you any Acquaintance with Mr. *Feilding*?

Mrs. *Deleau*. None at all.

Council. Do you remember he came to your Houſe in the Country?

Mrs. *Deleau*. He did about *Bartholomewtide* was Twelve-month.

Council. When he was there, had he a ſight of you, Madam?

Mrs. *Deleau*. No, my Lord; he was not in the Houſe, but in the Garden.

Council. Do you know Mrs. *Villars*?

Mrs. *Deleau*. I do, my Lord.

Council. Did ſhe ever come to you upon ſuch a Meſſage, That my Lady Dutcheſs of *Cleveland* and Mr. *Feilding* had a Deſire to ſee the Gardens?

Mrs. *Deleau*. She did ſo; and it was about the ſame Time Mr. *Feilding* had been there, or ſome little Time after, I believe.

Council. Did you go to the Race on *Banſtead Downs*?

Mrs. *Deleau*. No, my Lord.

Council. Did Mrs. *Villars* uſe to Cut your Hair?

Mrs. *Deleau*. No, my Lord---Her Miſtreſs did.

Council. Was there any Letter brought to your Houſe from Mr. *Feilding*?

Mrs. *Deleau*. I heard there was.

Council. Who receiv'd the Letter from Mr. *Feilding*?

Mrs. *Deleau*. Some of the Servants, but I receiv'd none; but ſome of the Servants receiv'd it. I was then at my Father's, and left Orders that they ſhould take in no Letters but ſuch as came from my Relations, which would come by themſelves.

Council. When had you Notice of Mr. *Feilding*'s being at your Houſe?

Mrs. *Deleau*. My own Butler came up, and acquainted me Mr. *Feilding* was below. He came to my Houſe with the Character of Major General *Villars*. I did not ſee him; but here's the Lady that ſaw him out of the Window; who, it ſeems, he took for my ſelf.

That Lady Sworn.

Council. My Lord, we only bring this Lady to prove what the firſt Witneſſes ſaid, That Mr. *Feilding* ſaw Mrs. *Deleau* thro' a Window --- Madam, Do you remember Mr. *Feilding* was at *Waddon*, and when?

Lady. He was there about *Bartholomew*-tide was Twelve-Month. I did ſee him thro' a Window, and inform'd my Couſin of it.

Council. Then call Mr. *Boucher*, (*who was Sworn.*)

Council. Mr. *Boucher*, Pray give my Lord and the Jury an Account of all you know of this Matter.

Mr. *Boucher*. My Lord, I went with Mr. *Feilding* to my Lord-Mayor's Show laſt Lord-Mayor's Day was Twelve-month. He went in his Chariot to Mr. *Feilding*'s a Linnen-Drapers at the *Three Legs* in *Cheapſide*. I looked into the Balcony and ſaw Mrs. *Villars* there --- My Maſter came down again, and went to Sir *Baſil Firebraſs*'s; from thence I was order'd to go home, and meet my Maſter in *Bond-Street*; which I did. He ask'd me whether any body had been at his Lodgings to enquire for him? I ſaid, No, and went home again. Then I found the Lady and Mrs. *Villars* at Mr. *Feilding*'s Lodgings. They had been there but a little time, but Mr. *Feilding* came in. Mr. *Feilding* complimented the Lady, and ask'd her if ſhe lov'd Singing? Mrs. *Margaretta* was ſent for, and accommodated this Lady and Mrs. *Villars* with two Songs. Mr. *Feilding* treated them with a Bottle of Wine and a Plumb-Cake --- *Margaretta* went away; and ſoon after Mrs. *Villars* and this Lady went away. So, ſays Mrs. *Heath* afterwards to me, Do you know what Woman of Quality that is in the Coach? This Mrs. *Heath* is the Landlady where Mr. *Feilding* lodged. Mrs. *Villars* and the Lady went away in a Coach. She was in a Mourning-Dreſs, and the Coach was a Mourning-Coach.

Council. What Time was this?

Mr. *Boucher*. It was my Lord-Mayor's Day was Twelve-month, on the Twenty ninth of *October*.

Council. Well, go on, and tell what you know of the Marriage.

Mr. *Boucher*. Not long after this, my Maſter order'd me to be at home, to get clean Sheets for the Bed, Wax-Candles, and Sconces, and Fires in both the Rooms: He told me ſome Ladies would be there that Night; and order'd if he was not at home when they came, to tell them, that he would be there preſently. Accordingly they came, and he was not at home; but in a little time he came and went up to them. Some time after that, he came down Stairs in great Haſte, and ſaid, *Boucher*, go and beſpeak a Diſh of Pickles. I did ſo; and brought over a Cloth, and the reſt of the Things, and left them in the Window. I ſtay'd by the Stairs till he came back in a Hackney-Coach, with a Prieſt along with him in a long Gown, and long Beard, and a Furr Cap; I knew him to belong to the Emperor's Envoy; and I heard Mr. *Feilding* call him, Reverend Father. Then I was order'd to ſet the Table and Glaſſes, and Wine, and Things of that kind, upon the Side-board. I waited at Table all the while. When Supper was over, Mr. *Feilding* order'd me to go down and fetch Water, Salt, and Roſemary. I went and got Water and Salt, but could get no Roſemary. Then I was order'd to go down, and they were lock'd in about three quarters of an Hour: He then call'd, *Boucher*, ſays he, will you fill ſome Wine? --- I did ſo, and perceiv'd upon the Thumb of this Lady, upon her Left Hand, a plain Gold Ring, which before Supper ſhe had not. When this was over, the Prieſt went away. Preſently after, ſays Mr. *Feilding*, Take the Sheets from my Bed, and lay them on the other Bed, for Mrs. *Villars*; and ſee that none lye there. I told my Maſter 'twas done. Mrs. *Villars*, in the mean time, put the Lady to Bed. When I came down to tell them of it, I ſaw the Ladies Cloths upon a Stool in the Chamber; and Mrs. *Villars* folding them up, and laying them in another Room. I then light Mrs. *Villars* to Bed, and then went to Bed my ſelf. In the Morning I was call'd to make a Fire; I then perceiv'd Mr. *Feilding* and this Lady in Bed together. The Fire being made, I was order'd to get a Hackney-Coach. Mrs. *Villars* dreſſed the Lady haſtily, and ſhe was carried away in the Hackney-Coach. About a Fortnight after, Mr. *Feilding* order'd me to prepare the Lodgings again. This Lady came to my Maſter's Lodgings that Night, and had ſomething for Supper; my Maſter order'd me to get ready Mrs. *Villars*'s Bed: I did ſo. In the Morning was call'd down to make a Fire, which I did; the Curtains being open next the Fire, I perceiv'd them in Bed again. I was order'd to get a Hackney-Coach, which I did; and they went away again.

again. This was about the Twenty fifth of *November*. Soon after this, I understood by some of the Dutchess of *Cleveland*'s Servants, that Mr. *Feilding* was marry'd to my Lady Dutchess. At the same time Mr. *Feilding* order'd me to go to Mrs. *Heath*'s, to bring his Night-Gown, Cap and Slippers to the Dutchess of *Cleveland*'s House, and to attend the next Morning with clean Linnen, his Wig, *&c.* And about, or on the Fifth of *December*, says he, *Boucher* get my Lodgings in Order again, for I expect Mrs. *Villars* and the Lady to be there; which accordingly I did. I was sent from the Dutchess of *Cleveland*'s with his Night-Gown, Cap and Slippers. Mrs. *Villars* and the Lady came accordingly that Night, and had a Boil'd Chicken for Supper. Mr. *Feilding* and the Lady lay together that Night; and in the Morning I saw them in Bed together; and when she got up, she went away again in a Hackney-Coach. That was the last time I saw the Lady in Mr. *Feilding*'s Lodgings.

Council. Were you at *Epsom* with Mr. *Feilding*?

Mr. *Boucher.* I was there with him, and went to *Waddon* with him to Mrs. *Delean*'s. Mr. *Feilding* went into the Gardens and walk'd in them.

Mr. *Feilding.* I would ask you, *Boucher*, whether the Priest that came in a Red Gown lin'd with Blue, whether you did not sometimes see him dine at the Dutchess of *Cleveland*'s House?

Mr. *Boucher.* I did see him there, I cannot say often; but once I am sure I did.

Justice Powel. Was not that Priest that was there that Night upon which Mr. *Feilding* was suppos'd to be Married, at the Dutchess of *Cleveland*'s.

Mr. *Boucher.* I saw him there once.

Justice *Powel.* Was it before or after that suppos'd Marriage?

Mr. *Boucher.* I cannot be positive whether it was before or after.

Mr. *Feilding.* Whose Servant are you at this time?

Mr. *Boucher.* I am now Cook to Coll. *Webb*'s Regiment.

Mr. *Feilding.* How came you here?

Mr. *Boucher.* My Master desir'd me to go to the Duke of *Grafton*'s House, where his Grace told me I was to justify the Truth of what I knew of Mr. *Feilding*'s Marriage; that's all. I was sent to *England* for by my Master.

Mr. *Feilding.* I desire to know whether he did not only make Mrs. *Villars*'s Bed, but lye with her likewise?

Council. Call Mrs. *Martin, (who was sworn.)*

Sir *Ja. Montague.* Mrs. *Martin*, Will you give my Lord and the Jury an Account of what you know of Mrs. *Villars*?

Mrs. *Martin.* I know Mrs. *Villars.*

Council. What do you know of her, and of any Body else coming to your Sister's House after Mr. *Feilding*?

Mrs. *Martin.* The next Day after the Lodgings were taken, Mrs. *Villars* came and ask'd for the Major-General, and continu'd coming almost every Day as long as he was at our House.

Council. What time did Mr. *Feilding* come first to your House?

Mrs. *Martin.* It was the beginning of *October* was Twelve-month.

Council. Did you ever see any other Gentlewoman come with her?

Mrs. *Martin.* My Lord, on my Lord-Mayor's Day at Night I saw Mrs. *Villars* come in, and another Gentlewoman with her.

Council. Did you see the Coach they came in?

Mrs. *Martin.* There are others that saw the Mourning-Coach.

Council. What time was this?

Mrs. *Martin.* It was my Lord-Mayor's Day at Night.

Council. Where do you live?

Mrs. *Martin.* At Mrs. *Heath*'s, my Sister's in *Pall-Mall*, at that time.

Council. Did Mrs. *Villars* and the Lady continue there all Night?

Mrs. *Martin.* No, they did not.

Council. Was there any Body came in afterwards?

Mrs. *Martin.* I did not see any Body.

Council. How long did they continue in your Sister's Lodgings that Night?

Mrs. *Martin.* I cannot tell.

Council. Did you see them there again?

Mrs. *Martin.* The second time was about *November*.

Council. Who came then?

Mrs. *Martin.* I did not see them come in; but Mrs. *Villars* came into the Parlour, and said, that there was the same Lady that had been there the Night before.

Council. Did they stay then that Night?

Mrs. *Martin.* I believe they stay'd there that Night.

Council. Did you see them go away in the Morning?

Mrs. *Martin.* I did not see them in the Morning.

Council. Did you ever see any Body come at them whilst they were there in an extraordinary Habit, a Red Gown, *&c.?*

Mrs. *Martin.* There was a tall Man knock'd at the Door in a long Gown, Blue Facing, and Furr-Cap, with a long Beard. He was conducted to the Major-General's, up Stairs.

Council. Do you remember the Supper that Night?

Mrs. *Martin.* I remember a Dish of Pickles.

Council. How long did the Gentleman in Red stay?

Mrs. *Martin.* I know not; I did not see him go away again.

Council. Do you remember that the Lady and Mrs. *Villars*, with a Gentleman in Red, and Mr. *Feilding* were together?

Mrs. *Martin.* I remember when they were together, *Boucher* was sent down.

Council. Do you remember any Bed got ready?

Mrs. *Martin.* I remember that Orders was given to his Servant to make ready a Bed, and to put on clean Sheets.

Justice *Powel.* Do you believe there was any Marriage that Night?

Mrs. *Martin.* I do not know any thing of the Marriage.

Council. Then call Mrs. *Heath, (who was Sworn.)*

Sir *Ja. Montague.* Mrs. *Heath*, give an Account what time Major-General *Feilding* came to take Lodgings at your House.

Mrs. *Heath.* About the Beginning of *October* last was a Twelve-month.

Council. Do you remember that one Mrs. *Villars* came to see him there?

Mrs. *Heath.* Yes, frequently, my Lord, she has been in my Parlour, and told me there frequently, that she came from a Lady of Quality.

Council. Did you ever see this Lady.

Mrs.

Mrs. *Heath.* I never saw her, my Family being retired from Lodgers.

Council. What Discourse did you hear from *Boucher*?

Mrs. *Heath.* He said that a Woman of Quality was there, and that she came there two or three Times with Mrs. *Villars.*

Council. What Time did you hear of that Lady's being there first?

Mrs. *Heath.* On my Lord Mayor's Day; for I dined in the City, and when I came home, my Family acquainted me with it. Mrs. *Villars* came down to me one Night, which was the Night the Man in Red was there, but I did not see him.

Sir *James Mountague.* Do you know of their staying there all Night?

Mrs. *Heath.* Mrs. *Villars* came to me, and said that her Lady was a Person of Quality worth 80000 *l.* she shewed me a little Picture, which she said was her Lady's Picture: That Night she came to me, and desired that the Lady and she might lie in a Room up two Pair of Stairs; for they had stay'd late, and did not care to go home. I disputed it, but she said we should have no trouble, for *Boucher* should make the Bed, and the General's Sheets should serve them.

Council. Do you remember at any Time after that, that Mr. *Feilding* came to you, and rail'd against Mrs. *Villars*?

Mrs. *Heath.* He did come to my House, after he had discharged my Lodgings, and he told me that Mrs. *Villars* was a very bad Woman; and that she imposed a Woman of the Town upon him for a Woman of Quality.

Council. What Time was it that Mr. *Feilding* told you so?

Mrs *Heath.* It was two or three Months ago, but I don't well remember the Time; says he, *Damn her, I do not know how she contrived it, but I saw her at a Woman of Quality's House in the Country.* He said this at that Time.

Council. Let's hear it again.

Mrs. *Heath.* Mr. *Feilding* told me, *That Mrs.* Villars *was a Bitch, and had imposed a base Woman upon him, instead of a Woman of Quality.* He said likewise, *That he thought he saw the Lady look out of a Window of a Person of Quality's House in the Country.*

Justice *Powel.* Mrs. *Heath*, Did you ever hear or believe that they were married?

Mrs. *Heath.* I did not believe it a Marriage, but a Conversion; because his Man came down into the Parlour, and asked for Salt and Water and Rosemary; which occasioned these Words, *Lord*, said I, *I fancy they are making a Convert of this Woman*; because they said it was a Priest above. And his Man at that Time said, there was a Priest above.

Mr. *Feilding.* Did my Man, at that Time, tell you I was married to that Woman, or any Time else?

Mrs. *Heath.* Nothing, my Lord; no body told me Mr. *Feilding* was married at that Time.

Council. Then call Mrs. *Margaretta*, (*who was sworn.*)

Mrs. *Margaretta.* My Lord, I remember that Mr. *Feilding* sent for me to his Lodgings in *Pall-Mall*; I was sent for in the Evening, but I can't tell how long it was before he was married to my Lady Dutchess.

Council. What Company was there in the Room at that Time?

Mrs. *Margaretta.* I cannot tell.

Council. What were the Songs you sung?

Mrs. *Margaretta.* I sung several *Italian* Songs, and one *English*, and that was *Ianthe the lovely.*

Council. Who was then in the Room?

Mrs. *Margaretta.* No body was there then, as I remember, but the Gentlewoman, Mr. *Feilding* and I.

Council. What sort of Woman was this you speak of?

Mrs. *Margaretta.* She was in Mourning; she had a Velvet-Scarf. I never heard her speak, for he desired me to sing that Song, *Ianthe the lovely*; for he said he had the Original of it, and had translated it out of *Greek.*

Justice *Powel.* Were you then more than once at Mr. *Feilding*'s Lodgings?

Mrs. *Margaretta.* But once; and saw no more there than the Gentlewoman that sat by the Fire with her Back towards me. But I did not see her Face, nor hear her speak.

Justice *Powel.* What Time was it?

Mrs. *Margaretta.* I cannot tell justly the Time; it was dirty Weather and dark: I believe it might be about Six a-Clock, but am not sure.

Mr. *Feilding.* My Lord, she says there was but one Woman there: Mrs. *Villars* was not there.

Justice *Powel.* Name the Persons that were there.

Mrs. *Margaretta.* There was that Gentlewoman in Mourning, whose Name I do not know, Mr. *Feilding*, and my self; there was no body else that I saw; and no body could be there, but I must see them, for I was Mistress of all the Doors.

Justice *Powel.* Did Mr. *Feilding* pretend it was to entertain his Wife?

Mrs. *Margaretta.* No; he desired me to come to him, and left a Direction at my Lodgings, and said, there were some People of Quality there; and when I came I saw none but the Lady that sat by the Fire.

Council. Then call Mrs. *Price*, *(who was sworn.)*

Council. Mrs. *Price*, do you live at Mrs. *Heath*'s House?

Mrs. *Price.* I do.

Council. Give an Account to my Lord of the Mourning-Coach coming to Mr. *Feilding*'s Lodgings on Lord Mayor's Day was Twelve-month.

Mrs. *Price.* I saw a Mourning-Coach come to Mr. *Feilding*'s Lodgings at Mrs. *Heath*'s House, but did not see the Ladies come out of it; two Ladies were lighted into Mr. *Feilding*'s Lodgings, Mrs. *Villars* and another; and Mrs. *Villars* followed the other Lady up Stairs, and immediately Mrs. *Villars* came down, and ask'd for the General: *Boucher* in the mean Time came in, and told them he would be there presently. Accordingly he came. They continued some Time, and when they were gone, the Coach was gone.

Council. Was Mrs. *Margaretta* there?

Mrs. *Price.* I did not see her.

Council. Do you know of any other Time of their coming there?

Mrs. *Price.* Some Time after my Lord Mayor's Day, this Gentlewoman and Mrs. *Villars* came again; at the same Time Mrs. *Martin* told me she let in a Gentleman in Red, in an *Armenian* Habit; but I cannot tell what he came there for; I think his Man *Boucher* said he was a Priest.

Council. Whilst the Priest was there, do you remember *Boucher*'s coming down for any remarkable Thing?

Mrs. *Price.*

Mrs. *Price.* I remember *Boucher* came down, but do not remember what he came down for.

Council. How long did they ſtay the ſecond Time?

Mrs. *Price.* They ſtaid there all Night; there were clean Sheets put on the Bed, and Lodgings prepared for the Lady and Mrs. *Villars.*

Council. Do you know Mrs. *Villars?*

Mrs. *Price.* I did know Mrs. *Villars* by her coming to Mr. *Feilding.*

Juſtice *Powel.* Do you know what Reputation Mrs. *Villars* has?

Mrs. *Price.* I do not, my Lord.

Mrs. Heath *called again.*

Mrs. *Heath.* My Lord I never had any Acquaintance with Mrs. *Villars*, no more than by her coming to the Major General. One Mrs. *Howard* came with her, and ſhe has told me that ſhe was a Woman of no Reputation, and that ſhe was a Singer too, my Lord.

Council. Then call *Thomas Sone*, *(who was ſworn.*

Council. What do you know of Mr. *Fielding*'s buying a Ring of you? Give us an Account of it?

Mr. *Sone.* I know Mr. *Fielding* by ſight, he bought a Gold Ring of me, but I cannot remember the Time.

Council. How long ago do you think it is?

Mr. *Sone.* I believe it may be a Year ago.

Council. Was there any Poſie in it?

Mr. *Sone.* Yes, I grav'd the Poſie whilſt he took a turn in the Alley: The Poſie was by his Direction, *(Tibi Soli.)*

Council. Who did you deliver this Ring to?

Mr. *Sone.* I ſold it out of my Glaſs to Mr. *Feilding.*

Council. Swear Mr. *Wilkins*, *(he was ſworn.)*

Council. What do you know of Mr. *Feilding*'s buying a Ring of Mr. *Sone?* The Time when this Ring was bought?

Mr. *Wilkins.* It is about a Year and two Months ago; I was by when the Gentleman gave Direction for it; and I ſaw him write down *(Tibi Soli.)*

Council. Then ſwear the Regiſter of *Doctors-Commons.*

The Regiſter of Doctors-Commons *Sworn.*

Council. Shew the Regiſter the Ring.

Regiſter. My Lord this Ring, was brought by my Lady Dutcheſs's Proctor with the Letters.

The Ring produced, and ſhewn to Mr. Sone *the Goldſmith, who depoſed, That that was the Ring which he made for Mr.* Feilding; *and the Poſie the ſame which Mr.* Feilding *directed.*

Council. How do you know it to be the ſame which you ſold to Mr. *Feilding?*

Mr. *Sone.* I know it to be the ſame by my Mark and Work.

Mr. Cooke, *Proctor, ſworn.*

Mr. *Cooke.* My Lord, there was a Ring brought, it is the ſame that was exhibited in Court, and the Ring was brought firſt of all by the Lady, Mrs. *Feilding*; it was afterwards in the Cuſtody of my Brother; my Brother brought it to me, and I delivered it to the Regiſter, and believe it to be the ſame Ring by the Poſie *(Tibi Soli.)*

Council. Now, my Lord, we ſhall prove Mr. *Feilding*'s coming to Count *Gallas*'s for a Prieſt.

Call Conſtantine Pozzy, *(who was ſworn.)*

Council. Where do you live?

Pozzy. I am Servant to the Emperor's Envoy.

Council. Do you know Mr. *Feilding?*

Pozzy. I know General *Feilding* by ſight; I remember one Night he came and asked for the Father in Red? I told him that he was not within; then he ask'd for Count *Gallas*'s Almoner (meaning Father *Vanderber*, his Lordſhip's firſt Chaplain,) but he happened not to be within neither. I told him that Father *Florence*, one of the Chaplains was within. Then ſaid Mr. *Feilding*, call him to me; I did ſo. Upon which Mr. *Feilding* gave me Half a Crown. Mr. *Florence* came immediately to Mr. *Feilding.*

Council. Was there a Prieſt at that Time in Red that had a long Beard.

Pozzy. My Lord had ſuch a Prieſt then; after Mr. *Florence* and Mr. *Feilding* had been diſcourſing ſome Time in the Hall together, Mr. *Florence* went up Stairs to Count *Gallas*; whilſt Mr. *Florence* was up Stairs, the Father in Red came in; I ſaw Mr. *Feilding* and the Father in Red go away together in the Hackney-Coach before Mr. *Florence* came down.

Council. What Time was this?

Pozzy. It was in *November*, the begining of it.

Council. Did you hear what Mr. *Feilding* and Mr. *Florence* did diſcourſe of?

Pozzy. No, nothing.

Council. Then ſwear Mr. *Florence*, *(who was ſworn.)*

Council. Give my Lord, and the Jury an Account of what you know of Mr. *Feilding*'s coming to you?

Mr. *Florence.* I have ſeen Mr. *Feilding.*

Council. Upon what Occaſion had you any Diſcourſe with him?

Mr. *Florence.* It was on *Friday* Night, Poſt-Night, about the beginning of *November*, *Conſtantine Pozzy* came under my Chamber-Window, called to me, and ſaid, Here is Major General *Feilding*, he wants one of the Chaplains, he deſires to ſpeak with you. I went to him immediately, and introduced him into the Hall. The Major General ſpoke to me in *French.* Sir, ſays he, I come here to look for the Father in Red; but I underſtand he is not at home; you will do as well, be pleaſed to go along with me. He told me he had courted a young Lady for ſome Time, and now found her well diſpos'd, and therefore deſir'd me to go along with him to marry them. I underſtood there had been ſome Treatment between him and the Dutcheſs of *Cleveland*, and therefore I ask'd him whether it were to the Dutcheſs; He did not inform me. I told him I did not care to do any Thing out of the Houſe; and deſir'd him to let me ask my Lord; ſays he, give my Service to Count *Gallas* and tell him. I went up to him and ſpoke to him, and told him the Buſineſs Mr. *Feilding* came about. He bid me, ſays he, What you do, do it wiſely. When I came down Mr. *Feilding* was gone, I was told that the Gentleman in Red came in, and that Mr. *Feilding* and he were gone away together.

Council. That which he would have you to do, was to have married him with a certain Lady, was it not?

Mr. *Florence.* It was ſo.

Council. What Time was that?

Mr. *Florence.* It was upon *Friday*, I am ſure.

Council. Had you any Diſcourſe with Mr. *Feilding* after this?

Mr. *Florence.* The next *Sunday* after this, ſays he, I give you many Thanks for the laſt Favour. I knew of no other Favour I did him but this.

Council. Then call *Matthew Paul, (who was ſworn.)*

Council. Do you give my Lord and the Jury an account of Mr. *Feilding*'s beating a Gentlewoman; and if any Marriage was claimed at that Time by a Gentlewoman.

Paul. Mr. *Feilding* came to *Whitehall*-Gate in a Chariot, he litt out of it. There was a Hackney Coach brought two Women, one of theſe Women got out of the Coach and came up to Mr. *Feilding*: Mr. *Feilding* called her *Bitch*; the Lady called him *Rogue*, and ſaid ſhe was his *lawful Wife*; at that Mr. *Feilding* having a Stick, he punch'd it at her; it happen'd upon her Mouth, and made her Teeth bleed. He order'd the Centry to keep her 'till he was gone, and he would give 'em a Crown. She ſaid, as I told you before, That ſhe was his *lawful Wife*, and for that Reaſon they did not care to meddle with her.

Council. Sir, Do you know what Time this was?

Paul. I cannot juſtly tell: It was as near as I can judge, about the latter End of *May*.

Council. Pray call Mrs. *Feilding*, and let the Witneſs ſee if he knows the Woman again that he ſaw Mr. *Feilding* beat.

Mrs. Feilding *called into Court.*

Council. Is this the Woman you ſaw?

Paul. This is the Woman, my Lord, I really believe.

Council. Then ſwear Mr. *Seymour*, (*who was ſworn.*)

Council. Do you know Mr. *Feilding*?

Mr. *Seymour.* Yes, Sir.

Council. Do you remember his beating any Woman at *Whitehall*-Gate?

Mr. *Seymour.* Yes, Sir.

Council. What Time was it?

Mr. *Seymour.* It was in the laſt Summer, but I cannot be poſitive to the Time.

Council. Do you know the Gentlewoman when you ſee her?

Mr. *Seymour.* Yes, I do; that's the Gentlewoman (*pointing to Mrs.* Feilding) I am ſure of it.

Council. What did ſhe ſay to Mr. *Feilding*?

Mr. *Seymour.* She ſaid to him, you are a *Rogue*, I am your *lawful Wife*.

Council. Then ſwear Captain *Eaton*, (*who was ſworn.*)

Council. Captain, do you know any Thing of Mr. *Feilding*'s beating a Woman?

Captain *Eaton.* I was at the *King's Arms* Tavern, and whilſt I was there, the Drawer came to me, and told me there was two Women would ſpeak with me; this Woman (*pointing at Mrs.* Feilding) and another, whom ſhe call'd Mother. She told me ſhe was married to Mr. *Feilding*, before he was married to my Lady Dutcheſs; and deſired me to acquaint my Lord Duke of *Northumberland* with it, that the Dutcheſs of *Cleveland* might know of it: I told her I did not deſign to concern my ſelf about it. She told me ſhe had been much abuſed by him.

Council. What Time was this?

Captain *Eaton.* It was ſome Time before the 18th of *Auguſt*; it was the latter End of *June*, or beginning of *July*.

Council. Was it before the Difference between Mr. *Feilding* and my Lady Dutcheſs?

Captain *Eaton.* It was before that Time.

Council. Now we ſhall produce Mr. *Feilding*'s own Letters, where under his Hand your Lordſhip will find he took Mrs. *Wadſworth* for Madam *Deleau*.

Divers Letters produced in Court.

Council. Call Mr. *Lilley*. (*He appears.*)

Council. Do you know theſe Letters to be Mr. *Feilding*'s Hand-Writing?

Mr. *Lilley.* I am a Stranger to his Hand.

Boucher *called.*

Council. Can you read and write?

Mr. *Boucher.* Yes, my Lord, I can.

Council. Do yo know theſe Letters to be Mr. *Feilding*'s Hand-Writing?

Mr. *Boucher.* This is his Hand, I believe. I have ſeen him write an hundred Times; I have had the Curioſity to obſerve his Hand, and this is his own Writing.

Council. Then ſwear *Frances Beale*, (*who was ſworn.*)

Council. Do you know Mr. *Feilding*'s Hand-Writing?

Beale. I do, my Lord.

Council. Do you know that Letter to be his Hand?

Beale. I have ſeen him write ſeveral Times, and believe it to be his Hand.

Council. Now, my Lord, we will beg the Favour to read theſe Letters, and firſt of all, one directed

To the Counteſs of *Feilding.* *Sunday* Night.

I *Hope my Deareſt Wife will eaſily believe that nothing can be Welcomer to me than the Aſſurance of her Health; but as I receiv'd hers but this Day, I could not have the Felicity of ſeeing her to Morrow, and ſhe have notice of it; therefore if ſhe thinks fit on* Thurſday *next at Four a-Clock, I will ſee her at* Puggy's, *and there endeavour to repair this tedious Abſence.*

Eternally Your own *Feilding.*

Another Letter prov'd to be his Hand by *Boucher* and *Beale.*

To my Deareſt Wife, the Counteſs of *Feilding.* *Friday.*

I *Had return'd my Dear Wife's Favour long before now, but my Lady Dutcheſs's Sickneſs on one hand, and more than ordinary Buſineſs (of which I will give my Dear a particular Account) on the other hand, has not given me a Moment of Time to write to my Love.* Puggy *brings you the Set of Knots you deſir'd, and the Pattern of the Damask; or if my deareſt Life wants any Thing elſe, ſhe may with Pleaſure command it; for I am never ſo well pleas'd as when employ'd by my Deareſt Wife, and muſt be ever* her affectionate Husband, till Death,

Feilding.

Another Letter proved by *Boucher* and *Beale.*

Nov. 27. 1705.

THE *laſt Letter I had from my deareſt Wife has mortified me much, finding, that notwithſtanding all my Kindneſſes, ſhe taxes me with Coldneſs in my Letters, which I call Heaven to witneſs I never in the leaſt intended; and beg my Deareſt to give me ſome Warning before ſhe taxes me of Unkindneſs.* Puggy *tells me that my Dear deſigns to come to* Town *to Morrow, which I hope ſhe will put off till another Day, becauſe I am obliged to be at her Grace's to morrow all the Afternoon, and till late at Night; but any other Day my Dear ſhall find ſhe is always welcome to the Arms of him who loves her more than Life it ſelf;*

ſelf; and I ſhall never fail of giving her freſh Proofs that I am,

Her Loving and Affectionate Husband,
Feilding.

Juſtice *Powel.* It is plain it is his Hand; and that he wrote to one whom he terms his Wife.

Council. Do you know theſe Letters to be writ by Mr. *Feilding*, and ſent to his Wife?

Mrs. *Villars.* I have ſeen them before, and I believe them to be Mr. *Feilding*'s Hand. I ſaw Mr. *Feilding* write them, as well as I can ſee by my Eyes; and when he had writ them, he deliver'd them into my Hands, and order'd me to deliver them to his Dear Wife.

Council. What does he mean by *Puggy*, in his Letters? Who is *Puggy*?

Mrs. *Villars.* He us'd to call me *Puggy*.

Council. My Lord, We have done for the preſent, (having proved clearly his Marriage with this Woman) without Mr. *Feilding* denies his Marriage to the Dutcheſs of *Cleveland*.

Mr. *Feilding.* My Lord, I own my Marriage with the Dutcheſs of *Cleveland*.

Juſtice *Powel.* Mr. *Feilding*, You have heard from the Evidence that hath been given againſt you, That you were married to another Woman, before you were married to the Dutcheſs of *Cleveland*: And now is the Time to make your Defence.

Mr. *Feilding.* All the Evidence againſt me, conſiſts in what Mrs. *Villars* hath ſaid: She is the only Evidence that ſwears poſitively to this Fact; the reſt are very inconſiſtent with themſelves. I beg of your Lordſhip, in a Caſe ſo nice as this is, where my Honour and Reputation, and every Thing that is dear lies at Stake, that the Evidence in this Cauſe may be clear and poſitive. Mrs. *Villars* (my Lord) hath forſworn her ſelf; 1. In that ſhe ſwears ſhe cut Mrs. *Deleau*'s Hair: Mrs. *Deleau* takes notice, that ſhe never cut it. And as to her Reputation, it's ſo bad, that when our Witneſſes are heard, I hope your Lordſhip will ſee little Reaſon to believe any thing ſhe ſays to be true. My Lord, We will prove, that ſhe hath been in Cuſtody of a Maſter of *Bridewel*; that there ſhe hath received the Correction of the Houſe; therefore I think ſhe is not fit to appear as Evidence in this Court. She ſwears, That the Singing-Woman was at the Marriage; but it appears ſhe was not, for the Singing-Woman contradicts it. And as to this Mrs. *Wadſworth*, who they ſet up, ſhe was married to another Man, one *Bradby*.

Juſtice *Powel.* I muſt deal plainly with you, Mr. *Feilding*, from the Proof: I cannot ſpeak of Mrs. *Villars*'s Credit, for ſhe is an ill Woman (no doubt) from her own Evidence, in that ſhe put a falſe Woman upon you: But her Evidence is well ſupported by Circumſtances of Time and Place; and all of them put together, bid fair for a Proof, that you were married to this Woman. You may call what Witneſſes you pleaſe to Mrs. *Villars*'s Reputation, and they may be heard. No Woman of Reputation will bring a mean Woman to a Man, inſtead of a Perſon of Quality. I think you ſay, Mrs. *Wadſworth* was married to another Man at the ſame Time: Indeed that will be to the Purpoſe, if you can make it out.

Mr. *Feilding.* My Lord, I can. She was married to another Husband, one *Bradby*. Call *Elizabeth Baſſet*. (*Who was ſworn.*)

Juſtice *Powel.* Do you call this Woman to be Witneſs to the Marriage?

Mr. *Feilding.* My Lord, I do.

Juſtice *Powel.* Do you know Mrs. *Wadſworth*?

Mrs. *Baſſet.* My Lord, I do not know her from another Woman; but there was a certain Woman, Two or Three Months ago, came to take a Name out of the Regiſter-Book.

Council. What Regiſter do you ſpeak of?

Mrs. *Baſſet.* The Regiſter of Marriages in the *Fleet*.

Council. Who keeps that Book?

Mrs. *Baſſet.* I keep it at preſent: My Father-in-Law is the Keeper of them; but he is ſick, and therefore he hath left them in my Charge.

Council. Where is your Father?

Mrs. *Baſſet.* He is not able to appear.

Council. Do you keep them in your Cuſtody?

Mrs. *Baſſet.* Yes, I do.

Council. Does no body elſe come at them but your ſelf?

Mrs. *Baſſet.* No, not this Twelve-month; ſince they have been in my keeping.

Council. Who then makes the Entries?

Mrs. *Baſſet.* Theſe were my Father's Books when he was in Health.

Council. What can you ſay of this Woman?

Mrs. *Baſſet.* I do not know her. But ſome Time ago there was a Woman came to my Houſe: She told me, ſhe wanted to ſpeak with Mr. *Baſſet*. I told her, ſhe could not ſpeak with him. She preſſed to ſpeak with him: But when I told her he was ill, and could not be ſpoken with; ſays ſhe to me, Here is a Marriage in your Book, of one *Lilly Bradby* and *Mary Wadſworth*. Says ſhe to me, If you'll put it out of your Book, I'll give you a Piece of Money.

Council. Is this the Woman that made you this Offer?

Mrs. *Baſſet.* I will not ſwear to the Woman: I never ſaw her but that one Time, my Lord. I am not poſitive in the Matter; but I believe it is.

The Certificate of the Marriage read.

Lilly Bradby *Marry'd to* Mary Wadſworth, *the* 28*th of* October, 1703. *The Man of St.* James's, *the Woman of St.* Margaret's Weſtminſter.

Juſtice *Powel.* Who us'd to write down the Certificates in the Regiſter-Book?

Mrs. *Baſſet.* Several People, my Lord, we hir'd to do it.

[*The Place of the Regiſter ſhewn Mrs.* Baſſet.

Council. Have not you your ſelf look'd upon this Place now given as Evidence?

Mrs. *Baſſet.* Yes, I have.

Council. Whoſe Hand is that?

[*Pointing to the Certificate.*]

Mrs. *Baſſet.* It is my Father-in-Law's: He that was Clerk of the *Fleet*.

Council. Is the whole Leaf of his Hand-Writing?

Mrs. *Baſſet.* I cannot tell.

Juſtice *Powel.* Can you read Writing?

Mrs. *Baſſet.* Yes, my Lord.

[*The Certificate view'd by the Court, and prov'd to be a different Hand from the reſt.*]

Council. There are Hands various in this Book.

Mrs. *Baſſet.* My Husband's Brother us'd to make Entries ſometimes.

Sir *James Mountague.* Does your Husband's Brother uſe only to make Entries at the latter End of the Book?

Mrs. *Baſſet.* I don't know.

Council. Do you know when the Entry was made?

Mrs. *Baſſet.* I do not know when the Entry was made.

Council. Do you remember, that there were any Gentlemen with you to examine the Book?

Mrs. *Baſſet.* Yes, Sir, there were.

Council. Did you ſhew them this very Book?

Mrs. *Baſſet.* I did not; becauſe Mrs. *Wadſworth* ſaid there would be ſome Trouble about it.

Council. Have you ſeveral Regiſters at the ſame Time?

Mrs. *Baſſet.* Yes; there are ſeveral Miniſters, and therefore are Entries made in ſeveral Books.

Council. Why were you ſo friendly to Mrs. *Wadſworth*; when the Gentlemen came to examine the Book for this Regiſter, and you ſhew'd them other Books inſtead of this?

Mrs. *Baſſet.* I did not ſhew them that, becauſe Mrs. *Wadſworth* deſired me.

Council. What did Mrs. *Wadſworth* give you?

Mrs. *Baſſet.* She gave me nothing. I will not ſay it was Mrs. *Wadſworth.*

Council. Do you remember you ſhew'd any Books to theſe Gentlemen, where there were Marriages regiſtred in 1703?

Mrs. *Baſſet.* The Book is at Home in my Houſe.

Council. Do you keep Two Books for the Regiſter of Marriages, for one and the ſame Year and Time?

Mrs. *Baſſet.* There are ſeveral Books; and we Enter ſometimes in one, and ſometimes in another; by reaſon that there are ſeveral Miniſters, and each hath his particular Book.

Council. Did the Gentlemen ask you at that Time, whether there were more Books of Marriages?

Mrs. *Baſſet.* I do not remember.

Council. How many Books have you of that Year?

Mrs. *Baſſet.* But Two.

Council. Did you ſhew them any falſe Book? That is, Did you ſhew them a falſe Regiſter of Marriages for a true one?

Mrs. *Baſſet.* I know nothing of that.

Mr. *Feilding.* Call Mrs. *Drinkwater.*

[*Who was ſworn.*]

Juſtice *Powel.* Do you know Mrs. *Villars*?

Mrs. *Drinkwater.* I have known her above a Year.

Juſtice *Powel.* What is her Character and Reputation?

Mrs. *Drinkwater.* I know nothing of that - - - But I know ſo far of her, That ſhe ſaid ſhe was married to Colonel *Feilding* on the Fifth of *November*: She accordingly gave it out that ſhe was with Child by him. And that ſhe told me, that the Dutcheſs of *Cleveland* proffer'd to give her 200 *l.* and 100 *l.* a Year, for Fifteen Years, if ſhe would prove a Marriage with Mr. *Feilding*: But that ſhe would do more for Mr. *Feilding* for 40 *l.* than ſhe would for the Dutcheſs of *Cleveland* for a much greater Sum. And ſaid, it was purely Want, that made her comply with my Lady Dutcheſs's Deſire. I have read all the Letters between Mrs. *Villars* and the Colonel; and I never heard of any Marriage between Mrs. *Bradby* and Mr. *Feilding*, but between Mr. *Feilding* and Mrs. *Villars.*

Council. When was this Diſcourſe between you and Mrs. *Villars*?

Mrs. *Drinkwater.* I cannot tell exactly the Day; but the Time they were marry'd was the Fifth of *November* was Twelve-month, as ſhe ſaid.

Sir *James Mountague.* You pretend to ſay, ſhe ſaid, That if Mr. *Feilding* gave her 40 *l.* ſhe would do more for him, than ſhe would do for a greater Sum from my Lady Dutcheſs. How long was this ago when ſhe ſaid this?

Mrs. *Drinkwater.* It was about Three Months, or better.

Council. Where was this Diſcourſe, pray?

Mrs. *Drinkwater.* It was at her Lodgings, when ſhe lodged at the Back-ſide of *Red Lion Square*, at a Widow-Gentlewoman's Houſe.

Council. How came you to be there when this Diſcourſe was?

Mrs. *Drinkwater.* She, ſome Time before, gave me an Invitation to her Lodgings; and I went to give her a Viſit, and then this Diſcourſe happen'd.

Council. Who was by then?

Mrs. *Drinkwater.* None but I and She. She ſaid it was Want and Neceſſity, that made her act after this manner.

Mr. *Feilding.* Did ſhe not ſend for you, to tell you ſhe was going to forſwear her ſelf?

Mrs. *Drinkwater.* She talk'd of it firſt.

Council. When did you tell the Colonel of it?

Mrs. *Drinkwater.* I do not know juſtly the Time.

Council. How long have you been acquainted with Colonel *Feilding*?

Mrs. *Drinkwater.* Not but ſince this Thing happen'd. I never had any further Converſation with him, than to ſpeak in her Behalf to him. But I have this further to ſay; That an Outlandiſh Man came to me about a Fortnight's Diſtance, and ſaid, If I could do any thing on the Behalf of the Dutcheſs of *Cleveland*, it would be a conſiderable Sum of Money in my way.

Council. Where do you live your ſelf?

Mrs. *Drinkwater.* I live in the ſame Houſe where Mrs. *Villars* lodged: I am a Servant to one Captain *Howard*: My Maſter is now in the Service.

Council. Who lives in the Family?

Mrs. *Drinkwater.* We have none but a Footman, and my Maſter.

Mr. *Feilding.* Call Mrs. *Engliſh.*

[*Who was ſworn.*]

Juſtice *Powel.* What have you to ſay?

Mrs. *Engliſh.* My Lord, I went down to Mrs. *Villars*'s Lodging the Morrow after laſt *Valentine*'s Day, for ſome Money; for I waſhed for her: Says ſhe, I have none at preſent. She told me, ſhe would ſend to her Spouſe for ſome. A Gentleman came in and ſaid, I have none for you: Says he, My Maſter ſays, If a Crown will do, he will ſend it you out of Charity; but he cannot ſupply your Extravagancies. On the Fifth of *November* (ſhe ſaid) ſhe was marry'd to Mr. *Feilding*; and ſhe ſaid, ſhe would have Money from Mr. *Feilding*, or ſhe would ſend her Soul to the Devil.

Mr. *Feilding.* Call Mrs. *Fletcher*; (*who was ſworn.*) Give my Lord an Account of what you know of Mrs. *Villars.*

Mrs. *Fletcher.* All I know of her and Mrs. *Bradby*, is, Mrs. *Villars* lived with me a Twelve-month. She told me ſhe had had Two Baſtards; one

one by my Lord *Torrington*, the other by my Lord *Stamford*.

Juſtice *Powel*. How long was this ago, that ſhe was at your Houſe for a Twelve-month ?

Mrs. *Fletcher*. It was about Four Years ago. She confeſs'd ſhe had had Two Baſtard-Children ; and that ſhe had been in *Bridewel*. I have nothing more than from her own Tongue, that ſhe was a very infamous Woman.

Sir *James Mountague*. Miſtreſs, How long have you been acquainted with Mrs. *Villars* ?

Mrs. *Fletcher*. She was recommended to me by one in the Court, and by her good Behaviour.

Sir *James Mountague*. Would you have a Correſpondence with a Woman that had Two Baſtards ? Pray what is your way of Living in the World ?

Mrs. *Fletcher*. My Husband is a broken Mercer ; he allows me 20*l*. a Year.

Council. What Vocation are you of ?

Mrs. *Fletcher*. I drive little Trade, but work Plain-Work.

Sir *James Mountague*. You are acquainted with Mr. *Feilding* ; are you not ?

Mrs. *Fletcher*. I know him.

Council. How long have you known him ?

Mrs. *Fletcher*. About Three or Four Years.

Council. You would not ſcruple to aſſiſt Mr. *Feilding*, if he wanted a fair Lady. Look upon that Letter, and ſee whether it be your Hand-Writing, or no ?

[*Then a Letter was ſhewn her.*]

Mr. *Longford*. If you deny it, we will prove it.

Mrs. *Fletcher*. It is my Hand-Writing.

Juſtice *Powel*. Miſtreſs, You can ſay no more of it.

Mrs. *Fletcher*. No, my Lord.

Mr. *Feilding*. Call Mrs. *Gardiner*.

[*Who was ſworn.*]

Juſtice *Powel*. What have you to ſay ?

Mrs. *Gardiner*. My Lord, Mrs. *Villars* lodged in my Houſe ; and ſhe came one Morning.

Council. When was it ?

Mrs. *Gardiner*. It was the 6th of *November* laſt was Twelve-month : She came in then, and had been abroad all Night. She told me, ſhe was married to Colonel *Feilding*. She gave a Pair of Gloves to me, and to this Gentlewoman ; and likewiſe gave Favours and Garters in the Houſe. But ſhe deſir'd me to keep it ſecret. Mrs. *Bradby*, about a Fortnight or Three Weeks before *Chriſtmas*, came into Mrs. *Villars*'s Lodging, and happen'd to fall down as if ſhe had been in a Swoon ; and within a few Days ſhe fell in Labour.

Juſtice *Powel*. Was it a Boy, or a Girl, ſhe was deliver'd with ?

Mrs. *Gardiner*. I was not there. It was not at my Houſe, but at new Lodgings.

Juſtice *Powel*. Where was it ſhe was brought to Bed ?

Mr. *Feilding*. We can bring Evidence of that, my Lord.

Juſtice *Powel*. Woman, How can you ſwear, that ſhe was brought to Bed before *Chriſtmas* ?

Mrs. *Gardiner*. I may ſay it, my Lord, becauſe here is one, I believe, that will ſwear it. Mrs. *Villars* her ſelf told me ſo ; and the Midwife ſaid ſhe deliver'd her, for which Mrs. *Bradby* gave her a Guinea. The next Day after her Fall ſhe was very ill, and continued ſo till ſhe was brought to Bed.

Juſtice *Powel*. Was ſhe big ?

Mrs. *Gardiner*. She was paſt breeding ; ſhe was very big.

Mrs. Drinkwater *call'd again.*

Juſtice *Powel*. What can you ſay about Mrs. *Bradby*'s Labour ?

Mrs. *Drinkwater*. My Lord, Mrs. *Villars* and I were at Mrs. *Bradby*'s Labour.

Council. When was this ?

Mrs. *Drinkwater*. To the beſt of my Remembrance, it was about a Fortnight before *Chriſtmas* ; but ſhe did not look before *February*. I do not know, but the Fall ſhe had in Mrs. *Villars*'s Houſe, might be the Occaſion of her coming before her Time.

Juſtice *Powel*. Was ſhe deliver'd of a live or dead Child ?

Mrs. *Drinkwater*. I do not remember that, my Lord.

Council. Was it a Boy, or a Girl ?

Mrs. *Drinkwater*. I know not that neither.

Juſtice *Powel*. I thought verily that if you were at her Labour, that you could tell whether ſhe had a Child, or no Child ?.

Mrs. *Drinkwater*. There were others that were at her Labour, can juſtify that the Midwife ſaid ſhe had a Child.

Council. Don't you know what became of the Child afterwards ?

Mrs. *Drinkwater*. To the beſt of my Knowledge, I think it dy'd as ſoon as it was born.

Council. Juſt now you ſaid, you did not know whether it was alive or no ?

Mrs. *Drinkwater*. Here is Madam *Luet* will juſtify it.

Mrs. Villars *called again.*

Juſtice *Powel*. Mrs. *Villars*, Do you know ſhe was with Child ?

Mrs. *Villars*. I know that ſhe miſcarried.

Council. What time was it ?

Mrs. *Villars*. After *Chriſtmaſs*.

Mr. *Feilding*. Call the Keeper of the Houſe of Correction, *(who was Sworn.)*

Juſtice *Powel*. What can you ſay ?

Keeper. All that I know of Mrs. *Villars*, is, that ſhe was a Priſoner in the Houſe where I live.

Juſtice *Powel*. Where is that ?

Keeper. In *Weſtminſter*. I remember this Perſon was in my Cuſtody above Five Years ago.

Juſtice *Powel*. Had ſhe the Correction of the Houſe ?

Keeper. She had not the Correction of the Houſe, becauſe ſhe was then with Child.

Mr. *Feilding*. Call Mr. *Minors*, *(who was Sworn.)*

Juſtice *Powel*. Mr. *Minors*, What have you to ſay ?

Mr. *Minors*. My Lord, in *October* was Twelvemonth, when Mr. *Feilding* lodged at Mrs. *Heath*'s, I was then with Mr. *Feilding* almoſt every Day ; I ſaw this Woman there every Day, except *Saturday* and *Sunday*. I din'd there, and there was Mrs. *Margaretta*, and ſung theſe Songs which ſhe ſpoke of now. Two or three Days after this, Mr. *Feilding* communicated to me his Treaty of Marriage with the Dutcheſs of *Cleveland*, and ſpoke to me to ſettle ſome Writings between them. (*He produced the Writings.*) Mr. *Feilding* deſired me that I would be ready with them by the beginning of *November*, or the latter end of *October*. This is all I can ſay of this Matter. As to the Women, I ſaw theſe, and Abundance of common Women of the Town : I ſaw him take no more notice of Mrs. *Bradby*, than he did of any of the others.

Juſtice *Powel*. When did you ſee *Magaretta* there ?

Mr. *Mi-*

Mr. *Minors.* I cannot ſpeak to a Day; but ſhe was at Dinner when I dined there about *October* was Twelve-month.

Mr. *Feilding.* Call Mr. *Chomley.*

[*Who was ſworn.*]

Juſtice *Powel.* What can you ſay?

Mr. *Chomley.* My Lord, Not long ago there was a certain Perſon taken up, by the Name of *Villars*, about a Twelve-month ago.

Juſtice *Powel.* Do you know her, when you ſee her?

Mr. *Chomley.* My Lord, I believe that is the Perſon; (*pointing at her*) but whether ſhe was committed or not, I cannot ſay. I have ſeen her divers times at a lewd time of Night, when ſhe ought to have been at home.

A Letter produc'd of Father Dryan's, *and ſhown to Mr.* Florence. (*Mr.* Florence *Sworn.*)

Council. Mr. *Florence*, Do you know this Letter?

Mr. *Florence.* I have ſeen it, and given an Anſwer to it accordingly.

Council. Is it *Dryan*'s Hand?

Mr. *Florence.* I cannot ſay poſitively it is his Hand. There are ſome more of his Letters in the Houſe; I cannot believe, or diſbelieve it.

Council. Could *Francis Dryan* ſpeak *Engliſh?*

Mr. *Florence.* Very little.

Council. How long was he in *England?*

Mr. *Florence.* About Eleven Months. He hath been gone a conſiderable Time.

Juſtice *Powel.* This Father that is now gone, Did he ſpeak *Engliſh* at all?

Mr. *Florence.* He was learning of it. Some *Engliſh* he could ſpeak; for I taught him from time to time.

Juſtice *Powel.* Do you think that he could enquire for Mr. *Feilding* in *Engliſh?*

Mr. *Florence.* I believe he might ſay, Is Mr. *Feilding* at home? But could ſpeak little Senſe in *Engliſh.*

Juſtice *Powel.* Do you think that if he were deſired to ſpeak theſe Words, *I take this Man for my Huſband*, that he underſtood ſo much?

Mr. *Florence.* I believe he might ſay what another ſaid before.

Then the Queen's Council Reply'd.

Sir *James Montague.* My Lord, Mr. *Feilding*'s Defence conſiſts of Two Parts. Firſt, he does endeavour to falſify his Marriage with Mrs. *Wadſworth*, by contradicting the Evidence of Mrs. *Villars*; and for that he calls divers to prove Mrs. *Villars* to be a diſhoneſt Woman. My Lord, we think there is no Occaſion for us to make a Reply to that Particular, ſince we our ſelves do not pretend to ſay ſhe is a Woman of very good Reputation. That which we inſiſt upon is, that Mr. *Feilding* hath been impos'd upon, and marry'd this Woman; and this we hope we have prov'd not only by Mrs. *Villars*'s Evidence, but by other concurring Circumſtances, which are ſo ſtrong, that they cannot poſſibly be deny'd. And as to theſe Facts, he hath not at all contradicted our Evidence. For he does not ſo much as give your Lordſhip an Account how he came by the Ring, or for what End and Purpoſe he beſpoke it. He does not deny that he directed the Poſy of it to be *Tibi Soli.* So that, my Lord, he gives no manner of Anſwer to all theſe Matters.

In the next place, he ſeems to admit that he had been fooliſh enough to be thus impos'd upon by theſe Intrieguing Women. But, ſays he, they have not gain'd their Point; for this impoſing upon me ſignifies nothing, becauſe this Woman was Wife to another Man, when we ſaid ſhe was marry'd to Mr. *Feilding.* Now this ſort of Defence does, in great meaſure, admit the Thing we contend for, *His Marriage with Mrs.* Wadſworth; and whether he hath made it appear that this Marriage is null and void, ſhall be taken into Conſideration next, by making ſome few Obſervations on the Nature of the Evidence that he hath produced to prove this Woman's Marriage with another Man. He ſays ſhe is the Wife of one *Lilly Bradby.* That Man, by the Book, is deſcrib'd to live in St. *James*'s, and the Woman to be of St. *Margaret*'s *Weſtminſter.* But he hath not ſo much as given you any Account *that there is ſuch a Man in the World, that he would have to be the ſuppos'd Huſband of this Woman.* In the next place they have not undertaken to produce one Witneſs that was by at this Marriage, *not one Witneſs.* And what do they rely upon to prove this Wedding? Truly, nothing but the Regiſter-Book; and the Man that keeps the Regiſter-Book is not here. It's true, indeed, they ſay that it's a true Regiſter, but we deſire the Jury may inſpect it; for it appears by divers Circumſtances to be a Counterfeit-Entry; for it is written in another Character than what the reſt are; and it is written in the lower part of the Leaf, where we may ſuppoſe a Vacancy left to inſert ſuch a thing as this is, upon occaſion. The Perſon that wrote it is not here. The whole Year that is ſet down here, is all *entirely one Hand Writing*; and it is not at all like the *Writing of this Entry.* I think they pretend to ſay, there is ſomething of the like Hand-Writing in the ſame Book; and that they make uſe of to be a corroborating Circumſtance. But that appears likewiſe to be at the latter end of another Book. The Book is *Rul'd*, and this Entry is writ below Lines without a Rule.

My Lord, this is what I think fit to take Notice upon the View of the Thing. We had an Intimation given us of this Book. It was rumour'd about the Town that this was the Defence which we were like to meet with. Therefore we did ſend to all Places where ſuſpicious Regiſters were kept, and among the reſt to this *Fleet*-Regiſter. My Lord, we ſhall ſhew you that our Witneſſes went to enquire for this Book; but there they found no Book where this Entry was written. It's a very unaccountable thing that this Book ſhould be concealed. Here is a Woman indeed gives you a Reaſon why ſhe did it.—She ſays ſhe did it, becauſe ſhe was deſired to keep it ſecret by a Woman whom ſhe *never ſaw before*; and of whom ſhe ſays ſhe never *had a Penny.* This, methinks, is very extraordinary. But this very Book was ſhown them, if my Inſtructions be true, and the Place where this Entry is made was then a *Blank*, and *filled up ſince.* There was no ſuch Entry at that time when they look'd upon it. This is all we ſhall ſay in reſpect of the Regiſter, which is *all the Evidence* they bring to prove this Marriage.

But there is another thing they inſiſt upon; They make it an Objection, That this Father in Red was ſeen at Dinner with the Dutcheſs of *Cleveland*, after Mr. *Feilding* was marry'd to my Lady Dutcheſs. As to that Matter, we ſay it does not appear when that time was; nor do they make it out that the Father in Red did know that he was married to the Dutcheſs of *Cleveland* at that time; tho' in Fact they might be marry'd. Twenty People might be at Dinner there, and yet might be ignorant of this Marriage. It's poſſible that a Man may eat and drink with another, and yet not know whether he be married or unmarried. They do not make it appear that there was any Occaſion given at Table that would

would give Riſe to ſuch a Diſcourſe. The Man not having an Opportunity to ſpeak of it, To what end and purpoſe ſhould he do it? The next thing they inſiſt upon, and have endeavour'd to prove, is, That Mrs. *Feilding* was with Child, and brought to Bed the *Chriſtmaſs* after ſhe was marry'd to Mr. *Feilding*. But they do not pretend to tell whether the Child ſhe was brought to Bed of, was dead or alive; or whether it was a Boy or a Girl; but at laſt it proved a Miſcarriage. We have given your Lordſhip an Account how it is likely ſhe ſhould be with Child; for we have proved to you undoubtedly that ſhe was married to Mr. *Feilding*; that *they lay together ſeveral times*; and we have no Reaſon to ſuſpect Mr. *Feilding*'s *Ability*. Mr. *Feilding* knew ſhe was with Child by him. He was the proudeſt Man in the World *of this thing*, and call'd it *young Lord Tunbridge*. To prove this, my Lord, here is a Letter written by himſelf. The Stile is ſomething peculiar too, it is directed, *To the beſt of Wives*, *Anne* Counteſs of *Feilding*. Now, my Lord, Mrs. *Deleau*, whom Mr. *Feilding* thought he had married, her Name is *Anne*, but Mrs. *Feilding*'s Name is *Mary*.

The Letter produced and proved by Boucher *and* Beal, *and it was directed,*

To the beſt of Wives, *Anne* Counteſs of *Feilding*, at *Waddon*.

Novemb. 14. 1705.

THere is nothing can pleaſe me more upon this Occaſion, than to hear my Deareſt Wife ſay I had made her ſick, by turning her Liver; *for without that we could not hope* for a young Lord Tunbridge; *which would be, the next to my Dear her ſelf, the moſt welcome* Preſent to my Arms. *Make haſte then, my Deareſt Life, to* Cultivate the young Spark; *and be ſure you don't* ſtarve my Boy. *As for your coming to me, it wholly depends upon your ſelf, who can beſt judge when it is moſt proper to come to me; which you can do, by giving out you are to ſtay all Night in* London; *and then you and* Puggy *have nothing to do but to come to me at Bed-time, and ſo we may go to Bed and lye till Morning, when* Puggy *may come again and call you. Adieu* my Soul's Love, *whom I muſt ever value more than* Life. Feilding.

Council. Call Mr. *Longford* (*who was Sworn.*)

Sir *Ja. Montague*. Were you directed to go to the *Fleet*, and look into the Regiſter-Book.

Mr. *Longford*. Mr. *Attorney General* telling me that he heard there would be ſome Pretence of a Marriage that would be ſet up, adviſed me enquire after it. I was informed, that ſome Certificate was, or would be given in the *Fleet*. I went with Mr. *Reſcorloe* to ſee the Books. We look'd all over thoſe Months for the Year 1703. This Book is the very Book I take it to be, but am not poſitive. That which we ſaw, I obſerved had an Entry dated the Year 1705. before the Marriages *in the Year* 1704. *in yellowiſh Ink at the Top of a Leaf*.

Council. Call Mr. *Reſcorloe* (*who was Sworn.*)

Sir *Ja. Montague*. Do you remember that you ſaw that Book?

Mr. *Reſcorloe*. I do remember that I ſaw that Book with Mr. *Longford*. Mr. *Longford* and I went by the *Attorney General*'s Order, to ſearch the Books at the *Fleet*, to ſee whether we could find any Entry of *Lilly Bradby*'s Marriage with Mrs. *Wadſworth*. This Woman that gave her Evidence here brought in this Book, and we look'd back for three Years. We found no ſuch Entry as ſhe ſhows here in this Book. We ask'd her again, whether there were any other Books of Entries of Marriages? She ſaid, No. I ask'd her, whether there had been any one there to ſee after ſuch a Certificate? She ſaid, there was a Woman and a Man about a Week or Fortnight ago. I ask'd her, Whether ſhe ſhewed them this Book? She ſaid, ſhe had ſhewed them this Book, and they gave her a Shilling for ſearching it. She ſaid poſitively there was no *ſuch Certificate* entred in the Book, and that there was *no other Book for the Entry of Marriages*. We ſearch'd the Month of *October* more ſtrictly; we look'd for the very Certificate with the greateſt Care and Induſtry that could be. We went to *Baſſett*'s Houſe, who, this Woman ſaid, was not at home. She laugh'd in her Sleeve, and ſaid, he was a doating Man; and if he ſpoke two Words, he could not ſpeak a third. I do really believe this to be the Book. I took good Notice of the *Blank* where this Certificate is entred, and did remark that there was a *vacant Space* under this Certificate, where was no Writing. Mr. *Longford* and I turned back again to the Year 1705, which was put before the Year 1704, and obſerved it then, as it appears now, to be the Book, *Except this Entry*. I do believe it to be the ſame Book we then ſaw.

Sir *Ja. Montague*. There is but one thing more that I would mention, which is, that the Woman in the Top-knot confeſs'd that this Letter was her own Hand-Writing. I deſire it might be read.

The Letter was read. It is directed.

To Major-General *Feilding*.

Tueſday Morning.

ALL that know the Name of Major-General Feilding, *muſt own the Generous and Charitable Actions that your Honour daily beſtows upon 'em. I, among the reſt, ſhall ever acknowledge your Goodneſs. It's Neceſſity that forces me to diſpoſe of this Picture. Your Honour is a nice Judge of Painting, as well as an Admirer of ſuch Pieces, which makes me humbly preſent it to you firſt; and in accepting the ſame, your Honour will highly oblige, as well as ſerve,*

Your humble Servant,
M. FLETCHER.

POSTSCRIPT.

I long to ſee you. For your Encouragement, to grant me that Favour; I am now acquainted with a young Lady that's Pretty, and lives in good Faſhion. *Your Honour will oblige me in letting me receive your Commands.*

Juſtice *Powel*. *Gentlemen of the Jury*, The Priſoner, Mr. *Robert Feilding*, ſtands Indicted for a capital Offence, for Felony, in marrying a Second Wife, his Firſt being then Alive. This is the Offence charged againſt him. The Council for the Queen have called ſeveral Witneſſes to prove this Matter upon him. And the firſt is one Mrs. *Villars*. She hath given her Evidence from one end to the other, if you believe what ſhe ſwears. She ſwears, that one Mrs. *Streights* came firſt to her Lodging, and ſhe was not at home; but left word that ſhe muſt needs ſpeak with her; that ſhe was always out of the way when any thing offer'd that would do her a kindneſs; and that it would be 500*l.* out of her way if ſhe did not ſee her. It ſeems, that when Mrs. *Streights* met her, ſhe acquainted her with Mr. *Feilding*'s Inclinations; and being inform'd that ſhe was acquainted with the Lady, that ſhe us'd

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to cut her Hair, thought that she might have such an Interest in her, as to be made serviceable to bring the Matter about; which if she was, it might be worth 500 *l.* to her. Mrs. *Villars* undertakes the Business to bring Mr. *Feilding* and Mrs. *Deleau* together; she did readily accept of it; thereupon Mr. *Feilding* and she discours'd together concerning this Matter: She told him she was acquainted with Mrs. *Deleau*, and that she would do the best she could to bring it about. Mr. *Feilding* upon this went to Mrs. *Deleau*'s Country-House at *Waddon* in *Surry*, that thereby the Lady might have an Opportunity of seeing him. She says, Mr. *Feilding* told her that he had Access to the Gardens; that when he was there he saw the Lady thro' the Glass-Window; he was willing to give the Lady a full View of him, therefore he stood still and set his Watch by the Sun-Dial, and took several Turns in the Garden; and he did afterwards send a Letter to her. Mrs. *Villars* was afterwards sent of a Message, as tho' it was from the Dutchess of *Cleveland*, to acquaint the Lady that the Dutchess had a great Mind to see the Gardens. Mrs. *Deleau* told Mrs. *Villars* that she should be proud that a Person of her Quality should come to her. She said that Mr. *Feilding* sent her, and she found afterward that the Dutchess of *Cleveland* did not intend to go; nay, that she knew nothing of the Matter. But see how she managed the Matter, and play'd this Trick upon Mr. *Feilding*; it is no better, if true. They agreed together that Mrs. *Deleau* should come to a Place where Mr. *Feilding* should appoint; that something of Musick, or some Entertainment should be provided; they contrived when it should be, the Time was on my Lord Mayor's Day at Night, and according to Appointment Mrs. *Villars* came with Mrs. *Deleau*, as Mr. *Feilding* thought, but in reality it was one *Mary Wadsworth*, which represented Mrs. *Deleau*; she came in a Mourning Coach, and dress'd in a Widow's Habit; after this manner they came to Colonel *Feilding*'s Lodgings in *Pall-Mall*. The Lady truly was not to know that they were Mr. *Feilding*'s Lodgings; however Mr. *Feilding* was not at home, but it was not long before he came: He came up to the Lady: You have heard what Addresses he made to the Lady, and how much Love he express'd towards her: Ask'd her, whether she lov'd singing? One *Margaretta* was sent for, and sung two Songs. Mr. *Feilding* was so taken with her, he would have marry'd her presently; but she being coy, modestly declin'd it, and so they parted for that Time. Mrs. *Villars* was to bring her afterwards, which was on the 9th of *November*, on the Night the supposed Wedding was; Mrs. *Villars* brought her. When she came there, Mr. *Feilding* propos'd to be married to her forthwith; she seem'd to be shy at present, but Mr. *Feilding* said he would fetch the Priest immediately; he lock'd them in, took the Key with him, and returned in three Quarters of an Hour; the Priest she describes to be in a long red Gown lin'd with blue, a long Beard and a Fur-Cap upon his Head, so he brought him along with him; when he came, he said, *This is the Man that should joyn their Hearts together*. She tells you further that Mrs. *Wadsworth* question'd the Priest; required of him a Proof to shew he was a Priest in Orders. The Priest pull'd a Picture of the Pope out of his Pocket, which he said was a Credential for Priests. After Supper the Marriage was propos'd, whether it should be in the Dining-Room, or Bed-Chamber? That was the Question. The Lady thought the Bed-Chamber best; he thought so too. Well then, in the Bed-Chamber it must be. The Priest did want Water, Salt and Rosemary, Things that he us'd in performance of the Ceremony; *Boucher* was sent down for them; he brought up Water and Salt, but could get no Rosemary; after these Things were brought up, *Boucher* the Servant was turned out, and the Doors were shut. Then there was no body present but Mr. *Feilding*, the Lady, the Priest and Mrs. *Villars*. Then she tells you of the Ceremony of the Wedding, the Ceremony of the Water, and the Ceremony of the Ring. After that was done, they proceeded to the Marriage; the Office was in *Latin*; when they came to the Marriage Words, *I take thee to be my Husband*, &c. Mrs. *Wadsworth* desir'd it might be spoke in *English*; thereupon Mr. *Feilding* did say it in *English*, *I take this Woman to be my wedded Wife, with all my Heart and with all my Soul*. The Gentlewoman she said her part likewise in *English*; *I take this Man to be my Wedded Husband*; but Mr. *Feilding* observing her to speak it too low, desir'd her to speak it as earnestly as he did: Whereupon she did say, *I take this Man to be my Husband, with all my Heart, and with all my Soul*. The Ceremony of putting on the Ring the Priest directed; that was, to take hold of the End of one of her Fingers and put it on; she saw that done, and when the Ceremony was over, the Priest went away; that when he was gone away, she undressed the Bride, and put her to Bed, and then gave notice to Mr. *Feilding* that the Lady was in Bed. Then Mr. *Feilding* went to Bed, and *she saw them in Bed together*. Then she went to Bed her self in a Lodging that was provided for her up another Pair of Stairs: That the next Morning she arose, came down, went into the Room where there was a Fire made by *Boucher*; that then she saw *them in naked Bed together*. If you believe her, she swears the Marriage by this Priest, and the Consummation of it. Mrs. *Villars* goes further, and swears, that she brought her *two other Times*, and that those Times *she saw them in Bed together as Man and Wife*. I ask'd Mrs. *Villars* at last how Mr. *Feilding* came to be undeceived? She says, it was kept secret from *November* to *May*. Then Money was wanted; that was a great Disappointment to Mr. *Feilding*, for he thought he had marry'd a Lady that would have furnish'd him with Money. Then he discover'd the Fraud, and found he had been impos'd upon; then he was angry with her, beat her, and call'd her Names. Indeed, Gentlemen, I must deal plainly with you, if her Evidence stood alone, her Reputation is shaken to that degree, that in Truth, where a Man stands upon his Life, one would not have a great Regard for what such a Woman swears, if it were not supported otherwise. Now, tho' by her self she be not a good Evidence, yet the Matters of Fact which she swears to, are likewise proved by the concurrent Testimony of others.

First, They call *Boucher*, and truly he fortifies her Evidence in a great many Particulars, gives an Account of Mrs. *Villars* bringing Mrs. *Wadsworth* to Mr. *Feilding*'s under the Character of a Person of Quality; gives an Account, just as she does, of their coming to Mr. *Feilding*'s Lodgings in a Widow's Habit and Mourning Coach; their having a Treat of Plumb-Cake and two Bottles of Wine. He further gives an Account of their coming a second Time, and an Account of the Priest:

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knew the Prieſt; knew him to be the Emperor's Envoy's Prieſt. He remembers the Prieſt coming to the Place; he remembers alſo the Circumſtances of being ſent for Water, Salt and Roſemary. He ſays he was order'd down, and the Chamber-door was ſhut, and the Prieſt was then in the Chamber with Mr. *Feilding*, the Lady, and Mrs. *Villars*; and that when the Prieſt was gone, Mr. *Feilding* and the Lady went to Bed; that *he ſaw them in Bed together*; that the People that were below, when *Boucher* was ſent down for Salt and Roſemary, they could conclude no otherwiſe but that they were making this Lady a Convert. Now, Gentlemen, this is a material Thing, that there was a Prieſt at that Time, and they were private together; this is a concurrent Evidence to ſtrengthen Mrs. *Villars*'s Teſtimony. There is Mrs. *Martin*, Mrs. *Heath*, and Mrs. *Price*, they remember ſeveral of theſe Matters perfectly well. Mrs. *Martin* ſaw this Perſon and her Mourning Coach; ſhe ſaw the Lady and Mrs. *Villars* go up Stairs, and the Time when the Prieſt came in, ſhe let him in; deſcribes him by his particular Habit as the reſt do. Mrs. *Heath* remembers Mrs. *Villars* coming with a Woman that ſhe thought was a Woman of Quality, but ſaw not the Prieſt. Mrs. *Villars* told her ſhe was worth 80000 *l.* ſhe ask'd her whether ſhe might lie there that Night, for it was too late to go home? She agreed they ſhould lie together, Mrs. *Villars* and Mrs. *Wadſworth*. But now here is another Circumſtance that hath mighty Weight in it, that is, the Ring; they have brought the Perſon of whom Mr. *Feilding* bought the Ring to the Value of 20 *s.* that the Ring was ready made, and Mr. *Feilding* directed the Poſy (*Tibi Soli*) to be engrav'd in it. There was another Man by, when Mr. *Feilding* bought the Ring and order'd the Poſy for it; and this *very Ring* with *this Poſy* has been produc'd firſt by the Proctor and Regiſter; the Proctor does ſay it was firſt brought to him by Mrs. *Wadſworth*, who came to retain him in an Action of Nullity of Marriage; he took notice of the Ring, and ſaid that it had this Poſy in it. Afterwards when Mrs. *Wadſworth* came again he was not at home; it was in the Hand of his Brother, and he is ſure it is the ſame Ring. The Goldſmith ſwears it to be that Ring Mr. *Feilding* bought of him; he knew it by the Mark and Workmanſhip of it; for Goldſmiths know one anothers Work. This, Gentlemen, hath a great deal of Weight in it; it is a very great Circumſtance, unleſs they could tell you, which they have not, upon what Occaſion this Ring was bought at this Time.

Gentlemen, They give a further Account of this Matter, by the Teſtimony of Letters, which they prove to be Mr. *Feilding*'s Hand. Mrs. *Villars* was the Carrier of theſe Letters; Mr. *Feilding* ſtiling her in them by the Name of *Puggy*, a Name by which it ſeems he uſed to call her. Theſe Letters are proved by *Boucher* and a Lady in the Gallery, to be Mr. *Feilding*'s Writing. Theſe Letters have been read to you, they are written as from a Husband to a Wife; in them he owns her to be his *Wife*, calls her Counteſs of *Feilding*, ſtiles himſelf *her Husband*. Theſe Letters have been read to you. This Gentlemen, as I remember, is the Subſtance of the Evidence that hath been given for the Queen.

Sir *James Mountague*. My Lord, be pleaſed to take notice of Mr. *Feilding*'s going to the Emperor's Envoy for the Father in Red.

Juſtice *Powel*. It is true, I had forgot the Evidence of Mr. *Florence* a Chaplain, that is a Prieſt, now belonging to Count *Galas* the Emperor's Envoy, and the Porter. They tell you about this Time Mr. *Feilding* did come to enquire for this Prieſt; and gave the Porter half a Crown (by a good Token:) but the Prieſt he asked for not being at home, he enquired for Mr. *Florence*; he told Mr. *Florence* that he had been in Love with a young Lady a good while, but now had prevailed with her to marry him. And ſeeing the Father in Red was not there, he deſired he would go along with him and do the Office. Mr. *Florence* told him it was improper for him to go without the Envoy's Leave; he went up to the Envoy and acquainted him with it, the Envoy gave him Caution to do it with Diſcretion; but when he came down again, it ſeems that the Red Father had been with Mr. *Feilding* in the mean Time, and were both gone together.

Now, Gentlemen, you hear what Defence Mr. *Feilding* makes againſt this great Charge againſt him.

Firſt, He calls a great many Witneſſes to prove that this Mrs. *Villars* was married as ſhe pretended to Colonel *Feilding*, and that ſhe was a very common Woman, ſo far as that ſhe has been in a publick Houſe of Correction; and one of their Witneſſes does bear hard upon her Teſtimony; that is, that ſhe ſhould declare to her that ſhe was married to Colonel *Feilding*, and that my Lady Dutcheſs ſhould ſay to her, If you can make that out that you are married to Mr. *Feilding*, ſhe would give her two hundred Pounds, and ſettle 100 *l.* a Year upon her for Fifteen Years together. Then as for Mrs. *Wadſworth*, they call you divers to prove that ſhe was brought to Bed about *Chriſtmas*, after this ſuppos'd Marriage. But when they came to be examined they did not prove very much of that; for indeed it proved to be a Miſcarriage; the Woman could not ſay ſhe ſaw the Child, could not tell whether it was a Boy or a Girl; whether it was dead or alive; it did not appear by their Evidence that ſhe went out her Time with a Child. Another part of Mr. *Feilding*'s Evidence is this, to prove Mrs. *Wadſworth* married to another Perſon; and then admitting ſhe was married to Mr. *Feilding*, 'tis a null Marriage. To prove that Mrs. *Wadſworth* was before married to another, they have brought the Book of Marriages of the *Fleet*, and in that Book there is an Account of one *Lilly Bradby*, married ſuch a Time to Mrs. *Mary Wadſworth*; the Man of St. *James*'s, the Woman of St. *Margaret's Weſtminſter*. The Woman of the *Fleet*, in whoſe Cuſtody this Book was, pretends that Mrs. *Wadſworth* came to her, and deſired if any came to ſee the Book, that ſhe would not let them ſee the Entry of her Marriage; and why? Becauſe there would be Trouble about her Marriage. This Woman ſwears that there were two Men came to ſearch the Book, but ſhe ſhewed them another Book; but this Book ſhe did not ſhew them. She was ask'd whether ſhe had two Books of Marriages for the ſame Year? She ſaid ſhe had ſeveral Books for the ſame Year: One Parſon made his Entry in one Book, and another Parſon in another Book. She pretends ſhe did not ſhew them this Book; but the Book ſhe ſhewed them was at home. I cannot conclude much from what this Woman hath ſaid; but Gentlemen you have look'd upon this Book, and if you are ſatisfied from this Evidence, that *Mary Wadſworth* was married to

Bradby at this Time, I confeſs Mr. *Feilding* will not be within the Statute. You have look'd into the Book; they give you no Account that there was ever any ſuch Man as *Bradby*, nor of no Cohabitation; but a meer Book is produced, and not of the *beſt Credit* neither; it is entred in the Bottom of the Leaf, but not in the Middle; it is written with *another coloured Ink*, and *in another Hand.* I ask'd the Woman whether ſhe knew the Man that wrote it? She ſaid, yes; and it was her Husband's Brother's Hand. He is alive, why is not he produced?

Gentlemen, they have called no Witneſſes to prove the Marriage with *Lilly Bradby*. There were two Gentlemen on the other ſide, they went to the *Fleet* to ſearch the Books of the Entry of this Marriage. They ſay that a Perſon inform'd them that there had been there a Man and a Woman before them; theſe Gentlemen went and deſired to ſee the Book, particularly for the Year 1703. They ſay the Woman did produce the Book of Marriages, but they could not ſee ſuch an Entry; ſhe denied to them that ſhe had any other Book for that Year; they cannot ſwear poſitively that this is the Book that was ſhewn them; but one of them ſays he believes it to be the ſame, for in that which he ſaw, he obſerved Entries of the Year 1705. before the Year 1704. He took good notice of it, and ſo it is *found in Court.* The other Gentleman ſays, he took particular notice of the Space that was in the Book, where this Entry is now written. Now the Woman does not bring the other Book ſhe pretended to have ſhewn them. Now, as to the Labour, they have produced a Letter under Mr. *Feilding*'s Hand, whereby Mr. *Feilding* takes notice of her being with Child, directs the Letter to *Anne Counteſs of Feilding* at *Waddon*; he took it that he had married Mrs. *Deleau*, for her Name is *Anne*, he directed his Letter to her Country-Seat. There is another Thing, of Mr. *Feilding*'s coming to Mrs. *Heath*, and complaining what an ill Woman Mrs. *Villars* was, for ſhe had ſerved him a baſe Trick, inſtead of a Woman of Fortune, ſhe had put a common Woman upon him. Gentlemen, you have heard the Account too concerning his beating of her; for this Woman, it ſeems, was troubleſome to him at *White-Hall*; ſhe demanding him as her Husband, ſaid ſhe was lawful Wife; he ſtruck her, and cauſed her to be held till he got away from her.

Gentlemen, It is a very great Charge, upon Mr. *Feilding*, it is true, if there be Evidence to maintain it; it does not really depend upon Mrs. *Villars*'s Evidence; for if her Evidence were to ſtand alone, no Credit ſhould be given to it; but as it is ſupported by concurring Evidence, I leave it with you whether it be not ſufficient to find Mr. *Feilding* Guilty. But if you think that Mrs. *Wadſworth*'s Marriage to *Lilly Bradby* is proved ſufficiently, then, altho' you think Mr. *Feilding*'s Marriage with Mrs. *Wadſworth* ſufficiently proved, yet you are to find for the Defendant.

The Jury having withdrawn for ſome Time, brought in their Verdict, *That Mr.* Feilding *was Guilty of the Felony he ſtood indicted of.*

Mr. *Feilding*, (*in Caſe he was found Guilty*,) had obtained the Queen's Warrant to ſuſpend *Execution* of this Sentence; and then by his Council took Exceptions to the Indictment, and moved in Arreſt of Judgment; but they were anſwered by the Council for the Queen; but Mr. *Feilding* having obtained a Suſpenſion of the Execution, the Judges by a *Cur' adviſare vult* (as the Form is) ſuſpended giving Judgment till the next Seſſions, and accepted Bail for Mr. *Feilding*'s Appearance the next Seſſions.

The next Seſſions, being the Fifteenth of *January* following, Mr. *Feilding* appear'd, and his Council waving their Exception (as being Frivolous) he was ask'd what he had to ſay why the Court ſhould not proceed to Judgment and Execution? And then he craved the *Benefit of his Clergy*; which was allow'd. And then Judgment was given (as uſual) That he ſhould be burnt in his Hand. But he having the Queen's Warrant to ſuſpend Execution, he was admitted to Bail.

The Proceedings againſt Robert Feilding, *Esq;* *in* Doctors Commons.

NOtwithſtanding Mr. *Feilding* was found Guilty of Felony at the *Old Baily*, her Grace the Dutcheſs of *Cleveland* having inſtituted a Cauſe of Nullity of Marriage againſt the ſaid Mr. *Feilding*, by Reaſon of a former Marriage with the ſaid *Mary Wadſworth*, in the Arches Court of *Canterbury*; and having by Examination on Oath, of divers credible Witneſſes, made good and ſufficient Proof of the ſeveral Articles of the Libel by her Grace exhibited in the ſaid Court againſt the ſaid Mr. *Feilding*, did proceed to obtain the Sentence of the ſaid Court; and accordingly on the 23d day of *May*, in the Year of our Lord God 1707. the Right Worſhipful Sir *John Cooke*, Kt. Dr. of Laws, Official Principal of the ſaid Court, then judicially ſitting in the Common Hall of *Doctors Commons*, *London*, being then preſent the Duke of *Grafton*, the Duke of *Northumberland*, the Earls of *Litchfield*, *Suſſex*, *Jerſey*, and the Lord *Quarrendon*; as alſo the reſpective Proctors of her Grace the Dutcheſs of *Cleveland* and Mr. *Feilding*, did, at the Petition of her Grace's Proctor, read and promulge his definitive Sentence in *Latin*, of the Tenor following, *viz.*

" IN *the Name of God, Amen.* We *John Cooke*,
" Kt. Dr. of Laws, Official Principal of the
" Arches Court of *Canterbury*, lawfully appointed,
" rightly and duly proceeding, Having heard, ſeen,
" underſtood, and fully and maturely diſcuſs'd
" the Merits and Circumſtances of a certain Cauſe
" of Nullity of Marriage, by reaſon of a former,
" now depending before us, between the moſt No-
" ble Lady, *Barbara* Dutcheſs of *Cleveland*, the
" Party Agent and Complainant, on the one Part;
" and *Robert Feilding*, Eſq; of the Pariſh of St.
" *James*'s *Weſtminſter*, in the County of *Middle-*
" *ſex*, the Party againſt whom it is complain'd,
" on the other Part. The Parties aforeſaid lawful-
" ly appearing before us in Judgment, by their
" Proctors reſpectively; and the Proctor for the
" ſaid moſt Noble Lady. *Barbara* Dutcheſs of
" *Cleveland*, praying Sentence to be given, and Ju-
" ſtice to be done to his Party; and alſo the Proctor

" of

" of the ſaid *Robert Feilding*, Eſq; praying Juſtice " to be done to his Party: And having carefully " and diligently ſearch'd into, and conſider'd of the " whole Proceedings had and done before us in this " Court; and having obſerv'd all and ſingular the " Matters and Things, that by Law in this Behalf " ought to be obſerv'd; We have thought fit, and " do thus think fit to proceed to the giving our " Definitive Sentence, or Final Decree, in manner " following; *viz.*

" Foraſmuch as we have by the Acts enacted, " deduced, alledged, exhibited, propounded, pro- " ved and confeſs'd, That the Proctor for the ſaid " moſt Noble Lady, *Barbara* Dutcheſs of *Cleve-* " *land*, hath fully and ſufficiently prov'd and " founded his Intention in a certain Libel, and " other Matters now remaining in the Regiſtry of " this Court, propounded and exhibited in this " Cauſe on the Part and Behalf of his ſaid Client; " And that nothing hath been, on the Part and Be- " half of the ſaid *Robert Feilding*, effectually ex- " cepted, deduc'd, alledg'd, exhibited, propound- " ed, prov'd and confeſs'd, which might, or could " in any wiſe (touching our Sentence hereafter to " be pronounc'd) *hurt or weaken* the Intention of " the ſaid moſt Noble Lady, *Barbara* Dutcheſs of " *Cleveland*:

" Therefore, We *John Cooke*, Knight, Doctor of " Laws, the Judge aforeſaid, *having firſt called up-* " *on God, and ſetting him alone before our Eyes*, " and having heard Council thereupon; do pro- " nounce, decree, and declare the before-named " *Robert Feilding*, Eſq; and one *Mary Wadſworth*, " mentioned in the Proceedings of this Cauſe, be- " ing free from all Contract and Promiſe of Mar- " riage with any other, (ſo far as appears to us) " on the Ninth Day of *November*, in the Year of " our Lord God, 1705. at a Place mention'd in " the Libel in this Cauſe, did contract Marriage, " and did ſolemnize, or procure the ſame to be ſo- " lemniz'd between them; and did afterwards con- " ſummate the ſame: And that the ſaid *Robert* " *Feilding* and the ſaid *Mary Wadſworth* were, and " are Man and Wife. And that the ſaid *Robert* " *Feilding*, Eſq; after the Solemnization and Con- " ſummation of the aforeſaid Marriage, not ha- " ving the Fear of God before his Eyes, on the " 25th Day of the ſaid Month of *November*, in " the ſaid Year of our Lord God, 1705. and in " the Place alſo in the aforeſaid Libel mention'd, " did contract a pretended Marriage with the ſaid " moſt Noble Lady, *Barbara* Dutcheſs of *Cleve-* " *land*. And alſo we pronounce, decree, and de- " clare, That the ſaid pretended Marriage, or ra- " ther a Shew of Marriage, between the ſaid *Ro-* " *bert Feilding* and the ſaid moſt Noble Lady *Bar-* " *bara* Dutcheſs of *Cleveland*, at the Time and " Place libellated, was ſolemniz'd, or rather pro- " phan'd; the ſaid *Mary Wadſworth*, alias *Feil-* " *ding*, being then and ſince living. And alſo we " pronounce, decree, and declare the ſame pre- " tended Marriage, or rather Shew of Marriage, " between the ſaid *Robert Feilding* and the ſaid " moſt Noble Lady *Barbara* Dutcheſs of *Cleveland*, " ſo as aforeſaid contracted and ſolemniz'd, or ra- " ther prophan'd, by reaſon of the former Mar- " riage between the ſaid *Robert Feilding* and the " ſaid *Mary Wadſworth* ſolemniz'd and conſum- " mated, was, and is from the Beginning, void, " and of no Force in Law, and doth and ought to " want the Force and the Effect of the Law. " Therefore, by this our Definitive Sentence, or " our Final Decree, which we now promulge in " theſe our Writings, We do pronounce, decree, " and declare the ſaid moſt Noble Lady, *Barbara* " Dutcheſs of *Cleveland*, was and is free from any " Bond of Marriage with the ſaid *Robert Feilding*, " and had and hath the Liberty and Freedom of " Marrying with any other Perſon.

The Original Sentence was Sign'd thus,

JOHN COOKE.

The aforeſaid Sentence having been publickly read by the Judge, at the Time, Place, and in the Manner aforeſaid; the ſaid Judge did decree one or more Publick Inſtrument or Inſtruments thereof to be made, (at the Petition of her Grace's Proctor) by Mr. *Henry Farrant*, the principal Regiſter of the ſaid Court; which accordingly he hath ſince iſſued under the Publick Seal of the Office of the ſaid Judge, on the Day following, *viz.* the 24th of *May*, 1707.

On *Wedneſday*, the 25th Day of *June*, in the Year of our Lord, 1707. before the Right Worſhipful Sir *John Cooke*, Knight, and Doctor of Laws, Official Principal of the *Arches Court* aforeſaid; in his Dwelling-Houſe at *Doctors-Commons*; in the Preſence of the ſaid Mr. *Henry Farrant*, Notary-Publick, and Principal Regiſter of the ſaid Court; Mr. *Feilding*, by his Proctor, did renounce all Benefit of Appeal from the ſaid Sentence, in the manner following; *viz.*

' Appearing perſonally Mr. *Edward Cooke*, Proctor ' for her Grace, the moſt Noble Lady, *Barbara* ' Dutcheſs of *Cleveland*; and Mr. *Thomas Willy-* ' *mott*, Proctor for the ſaid *Robert Feilding*, Eſq; ' At which Time, the ſaid *Willymott* did exhibit a ' certain Letter, or Epiſtle, of the Tenor following; *viz.*

Mr. Willymott,

WHen Sentence *is given in Behalf of her Grace the Dutcheſs of* Cleveland, *pray enter no Inſtrument of Appeal, for I ſhall proceed no further therein.*

Your Friend and Humble Servant,

FEILDING.

' And the ſaid *Willymott* alledg'd, That the ſaid ' Letter was all of the proper Hand-Writing of the ' ſaid *Robert Feilding*; and that he the ſaid *Willy-* ' *mott* receiv'd the ſaid Letter from the ſaid *Robert* ' *Feilding*. And the ſaid *Willymott* further alledg'd, ' That no Appeal from the Definitive Sentence, given ' by the ſaid Judge on the Part and Behalf of the ' ſaid moſt Noble Lady, *Barbara* Dutcheſs of *Cleve-* ' *land*, had been, or was interpoſed by, or on the ' Behalf of the ſaid *Robert Feilding*. And the ſaid ' *Willymott*, as Proctor of the ſaid *Robert Feilding*, ' did renounce all Benefit of Appeal from the ſaid ' Sentence, in the Preſence of the ſaid *Cooke*, as ' Proctor of the ſaid moſt Noble Lady, *Barbara* ' Dutcheſs of *Cleveland*; who, on the Part and ' Behalf of the ſaid moſt Noble Lady, *Barbara* ' Dutcheſs of *Cleveland*, accepted the aforeſaid Al- ' legation and Renunciation of the ſaid *Willymott*; ' and then alſo pray'd the Golden Ring, and Se- ' ven Letters, by him exhibited on the Part of her ' Grace, and annexed to the Libel in this Cauſe, to

' be deliver'd out of the Regiſtry of this Court, for ' the Uſe of her ſaid Grace. Whereupon the Judge, ' at the Petition of the ſaid *Cooke*, (the ſaid Let- ' ters being firſt regiſtred in the ſaid Court) de- ' creed the ſaid Golden Ring, and the Seven Let- ' ters, to be deliver'd to the moſt Noble Lady, ' *Barbara* Dutcheſs of *Cleveland*, or to the ſaid ' *Cooke*, for the Uſe of her Grace; as by Act of ' the Court had been expedited at the Time and ' Place aforeſaid, and now remaining in the princi- ' pal Regiſtry of the ſaid Court, Relation being ' thereunto had, doth and may more fully ap- ' pear.

The Tryal of JAMES STIRLING, *of* Keir, *and Others*, Nov. 15. 1708.

CURIA JUSTICIARIA, *S. D. N. Reginæ, tenta in novo Domo Seſſionis Burgi de* Edinburgh, *Decimo quinto Die Menſis* Novembris, *Milleſimo, Septingenteſimo, Octavo; per Nobilem & Potentem Comitem*, Georgium *Comitem de* Cromertie, &c. *Juſticiarium Generalem, & Honorabiles Viros* Adamum Cockburn *de* Ormiſtoun, *Juſticiarium Clericum*; *Dominos* Joannem Lauder *de* Fountainhall, Gulielmum Anſtruther *de eodem*, & Gilbertum Eliot *de* Minto; *Magiſtrum* Robertum Steuart *de* Tillicoutrie, *& Magiſtrum* Jacobum Erskine *de* Grange; *Commiſſionarios Juſticiarii Dict. S. D. N. Reginæ.*

Curia Legitimè Affirmata.

Intran.
James Stirling, Laird of *Keir.*
Archibald Seaton, Laird of *Touch.*
Archibald Stirling, Laird of *Carden.*
Charles Stirling, Laird of *Kippendavie*; and
Patrick Edmonſton, of *Newtown.*

INdicted and Accuſed at the Inſtance of Sir James Steuart, *Her Majeſties Advocate, for Her Highneſs Intereſt, and as having Special Warrant from Her Majeſty for that Effect.* That where, *by the Law of* GOD, *and the Laws of this, and all other well-govern'd Realms, the Crime of Treaſon and Leſe-Majeſty, and the Treaſonable and Unlawful Riſing and Continuing in Arms, are moſt Atrocious and Heinous Crimes, puniſhable by Forfeiture of Lands, Life and Eſtate, or other Pains of Law. Likeas by the Act of Parliament*, Jac. I. Par. 1. Cap. 3. *it is ſtatute*, That no Man openly rebel againſt the King's Perſon, under the Pain of Forfeiture of Life and Goods. *And by the Act of Parliament*, Jac. II. Par. 6. Cap. 24. *it is ſtatute*, That who commit Treaſon againſt the King's Perſon, or Majeſty, or who riſe in Feire of Weir againſt him, ſhall be puniſhed as Traitors. *And by the Act of Parliament*, Car. II. Par. 1. Seſſ. 1. Cap. 3. *it is declared to be* High-Treaſon, for the Subjects more or leſs, upon any Pretext, to riſe and continue in Arms; and to make Treaties or Leagues with Foreign Princes or States, or among themſelves, without His Majeſty's Special Authority firſt interponed. *And by the Act of Parliament*, Car. II. Par. 1. Seſſ. 2. Cap. 2. *it is ſtatute*, That if any Perſon ſhall Plot, Contrive or Intend, Death and Deſtruction to the King, or Bodily Harm tending thereto; or Deprive, Depoſe, or Suſpend Him from the Stile, Honour, and Kingly Name of this, or any other His Majeſty's Dominions; or levy War, or take up Arms againſt Him, or any commiſſionate by Him; or entice Strangers, or others, to invade any of His Dominions, and expreſs and declare ſuch Treaſonable Intention; he ſhall be adjudged a Traitor, and puniſhed as in the Caſe of High Treaſon. *Likeas by the Act of Parliament*, 1702. *intituled*, Act Recognizing Her Majeſties Royal Authority, *it is declared*, That it ſhall be High Treaſon in any of the Subjects of this Kingdom, by Writing, Speaking, or any other manner of way, to diſown, quarrel, or impugn Her Majeſties Royal Power and Authority, or Right and Title to the Crown. *And by the Act of Parliament*, 1703. *intituled*, Act Aſſerting and Recognizing Her Majeſties Authority, *it is again ſtatute and declared*, That it ſhall be High Treaſon, in any of the Subjects of this Kingdom, to diſown, quarrel or impugn, Her Majeſties Right and Title to the Crown of this Kingdom, or Her Exerciſe of the Government thereof. *NEVERTHELESS it is of Verity, That the ſaid* James Stirling *of* Keir, Archibald Seaton *of* Touch, Archibald Stirling *of* Carden, Charles Stirling *of* Kippendavie, *and* Patrick Edmonſton *of* Newtown, *all and each of them were guilty of the ſaid Crimes, in ſua far as they all, and each of them, ſhaking off all Fear of* GOD, *and Regard to Her Majeſties Perſon, Authority, and Laws, upon one or other of the Days of the Months of* February, March, *or* April *laſt, when an Invaſion of that Part of* Great-Britain *called* SCOTLAND *was threaten'd, by an Enemy-Fleet of Ships with Forces, and an Army aboard, ſent by the* French *King, or by the* Pretender, *who went ſome Time by the Name of the Prince of* Wales, *and now aſſumes to himſelf the Name, Stile and Title of King* James, *as King of Her Majeſties Dominions; with a manifeſt and open Deſign to invade Her Majeſties Dominions, and to deſtroy Her Majeſty and Her good Subjects; at leaſt to deprive and depoſe Her Majeſty from the Stile, Honour, and Princely Name of theſe Her Dominions; Did convocate and convene in Arms, with others their Accomplices; ſuch as Major* William Graham, Alexander Steuart, *Uncle to* Ardvorlich, George Seaton, *Brother to the ſaid* Archibald Seaton, *and Mr.* Charles Fleeming, alias Hay, *Brother to the Earl of* Wigtoun, *all ſince abſconded, and upon the ſame Account declared Fugitives: And thus did riſe and continue in Arms without Her Majeſties Special Authority firſt interponed;*

poned; and did levy War, and take up Arms againſt Her Majeſty. And farder, they having never before qualified themſelves by any Mark of good Affection to Her Majeſty or Her Government, did (at the Time foreſaid) gather themſelves together, with their Accomplices, in Arms, with Swords and Piſtols, and other offenſive Weapons, in an open Correſpondence with the ſaid Enemies and Invaders, at the very Time of their ſaid Invaſion; and being ſo convocate and convened in Arms, did march in one Body, or Company, with their ſaid Accomplices, ſeveral Days and Nights, to and from ſeveral Places, in the Shires of Stirling, Perth, *and other Shires adjacent, on purpoſe to encourage and ſtrengthen the ſaid Invaders, or at leaſt to raiſe Her Majeſties other Subjects in Rebellion againſt Her. Likeas for that End, they did openly drink to the good Health of their Maſter, as they called him; who could be none elſe but the ſaid* Pretender. *And did by their ſaid Riſing in Arms, and open Correſpondence with Her Majeſties ſaid declared Enemies, and otherways, entice them and others to invade Her Majeſties Dominions, to the deſtroying of Her, and Her good Subjects; at leaſt to deprive and depoſe Her from the Stile, Honour, and Princely Name of Queen and Sovereign of this and Her other Dominions; or at leaſt thereby endeavour the Alteration of the Right of Succeſſion to the Crown, ſo happily by Law ſettled upon Her Majeſty and Her Succeſſors. By all which, they, and each of them were guilty, Art and Part, of the foreſaid Crimes of Treaſon, Rebellion, and Leſe-Majeſty, at leaſt of Treaſonable Riſing and Convening in Arms, without Her Majeſties Special Authority firſt had thereto; at leaſt of a moſt unlawful Convocation in Arms, in a moſt dangerous and threatning Seaſon, and in open Correſpondence with the ſaid Enemies and Invaders, to the Deſtruction of Her Majeſties Government, and of the Quiet and Peace of Her Dominions. Which Crimes, all or any of them, being found proven againſt all or any of the forenamed Perſons, by the Verdict of an Aſſize, before the Lords, Juſtice-General, Juſtice-Clerk, and Commiſſioners of Juſticiary; They, and each of them, ought to be condemn'd by Sentence and Doom of the ſaid Lords Commiſſioners, to forfault their Lands, Lives and Goods, as Traitors; and be otherways puniſhed in their Perſons and Goods, by the Pains of Law, to the Example and Terror of others to commit the like in Time coming.*

Sic ſubſcribitur,

JA. STEUART.

PURSUERS.

Sir *James Steuart*, of *Goodtrees*, Her Majeſties Advocate.
Mr. *William Carmichael*, one of Her Majeſties Sollicitors.
Sir *Walter Pringle*; and
Sir *Francis Grant*.

Advocates.

Procurators in DEFENCE.

Sir *Patrick Home*.
Sir *David Forbes*.
Sir *James Steuart*.
Mr. *Alexander Macleod*.
Mr. *James Graham*.
Mr. *Walter Steuart*.
Mr. *John Elphingſton*.
Mr. *Colin Mackenzie*.
Mr. *Charles Cockburn*; and
Mr. *David Lauder*.

Advocates.

My Lord Advocate judicially produced Her Majeſties Letter, authorizing and requiring his Lordſhip to raiſe and inſiſt in the aforeſaid Proceſs; whereof the Tenor follows, *ſuperſcribed* thus:

ANNE R.

'Right Truſty, and Well-beloved, We greet you 'well. Whereas *James Stirling*, Laird of *Keir*, 'Archibald Seaton, Laird of *Touch*, *Archibald Stir*'ling*, Laird of *Carden*, *Charles Stirling*, Laird of 'Kippendavie*, and *Patrick Edmonſton*, of *New*'town*, were about the Time of the late intended 'Invaſion apprehended by Warrants, for Suſpicion 'of Treaſon, and Treaſonable Practices, againſt Us 'and Our Government; and have ſince been com'mitted by Warrants for High Treaſon, Depoſiti'ons upon Oath having been made againſt them: 'Our Will and Pleaſure is, and We do hereby 'authorize and require you, to raiſe a Proceſs in 'the ordinary Form, before the Commiſſioners of 'Juſticiary, againſt them, and each of them, for 'the Treaſonable Practices wherewith they, or any 'of them, are, or ſhall be charg'd. And herein you 'are to take the Aſſiſtance of Sir *David Dalrym*'ple*, Mr. *William Carmichael*, Sir *Walter Pringle*, 'and Sir *Francis Grant*, Advocates; or any Two 'of them, if neceſſary; and who are hereby re'quired to concur with you accordingly. For all 'which, this ſhall be your Warrant. *Given at Our Caſtle at* Windſor, *the Nineteenth Day of* July, 1708. *in the Seventh Year of our Reign.*

By Her Majeſties Command,

Subſcribed thus, SUNDERLAND.

Directed on the Back thus:

To Our Truſty and Well-beloved,
Sir *James Steuart*, Our Advocate for *Scotland*.

Which being read in Preſence of the ſaid Lords, Juſtice-General, Juſtice-Clerk, and Commiſſioners of Juſticiary, they ordained the ſame to be recorded.

Sic ſubſcribitur,

CROMERTIE, I.P.D.

Thereafter, there was a *Petition* preſented to the ſaid Lords, by *James Stirling* of *Keir*, *Archibald Seaton* of *Touch*, *Archibald Stirling* of *Carden*, *Charles Stirling* of *Kippendavie*, and *Patrick Edmonſton* of *Newtown*, humbly ſhewing, 'That the Petitioners 'being indicted at the Inſtance of Her Majeſties 'Advocate, for the Crimes of Treaſon and Leſe-'Majeſty; and this being the Day of their Com'pearance and Tryal, they had, according to the 'Privileges allowed to all the Lieges, and confirm'd 'by Acts of Parliament, made choice of the fol'lowing Lawyers, to appear before their Lordſhips 'in their Defence; *viz.* Sir *Patrick Home*, Sir *Da*'vid Forbes*, Sir *James Steuart*, Mr. *Alexander* 'Macleod*, Mr. *Walter Steuart*, Mr. *James Graham*,

'Mr.

'Mr. *Colin Mackenzie*, Mr. *Charles Cockburn*, and 'Mr. *John Elphingſton*. And it being alſo uſual in 'Caſes of Treaſon, That Lawyers are publickly au-'thorized and warranted to Manage the Tryals in 'their Pannels Defence; therefore humbly craving 'their Lordſhips would be pleaſed to allow of the 'Petitioners Choice of the Lawyers above-men-'tioned, and to authorize theſe Gentlemen accor-'dingly, as the ſaid Petition bears.

Which being conſider'd by the ſaid Lords, They, by their Deliverance thereon, allowed ſuch Advocates as the Pannels ſhould think fit to employ to appear and debate for them in the above-mentioned Indictment; they being already ſufficiently authorized by Law for that Effect.

Sic ſubſcribitur,
CROMERTIE, I. P. D.

The ſaid Indictment being read, and fully debate *viva voce*, in Preſence of the ſaid Lords, Pannels and Aſſizers; the ſaid Lords, Juſtice-General, Juſtice-Clerk, and Commiſſioners of Juſticiary, ordained the Pannels to give in their Information thereon, betwixt and *Wedneſday*'s Night next; and Her Majeſties Advocate to give in his, betwixt and *Friday*'s Night thereafter, in order to be recorded; and continued the Dyet till *Monday* next, at Nine a Clock in the Forenoon; and ordained the whole Aſſizers and Witneſſes to attend then, each of them under the Pain of One Hundred *Merks*; and the Pannels to be carried back to Priſon.

INFORMATION *for the Laird of* Keir, *and Others, againſt Her Majeſties Advocate.*

IT is alledged for the Pannels, denying always the Indictment, and haill Articles and Qualifications thereof; 1. That the Indictment is not relevantly libelled, in reſpect it does not condeſcend upon any Overt-Act or Deed done by them, that could poſſibly be ſtretched to infer the Pains libelled; and the Acts of Parliament libelled on, expreſly require ſuch Facts and Deeds, to infer the Pains of Treaſon therein mentioned. As *Act* 3. *Parl.* 1. *James* I. *That none rebel openly or notourly*. And *Act* 14. *Parl.* 6. *James* II. bears, *And if it happens, any within the Realm, openly or notourly againſt the King to rebel, or makes War againſt the King's Lieges, againſt his Forbidding*, &c. And *Act* 2. *Seſſ.* 2. *Parl.* 1. *Charles* II. has theſe Words: *And ſhall, by Writing, Printing, Preaching, or other malicious and adviſed Speaking, expreſs or declare ſuch their Treaſonable Intentions*, &c. And the *Act* 1702. bears, *That it ſhall be High Treaſon, by Writing, Speaking, or any other manner of way, to diſown or impugn Her Majeſties Royal Authority*, &c. Which Laws, and generally all Laws, as well as the Nature of Crimes, require, That the ſame ſhould be by expreſs *Words*, *Writs*, or *Deeds*; and not ſtrained by remote Inferences and Conjectures: And in the preſent Caſe, there is neither *Words*, *Writ*, or *Deeds* condeſcended on, that could poſſibly be drawn to infer the Crimes libelled.

2. Whereas the Indictment bears, That the Pannels did convocate and convene in Arms, with others their Accomplices, and ſo did riſe and continue in Arms, without Her Majeſties Special Authority firſt interponed; and did levy War, and take up Arms againſt Her Majeſty, *&c.* It is anſwered, That albeit Levying War againſt Her Majeſty, or riſing and continuing in Arms without Her Majeſties Authority, be undoubtedly Treaſon when duly qualified; yet there is no Circumſtance of Fact, Word or Writ, condeſcended on in the Indictment, that can be imagined to infer a Riſing in Arms, or Levying War againſt Her Majeſty. And albeit the Law ſtatutes anent Riſing in Arms, or Levying War generally; yet in all Libels duly founded thereupon, the Subſumption muſt condeſcend upon particular Facts and Deeds, capable to be found and conſtrued a Riſing in Arms. The Common Law expreſſes it thus: *Qui injuſſu Principis bellum geſſerit, delectumve habuerit, exercitum comparaverit*. And our Law, *Act* 75. *Parl.* 9. Q. *Mary*, explains what it is to riſe in Arms; *viz. That no manner of Perſons attempt to do, or raiſe any Band of Men of War, or Horſe or Foot, with Culverins, Piſtolets, Pikes*, &c. *or other Munition bellical whatſomever, for Daily, Weekly, or Monthly Wages, in any Times to come, without ſpecial Licenſe in Writ had of our Sovereign Lady, and Her Succeſſors thereto*. And Sir *George Mackenzie*, in his *Obſervation* on *Act* 2. *James* I. defines Riſing in Arms thus; *The Riſing of Men in warlike manner, by Muſtering them, or Forming them in Companies, or Swearing them to Colours*. Nor are theſe Qualifications by themſelves ſufficient, unleſs there be a formidable Number: And therefore he cites the Caſe of *Macleod* of *Aſſint*, *Feb.* 2. 1674. where the Lords of Juſticiary refuſed to ſuſtain the Articles wherein it was libelled, the raiſing of Men, and diſpoſing of them under Colours, to be relevant; except it were alledged, that they were an Hundred Men or upwards, and were under Colours, or muſtered under weekly or daily Pay. Whence it is evident, that the Riſing in Arms muſt be by publick and notour Appearance of Companies in Arms, ſo as their Deſign and Oppoſition to Authority could not be doubted; whereof the leaſt Shadow cannot be alledged in this Caſe.

3. Whereas the Libel bears further, That the Pannels did gather themſelves together, with their Accomplices, in Arms, with Swords and Piſtols, and other offenſive Weapons, in an open Correſpondence with the ſaid Enemies and Invaders, at the very Time of the Invaſion. It is anſwered, That the ſaid Article anent Correſpondence is not relevantly libelled; there being no particular Condeſcendance of any Acts of Correſpondence paſs'd betwixt the Pannels and the Enemy, as is neceſſary to be condeſcended on for inferring the Crime libelled. Correſpondence with the Enemy, in the Common Law, is thus expreſs'd: *Quive hoſtibus nuncium literaſve miſerit, ſignumve dederit, feceritve dolo malo quo hoſtes conſilio juventur*. And no ſuch Fact or Qualifications can ever be pretended, or alledged in this Caſe. And their meeting together ſo few in Number of near Relations and Neighbours, as it were lawful for them to do at all times, ſo the accidental Circumſtance of an imminent Invaſion could never render the ſame unlawful. Nor could their Travelling together for ſome Space in the Country, be ſtrained to any Deſign of encouraging Enemies, or to raiſe the Subjects in Rebellion; whilſt they were no other ways appoint-

appointed or attended, than as they (and others of their Character) do uſually travel, in a moſt peaceable manner, without giving the leaſt Occaſion, by Word or Deed, to any Rebellion or Sedition. And as there was not then any Body of Men in Arms in the Kingdom, againſt Authority, to whom they could be imagined to reſort; ſo it is an Evidence that they had no mind of Convocating themſelves againſt Authority, that they did not uſe the Means in their Power, by convocating their Tenants and Followers in Arms, either for aſſiſting themſelves, or giving Countenance and Encouragement to others on any ſuch Deſigns.

4. Whereas the Libel mentions, That the Pannels did openly drink to the good Health of their Maſter, as they called him; who could be none elſe but the *Pretender*; it is no ways relevant. 1. Becauſe the drinking of any Perſon's Health is not a Crime, there being no Law againſt it. 2. There is no Perſon named, whoſe Health is ſaid to be drunk; and therefore cannot infer any Crime. And the Gloſs put thereupon, That it could be no other but the *Pretender*, is only a Conjecture and uncertain Inference of the Purſuers; which can be no wiſe ſufficient to fix a Crime upon others, who can only be anſwerable for what is clearly expreſs'd and declar'd by them, by plain Words, Writs, or Deeds.

It was reply'd for the Purſuer, 1. That the Libel was moſt relevant, in ſo far as it did expreſly bear, That the Pannels did riſe and continue in Arms, without Her Majeſties Special Authority firſt interponed: And the ſaid Act 5. *Parl.* 1. *Car.* II. declares it *Treaſon to the Subjects, or any Number of them, more or leſs, upon any Ground or Pretext whatſomever, to riſe and continue in Arms, without His Majeſty's Special Authority.* And the particular Qualifications and Circumſtances of their ſaid Riſing in Arms, will appear from the Probation.

2. The Pannels riſing in Arms, leaving their own Houſes, and marching in a Body thro' the Shires of *Stirling* and *Perth*, in Company with the other Perſons mention'd in the Libel, whereof ſome have been ſince denounced for not Compearance, to underly the Law therefore; at the ſame time that the Nation was threatned by an Invaſion of a *French* Fleet, with Land-Forces Aboard, cannot be underſtood to be upon any other Deſign, than on purpoſe to encourage and ſtrengthen the Invaders, and in open Correſpondence with them, eſpecially whilſt the Pannels can adduce no reaſonable Cauſe for their ſo Convocating and Travelling together; and this was ſuſtain'd *Treaſon* in *Caldwel*'s Caſe.

3. The Laws libelled on, do not only make actual Riſing in Arms, and Levying War againſt the Sovereign, to incur the Crimes and Pains of Treaſon, but likewiſe any Attempt ſo to do: For any Attempt or *Conatus* in the Caſe of Treaſon, is to be puniſhed with the ſame Pains as the conſummate Crime, as the Law ſays, *Eadem enim ſeveritate voluntatem ſceleris qua effectum puniri Jura voluerunt.* And Attempts are reckon'd as Treaſon in the Acts abovemention'd.

4. The Libel bearing Art and Part, is ſufficiently relevant, notwithſtanding the Generality thereof, ſuch Libels being expreſly ordained to be relevant by the Act of Parliament 151. *Parl.* 12. *Ja.* 16th. So that no Objection can be ſuſtained againſt the Libel as Irrelevant, upon the Account of the Generality thereof, ſince Art and Part is libelled; which takes off any Objection, for not particularly condeſcending upon the Pannels Acceſſion to the Crimes libelled.

It is Duplyed for the Pannels to the *Firſt*, That albeit the Riſing in Arms without Authority be mention'd in General, to infer the Crime of Treaſon, ſince the Law could not deſcend to every particular Qualification, that might happen to infer Riſing in Arms to be Treaſon, but left the ſame to be determined by the Judges competent: Yet the Purſuer of a criminal Libel muſt adduce ſpecial Qualifications, and circumſtantiate Matter of Fact, that may be ſufficient to infer, That the Pannels did Treaſonably riſe in Arms, or otherways the Libel cannot be ſuſtain'd. For as it could not be allowed to libel in General, that a Perſon is guilty of Murder, ſo no more can it be allowed to libel in General, that a Perſon is guilty of riſing in Arms without Authority; the Propoſitions in theſe Libels being equally founded in Law; but the Subſumption muſt be cleared and qualified by circumſtantiate Matters of Fact, inferring the reſpective Crimes; and if it were otherways, theſe evident Inconveniencies would follow.

As, 1. That the Pannels would be deprived of the Benefit of Exculpations, which could not eaſily be brought to meet with general Libels; whereas, ſpecial circumſtantiate Matters of Fact might have been more readily taken off by proper particular Grounds of Exculpation, whereby the Deeds condeſcended on, might be applied to other reaſonable Cauſes, that might wholly exclude the *animus delinquendi*, or *dolus*, requiſite in all Crimes.

2. This Inconveniency would likeways be inevitable, That the Aſſize would become Judge of the Relevancy, as well as of the Probation. For if the Libel bearing in General, the Pannels to be guilty of riſing in Arms againſt Authority, ſhould be ſuſtain'd, and the Qualifications left to be determin'd by the Probation, then the Aſſize would be Judges both of the Relevancy and Probation; for they behoved to determine, whether the Qualifications ariſing from the Probation, did amount to a Riſing in Arms, or other Crimes, generally mention'd in the Statute; whence it might come to paſs, that Pannels might be put to the Knowledge of an Inqueſt upon irrelevant Crimes; and therefore Crimes ſhould be particularly ſubſumed, as Sir *George Mackenzie* obſerves in his *Criminals Tit. Libels.* Page 465.

To the 2*d.* it's Duplyed, That whether the Pannels Travelling for ſome Space from their own Houſes, either for Diverſion or Buſineſs, in the moſt peaceable Manner imaginable, had happen'd in the Time in the threatned Invaſion or not, could never alter the Nature of that Deed, ſince it cannot ſo much as be pretended, that they were *verſantes in illicito*; the Travelling in ſuch a peaceful Manner ſingly with Domeſtick Servants, being unqueſtionably allowed by Law. And this Defence of the Pannels Travelling in their uſual Manner, and with their ordinary Equipage, was ſo evident of it ſelf, that the Purſuers acknowledged there could nothing culpable be inferred from it at other Seaſons; but that the Crime now inſiſted on, was founded, in that their Meeting and Travelling was the Time of the threatned Invaſion, when a Fleet of Enemies Ships was upon the Coaſt. And yet the Libels does not bear, that the Pannels knew of any ſuch Deſign, or that the *French* were actually upon the Coaſt; and without this Knowledge, the Circumſtance which the Purſuers inſiſt chiefly to make the Crime, was, as to the Pannels, no Circumſtance at all. So that the Libel ſhortly reſolves in the Pannels Travelling with

with their ordinary Equipage, after their uſual way, in a peaceable Manner; which neither in common Senſe, nor in the Conſtruction and Interpretation of our Law, and Opinion of our Lawyers above-mention'd, can be pled a Riſing in Arms againſt Her Majeſty or Government, or give the Occaſion of the leaſt Suſpicion of any Intention that way. Neither can Suſpicions, albeit there had been more evident Grounds for them, be ſufficient to infer a Crime; the Law ſaying expreſly, That *ex ſuſpitionibus nemo eſt damnandus, Leg. 5. ff. de Pœn.* And whereas it is pretended, that the Pannels have given no reaſonable Account of their Progreſs and March at that Time; and therefore leaves place for the Purſuer's Conjectures; the ſame is noways of any weight to fortify the Purſuers Libel; it being ſufficient for the Pannels to alledge, That the Meeting of a few Gentlemen, and Travelling with Swords and Piſtols, as they were hitherto uſed, does not infer a Riſing in Arms. And to pretend that the Pannels ſhould give ſpecial Accounts of their Progreſſes, is plainly to found a Criminal Charge or Libel *ſuper inquirendis*, and ſo expreſly diſcharged by Law: And doubtleſs it is ſufficient for the Pannels to ſay, that their Meeting or Travelling together with ſuch ſmall Retinue, and in ſuch peaceable and unprovided Manner, could not give the leaſt Jealouſy to any Perſon whatſomever; and if this Defence were not ſuſtained, the natural Liberty of the Lieges would be very much circumſcribed; and no Man could be ſure, but the Action of his Life which he intended ſhould be moſt innocent, ſhould be the moſt fatal, as concluding him under Treaſon, and the worſt of Crimes. And the Practique in *Caldwel*'s Caſe is greatly differenced from this, in that there was a conſiderable Body of Men with all ſorts of Arms actually in Rebellion againſt the Government at the Time; and that *Caldwel*, with his Aſſociates, likewiſe of a conſiderable Number, had intercepted common Poſts, and particularly ſome Letters to the Earl of *Eglingtoun*, a Privy-Counſellor, which was an Ouvert-Act, and ſufficiently declared their bad Deſign; beſides theſe Sentences were reduced, and the Perſons reſtored *per modum Juſtitiæ.*

To the *3d.* it is Duplyed, That albeit it be generally received by Lawyers, that Attempt or *Conatus* in Treaſon is puniſhable as Treaſon; yet that is never to be underſtood of a naked Deſign or *actus animi*; the Law ſaying expreſly, that *Cogitationis pœnam nemo patitur Leg. 18. ff. de Pœn.* and *neminem qui male facere voluit plecti equum eſt niſi quod factum voluit etiam fecerit.* But that *Voluntas* or *Conatus* mention'd in Law, muſt break out into an external Act; if not conſummating the intended Crime, at leaſt inchoating the ſame, ſo as to become a Deed obvious to the external Senſes, before it can be ſubjected to the Cenſure of humane Laws. And albeit *Dolus* or *Propoſitum* be requiſite in all Crimes; yet not as it is latent in the Mind, but as it is expreſs'd and declar'd by an external Act. And ſo *Matthæus de Crim. in Proleg.* ſays, *Dolo contrahi crimen diximus, per dolum autem factum doloſum intelligimus.* As it is clear by the expreſs Statutes libelled upon, particularly the ſaid *Act 2d. Seſſ. 2d. Parl. 1ſt. Ch.* II. That Treaſonable Intentions ſhould be expreſſed and declared by Writing, Printing, or adviſed Speaking, before the ſame can be ſaid to have inferred the Pains mention'd in the Act; yea, even where there was Writing alledged upon; yet in Mr. *Robert Caddel*'s Caſe, that was not found ſufficient to infer the Crimes in the Statute, unleſs it ſhould have been qualified, that the Writing was publiſhed, and out of the Writer's Hands, whereby the Attempt would become manifeſt; and in the Caſe of an Ouvert-Act, which was the Point upon which *Balmerino*'s Tryal proceeded; and without which, no Crime could have been found againſt him. And in the preſent Caſe, as the Pannels had truly no manner of ill Deſign, ſo no external Act whatſomever is, or can be condeſcended on, either of Word or Deed, that infers any Deſign of the Pannels to oppoſe Authority, or to act any thing contrair to Law, or their Duty to the Sovereign; for as they uſed their natural and innocent Liberty of Travelling in a peaceable Manner with their near Relations and Neighbours, for their Diverſion or Buſineſs, ſo when they were called by Authority, they did not abſent or withdraw themſelves, but readily appeared and gave Obedience, upon the firſt Citation.

To the *4th*, it is Duplyed, That the Libelling of Art and Part, is not ſufficient to exclude the Objection upon the Generality of the Libel, becauſe Art and Part relates to the particular criminal Facts, and Qualifications thereof libelled, and includes an Alternative, that the Perſon complained upon, was either Actor, or Art and Part of the criminal Facts and Deeds particularly libelled. Which general and indefinite Qualification of Acceſſion, Law and Cuſtom has not allowed, without a more ſpecial Condeſcendence of the Parties Acceſſion to the Deeds libelled, which could only be certainly and diſtinctly known by the Probation: But ſtill that does not take off the Neceſſity of ſpecial Condeſcendences of the Qualifications that make up the principal Crime libelled, without which Pannels could not have the Benefit of Exculpations; nor could the Relevancy be determined by the Judges, but remitted with the Probation to the Aſſize, which always has been cautiouſly ſhunned, as of dangerous Conſequence. And in the preſent Caſe, the ſuſtaining of the Libel in the Generality thereof above-mention'd, would be a moſt dangerous Preparative; it being evident, that if a few Gentlemen, Meeting and Travelling together with their ordinair Retinue and Equipage, which is generally with Swords and Piſtols, could be thought to fall under the Act of Parliament, of Riſing in Arms without the Sovereign's Conſent, no Gentleman in the Kingdom could be free from Grounds of a Criminal Proceſs, if the bearing ſuch Weapons ſhould be conſtrued a Riſing in Arms; and few or many, making no Difference, as the Purſuer contends, it would neceſſarily follow, that two or three Perſons meeting or travelling with Swords or Piſtols, might be lyable to a Proceſs of Treaſon, as riſing in Arms without Authority; which were moſt abſurd, and of dangerous Conſequence to the Lieges. And as no Company can ever be found to have met and travelled in a more peaceable and inoffenſive manner than the Pannels have done, doing no Injury by Word or Deed, to any Perſon whatſomever, and travelling in ſuch a ſimple Manner, as did exclude all imaginable Jealouſy of their having any Warlike Deſigns, or creating the leaſt Diſturbance to themſelves or others, and giving a ready Obedience when called by Authority on a ſimple Citation: So they ought to be Aſſoilzied from the ſaid Groundleſs and Irrelevant Libel.

The Pannels ſhall not take up the Lords Time in informing more particularly upon the other Circumſtances of the Libel, ſuch as drinking of Healths, Correſpondence, and enticing of the Country; by reaſon that my Lord Advocate did not inſiſt upon theſe in the Debate, but only pretended to

to have libelled them as Aggravations, which is of no Moment in a Proceſs of Treaſon, and can be of no manner of Effect in this Caſe, where the Crime libelled is ſo manifeſtly elided. *Sic ſubſcribitur*,

Alexr. Mcleod.

Information for Her Majeſty's Advocate. againſt the Lairds of Keir, Touch, *and others, now Priſoners in the Tolbooth of* Edinburgh.

HER Majeſty's Advocate, holding the Indictment as repeated, and here premiſed, before he offer to anſwer and remove the Exceptions and Objections made againſt it for the Defenders; takes leave to remember what cannot well be forgot, That the Occaſion of the preſent Tryal was an actual Invaſion of an Enemy-Fleet, with *French*, *Iriſh*, and *Popiſh* Forces aboard, in *March* laſt, threatning an imminent Invaſion upon our Coaſt, to deſtroy Her Majeſty, and all Her good Subjects, and ruin our Religion, Laws and Liberties.

Which Invaſion was the more formidable, that it was intended and carried on by *Papiſts* and *French*, and by *Iriſh Papiſts*, the Dregs of both, which are certainly the worſt Characters that can be apprehended in an Enemy.

While we ſtood thus threatned by ſuch Enemies that had riſen up againſt us, and were ready to ſwallow us up quick, ſo that the Waters had overwhelmed us, and the Stream had gone over our Soul, if GOD had not appeared for us; and her Majeſty, by His Bleſſing upon her careful and moſt vigilant Conduct, interpoſed for our Delivery, and when the Enemy was upon our Coaſt, and ready to enter our *Firth*, and when all good Men were in the greateſt Suſpenſe of the ſaddeſt Apprehenſions of what might enſue, by turning our Country at leaſt to a Field of Blood, and Scene of all Confuſions and Miſchiefs: Yet there were found amongſt us, even among *Scots* Proteſtants, a Knot of Men who may juſtly ſeem to have wiſhed and longed for that which all Men beſides feared.

It is now indeed made an Argument to exculpate, that they were ſo few; and yet it may far more reaſonably be wondered, that there was ſo much as one Man to be found of ſuch a deſperate Reſolution and Practice.

The Five Gentlemen now in the Pannel, being of the Knot mentioned, ſo ſoon as this Invaſion was noiſed abroad, and when it was brought juſt upon our Coaſt, then they think fit to leave their Houſes, and going with their Horſes and Servants, and all well armed with Swords and Piſtols, and other invaſive Weapons, they riſe and continue in Arms, without any lawful Authority interpoſed: And thus appearing in Arms, and Marching from Place to Place in ſeveral Shires, and for ſeveral Days and Nights, as it were in Correſpondence with the foreſaid Invaders, did what in them lay, (if not to riſe to their Aſſiſtance, at leaſt) to diſturb Her Majeſty's good Subjects, from the Oppoſition and Defence that was at that Time ſo neceſſary.

It's true, when their Hopes were diſappointed, then they ſhrunk home, and ſuch of them as had more to loſe than they knew how to ſave otherways, compeared and rendred when called; when others of them that had no more Guilt, but leſs to loſe, thought fit to retire and abſcond: Whereupon Her Majeſty moſt juſtly ordered, that the Perſons now in the Pannel ſhould be brought to this preſent Tryal.

The Indictment exhibit againſt them, founds upon moſt plain and poſitive Laws and Acts of Parliament, *That none rebel openly againſt the King's Perſon or Government*; *That none levy War and take up Arms againſt the King and His Government*; *And that for any of the Subjects, more or fewer, to riſe and continue in Arms upon any pretext, or to attempt the ſame without His Majeſty's ſpecial Authority firſt interponed, it ſhall be High Treaſon*; *and that if any levy War, or take up Arms againſt the King, or entice Strangers or others to invade, and expreſs and declare ſuch treaſonable Intentions, he ſhall be adjudged a Traytor, and puniſhed as in the Caſe of High Treaſon.* And then the Indictment ſubſumes in the very Terms of the Law, *That at ſuch a Time, and in ſuch a Manner, and with the other Circumſtances mentioned, the Defenders did actually riſe and convene, and continue in Arms without her Majeſty's ſpecial Authority firſt interponed*; *which in Law is juſtly conſtrued to be the Levying of War, and taking up Arms againſt Her Majeſty, and did plainly appear to be in a real Correſpondence with, and for the Encouragement of the* French *Invaders*; *whom thereby, and otherways they did entice, to the invading of Her Majeſty's Dominions, and the deſtroying of Her and all Her good Subjects: Of which Crime the Defenders being Actors, Art or Part, ought to be puniſhed with the Pains of Law.*

To this Indictment, the Defenders made Anſwer, denying the Crime libelled with all its Qualifications; that the Indictment is not relevant, in reſpect it doth not condeſcend upon any Overt Act or Deed that can be ſtretched to infer the Crime, or any treaſonable Intention; and that all the Acts of Parliament libelled upon, require ſuch open Facts and Deeds; and the Act of Parliament, *Car.* II. *Par.* 1. *Seſ.* 2. requires expreſly, *That by Writing, Printing, Preaching, or other malicious and adviſed ſpeaking, ſuch treaſonable Intentions ſhould be expreſſed or declared*; nothing of which can be found in this Caſe.

To which it is replied, 1. That it is granted, That neither inward Thoughts nor Intentions, unleſs ſome way expreſſed or declared, can be made criminal, and far leſs treaſonable; but on the other Hand, when the Law and Acts of Parliament does ſet down a ſpecifick palpable Deed, ſuch as riſing and continuing in Arms, which is viſibly an open Overt Act, and requires no more for the declaring of the Rebels Intention, ſave his ſo riſing and continuing in Arms, without having Her Majeſty's Authority interponed; what more can be required, either as to the Overt Act, ſince the Fact it ſelf is truly and openly ſuch; or as to the Certainty of the Parties Intention when the Law hath aſcertained it, *viz.* By the want of Authority; which is plainly the preſent Caſe? But 2. It is to be adverted, That our old Laws libelled upon, do indeed bear open and notour Rebellion: As likeways, *The levying of War againſt the King and His Perſon and Government*: But theſe Laws having been found very liable to the very Exceptions that the Defenders now make againſt the Indictment, when in the Year 1661 this came to be conſidered, and the Parliament judged fit to aſcertain and define the Crime of Treaſon, ſo as every Man might moſt plainly underſtand it, and

that there could be no Place for any of the former Evaſions: The Act of Parliament condeſcends upon riſing and continuing in Arms, as the very open and Overt-Act requiſite to the Crime; and withal fixes the treaſonable Intention, upon this one Qualification, That the riſing and continuing in Arms, is without His Majeſty's Authority interponed; a Negative that proves it ſelf, and requires no other Evidence. 3. As to what the Act of Parliament, *Car.* II. *Par.* 1. *Seſ.* 2. *Cap.* 2. requires, *That ſuch treaſonable Intentions ſhould be expreſſed and declared*; theſe Words are plainly ſubjoined to a long Enumeration of ſeveral Points and kinds of Treaſon, and are certainly only to be applied to the Caſes wherein the Intention may be doubtful, but can never in any good Senſe or Reaſon be applied to ſuch Deeds as the Law it ſelf declares to be open and to import the Intention, ſuch as riſing and continuing in Arms, levying of War, or taking up Arms; where both the Deed and the Intention are manifeſt, and by Law declared and condemned. And in effect to alledge, where there is an open riſing in Arms, or a levying of War, or the Maintaining a Fort or Gariſon, That yet the Intention ſhould be deſiderate, where the Law requires no more to prove, but that it is done without Authority, is viſibly abſurd.

Secondly, Where it is objected, that albeit riſing and continuing in Arms without Her Majeſty's Authority be undoubtedly Treaſon, yet it muſt ſtill be qualified by ſome Circumſtances of Fact, Word or Writ, to infer the Intention; and to libel riſing in Arms is but general, and it ought to be cleared by ſome particular Fact and Deed libelled, to make the riſing Criminal. Thus the common Law ſays, *Qui injuſſu principis bellum geſſerit, delectumve habuerit exercitum Comparaverit*, &c. And our Act of Parliament, Q. *Mary*, explains the Matter, *viz. That no Man raiſe Bands of Men of Weir on Horſe or Foot, with Piſtols and other bellical Arms, for daily or monthly Wages, without ſpecial Licenſe*, &c.

To all which it is anſwered, That it is granted by the Defenders, that riſing and continuing in Arms, if duly qualified to be againſt Her Majeſty, is undoubtedly Treaſon: But then is it not as evident, that all the Qualification that the Act of Parliament requires, is, that the ſame be done without Her Majeſty's Authority? So that where the Qualification is ſo plainly defined, to require any farther, is to impoſe on the Law. It's true, that the Act Queen *Mary*, ſpeaks of raiſing of Bands of Men of Weir, and keeping them under Pay; and the Common Law may alſo have ſomething of that Nature. But if the Act of Parliament 1661, thought fit ſo far to ſecure the Prerogative, as to cut ſhort and forbid all riſing in Arms without Her Majeſty's Authority, under the Pain of Treaſon, is not this plain Law, which the Defenders could neither miſken, nor ought to have tranſgreſſed?

The Caſe of *Aſſint* is much inſiſted in, That it was not found to be a treaſonable Riſing, unleſs there had been more than an Hundred Men conveened, and muſtered under Colours and Pay. But 1. A Practick cannot change the Law. 2. The Reaſon of that Practick is manifeſt, *viz.* That *Aſſints* Convocation was covered with another Colour and Pretext, and was certainly not againſt the Government; and therefore the ſaid Qualifications were required, which doth no ways hold in this Caſe.

For to deal plainly, and to cut off all the Defenders groundleſs Pretexts, that they were only innocently convened, that they had no Arms, but ſuch as are ordinary and allowed to Gentlemen in their Travelling; that they were only a ſmall Number of Friends and Neighbours for their Diverſion and Recreation: That they had no Correſpondence with the Invaders, tho' their meeting and travelling together happened about that Time: And *laſtly*, that if they ſhould be overtaken on the Fact and Deed libelled againſt them, none could be in Safety to travel with Arms, even in the ſmalleſt Company.

To all this it is anſwered, 1. For all that the Defenders have alledged or can alledge for Excuſe, yet their meeting and marching in Arms, at the Time and Manner that they did, is generally under this Prejugee by all that ever heard it, that it was at leaſt the Height of Folly, and had the worſt of Appearances.

But 2. If the Defenders would have the Deed to be conſidered with all its Circumſtances, it is not declined. Now as to the Deed it ſelf, it is open and palpable, *viz.* riſing and continuing in Arms. 2. It has all the Qualification that Law requires to make it criminal, *viz.* That it was without Her Majeſty's Authority being interponed. But 3. Admit of all the Circumſtances that the Defenders can alledge for alleviating, are they not only bare Suppoſition and Queſtion? What if they meet by Rencounter? What if they met for Diverſion? Are not ſuch Meetings ordinary? And what was acted by them againſt the Government? All which do not import ſo much as one poſitive colourable Excuſe. Whereas to conſider the Deed certainly condemned in Law on the other ſide with its undeniable Circumſtances, *viz.* That the Defenders left their own Houſes, having no juſt Occaſion to invite them abroad: That they met in ſuch a Company as perhaps all of them never met before; that they met well mounted, and with Swords and Piſtols of all ſorts, better appointed than moſt Men that go to War; that they were thus well mounted and armed, beyond what the Law and Act of Parliament 1693, allows to Men of their Faſhion, there being none of them qualified to the Government; that all this happened when the Invaſion was generally known and juſt upon our Coaſt: That they marched backward and forward for ſeveral Days and Nights, as it were hovering in expectation of what they look'd after: That they did not at all diſſolve and go home, until their Hope of the Invaſion was loſt; and that ſince ſeveral of them have abſconded. Can any Man lay and reflect upon theſe Things together, but he muſt ſay, That beſides their being clearly guilty in the Terms of Law, as having riſen and continued in Arms without Her Majeſty's Authority, which in the Conſtruction of Law, is to levy War againſt Her Majeſty, their Intention was as treaſonable as the Law preſumes; ſo that upon the whole, this Judgment may be both righteouſly and ſafely paſs'd in this Matter, *viz.* That their riſing and continuing in Arms at the Time and in the Manner, and with the other Circumſtances libelled, without Her Majeſty's Authority firſt interponed, was Treaſon, unleſs they could exculpate, by at leaſt ſome colourable or probable Pretext, which they never can prove, or have ſo much as alledged.

Nor could a Judgment of this Nature ſo clearly founded, be of the leaſt ill Conſequence or Inconvenience, ſince every ordinary Meeting bears its own Excuſe; nor can indeed a lawful Meeting of this Sort be found without Excuſe. And further, it would ſecure the Government according to the true Intention of the Law, againſt all ſuſpicious and evil Deſigns and Attempts in Time coming. The

The Defenders object, That the Indictment doth not libel relevantly, as to the Point of Correſpondence with the Invaders; which ſhould be qualified by a Condeſcendance on the particular Acts of Correſpondence; and, as the Common Law expreſſes it, That *Hoſtibus nuncium literaſve miſerunt, ſignumve dederunt, feceruntque dolo malo quo hoſtes conſilio juventur.*

To which it is anſwer'd; If Correſpondence with Invaders had been the principal Crime libelled, the Defenders might have contended for ſuch a Condeſcendance *quo modo* they correſponded: But when the Correſpondence is only libelled, *viz.* an open and real Correſpondence, by their riſing at the ſame Time in Arms without Authority, that a Foreign Enemy was actually invading: This real Correſpondence, or this Correſpondence *in re ipſa*, is more than ſufficient to make out the Preſumption of Law; *viz.* That their Riſing and Continuing in Arms without Authority, was plainly againſt Authority. If at the Time of the Invaſion, ſome Hundreds of diſaffected Perſons had got together in Arms; would it have been doubted, but that their getting together at that Time in Arms, without Her Majeſties Authority, was really to correſpond with the Invaders, and to countenance and encourage them in their Invaſion. If then all the Difference be, that the Defenders did convene in a ſmaller Number; it only remains to be conſider'd, That the Act of Parliament doth expreſly declare againſt any Number, their Riſing and Continuing in Arms without Authority; and that the ſame is Treaſonable; which fully reaches the Number libelled.

As to what is added, of their being ſo ſmall a Number, and only arm'd in the ordinary manner accuſtomed by Gentlemen Travellers; it is already anſwer'd, and withal it is certain, that the greateſt Miſchiefs may have their Riſe from ſmall Beginnings. And as for the Defenders, they were very early in their Appearance, and viſibly did what in them lay, both to encourage the Invaders, and to raiſe an Inſurrection in the Country: And it was only the Goodneſs of GOD, and Her Majeſties vigilant Conduct, that cut off both their further Hopes, and the increaſing of their Numbers; which might have been infallibly expected, if the Invaſion had ſucceeded.

The Defenders take notice of that Part of the Indictment, which alledges, That they did openly drink the good Health of their Maſter, who could be none elſe but the *Pretender*; which they alledge is no ways relevant to infer the Concluſion of the Libel.

To which it is anſwer'd, That the foreſaid Drinking having been only mention'd in the Libel, for a further Illuſtration of the Defenders Intentions, it is granted, that *per ſe* it is not relevant to infer a Crime. But, 2. Being join'd with the other Circumſtances above-mention'd, even in its doubtful Senſe, it cannot be deny'd to import a further Diſcovery of theſe Gentlemens Intentions, in appearing and continuing in Arms without Authority; which (in effect) is the principal Crime, ſufficiently declar'd by the Act of Parliament it ſelf, tho' it were not adminiculate by this and the other Circumſtances above-mention'd.

The Defenders go on to reſume and anſwer the Charge brought againſt them; but the whole of the Matter being above abundantly cleared, it may ſuffice to notice, that they ſtill inſiſt, That the Riſing in Arms libelled without Authority, is but general, and ſo could not infer the Crime of Treaſon, unleſs more particularly qualified: Whereas it is certain, that the Riſing in Arms is a ſpecifick Act; and of the which, if libelled circumſtantiately as to Time and Place, as it here is, makes a moſt particular Libel: And for qualifying the Intention of the Act, and of the Riſers, all that the Law requires, is, That the Riſing and Continuing in Arms, be without Her Majeſties Authority firſt interponed; which, in the Conſtruction of Law, is to levy War againſt Her Majeſty.

The Defenders alledge, That to libel Riſing in Arms in general, is no better than to libel Murder in general: But if Murder be libelled circumſtantiately, as to the Perſon murder'd, and the Time and Place; the Libel is no doubt particular and relevant, without any further Qualification. What then ſhould hinder, why Riſing and continuing in Arms, circumſtantiately libelled as to Time and Place, and plainly qualified as the Law requires, (*viz.* without Her Majeſties Authority) ſhould not alſo be a particular and relevant Libel of Treaſon?

But the Defenders ſay, That by ſuch a Libel they are deprived of the Benefit of Exculpation. But this is wholly groundleſs; it having been often ſaid, That if the Defenders can but qualify any probable Pretext for their Riſing and Continuing in Arms without Authority, to take off the Preſumption of the Law, it ſhould be admitted. But when they can qualify no Pretext, nor can aſſign the leaſt probable Cauſe for their Riſing and Continuing in Arms as they did, except it was to countenance Invaders, or to raiſe Inſurrection within the Country; how is it poſſible, that this their Riſing in Arms without Authority, as is libelled, ſhould not be Treaſon? Nor is there any Thing here left to the Judgment of the Aſſize, ſave moſt plain and palpable Matter of Fact; *viz.* That the Defenders roſe, and continued in Arms; which being qualified as the Law requires, *viz.* That it was without Her Majeſties Authority, it inevitably preſumes the Treaſonable Intention; which being further joined with the Circumſtances mentioned in the Indictment, cannot but evince to all Men, That the Riſing, and Continuing in Arms without Authority, and in the Circumſtances above-mention'd, was an Overt-Act of Rebellion; ſpecially when nothing is, or can be adduced, to give it a more probable Interpretation.

The Defenders inſiſt much, That they were not *verſantes in Illicito*; That they only went out for Diverſion, or Buſineſs, with their ordinary Arms and Servants: But what can be more *Illicitum*, than to riſe and continue in Arms without Authority; the very Deed forbid by the Law as Treaſonable? And what need of any further Qualifications of their Intention, ſince the Law makes *without Authority* to be ſufficient? And the Indictment doth alſo ſuperadd moſt pregnant Circumſtances, to verify their ill Intention; which are not ſo much as offered to be cavilled, except by, What if this? or, What if that? which plainly ſignify nothing.

The Defenders ſeem to inſinuate, That they did not ſo much as know there was an invading Fleet upon our Coaſt: But it is ſo notour, that at that Time the Invaſion was univerſally known, and likewiſe ſignified by a Proclamation; That this Alledgeance is manifeſtly diſingenuous.

But the Defenders further alledge, (*Eſto*) That Riſing and Continuing in Arms, as they did, was ſuſpicious; yet Suſpicions cannot found a Libel of

Treaſon. But the Defenders advert not, That it is not Matter of Suſpicion that is objected, far leſs their Travelling with their ordinary Horſes, Arms and Equipage, as formerly they were wont; but plainly, That at ſuch a Time, when the Country was openly invaded by a Foreign and moſt formidable Enemy, they, being never qualified to the Government, ſhould have run together in Arms, without Her Majeſties Authority; which is all that the Law requires to make them guilty; and which in effect, with the other Circumſtances libelled, declares their Treaſonable Intentions to a Demonſtration.

The Defenders ſay, That their Caſe differs from *Caldwal*'s: But albeit they may vary in ſome Circumſtances, yet it's certain, that as to the main, *Caldwal* and his Complices were found guilty of Treaſon, only for their raiſing of about Thirty or Forty, and continuing in Arms without Authority, when there was another Party in the Country engaged in an open Inſurrection. So that the Defenders having in like manner riſen and continued in Arms without Authority, when there was a far more dreadful Enemy imminent upon our Coaſt, cannot but fall under the ſame Conſtruction. And that *Caldwal*'s Proceſs and Doom was afterwards reduced, ſignifies nothing; ſince it was reduced for Reaſons wholly different and alien from the Caſe in Hand, and which are ſo well known, as they need not be repeated.

The Defenders do alſo endeavour to take off what was alledged from the Act of Parliament, That even the Attempt and *Conatus* in this Caſe is condemned, by telling us, That this *Conatus* doth alſo require an Overt-Act. But *Eſto*, it be ſo; what more Overt-Act can be required, than open Riſing in Arms? And what doubt can there be of the Intention and Deſign, when both the Act of Parliament, and the other Circumſtances of the Deed, do ſo fully clear it? And therefore it is in vain to notice either *Caldwel*'s Caſe, wherein there was indeed no Sentence; or yet *Balmerino*'s Caſe, where the Overt-Act was thought to be doubtful; when the Riſing and Continuing in Arms, is, in this Caſe, an Act both Overt in it ſelf, and expreſly defined to be ſuch by the Act of Parliament.

The Defenders are at ſome Pains to make it believed, That the Libelling of Art and Part cannot ſuſtain this Indictment. But, 1. The Advocate adheres to his Indictment, as libelled and qualified with Art and Part. 2. Tho' Art and Part be libelled, and the Act of Parliament makes it a Supplement for Relevancy in all Caſes; yet Her Majeſties Advocate finds no Neceſſity to enter further into that Debate, than to adhere as above; ſeeing that his Indictment is founded on clear Law, and that he as clearly ſubſumes in the Terms of Law; *viz.* The Riſing and Continuing in Arms without Her Majeſties Authority interpoſed; the Levying of War, and taking up Arms againſt Her Majeſty, and open Correſponding with Her Majeſties Enemies and our Invaders; and that not only by the above-mention'd real Correſpondence, but even by enticing them other ways to invade; as ſhall be proven, if needful. All which are too manifeſtly Acts and Deeds of Rebellion, to need the conſtructive Support of Art and Part, further than that Actor, Art and Part, are perpetually connected together.

And therefore, upon the whole, ſince, as hath been ſaid, the Country was (at the Time libelled) in the moſt imminent Hazard of a moſt deſtructive Invaſion; and that at that very Time, the Defenders, to the great Surprize and Aſtoniſhment of all Her Majeſties good Subjects, did flee out in Arms, and convene and march, and troop together in Arms, without Her Majeſties Authority, which in Law is ſufficient; and that with the other aggravating and moſt concludent Circumſtances above libelled, which were not offer'd to be taken off with any rational or probable Pretext: It appears to be without Queſtion, That the Defenders fall under all the Concluſions of the Libel, and ought to be made liable in the Pains thereof.

In Reſpect whereof, &c.

Sic ſubſcribitur,

JA. STEUART.

CURIA JUSTICIARIA, *S. D. N. Reginæ, tenta in nova Seſſionis Domo Burgi de* Edinburgh, *Vigeſimo ſecundo Die Menſis* Novembris, *Milleſimo, Septingenteſimo Octavo; per Nobilem & Potentem Comitem,* Georgium *Comitem de* Cromertie, &c. *Juſticiarium Generalem, & Honorabiles Viros* Adamum Cockburn *de* Ormiſtoun, *Juſticiarium Clericum; Dominos* Joannem Lauder *de* Fountainhall, Gulielmum Anſtruther *de eodem, &* Gilbertum Eliot *de* Minto; *Magiſtrum* Robertum Steuart *de* Tillicoutrie, *& Magiſtrum* Jacobum Erskine *de* Grange; *Commiſſionarios Juſticiarii Dict. S. D. N. Reginæ.*

Curia Legitimè Affirmata.

Intran.
James Stirling of *Keir.*
Archibald Seaton of *Touch.*
Archibald Stirling of *Carden.*
Charles Stirling of *Kippendavie*; and
Patrick Edmonſton of *Newtown.*

Indicted and accuſed at the Inſtance of Sir *James Steuart*, Her Majeſties Advocate, and as having Special Warrant from Her Majeſty for that Effect; for the Crime of Treaſon and Leſe-Majeſty, in manner mentioned in the Indictment raiſed againſt them thereanent.

PURSUERS.

Sir *James Steuart*, Her Majeſties Advocate.
Sir *Walter Pringle*; and
Sir *Francis Grant.*
Advocates.

Procurators in DEFENCE.

Sir *Patrick Home.*
Sir *David Forbes.*
Sir *James Steuart.*
Mr. *Alexander Macleod.*
Mr. *James Graham.*
Mr. *Walter Steuart.*
Mr. *John Elphingſton.*
Mr. *Colin Mackenzie.*
Mr. *Charles Cockburn*; and
Mr. *David Lauder.*
Advocates.

The

The Lords, Juſtice-General, Juſtice-Clerk, and Commiſſioners of Juſticiary, having conſider'd the Indictment at Her Majeſties Advocate's Inſtance, againſt *James Stirling* of *Keir*, *Archibald Seaton* of *Touch*, *Archibald Stirling* of *Carden*, *Charles Stirling* of *Kippendavie*, and *Patrick Edmonſton* of *Newtown*, Pannels, with the foregoing Debate thereon; THEY FIND, The ſaid Pannels, their Riſing and Continuing in Arms without Her Majeſties Authority, and actual Correſponding with an open Enemy upon the Coaſt, ready to invade this Part of *Great-Britain* called *SCOTLAND*, *Relevant* to infer the Pains of Treaſon libelled againſt the Pannels; and repel the whole Defences proponed for the Pannels, and remit the whole to the Knowledge of an Aſſize.

Sic ſubſcribitur,
CROMERTIE, I.P.D.

The ſaid Lords, for ſeveral Cauſes and Conſiderations, continued the Dyet of the ſaid Cauſe till Three a Clock in the Afternoon; and ordained Aſſizers and Witneſſes to attend then, ilk Perſon under the Pain of One Hundred *Merks*; and the Pannels to be carried back to Priſon.

Poſt Meridiem.

CURIA JUSTICIARIA, *S.D.N. Reginæ, tenta in nova Seſſionis Domo Burgi de* Edinburg, *Vigeſimo ſecundo Die Menſis* Novembris, *Milleſimo, Septingenteſimo Octavo; per Nobilem & Potentem Comitem*, Georgium *Comitem de* Cromertie, &c. *Juſticiarium Generalem, & Honorabiles Viros* Adamum Cockburn *de* Ormiſtoun, *Juſticiarium Clericum*; *Dominos* Joannem Lauder *de* Fountainhall, Gulielmum Anſtruther *de eodem*, & Gilbertum Eliot *de* Minto, & *Magiſtrum* Jacobum Erskine *de* Grange, *Commiſſionarios Juſticiarii Dict. S. D. N. Reginæ.*

Curia Legitimè Affirmata.

Intran.
James Stirling of *Keir*.
Archibald Seaton of *Touch*.
Archibald Stirling of *Carden*.
Charles Stirling of *Kippendavie*; and
Patrick Edmonſton of *Newtown*.

Indicted and accuſed at the Inſtance of Her Majeſties Advocate, and as having Special Warrant for that Effect, for the Crime of Treaſon and Leſe-Majeſty, in manner mention'd in the Indictment raiſed againſt them thereanent.

PURSUERS.

Sir *James Steuart*, Her Majeſties Advocate.
Sir *Walter Pringle*, and
Sir *Francis Grant*.
Advocates.

Procurators in DEFENCE.
Ut ante.

ASSIZE.

Sir *Thomas Young*, of *Roſebank*.
John Hamilton, Portioner of *Newbottle*.
William Turnbul, of *Currie*.
James Kinloch, of *Stonyſtate*.
James Deans, of *Woodhouſelie*.

Henry Nisbet, younger, of *Dean*.
Sir *James Fleeming*, of *Rathobyres*.
Sir *John Clark*, of *Pennycook*.
John Hunter, Merchant in *Edinburgh*.
David Cleland, Merchant there.

James Gordon, Merchant in *Edinburgh*.
Gilbert Campbel, Merchant there.
William Duncan, Merchant there.
Alexander Brown, Merchant there.
Robert Walwood, Merchant there.

The Aſſize lawfully ſworn, and no Objection of the Law made by the Pannels in the contrary.

The Purſuer for Probation adduced the Witneſſes after Deponing; *viz.*

Mr. *David Fenton*, in *Dunkeld*, aged Forty Years, or thereby, Married; ſolemnly ſworn, purged of partial Counſel, examined upon the Libel, depones, That about the Time libelled, being about the Twentieth or Twenty firſt of *March*; tho' he knows not the Pannels Names, yet, by their Faces, he remembers they were at his Houſe at *Dunkeld*, ſome of them two Days, and ſome but one Day; that Two of them, that came there on *Sunday*, went away on *Monday* Morning; *viz. Carden* and *Kippendavie*; and that the reſt went away from his Houſe on *Tueſday*. Depones, That all of them were in Arms; all of them having Swords, and ſome Piſtols: But he cannot remember how many Pair of Piſtols he ſaw. That Nine of them owned themſelves to be Maſters; and that there were Seven Servants; and that he ſaw no other Weapons but Swords and Piſtols, as ſaid is. Depones, That all the Maſters lodged in his Houſe; but that the Servants and Horſes lodged in common Stables. Depones, That he did not hear any of them ſpeak of the Government, or the Invaſion that was then intended: And that he knows nothing of their Purpoſe or Deſign of coming to his Houſe; or why they were together. Depones, That when they went away, ſome of them went to the *Eaſt* Boat on the Water of *Tay*, in the way towards *Perth*; and others of them croſſed at the *Weſt* Boat, in the way towards *Strathbrand*. And this is all he knows; and is the Truth, as he ſhall anſwer to GOD.

Sic ſubſcribitur,
Da. Fenton.
CROMERTIE.

John Maccleran, Change-Keeper at the Bridge of *Turk*, aged Forty ſix Years and upwards, Married; ſolemnly ſworn, purged of partial Counſel, examined upon the Indictment, and interrogate, depones, That about the Fifteenth of *March* laſt, he ſaw the Five Pannels at his Houſe; but that he was not at Home when they came, and came Home the next Day: And that he ſaw with them, *William Graham*, *Alexander Steuart*, Brother to *Ardvorlich*, and a Brother of *Touch*'s; and remembers of none others, but ſome Servants, whoſe Names he knows not. That they went away from his Houſe the next Morning; and that all of them had Swords, and ſome of them had Piſtols; and ſaw them have ſome few Guns, but he knows not how many. Depones, That he was not ſent on any Meſſage, not knows

knows of none other there being ſent on any Meſſage from his Houſe by the Pannels; and that they went from his Houſe ſtrait *Eaſtward* towards *Lenie*: And that he did not hear them ſpeak of any Perſon that they expected to meet at his Houſe. *Cauſa Scientiæ patet.* And this is all he knows; and is the Truth, as he ſhall anſwer to GOD.

And being further interrogate, if he heard the Pannels ſpeak of the Government, or of King *James*, or the Prince of *Wales*, or of the *French* Invaſion, or of their Landing in any Place in the *North*; depones *negativè*. And this is alſo the Truth, as he ſhall anſwer to GOD.

Sic ſubſcribitur,
John Maccleran.

CROMERTIE.

Daniel Morriſon, Servant to the Laird of *Keir*, Aged twenty three Years or thereby, unmarried, ſolemnly Sworn, purged of partial Counſel, examined and interogate, Depones, That about the Time libelled, he ſaw the Pannels, with ſome others, to the Number of 10 or 12 Horſe at *Dunkeld*, and at *Appinadove*, and at the Head of *Lochearn*; and that they had Swords and Piſtols, but no other Weapons that he ſaw; Depones, That the firſt Place he ſaw the Pannels was at a Place near the Bridge of *Turk*, and went then to *Appinadove*, and from that to *Dunkeld*; Depones that he heard, That there was one *Campbell* who commanded a Party at the Bridge of *Allan*; and that *Keir* being informed thereof, and that they deſigned to apprehend him and his Horſes, occaſioned his going away with his Horſes; and that *Touch* was with him that Morning, and went along with him to *Dunkeld*, and that they met *Carden* and *Kippendavie* at the Bridge of *Turk*; and that *Newtown* came there that Night, and from thence went all to *Lochearn*; Depones, he heard them ſpeak nothing of the pretended Prince of *Wales*, or of the Invaſion then intended; and that *Keir*, *Carden* and *Touch*, came home together from *Dunkeld*; and that to the beſt of the Deponent's Memory, it was on the 23*d* of *March* that they were at *Dunkeld*, and that he knows not what was the Occaſion of their parting; and Depones, That it was on the Seventeenth of that Month that they went from *Keir*; and Depones, That *Carden* and *Newtown* had neither Sword nor Piſtol that he ſaw, and that none of the Servants had either Piſtol or Sword, except *Keir*'s Man, who had a Sword. And Depones, that *Touch*'s Brother, who was in Company, had neither Sword nor Piſtol that the Deponent ſaw; *Cauſa ſcientiæ patet.* And this is the Truth as he ſhall anſwer to GOD. And Depones he cannot Write. *Sic ſubſcribitur.*

Cromertie.

Peter Wilſon, Servant to the Laird of *Keir*, Aged Thirty Years, or thereby, *ſolutus*, ſolemnly Sworn, purged of partial Counſel, Examined upon the Libel, and Interrogate, Depones, That about the Seventeenth Day of *March* laſt, *Keir*, accompanied with *Touch* and his Brother, and others, to the Number of five Horſe, came from *Keir*, and were that Night at the Bridge of *Turk*, where *Carden* and *Kippendavie* met them, and went all of them next Day to *Appinadove*, where one Mr. *Hay* met them: Depones, That the Occaſion of *Keir*'s going from his Houſe, was the Apprehenſions he had of being ſeiz'd with his Horſes, by the Forces then lying at *Stirling*, as he heard. Being Interrogate, if he heard the Pannel ſpeak any thing concerning the Government, the Prince of *Wales*, and the intended Invaſion, depones *Negative*; but that they heard, that Admiral *Bing* had chaſed the *French* Fleet off the Coaſt, before they went from *Keir*; depones, That ſeverals of them had Swords and Piſtols, but cannot be poſitive whether *Carden* and *Touch*'s Brother had any or not; or if any of the other Servants had any, except the Deponent himſelf, and that they had no other Weapons that he ſaw; and depones, that it was at *Lochearn*, and not at *Appinadove*, that Mr. *Hay* met them. *Cauſa ſcientiæ patet*: And this is the Truth as he ſhall anſwer to GOD. *Sic ſubſcribitur.*

Patrick Wilſon.
Cromertie.

The Lords, Juſtice-General, Juſtice-Clerk, and Commiſſioners of Juſticiary, ordain the Aſſize preſently to incloſe, and to return their Verdict to Morrow at twelve a Clock, in the high Councilhouſe, and the hail fifteen Aſſizers to be preſent each of them, under the Pain of two hundred Merks.

CURIA *JUSTICIARIA*, S. D. N. *Reginæ Tenta in Prætorio Burgi de* Edinburgh, *Vigeſimo tertio die menſis* Novembris *milleſimo Septingenteſimo Octavo per Nobilem & potentem Comitem de* Georgium *Comitem de* Cromertie, *&c. Juſticiarium Generalem, & Honorabiles Viros* Adamum Cockburne *de* Ormiſtoun *Juſticiarium Clericum, Dominos* Joannem Lauder *de* Fountainhall, Gulielmum Anſtruther *de Eodem, &* Gilbertum Eliot *de* Minto, *& Magiſtrum* Jacobum Erskine *de* Grange, *Commiſſionarios Juſticiarii Dict.* S. D. N. *Reginæ.*

Curia legitime affirmata.

The ſaid Day, the Perſons who paſs'd upon the Aſſize of *James Stirling* of *Keir*, and others, returned their Verdict in Preſence of the ſaid Lords, whereof the Tenor follows.

Edinburgh 22d. November, 1708.

The above Aſſize having incloſed, did choiſe Sir *James Fleeming* of *Rathobyres* their Chancellor, and *Gilbert Campbell* Merchant in *Edinburgh*, to be their Clerk. And having conſidered the Indictment purſued at her Majeſties Advocate's Inſtance, as having ſpecial Warrant from Her Majeſty for that Effect, againſt *James Stirling* of *Keir*, *Archibald Seton* of *Touch*, *Archibald Stirling* of *Carden*, *Charles Stirling* of *Kippendavie*, and *Patrick Edmonſton* of *Newton*; for the Crime of Treaſon and Leſe-Majeſty, with the Debate thereupon, the Lords Juſtice-General, Juſtice-Clerk, and Commiſſioners of Juſticiary their Interloquitor pronounced thereupon, and Depoſitions of the Witneſſes adduced, *They* all in one Voice *Find* the Libel not proven. In Witneſs whereof (written by the ſaid *Gilbert Campbell*) Theſe Preſents are ſubſcribed by our ſaid Chancellor and Clerk, Day and Date aforeſaid. *Sic ſubſcribitur,*

James Fleeming.
Gilb. Campbell, Clerk.

After Opening and Reading of which Verdict of Aſſize, the Lords Juſtice-General, Juſtice-Clerk, and Commiſſioners of Juſticiary, Abſoilzied the Pannels, and diſmiſſed them from the Bar: Whereupon they took Inſtruments. *Sic ſubſcribitur.*

Cromertie I. P. D.

The

The Tryal of Dr. HENRY SACHEVERELL. *Begun in* Weſtminſter-Hall *on* Monday, February 27, 17$^{09}_{10}$.

The Firſt Day.

ABOUT Eleven of the Clock the Lords came from their own Houſe into the Court erected in *Weſtminſter-Hall*, for the Tryal of *Henry Sacheverell*, Doctor in Divinity, in the manner following.

The Lord Chancellor's Gentlemen Attendants, two and two.

The Clerks of the Houſe of Lords, with the Two Clerks of the Crown in the Courts of *Chancery* and *King's-Bench*.

The Maſters in *Chancery*, two and two.

Then the Judges.

The Peers Eldeſt Sons, and Peers Minors, two and two.

The Yeoman-Uſher of the Houſe.

The Gentleman-Uſher of the Black Rod.

Then the Peers, two and two, beginning with the youngeſt Barons.

The Serjeant at Arms with his Macé.

Then one of the Heralds.

Then the Lord Chancellor alone.

The Lords being Seated in the Place for that Purpoſe prepared in *Weſtminſter*; and the Commons in a Committee of the whole Houſe being in the Seats prepared for them, and the Managers for the Houſe being at their Lordſhips Bar, the Serjeant at Arms made Proclamations as follow.

Serjeant at Arms. Oyez! Our Sovereign Lady the Queen doth ſtrictly Charge and Command all manner of Perſons to keep Silence, upon Pain of Impriſonment.

Serjeant at Arms. Oyez! *Henry Sacheverell*, Doctor in Divinity, come forth, ſave thee and thy Bail, or thou forfeiteſt thy Recognizance.

Then Doctor *Henry Sacheverell* came to the Bar and kneeled; his Council, *viz.* Sir *Simon Harcourt*, Mr. *Dodd*, Mr. *Phipps*, Mr. *Dee*, and Dr. *Henchman*, ſtanding near him at the Bar; and riſing again by Direction of the Lord Chancellor, the Serjeant at Arms again made Proclamation as follows.

Serjeant at Arms. Oyez! Whereas a Charge of High Crimes and Miſdemeanors has been Exhibited by the Houſe of Commons, in the Name of themſelves and all the Commons of *Great Britain*, againſt *Henry Sacheverell*, Doctor in Divinity; all Perſons concerned are to take Notice that he now ſtands upon his Tryal, and they may come forth, in order to make good the ſaid Charge.

Lord Chancellor. Doctor *Sacheverell*, it is needleſs to give you any Directions concerning your Behaviour during the Time of your Tryal, or the ordering your Defence, becauſe the Lords have not only allowed, but aſſigned you the Council you deſired, ſome both of the Civil and Common Law, who will be well able to direct and adviſe you, not only in the Subſtance, but Form of your Defence. The Lords have alſo made an Order for ſummoning all ſuch Witneſſes as you have propounded to appear for you. And that you might be the better able to provide for your Defence, you have had your Liberty on the firſt Application for it, and giving Security for your Appearance; you have alſo had all the Time you thought fit to deſire, in order to prepare for your Defence: So that you ought ever to remember, that their Lordſhips have uſed towards you all the Indulgence you could reaſonably expect.

Lord *Cowper.*

Then the Clerk, by Direction of the Lord Chancellor, read the Articles of Impeachment, Doctor *Sacheverell*'s Anſwer, and the Replication of the Houſe of Commons, as follows.

ARTICLES *Exhibited by the* Knights, Citizens, *and* Burgeſſes *in Parliament aſſembled, in the Name of Themſelves and of all the* Commons *of* Great Britain, *againſt* Henry Sacheverell, *Doctor in Divinity, in Maintenance of their Impeachment againſt him for High Crimes and Miſdemeanors.*

WHereas his late Majeſty King *William* the Third, then Prince of *Orange*, did with an armed Force undertake a glorious Enterprize, for delivering this Kingdom from Popery and Arbitrary Power; and divers Subjects of this Realm, well affected to their Country, join'd with and aſſiſted his late Majeſty in the ſaid Enterprize: And it having pleas'd Almighty God to Crown the ſame with Succeſs, the late happy Revolution did take Effect and was Eſtabliſh'd. And whereas the ſaid Glorious Enterprize is approv'd by ſeveral Acts of Parliament, and amongſt others, by an Act made in the firſt Year of the Reign of King *William* and Queen *Mary*, Entituled, *An Act, declaring the Rights and Liberties of the Subject, and ſettling the Succeſſion of the Crown*; and alſo by one other Act made in the ſame Year, Entituled, *An Act for preventing Vexatious Suits, againſt ſuch as acted in order to the bringing in their Majeſties, or for their Service*; and alſo by one other Act made in the ſame Year, Entituled, *An Act for appropriating certain Duties for paying the* States General of the United Provinces, *their Charges for his Majeſty's Expedition into this Kingdom, and for other Uſes: And the Actings of the ſaid well-affected Subjects in Aid and Purſuance of the ſaid Enterprize*, are alſo declared to have been Neceſſary, and that the ſame ought to be Juſtified. And whereas the happy and bleſſed Conſequences of the ſaid Revolution are, the Enjoyment of the Light of God's true Religion Eſtabliſh'd among us, and of the Laws and Liberties of the Kingdom; the Uniting Her Majeſty's Proteſtant Subjects in Intereſt and Affection, by a legal Indulgence or Toleration granted to Diſſenters; the Preſervation of Her Majeſty's Sacred Perſon; the many and continual Benefits ariſing from Her Majeſty's Wiſe and Glorious Adminiſtration, and the Proſpect

of Happineſs for future Ages, by the Settlement of the Succeſſion of the Crown in the Proteſtant Line, and the Union of the Two Kingdoms. And whereas the Lords Spiritual and Temporal, and Commons in Parliament Aſſembled, did, by their Addreſs of the Seventeenth of *December*, in the Year of our Lord One thouſand ſeven hundred and five, lay before Her Majeſty the following Vote or Reſolution, *viz. That the Church of* England, *as by Law Eſtabliſh'd, which was reſcued from the extremeſt Danger by King* William *the Third, of Glorious Memory, is now, by God's Bleſſing, under the Happy Reign of Her Majeſty, in a moſt ſafe and flouriſhing Condition*; *and that whoever goes about to Suggeſt or Inſinuate that the Church is in Danger under Her Majeſty's Adminiſtration, is an Enemy to the Queen, the Church, and the Kingdom:* And by their ſaid Addreſs, did humbly beſeech Her Majeſty to take Effectual Meaſures for making the ſaid Vote or Reſolution Publick, and alſo for Puniſhing the Authors and Spreaders of ſuch Seditious and Scandalous Reports; and on the twentieth Day of the ſame *December*, Her Majeſty was pleaſed to Iſſue Her Royal Proclamation accordingly. Yet nevertheleſs the ſaid *Henry Sacheverell* Preach'd a Sermon at the Aſſizes held at *Derby*, *Auguſt* the fifteenth, in the Year of our Lord One thouſand ſeven hundred and nine, and afterwards publiſh'd the ſame in Print, with a Dedication thereof; and the ſaid *Henry Sacheverell* alſo Preach'd a Sermon at the Cathedral Church of St. *Paul*, before the Lord-Mayor, Aldermen, and Citizens of *London*, on the Fifth Day of *November* laſt, being the Anniverſary Thankſgiving to Almighty God, for the Deliverance from the *Gunpowder-Treaſon*, and for beginning the late Happy Revolution, by giving his late Majeſty a ſafe Arrival here, and for compleating the ſame, by making all Oppoſition fall before him, 'till he became our King and Governor; which ſaid Sermon, he the ſaid *Henry Sacheverell* afterwards likewiſe publiſh'd in Print, with a Dedication thereof to Sir *Samuel Garrard*, Baronet, Lord Mayor of the City of *London*; and with a Wicked, Malicious, and Seditious Intention to Undermine and Subvert Her Majeſty's Government and the Proteſtant Succeſſion as by Law Eſtabliſh'd; to Defame Her Majeſty's Adminiſtration; to Aſperſe the Memory of his late Majeſty; to Traduce and Condemn the late Happy Revolution; to Contradict and Arraign the Reſolutions of both Houſes of Parliament; to Create Jealouſies and Diviſions amongſt Her Majeſty's Subjects; and to Incite them to Sedition and Rebellion.

ARTICLE I.

He, the ſaid *Henry Sacheverell*, in his ſaid Sermon Preach'd at St. *Paul's*, doth ſuggeſt and maintain, *That the neceſſary Means us'd to bring about the ſaid Happy Revolution, were Odious and Unjuſtifiable: That His late Majeſty, in His Declaration, diſclaim'd the leaſt Imputation of Reſiſtance*; *and that to impute Reſiſtance to the ſaid Revolution, is to caſt Black and Odious Colours upon his late Majeſty, and the ſaid Revolution.*

ARTICLE II.

He, the ſaid *Henry Sacheverell*, in his ſaid Sermon Preach'd at St. *Paul's*, doth ſuggeſt and maintain, *That the aforeſaid Toleration, granted by Law, is unreaſonable, and the Allowance of it Unwarrantable: And aſſerts, That he is a Falſe Brother with relation to God, Religion, or the Church, who defends Toleration and Liberty of Conſcience: That Queen* Elizabeth *was deluded by Archbiſhop* Grindall, *whom he ſcurrilouſly calls a* Falſe Son *of the Church, and a* Perfidious Prelate, *to the Toleration of the* Genevian *Diſcipline: And that it is the Duty of Superior Paſtors to thunder out their Eccleſiaſtical Anathema's againſt Perſons intitled to the Benefit of the ſaid Toleration*; *and inſolently dares, or defies, any Power on Earth to Reverſe ſuch Sentences.*

ARTICLE III.

He, the ſaid *Henry Sacheverell*, in his ſaid Sermon Preach'd at St. *Paul's*, doth Falſely and Seditiouſly Suggeſt and Aſſert, *That the Church of* England *is in a Condition of great Peril and Adverſity under Her Majeſty's Adminiſtration*; *and in order to Arraign and Blacken the ſaid Vote or Reſolution of both Houſes of Parliament, approv'd by Her Majeſty as aforeſaid, he, in oppoſition thereto, doth ſuggeſt the Church to be in Danger*; *and, as a Parallel, mentions a Vote, That the Perſon of King* Charles *the Firſt was voted to be out of Danger at the ſame time that his Murderers were conſpiring his Death*; *thereby wickedly and maliciouſly inſinuating, That the Members of both Houſes, who paſs'd the ſaid Vote, were then conſpiring the Ruin of the Church.*

ARTICLE IV.

He, the ſaid *Henry Sacheverell*, in his ſaid Sermons and Books, doth falſely and maliciouſly ſuggeſt, *That Her Majeſty's Adminiſtration, both in Eccleſiaſtical and Civil Affairs, tends to the Deſtruction of the Conſtitution: And that there are Men of Characters and Stations in Church and State who are Falſe Brethren, and do themſelves weaken, undermine and betray, and do encourage, and put it in the Power of others, who are profeſſed Enemies, to overturn and deſtroy the Conſtitution and Eſtabliſhment*; *and chargeth Her Majeſty, and thoſe in Authority under Her, both in Church and State, with a general Male-Adminiſtration: And as a publick Incendiary, he perſuades Her Majeſty's Subjects to keep up a Diſtinction of Factions and Parties*; *inſtills groundleſs Jealouſies, foments deſtructive Diviſions among them, and excites and ſtirs them up to Arms and Violence: And that his ſaid Malicious and Seditious Suggeſtions may make the ſtronger Impreſſion upon the Minds of Her Majeſty's Subjects, he the ſaid* Henry Sacheverell *doth wickedly wreſt and pervert divers Texts and Paſſages of Holy Scripture.*

All which Crimes and Miſdemeanors the Commons are ready to prove, not only by the general Scope of the ſame Sermons or Books, but likewiſe by ſeveral Clauſes, Sentences and Expreſſions in the ſaid Sermons or Books contain'd; and that he the ſaid *Henry Sacheverell*, by Preaching the Sermons, and Publiſhing the Books aforeſaid, did abuſe his Holy Function, and hath moſt grievouſly offended againſt the Peace of Her Majeſty, Her Crown and Dignity, the Rights and Liberties of the Subject, the Laws and Statutes of this Kingdom, and the Proſperity and good Government of the ſame. And the ſaid Commons, by Proteſtation, ſaving to themſelves the Liberty of Exhibiting at any time hereafter, any other Article or Impeachment againſt the ſaid *Henry Sacheverell*; and alſo of replying to his Anſwers, or any of them, and of offering Proofs of all the Premiſes, or of any of them, and of any other

other Article or Impeachment that ſhall be Exhibited by them, as the Caſe according to Courſe of Parliament ſhall require, do pray that he the ſaid *Henry Sacheverell* be put to Anſwer to all and every the Premiſes; and that ſuch Proceeding, Examination, Tryal, Judgment and Exemplary Puniſhment may be thereupon had and executed, as is agreeable to Law and Juſtice.

The ANSWER *of* Henry Sacheverell, *Doctor in Divinity, to the* ARTICLES *Exhibited by the* Knights, Citizens *and* Burgeſſes *in Parliament Aſſembled, in the Name of themſelves and of all the* Commons *of* Great Britain, *in Maintenance of their Impeachment againſt him for High Crimes and Miſdemeanors.*

THE ſaid *Henry Sacheverell*, ſaving to himſelf all Advantages of Exception to the ſaid Articles for the Generality, Uncertainty and Inſufficiency thereof, and of not being prejudiced by any Words or want of Form in this his Anſwer, admits, That at the Requeſt of *George Sacheverell*, Eſquire, High Sheriff of the County of *Derby*, he Preached a Sermon at the Aſſizes held for that County, on the Fifteenth Day of *Auguſt*, One thouſand ſeven hundred and nine; and that at the Deſire of the Right Honourable Sir *Samuel Garrard*, Baronet, Lord Mayor of the City of *London*, he alſo Preached a Sermon at the Cathedral Church of St. *Paul*, before the ſaid Lord Mayor, and the Aldermen and Citizens of *London*, on the Fifth Day of *November* laſt; and that he cauſed the ſaid Sermons to be Printed: But denies that he Preached, or cauſed the ſame to be Printed or Publiſhed, with any ſuch wicked, malicious or ſeditious Intent, as in the Preamble of the ſaid Articles is affirmed; the ſaid *Henry Sacheverell* having been induced to Print the Sermon he Preach'd at *Derby*, at the Requeſt of the Gentlemen of the Grand Jury for that County, to whom he humbly preſumed to Dedicate the ſame, as the moſt publick Acknowledgment he was capable of making, for the peculiar Honour he had receiv'd by their publick Approbation of that Sermon. And the ſaid Lord Mayor having been pleaſed to expreſs his good Liking of the ſaid Sermon Preach'd at St. *Paul*'s, the ſaid *Henry Sacheverell*, at his Requeſt, caus'd the ſame to be Printed, with a Dedication thereof to him. And for Anſwer to the ſaid Articles, humbly ſaith,

Anſwer to the Firſt Article.

To the Firſt Part of the Firſt Article, the ſaid *Henry Sacheverell* denies, That, in his ſaid Sermon Preach'd at St. *Paul*'s, *he doth ſuggeſt and maintain, that the neceſſary Means uſed to bring about the happy Revolution were Odious and Unjuſtifiable.* Nor doth he in any Part of that Sermon affirm any thing concerning the neceſſary Means uſed to bring about the Happy Revolution. The ſaid *Henry Sacheverell* is ſo far from Reflecting on His late Majeſty, or the Happy Revolution, that he endeavours, in that Sermon, to clear the Revolution and his late Majeſty from the black and odious Colours which their greateſt Enemies had endeavoured to caſt upon both.

And as to that Part of the ſaid Article, whereby the ſaid *Henry Sacheverell* is charged with *ſuggeſting and maintaining, that his late Majeſty, in his Declaration, diſclaimed the leaſt Imputation of Reſiſtance*; the ſaid *Henry Sacheverell* doth acknowledge himſelf to have made ſuch Suggeſtion; and declares, that he made it not in Diſhonour, but in Vindication, of his ſaid Majeſty. The Reſiſtance the ſaid *Henry Sacheverell* repreſents the late King to have diſclaimed, being ſuch a Reſiſtance as tended to the Conqueſt of this Realm, as plainly appears from that Part of his late Majeſty's Declaration which is referr'd to, and *verbatim* ſet forth at the Bottom of the ſame Page in which he mentions his late Majeſty's declaiming any ſuch Imputation.

Whether the ſaid *Henry Sacheverell* was miſtaken or not, in expreſſing himſelf as if the late King had diſclaimed any Imputation of Reſiſtance, when he the ſaid *Henry Sacheverell* meant thereby, that the late King diſclaimed the Imputation of a Deſign of Conqueſt, he humbly conceives, ſuch a Suggeſtion by him, plainly deſign'd for the Honour of the late King, cannot in any reaſonable Conſtruction be thought a Reflection on his ſaid Majeſty, or deemed any Crime or Miſdemeanor.

For the further Juſtification of what the ſaid *Henry Sacheverell* ſaid in reference to his late Majeſty's having diſclaimed any the leaſt Imputation of Reſiſtance, the ſaid *Henry Sacheverell* humbly obſerves, That in his late Majeſty's Declaration, the following Paſſages are contain'd: *We have thought fit to go over to* England, *and to carry over with us a Force, ſufficient, by the Bleſſing of God, to defend our ſelves from the Violence of Evil Counſellors.*----- *We think fit to declare, that this our Expedition is intended for no other Deſign but to have a Free and Lawful Parliament Aſſembled.*

As to the laſt Charge in the ſaid Article, the ſaid *Henry Sacheverell* denies, *that he doth in his ſaid Sermon ſuggeſt and maintain, that to impute Reſiſtance to the ſaid Revolution, is to caſt Black and Odious Colours upon his late Majeſty and the ſaid Revolution*; the Perſons whom the ſaid *Henry Sacheverell* in his Sermon deſcribes, as caſting Black and Odious Colours upon his late Majeſty and the Revolution, are not thoſe who impute Reſiſtance to the late Revolution, of whom the ſaid *Henry Sacheverell* affirms nothing, *but thoſe new Preachers and new Politicians, who teach, in Contradiction to both Goſpel and the Laws, that the People have the Power veſted in them, the Fountain and Original of it, to cancel their Allegiance at their Pleaſure, and to call their Sovereign to Account for High-Treaſon againſt his Subjects*; *nay, and to Dethrone and Murder him for a Criminal, as they did the Royal Martyr by a Judiciary Sentence*; *who are Maintainers of Antimonarchical Schemes, and of ſuch damnable Poſitions as are, by the Laws of Church and State, condemned for Rebellion and High-Treaſon*; *and who urge the Revolution in Defence of ſuch Principles.* Unleſs therefore thoſe who impute Reſiſtance to the Revolution, be the ſame with thoſe new Preachers and new Politicians above ſpecified, the ſaid *Henry Sacheverell* affirms nothing concerning them.

The ſaid *Henry Sacheverell*, upon the ſtricteſt Search into his ſaid Sermon Preached at St. *Paul*'s, doth not find that he hath given any the leaſt colourable Pretence for the Accuſation exhibited againſt him in this firſt Article, but barely by his Aſſerting the utter Illegality of Reſiſtance to the Supreme Power upon any Pretence whatſoever; for which Aſſertion, he humbly conceives he hath the Authority of the Church of *England*, which in di-

vers Paſſages of her Homilies, too large and too numerous to be here ſpecified, but by the ſaid *Henry Sacheverell* ready to be produced, hath taught and inculcated this Doctrine, as founded on the Word of God; particularly in the Second Part of the Sermon of Obedience, contained in the former Book of Homilies, ſet forth in the Time of King *Edward* the Sixth, where are theſe Words: *Here good People, let us all mark diligently: It is not lawful for Inferiors and Subjects in any Caſe to reſiſt and ſtand againſt the Superior Powers; for St.* Paul's *Words be plain, that whoſoever withſtandeth, ſhall get to themſelves Damnation; for whoſoever withſtandeth, withſtandeth the Ordinance of God.*

Which ſaid Book of Homilies is affirmed in one of the Thirty Nine Articles of Religion, which concern the Confeſſion of the true Chriſtian Faith, to contain a godly and wholſome Doctrine, and is order'd to be read in Churches, by the Miniſters diligently and diſtinctly, that they may be underſtanded of the People. And the ſaid *Henry Sacheverell*, in further Maintenance of the ſaid Doctrine and Poſition, contained in the Books of Homilies, and of the Authority of thoſe Books, ſaith, That by an Act of Parliament made in the Thirteenth Year of the Reign of Queen *Elizabeth*, Entituled, *An Act for the Miniſters of the Church to be of ſound Religion*, 'Tis Enacted, *That no Perſon ſhould thereafter be admitted to any Benefice with Cure, except he ſhould firſt have ſubſcribed the ſaid Articles in the Preſence of the Ordinary, and publickly read the ſame in the Pariſh Church of that Benefice, with Declaration of his unfeigned Aſſent to the ſame.* And that by an Act made in the Fifth Year of her preſent Majeſty's Reign, Entituled, *An Act for ſecuring the Church of* England *as by Law Eſtabliſh'd*, It was Enacted, *That the ſaid Act made in the ſaid Thirteenth Year of the Reign of Queen* Elizabeth, *ſhould remain and be in full Force for ever; and be inſerted in expreſs Terms in any Act which ſhould be made for ratifying the Union of the Two Kingdoms of* England *and* Scotland; *and therein declared to be an eſſential and fundamental Part thereof.* And the ſaid Act was accordingly inſerted in expreſs Terms, in an Act for the Union of the Two Kingdoms; and thereby ratify'd, and declar'd to be an eſſential and fundamental Part thereof.

And the ſaid *Henry Sacheverell* doth further humbly inſiſt, and is adviſ'd, that the aforeſaid Aſſertion is agreeable to, and warranted by, the Common Law of *England*, and divers Acts of Parliament now remaining in full force.

The ſaid *Henry Sacheverell* doth with all Humility aver the Illegality of Reſiſtance on any Pretence whatſoever to be the Doctrine of the Church of *England*, and to have been the general Opinion of our moſt Orthodox and Able Divines, from the Time of the Reformation to this Day: This Doctrine hath in the moſt ſolemn Manner been Taught in that Univerſity, whereof he hath been for more than Twenty Years a Member; this hath been often, with Publick Approbation of each Houſe of Parliament, Preached and Printed; and in Terms of greater Force than any uſed by the ſaid *Henry Sacheverell*, hath by the Right Reverend Fathers of our Church, Dead and Living, been avow'd and maintain'd.

And the ſaid *Henry Sacheverell* was the rather induc'd to Preach againſt the Doctrine of Reſiſtance of the Supreme Power upon the Fifth Day of *November*, becauſe on that Day the Church commemorates our Deliverance from the Traiterous Attempts of Rebellious Papiſts, and becauſe the Lawfulneſs of Reſiſting the Supreme Power was originally a Popiſh Doctrine; for which Reaſons, as he humbly conceives, the Rubrick of the Office appointed for that Day by her late Majeſty Queen *Mary* (of Bleſſed Memory) directs, That after the Creed, if there be no Sermon, ſhall be read one of the Six Homilies againſt Rebellion.

Whilſt therefore the Church of *England* as by Law Eſtabliſh'd is in a ſafe and flouriſhing Condition under Her Majeſty's happy Adminiſtration; whilſt Popiſh Tenets are by all good Proteſtants condemn'd and abhorr'd; whilſt the Laws of this Realm continue in their full Force and Vigor, the ſaid *Henry Sacheverell* humbly hopes, that a Dutiful Son of that Church, a ſincere Proteſtant, and a faithful Subject of Her Majeſty, ſhall not ſuffer for Aſſerting the Doctrine of Non-Reſiſtance of the Supreme Powers. But if this Doctrine be declared Erroneous, and it ſhould pleaſe God that he ſhould ſuffer for Aſſerting it, he truſts that God will enable him to ſhew his ſteady Belief of this Doctrine, by a meek and patient Reſignation to whatever ſhall befall him on that Account.

Anſwer to the Second Article.

To that Part of the Second Article, which charges, That he the ſaid *Henry Sacheverell* doth ſuggeſt and maintain, *That the Toleration granted by Law is Unreaſonable, and the Allowance of it Unwarrantable*; the ſaid *Henry Sacheverell* ſaith, That, upon the moſt diligent Enquiry, he hath not been able to inform himſelf, that a Toleration hath been granted by Law; but admits, that an Act did paſs in the firſt Year of King *William* and Queen *Mary*, Entituled, *An Act for Exempting their Majeſties Proteſtant Subjects Diſſenting from the Church of* England *from the Penalties of certain Laws.* Which Exemption the ſaid *Henry Sacheverell* doth not any where maintain or ſuggeſt to be unreaſonable, or that the Allowance of it is unwarrantable; but hop'd, that he had prevented any ſuch Miſapprehenſion, by declaring his ſincere Meaning in theſe Words, contain'd in his Sermon Preach'd at St. *Paul*'s;---- *I would not be here miſunderſtood, as if I intended to caſt the leaſt Invidious Reflection upon that Indulgence which the Government hath condeſcended to give them, which I am ſure all thoſe who wiſh well to our Church, are ready to grant to Conſciences truly ſcrupulous; let them enjoy it in the full Limits the Law has preſcribed them.*

If there be any other Expreſſions concerning Toleration, which may ſeem to carry a dubious Senſe in any other Parts of his Sermon, he hopes that they will not be applied to the Exemption granted by Law, but will be interpreted agreeably to his avowed Approbation of that Law.

And to ſuch Part of the ſaid Second Article, as charges that he the ſaid *Henry Sacheverell* aſſerts, *That he is a falſe Brother with relation to God, Religion, or the Church, who defends Toleration and Liberty of Conſcience*; he the ſaid *Henry Sacheverell* ſaith, That he having ſo plainly declared himſelf in favour of the Exemption granted by Law, when he blames thoſe, who, upon all Occaſions, defend Toleration and Liberty of Conſcience, cannot be thought to reflect on the Defenders of that legal Exemption or Indulgence which he himſelf approves and defends: He doth indeed ſuggeſt it to be one Part of the Character of a falſe Brother, *upon all occaſions to defend Toleration and Liberty*

Liberty of Conſcience; *and to excuſe the Separation, lay the Fault upon the true Sons of the Church, for carrying Matters too high.* Which univerſal Defence of Toleration, and Excuſe of Separation, attended with the laying the Fault of ſuch Separation upon the true Sons of the Church, are by him jointly mentioned in one and the ſame Clauſe of the Sentence, and in one and the ſame Branch of the Character. So that his Reflection doth not extend to all who defend Toleration and Liberty of Conſcience, much leſs to thoſe who defend the Exemption granted by Law to Proteſtant Diſſenters; but to ſuch only, who at the ſame Time they defend univerſal Toleration and Liberty of Conſcience, do alſo excuſe the Separation, and lay the Fault thereof upon the true Sons of the Church, for carrying Matters too high. And theſe he did then, and ſtill doth, with all Humility, conceive to be juſtly blameable, and, if Members of this Church, to be falſe Brethren.

And as to that Part of the ſecond Article, whereby the ſaid *Henry Sacheverell* is charged with aſſerting, *That Queen* Elizabeth *was deluded by Archbiſhop* Grindall, *to the Toleration of the* Genevian *Diſcipline*; he the ſaid *Henry Sacheverell* ſaith, he humbly conceives he hath good Authority from the Hiſtories and Monuments of thoſe Times for ſuch Aſſertion; but whether he hath, or hath not, he humbly apprehends ſuch Aſſertion to be no Proof of his maintaining or ſuggeſting, That the Exemption of Proteſtant Subjects diſſenting from the Church of *England* from the Penalties of certain Laws, granted by an Act made in the firſt Year of the Reign of King *William* and Queen *Mary*, (which Exemption he ſuppoſes to be intended by the legal Indulgence or Toleration granted to Diſſenters, mentioned in the Preamble of the Articles, and by the Toleration granted by Law, mentioned in this ſecond Article) is unreaſonable, or the Allowance of it unwarrantable. For he is humbly of Opinion, that there is a wide and manifeſt Difference between a Toleration of the *Genevian* Diſcipline, and an Exemption of Proteſtant Diſſenters from the Penalties of certain Laws; between a Toleration allowed meerly by the Regal Power, and an Exemption granted by Act of Parliament; which Exemption he is ſo far from thinking unreaſonable or unwarrantable, that from the bottom of his Heart he wiſheth it, under the ſame Reſtrictions and Limitations, extended to all Her Majeſty's Proteſtant Subjects throughout the whole Kingdom of *Great Britain*.

And as to ſuch Part of the Second Article, whereby the ſaid *Henry Sacheverell* is charged *with ſcurrilouſly calling the ſaid Archbiſhop* Grindal *a falſe Son of the Church, and a perfidious Prelate*; the ſaid *Henry Sacheverell* humbly hopes, that any harſh Expreſſions he hath uſed concerning that Prelate may be rather excuſed, becauſe the ſaid Archbiſhop having permitted Innovations to be obtruded on the Church, did thereby incur the high Diſpleaſure of ſo good and pious a Princeſs as Queen *Elizabeth*, by whoſe Order he was ſuſpended, and continued under ſuch Suſpenſion to the Day of his Death. However, the ſaid *Henry Sacheverell* preſumes, that no Words ſpoken of an Archbiſhop above one hundred and twenty Years ſince deceaſed, will, in Conſtruction of Law, amount to an high Crime and Miſdemeanor.

And as to ſuch Part of the Second Article, whereby the ſaid *Henry Sacheverell* is charged with maintaining, *That it is the Duty of Superior Paſtors to thunder out their Eccleſiaſtical* Anathema's *againſt Perſons entituled to the Benefit of the ſaid Toleration*; he the ſaid *Henry Sacheverell* ſaith, That he doth not maintain or ſuggeſt that it is the Duty of Superior Paſtors to thunder out Eccleſiaſtical *Anathema's* againſt Perſons entituled to the Benefit of the Toleration; which Perſons, where he ſpeaks of ſuch *Anathema's*, are neither by him mentioned nor intended; but if the Expreſſions by him unapplied to any, muſt be determin'd to any one ſort of Perſons, he humbly conceives, that the Connection of his Diſcouſe will determine them *to thoſe Schiſmatical and Factious Perſons, who take Permiſſion for Power, and advance Toleration immediately into an Eſtabliſhment*; and ſuch Schiſmatical and Factious Perſons, he humbly apprehends, are not the Perſons entituled to the Benefit of the Act of Exemption, which was deſigned only to give ſome Eaſe to ſcrupulous Conſciences in the Exerciſe of their Religion.

And as to the laſt Part of the ſecond Article, whereby the ſaid *Henry Sacheverell* is charged *with inſolently daring or defying any Power on Earth to reverſe ſuch Sentences*; the ſaid *Henry Sacheverell* ſaith, That the Sentence which he the ſaid *Henry Sacheverell* dares any Power on Earth to reverſe, is ſuch, and ſuch only, as is ratified in Heaven; and ſuch Sentence he ſtill affirms to be by any earthly Power irreverſible; and hopes it will not be thought Inſolence in him to affirm, what he conceives would be Blaſphemy in any one to deny: And doth further acknowledge himſelf firmly to believe, that ſome Sentences pronounced by the Paſtors of the Church are ratify'd in Heaven; and that ſome Perſons exempted from Puniſhment by the particular Laws of the Land, may yet by the Laws of Chriſt be juſtly liable to ſuch Sentence; and that Schiſm, or a cauſeleſs Separation from a Church impoſing no ſinful Terms of Communion, is a Sin, which expoſes the Perſons guilty thereof to the Cenſures of the Church.

Anſwer to the Third Article.

As to ſo much of the Third Article, as charges the ſaid *Henry Sacheverell, That he doth falſely and ſeditiouſly ſuggeſt and aſſert, that the Church of* England *is in a Condition of great Peril and Adverſity under Her Majeſty's Adminiſtration*; *and that, in order to arraign and blacken the ſaid Vote and Reſolution of both Houſes of Parliament, approved by Her Majeſty, he, in oppoſition thereto, doth ſuggeſt the Church to be in Danger:* The ſaid *Henry Sacheverell* denies that he hath either aſſerted or ſuggeſted the Church of *England* to be in a Condition of great Peril and Adverſity under Her Majeſty's Adminiſtration; but he doth freely acknowledge, that he hath in his Sermon ſuggeſted, That *when National Sins are ripened up to a full Maturity, to call down Vengeance from Providence on a Church and Kingdom, debauched in Principles, and corrupted in Manners, and inſtead of the true Faith, Diſcipline and Worſhip, given over to all Licentiouſneſs both in Opinion and Practice, to all Senſuality, Hypocriſy, Lewdneſs and Atheiſm, then we (that is evidently) all the Members of ſuch a Church or Kingdom, are in Danger in ſuch deplorable Circumſtances.* And this Suggeſtion of Danger ariſing to a Church and Kingdom from Vice and Infidelity, he humbly preſumes is not oppoſite to the Vote of the Two Houſes, or Seditious, but

entirely agreeable to what is ſolemnly declared in an Act of Parliament made the ninth and tenth of his late Majeſty King *William* the Third, for the more effectual ſuppreſſing of Blaſphemy and Prophaneneſs; wherein it is affirmed, *That many Perſons had of late Years openly avowed and publiſhed many Blaſphemous and Impious Opinions, contrary to the Doctrines and Principles of the Chriſtian Religion; greatly tending to the Diſhonour of Almighty God, which might prove deſtructive to the Peace and Welfare of this Kingdom:* And he conceives, that ſince the paſſing that Act, the deteſtable Crimes for the effectual ſuppreſſing of which that Act was intended, have greatly increaſed. And the ſaid *Henry Sacheverell* ſaith, the Suggeſtions by him made of Dangers ariſing to us from Vice and Infidelity, he apprehends to be in no wiſe more ſeditious or repugnant to the Vote of the Two Houſes approved by Her Majeſty, than the like Suggeſtions occurring in the ſolemn Prayers of the Church Authorized by Her Majeſty, and frequently uſed before each Houſe of Parliament; wherein *we beſeech God, that no Sedition may diſturb this State, nor Schiſm diſtract this Church; and that he would give us Grace ſeriouſly to lay to Heart the great Dangers we are in by our unhappy Diviſions.*

And as to ſo much of the ſaid Third Article, whereby 'tis charged, *That the ſaid* Henry Sacheverell, *as a Parallel, mentions a Vote, That the Perſon of King* Charles *the Firſt was voted to be out of Danger, at the ſame Time that his Murderers were conſpiring his Death; thereby wickedly and maliciouſly inſinuating, that the Members of both Houſes who paſſed the ſaid Vote, were then conſpiring the Ruin of the Church*; he the ſaid *Henry Sacheverell* doth ſay, That he doth not draw any Parallel between the Vote concerning the King's Perſon, and the late Vote of the Two Houſes, which he neither there, nor elſewhere in his Sermon, mentions: But had he ſuggeſted one Vote to be Parallel to the other, which he hath not, yet would not he thereby have wickedly and maliciouſly inſinuated, that the Members of both Houſes, who paſſed the late Vote, were then conſpiring the Ruin of the Church; but would only have intimated, that as ſome Perſons were conſpiring the Murder of the King, whilſt others, no way privy to their wicked Intentions, voted his Perſon to be out of Danger; ſo when the Two Houſes voted the Church of *England* to be in no Danger under Her Majeſty's Adminiſtration, there might be ſome others who were conſpiring the Ruin of the Church; and many others, who, by their Vice and Infidelity, were drawing down God's Vengeance both on Church and Kingdom.

As the Vote of both Houſes, made four Years ago, did concern thoſe only who did then inſinuate the Church of *England* to be in Danger under Her Majeſty's Adminiſtration; ſo it cannot, he preſumes, affect thoſe who do now ſuggeſt the Chriſtian Faith, which is the Foundation upon which every Chriſtian Church ſtands, to be endangered by thoſe Atheiſtical and Irreligious Principles which are daily from the Preſs propagated amongſt us, notwithſtanding the Proviſion made by the ſaid Act for ſuppreſſing Blaſphemy and Prophaneneſs: So that the ſaid *Henry Sacheverell* thinks, that he might with Truth affirm (as he did in his Sermon preach'd at *Derby*.) *That there were never ſuch outragious Blaſphemies againſt God and all Religion, Natural as well as Revealed, vented publickly with Impunity, in any Chriſtian Church or Kingdom in the whole World, as at preſent in our own*; of which Aſſertion the ſaid *Henry Sacheverell* is ready to produce undeniable and ample Proofs, if called thereto.

Anſwer to the Fourth Article.

As to the Fourth Article, it contains ſeveral Charges of a very high and Criminal Nature, of which the ſaid *Henry Sacheverell* knows his Heart to be entirely innocent; and he obſerves with Comfort, That whereas in the former three Articles he is ſaid to have maintained or aſſerted, as well as to have ſuggeſted, the Doctrines and Things therein laid to his Charge, in this fourth Article he is not accuſed of maintaining and aſſerting, but barely of ſuggeſting what is therein contained: And he humbly hopes, that bare Suggeſtions or Inſinuations, could they with any Colour or Probability be made out, as he is fully ſatisfied they cannot, will not, under the moſt mild and gracious Government, (at a Time when ſeveral new Laws have been made for ſecuring the Liberties of the Subject) by your Lordſhips, the great Guardians of our Laws and Liberties, be adjudged ſufficient to involve an *Engliſh* Subject in the Guilt and Puniſhment of high Crimes and Miſdemeanors.

To the ſeveral Parts of the ſaid fourth Article, the ſaid *Henry Sacheverell* doth in all Humility anſwer; As to ſuch Part thereof whereby it is charged, *That the ſaid* Henry Sacheverell, *in his ſaid Sermons and Books, doth falſly and maliciouſly ſuggeſt that Her Majeſty's Adminiſtration, both in Eccleſiaſtical and Civil Affairs, tends to the Deſtruction of the Conſtitution*; he the ſaid *Henry Sacheverell* ſaith, That he hath not made any mention, in either of his Books or Sermons, of Her Majeſty's Adminiſtration in Eccleſiaſtical or Civil Affairs, or of Her Miniſters: So far is he from ſuggeſting that Her Majeſty's Adminiſtration, both in Eccleſiaſtical and Civil Affairs, tends to the Deſtruction of the Conſtitution, that amongſt the inеſtimable Bleſſings which are owing to our Deliverance annually commemorated on the fifth of *November*, he reckons this to be one, *That Her Majeſty, the Good and Pious Relict of the Royal Family, ſits now happily upon the Throne of Her Anceſtors; and prays that God may long preſerve Her, for the Comfort and Support of the Church; and profeſſeth, that what he ſpoke proceeded from a tender Concern for Her Majeſty's Perſon and Government*: And in the Dedication alſo of his ſaid Sermon Preached at St. *Paul's*, ſolemnly declares, as he did before in his Diſcourſe, *That his only Aim and Intention was earneſtly to contend for the Safety, Rights and Eſtabliſhment of Her Majeſty, together with thoſe of the Church.*

And as to ſuch Part of the ſaid fourth Article, whereby it is charged, That the ſaid *Henry Sacheverell* doth ſuggeſt *that there are Men of Characters and Stations in the Church who are falſe Brethren*; the ſaid *Henry Sacheverell* ſaith, That the falſe Brethren, as deſcribed by him in his Sermon, *are either thoſe who propagate Falſe Doctrines, or who give up the Diſcipline and Worſhip of the Church, or who are for a Neutrality in Religion, or who wiſh well to the Church of* England, *and are ready to Sacrifice their Perſons and Eſtates in her Vindication, but do not ſhew their Zeal in the Communion of the Church, as well as for it, in Obeying her Precepts, as well as defending her Rights.* Theſe being the ſeveral ſorts of Falſe Brethren enumerated by the ſaid *Henry Sacheverell*, if he ſhould have ſuggeſted that there are Men of Characters and Stations in Church

and State, (Words by no Means reſtrained to the higheſt Characters and Stations) to whom the Denomination of Falſe Brethren, in ſome or more Senſes of that Word, as by him interpreted, doth belong, he humbly hopes that ſuch Suggeſtion would not be deemed Falſe, Malicious, or highly Criminal.

And as to ſuch other Part of the ſaid fourth Article, whereby it is charged, That the ſaid *Henry Sacheverell* doth ſuggeſt, *That there are Men of Characters and Stations in the Church and State, who do themſelves weaken, undermine and betray, and do encourage and put it into the Power of others who are profeſſed Enemies, to overturn and deſtroy the Conſtitution and Eſtabliſhment*; the ſaid *Henry Sacheverell* denieth that he ſuggeſteth any ſuch Things concerning Men of Characters and Stations in Church or State. Where he ſpeaks of thoſe *who weaken, undermine and betray, and encourage and put it in the Power of our profeſſed Enemies to overturn and deſtroy the Conſtitution and Eſtabliſhment*, there Men of Characters and Stations are not mention'd by him; and where he mentions Men of Characters and Stations, twelve Pages afterwards, the only Place wherein he mentions them, there he ſpeaks nothing of weakning, undermining and betraying, or of encouraging and putting it in the Power of our profeſſed Enemies to overturn and deſtroy the Conſtitution and Eſtabliſhment: And hopes therefore that he ſhall be no ways anſwerable for a ſuppos'd Reflection, which depends upon the Conjunction of Paſſages ſo widely diſtant from, and ſo little relating to each other. The Weakners, Underminers and Betrayers of our Conſtitution, and the Encouragers to whom the ſaid *Henry Sacheverell* doth in any Part of his Sermon refer, will, he preſumes, upon a candid Examination of thoſe Paſſages, appear to be one of theſe three Sorts of Perſons; either, *Firſt, ſuch as by their Writings endeavour to ſubvert the Foundations of our Church and State*; *or, Secondly, ſuch, whether Writers or others, who are for a Latitudinarian Heterogeneous Mixture of all Perſons of what different Faith ſoever, uniting only in Proteſtancy, which would let into her Bowels thoſe who neither believe her Faith, own her own Miſſion, ſubmit to her Diſcipline, or comply with her Liturgy*; *which he afterwards ſtiles the Model of an univerſal Coalition*; *Or, Thirdly, thoſe occaſional Conformiſts, who have ſo far eluded the Corporation and Teſt Acts by their abominable Hypocriſy, as to have undermined the Foundations, and endanger'd the Government, by filling it (as far as they could) with its profeſſed Enemies, that is, with themſelves.* Of all theſe, and their Encouragers, the ſaid *Henry Sacheverell* confeſſes himſelf to have ſuggeſted that they do, in his Opinion, weaken, undermine, and betray the Conſtitution: But that either theſe, or their Encouragers, are Men of Characters or Stations in the Church or State, he hath not any where ſuggeſted.

And as to ſuch other Part of the ſaid Fourth Article, which chargeth the ſaid *Henry Sacheverell with charging Her Majeſty, and thoſe in Authority under Her both in Church and State, with a general Male-Adminiſtration*; the ſaid *Henry Sacheverell* ſaith, That he abhors the Thoughts of bringing any Charge againſt Her Sacred Majeſty, whom he never mentions but in Terms of the profoundeſt Duty and Reſpect. Nor doth he tax thoſe in Authority with a General, or with any Male-Adminiſtration; which is a Word he hath never us'd, nor (as far as he can find) any other Word or Words by which the Thing is imply'd. So far is the ſaid *Henry Sacheverell* from making any undutiful Reflections upon Her Majeſty or Her Adminiſtration, that in the ſeveral Writings that he has publiſh'd, ſince Her Happy Acceſſion to the Throne, particularly in one which is an avow'd Defence of Her Title to the Crown, and a Juſtification of Her entring into a War with *France* and *Spain*, he hath expreſſed himſelf with the moſt Hearty and Loyal Zeal for Her Majeſty's Perſon, Government and Adminiſtration.

And as to ſuch other Part of the ſaid Fourth Article, whereby it is charged, *That the ſaid* Henry Sacheverell, *as a publick Incendiary, perſwades her Majeſty's Subjects to keep up a Diſtinction of Factions and Parties*; the ſaid *Henry Sacheverell* ſaith, That he is ſo far from being guilty of this Charge, that in his ſaid Sermon *he invites the Separatiſts to renounce their Schiſm, and come ſincerely into the Church*; *and complains of thoſe who have villainouſly divided us with the Knaviſh Diſtinctions of High and Low Church-Men, and wiſhes we may be one Fold under one Shepherd*; *and that all thoſe invidious Diſtinctions, that now diſtract and confound us, were loſt, ſo that we might be terrible like an Army with Banners to our Enemies, who could never break in upon ſuch an uniform and well-compacted Body.*

And to ſuch other Part of the ſaid Fourth Article, as chargeth, *That the ſaid* Henry Sacheverell *inſtills groundleſs Jealouſies, and foments deſtructive Diviſions among her Majeſty's Subjects*; the ſaid *Henry Sacheverell* ſaith, That in his ſaid Sermon, *he on the contrary Rebukes and Condemns thoſe, who, by falſe Inſinuations, and raiſing groundleſs Jealouſies and Fears, embroil the Publick, and bring it into Confuſion.*

And as to ſuch other Part of the ſaid Fourth Article, whereby it is charged, *That the ſaid* Henry Sacheverell *excites and ſtirs up Her Majeſty's Subjects to Arms and Violence*; the ſaid *Henry Sacheverell* ſaith, God forbid that he ſhould be guilty of ſo heinous a Crime, who aſſerts the *utter Illegality of Reſiſtance to the Supreme Power* upon any Pretence whatſoever; which Aſſertion he conceives to be the chief, if not only Ground of the Charge exhibited againſt him in the firſt Article.

In Confutation of this Charge, he begs leave to recite one Paſſage out of his Sermon preached at *Derby* in the following Words; *We may be Partakers of other Mens Sins, if we do not, to the utmoſt of our Power, endeavour to prevent or obſtruct their Commiſſion, when they manifeſtly endanger the Good of the Publick: As we are Members of any Government, or Society, we are all obliged in Point of Honour, Intereſt and Conſcience, to maintain its Security, promote its Welfare, and guard it againſt Factious Deſigns, or ſeditious Conſpiracies that may threaten its Conſtitution, diſcompoſe its Peace, or violate and ſubvert its Laws. God and Nature have inveſted every Subject from his Cradle, with a Commiſſion to engage, diſcover and diſappoint the Enemies of his Church and Country*; *and he that is either privy to, induſtriouſly conceals, or any way abets their Schiſmatical, Illegal or Rebellious Enterprizes, both in the Eyes of Human as well as Divine Laws, is an Accomplice and Partaker in the Guilt, a Traitor to God and his Prince, a Patron and Protector of Injuſtice, and a common Adverſary to himſelf as well*

as

as all Mankind. And the ſaid *Henry Sacheverell* hopes, what he hath ſaid in the Dedication of the ſame Sermon, *That there are not wanting ſome to preach the Truth, and others to ſupport it, at the Expence of their Lives and Fortunes*; will not be conſtrued as exciting Her Majeſty's Subjects to Sedition and Rebellion; ſince that Truth which he commends ſome for Preaching, and others for Supporting, is by him oppoſed to the Attempts of thoſe who betray and run down the Principles and Intereſts of our Church and Conſtitution; and ſince he there deſervedly commends the High Sheriff of that County, on the Account of his ſteady Loyalty and Zeal to ſerve Her Majeſty and the Government, for which he hath been ſo remarkably diſtinguiſhed.

In the Sermon Preach'd at St. *Paul's*, he doth indeed excite Chriſtians *to put on the whole Armour of God, as wreſtling, not only againſt Fleſh and Blood, but againſt Principalities, againſt Powers, againſt the Rulers of the Darkneſs of this World; againſt Spiritual Wickedneſs in high Places.* But he hath learned from the ſame St. *Paul*, That the Arms of Reſiſtance taken up by Subjects againſt the higher Powers, are no Part of that Spiritual Armour; and the Principalities and Powers by him mention'd, being plainly diſtinguiſhed from Fleſh and Blood, cannot, he thinks, be ſo far miſinterpreted, as to be underſtood of Earthly Potentates and Rulers.

And as to ſo much of the ſaid Fourth Article, whereby it is charged that he the ſaid *Henry Sacheverell* doth wickedly wreſt and pervert divers Texts and Paſſages of Holy Scripture, that his ſaid malicious and ſeditious Suggeſtions may make the ſtronger Impreſſion upon the Minds of her Majeſty's Subjects; the ſaid *Henry Sacheverell* ſays, That having no malicious or ſeditious Suggeſtions to Imprint, he could not intend to wreſt any Paſſages of the Holy Scripture to that wicked Purpoſe. Hard is the Lot of the Miniſters of the Goſpel, if when they Cite the Word of God in their General Exhortations to Piety and Virtue, or in their Reproofs of Mens Tranſgreſſions, or where they are Lamenting the Difficulties and Conflicts with which the Church of Chriſt, whilſt Militant here on Earth, muſt always ſtruggle, the ſeveral Texts and Paſſages by them Cited, ſhall be ſaid to have been by them meant of particular Perſons and Things, and ſhall be conſtrued in the moſt Criminal Senſe, and be made by ſuch Conſtruction one Ground of an Impeachment for High Crimes and Miſdemeanors.

And as to all other Matters and Things in the ſaid Articles contain'd, and not herein before particularly anſwered unto, the ſaid *Henry Sacheverell* ſaith, he is not Guilty of them, or any of them, in Manner and Form as the ſame are charged upon him in and by the ſaid Articles; and humbly ſubmits himſelf to your Lordſhips Judgment.

HENRY SACHEVERELL.

The Commons Replication to the Anſwer of Doctor Henry Sacheverell.

THE Commons have conſidered the Anſwer of *Henry Sacheverell*, Doctor in Divinity, to the Articles of Impeachment exhibited againſt him by the Knights, Citizens and Burgeſſes in Parliament Aſſembled; and obſerve, that there are many things in it not warranted by the Courſe of Proceedings upon Impeachments, foreign to the Charge of the Commons, unbecoming a Perſon Impeached, and plainly deſigned to reflect upon the Honour of the Houſe of Commons in this Proceeding, for which they might demand your Lordſhips immediate Juſtice.

But the Commons being ſenſible that the Nature of the Crimes whereof he ſtands Impeached, and the Neceſſity of bringing him to a ſpeedy and exemplary Puniſhment, require that all Occaſions of Delay ſhould be avoided, and not doubting that your Lordſhips will in due time vindicate the Honour of the Commons, and the Juſtice of their Proceedings; the Commons do Aver their Charge againſt the ſaid *Henry Sacheverell* for High Crimes and Miſdemeanors to be true, and that the ſaid *Henry Sacheverell* is Guilty in ſuch manner as he ſtands Impeached, and that the Commons will be ready to prove their Charge againſt him at ſuch convenient Time as ſhall be appointed for that Purpoſe.

Lord Chancellor. Gentlemen of the Houſe of Commons, you may proceed with your Evidence.

Mr. Attorney Gen. MY Lords, by Command of the Knights, Citizens and Burgeſſes in Parliament Aſſembled, we appear in behalf of all the Commons of *Great Britain*, to make good the Impeachment againſt the Priſoner at the Bar, Doctor *Henry Sacheverell.*

The Miſdemeanors he ſtands accuſed of are ſpecified in the Articles which have been juſt now read to your Lordſhips, and the Facts there Charged, are Laid to have been done with a Wicked, Malicious, Seditious Intention, to Undermine and Subvert Her Majeſty's Government, and the Proteſtant Succeſſion as by Law Eſtabliſhed; to Defame Her Majeſty's Adminiſtration; to Aſperſe the Memory of His late Majeſty King *William*; To Traduce and Condemn the late Happy Revolution; to Contradict and Arraign the Reſolution of both Houſes of Parliament; to Create Jealouſies and Diviſions amongſt Her Majeſty's Subjects; and to Incite them to Sedition and Rebellion.

My Lords, If this Charge is made good (as I am apt to think it will) I may preſume to ſay, no Words can either aggravate or alleviate the Offence.

My Lords, our Proofs in this Caſe will ariſe from Evidence which cannot be liable to the Imputation of being over-aw'd by the Weight of the Proſecutors, or corrupted or perverted; for out of his own Mouth we ſhall Charge him, and by his own Words and Sermons we ſhall convict him.

My Lords, I can with Truth ſay, That it is no ſmall Trouble to the Commons of *Great Britain*, to have this Occaſion of coming in this manner before your Lordſhips: Could they have ſatisfy'd themſelves that Her Majeſty's Honour, the Safety of Her People, and the Proteſtant Succeſſion as by Law Eſtabliſhed, were not highly concerned to bring this Man to ſpeedy Juſtice, they could very willingly have ſpared Your Lordſhips this Trouble.

But when they conſider'd of what Import it was to the Nation, how much it concerned the very Being of our Conſtitution, to Diſcountenance and put an End to ſuch ſort of Seditious Proceedings as the Doctor and ſome others of his Brethren have been lately practiſing in divers Parts of the Kingdom, they could not think otherwiſe than that it was a Matter fit for the Grand Inqueſt of the Nation to take Notice of: And finding it to be a Cauſe of ſo

great Moment to the Publick, they judg'd it fit to be taken under their own Management, and not truſt it to the Deciſion of any Inferior Tribunal. And, my Lords, it muſt be agreed that your Lordſhips are the only proper Judges, when the whole Commons of *Great Britain* find it neceſſary to be the Proſecutors; nor can Doctor *Sacheverell* have any juſt Cauſe to complain of this manner of Proceeding, when it gives him ſo publick an Opportunity of Defending himſelf (if his Innocence can clear him;) and what can he deſire more, when he lies under ſo heavy an Accuſation, than to have your Lordſhips for his Judges, who have already ſhewn your great Indulgence to him, by allowing him (as the Noble Lord from the Woolpack juſt now obſerv'd) all the Advantages a Man under his Circumſtances can ask, or deſire to have?

My Lords, This Proſecution took its Riſe from a Complaint that was made in the Houſe of Commons the Thirteenth of *December* laſt, of two Books which had been lately Printed and Publiſhed under the Name of Doctor *Henry Sacheverell*. The Books being delivered in, ſeveral Paragraphs were read; and by divers Paſſages, too many for me now to enumerate to your Lordſhips, it did plainly appear that both Books did contain very Scandalous and Seditious Matter, highly reflecting upon the Queen and Her Adminiſtration.

Hereupon the Doctor was order'd to attend; which he did accordingly the next Day, and at the Bar of the *Commons Houſe* own'd and avow'd both Books to be his; That they were Sermons he himſelf had preach'd; and that he had cauſed them to be printed and publiſhed.

After ſuch a Confeſſion, Your Lordſhips may imagine Her Majeſty's Dutiful *Commons* did expreſs their juſt Reſentments of the great Wrong and Injuries that were done to Her Majeſty, and all that were in Authority under Her; and immediately ordered this Impeachment.

Your Lordſhips will perceive, by Peruſal of the Sermons and Epiſtles Dedicatory, that the Deſign and Drift of the ſame is to poſſeſs the People with ſtrange Notions, and terrible Apprehenſions of the Danger they are in, by a General Male-Adminiſtration of the Publick Affairs both in Church and State.

That both theſe Sermons were preach'd upon Publick Occaſions; and had, ſince the Printing thereof, been handed about with more than ordinary Application.

One of theſe Books is entitled [*The Communication of Sin,*] being a Sermon preach'd at the Aſſizes held at *Derby* in *Auguſt* laſt: And becauſe the Doctor thought he had not ſaid enough againſt the Queen and Her Government in the Sermon, he affixes a Dedication to it, wherein he affirms, That the Principles of our Church and Conſtitution are ſhamefully betray'd and run down: That both are perſecuted, on the one Side by rude and preſumptuous Inſults, and baſe undermining Treachery on the other; and that this Perſecution is carry'd on by aſſociated Malignants.

The other Sermon was preach'd at St. *Paul*'s, *London*, on the Fifth of *November*, which is a Day ſet apart for a General Day of Thankſgiving, for Two very great Deliverances vouchſafed to this Nation, by the Diſcovery of the Gunpowder Plot, and the Arrival of His Late Majeſty King *William*, to redeem us from Popiſh Tyranny and Arbitrary Power.

My Lords, When ye come to hear this Sermon read, I am confident that it muſt appear very ſtrange to find, that when there were Two ſuch Memorable Occaſions for the Doctor to have ſet forth his Eloquence in a Thankſgiving-Sermon, he ſhould in great meaſure paſs by both the Buſineſſes of the Day, and entertain his Audience with a long Harangue of the deplorable Condition the Church was in; not ſo much from Papiſts, (the avow'd Enemies of the Church) as from her pretended Friends, as he calls them, the Falſe Sons of the Church, who were crept into her Bowels, and ſhewn themſelves to be perfidious Brethren, by defending Toleration and Liberty of Conſcience, and favouring the Diſſenters.

And to ſhew his little Liking of the Great Work which was begun to be wrought on that Day by the Arrival of His Late Majeſty, the chief Turn of his Diſcourſe is to cry up Non-Reſiſtance and Paſſive Obedience.

And to make it moſt evident, that what he ſaid of Non-Reſiſtance was to caſt black and odious Colours upon the Revolution; he lays down a General Poſition, *That it is not lawful, upon any Pretence whatſoever, to make Reſiſtance to the Supreme Power*; which Supreme Power, by other Paſſages, he explains to be the Regal Power.

And being apprehenſive that every one that heard him talking in that manner againſt Reſiſtance, would ſee plainly he was Cenſuring and Condemning the Means that brought about the Revolution, and being deſirous to caſt as heavy Reflections as he could upon the Memory of King *William*, he aſſerts, *That the Prince of* Orange, *in his Declaration, utterly diſclaim'd all manner of Reſiſtance.*

My Lords, Every body knows, that knows any thing of the Revolution, That the Prince of *Orange* came over hither with an Armed Force; and that in ſeveral Paragraphs of his Declaration, (the Doctor ſpeaks of) *His Late Majeſty invites and requires all* Peers *of the Realm, both Spiritual and Temporal Lords, all Gentlemen, Citizens, and other Commoners, to come in and aſſiſt him, in order to the executing that Deſign he had then undertook, againſt all that ſhould endeavour to oppoſe him.*

Therefore it muſt be accounted very ridiculous for the Doctor to advance ſuch a Poſition, if he had no further Meaning in it, than to give an Account of the Prince of *Orange*'s Deſign in coming over here into *England*.

And this will make it neceſſary for your Lordſhips to conſider what is the true Meaning of this Aſſertion: Is it not plainly to make the Prince of *Orange* ſay one Thing, and at the ſame time do directly another? And can this be done with any other Deſign, than to aſperſe the Memory of the late King *William*?

Then as to his Diſcourſe concerning Paſſive Obedience and Non-Reſiſtance, in ſuch Latitude as is there mention'd; what could it tend to, but to caſt Reflections upon that Reſiſtance, which was the Means which brought about the Revolution?

For was there any Occaſion at that Time to be ſo earneſt to cry down Reſiſtance, and preach up Paſſive Obedience?

Can any one pretend to ſay, there were any Symptoms of Diſcontent throughout the Nation, in any Parts thereof?

No: To our Comfort be it ſpoken, no Reign, no Age, no Hiſtory can give a better Account of the good Diſpoſitions of the People to their Sove-

reign. Therefore ſince the Preaching theſe Doctrines was needleſs, it does ſavour of ſome wicked Deſign, to be talking ſo unſeaſonably of this Subject.

If what the Doctor very frequently aſſerts in this Sermon be true, *That all are Falſe Sons of the Church, who aſſiſted in bringing about the Revolution, or that join'd in the Oppoſition that was made to the Encroachments which were begun by evil Miniſters in the Reign of King* James *the* IId. *againſt our Religion and Liberties*; let the Doctor a little conſider, how far his Character of a *Falſe Brother* may be carry'd!

Every body knows, that liv'd in thoſe Days, that the Body of the Clergy of the Church of *England* made a Noble Stand againſt the Encroachments which were then making, and appear'd as active as any of the Laity.

And was it not by their Writings, Preaching, and Example, that the Nobility and Gentry were animated to maintain and defend their Rights, Religion and Liberties? And as an undoubted Monument that this was the Senſe of the whole Kingdom at the Time of the Revolution, it is enter'd in the Journal of the Houſe of Commons, on the Firſt of *February*, 1688;

That the Unanimous Thanks of the Houſe was given, Nemine Contradicente, *to the Clergy of the Church of* England, *for the great Services they had done their Religion and Country, by the Oppoſition they had made to the Execution of the Eccleſiaſtical Commiſſion, and their refuſing to read the King's Declaration for a Toleration, which was then founded upon the Diſpenſing Power.*

And how did the Archbiſhops receive the Meſſage that was ſent them upon this Occaſion, that they might communicate that Reſolution to the Clergy in their reſpective Dioceſes?

Our Journals tell us, That Mr. *Leviſon Gower* the next Day acquainted the Houſe of Commons, that he had attended the Two Archbiſhops, according to Order, with the Thanks of the Houſe; and that Archbiſhop *Sancroft*, and the then Archbiſhop of *York*, return'd their Thanks to the Commons for themſelves, and in Behalf of all their Clergy, for their favourable Vote.

Your Lordſhips ſee, the Commons were then happy enough to be thought favourable to the Clergy of the Church of *England*; and yet thoſe very Commons were the Men who paſſed the *Toleration-Act*, for exempting Proteſtant Diſſenters from the Penalties of certain Laws, as one of the moſt neceſſary Acts for the Good of the Kingdom.

And were they not encouraged to go about that Charitable Work, by the Petition of the Seven Biſhops, preſented to King *James*; wherein they acquainted him, *That it was not for want of a due Tenderneſs to Diſſenters, which made them refuſe reading his Declaration for Toleration to Diſſenters; in relation to whom, they were willing to come to ſuch a Temper as ſhould be thought fit, when the ſame came to be conſider'd in Parliament.*

But now the ſame hath been conſider'd in Parliament, and the Toleration hath been ſettled and eſtabliſh'd by the Legiſlative Authority of the Kingdom, and hath been ratify'd and approv'd of in this Reign, by Her Majeſty and both Houſes of Parliament; Doctor *Sacheverell* belike diſapproves of it, and is pleaſed to tell us in a moſt extraordinary manner, *That a Man muſt be very weak, or ſomething worſe, that thinks or pretends the Diſſenters are to be gained by any other Grants and Indulgences, than giving up our whole Conſtitution: And he that recedes the leaſt Tittle from it, to ſatisfy and ingratiate with theſe Clamorous, Inſatiable, Church-devouring Malignants, knows not what Spirit they are of.*

After ſuch an ample Declaration of his Opinion, what fatal Conſequences will attend the granting Indulgences to Diſſenters, Can the Doctor imagine, that his ſaying, in his Anſwer to the Articles, *That he intends not to caſt the leaſt invidious Reflection upon that Indulgence the Government has condeſcended to give them*, will take off the hard Cenſures he hath paſs'd upon Diſſenters?

And, my Lords, if an Archbiſhop, who hath been dead almoſt a Hundred and twenty Years, cannot be permitted to reſt quiet in his Grave, but muſt have foul Aſperſions caſt upon his Memory, *as being a falſe Son, and a perfidious Prelate of the Church*, for interceding (as Doctor *Sacheverell* ſays) with Queen *Elizabeth* for the Diſſenters in thoſe Days: What muſt the preſent Archbiſhops and Biſhops of our Church expect from Doctor *Henry Sacheverell*, if they do not Thunder out their Eccleſiaſtical Anathema's againſt Diſſenters as often as the Doctor ſhall think there is occaſion for them?

My Lords, I perceive the Doctor hopes to ſalve all he hath ſaid againſt Toleration to Diſſenters, by a nice Diſtinction he hath hit upon between an Indulgence and a Toleration.

Therefore he tells your Lordſhips, *That upon the moſt diligent Enquiry, he hath not been able to inform himſelf that a Toleration hath been granted by Law.*

Can the Doctor pretend to ſay, that this Word Toleration has never been made uſe of to expreſs the Religious Liberty and Indulgence that is granted and allowed to Diſſenters? If we wanted Authorities to juſtify the Uſe of the Word, after the Doctor has made uſe of it in the ſame Senſe over and over, in many Paſſages in his Sermon, as will be taken Notice of by the Gentlemen that are to make good the Second Article, the Doctor might be put in Mind, that Her Majeſty in Her Speech from the Throne, on the 17th of *December*, 1705, hath been pleaſed to Declare, *That ſhe will inviolably Maintain the Toleration.*

My Lords, As the Time was moſt Unſeaſonable for the Preaching ſuch Doctrines as theſe, ſo the Place was very improper for a Lecture of Politicks: For your Lordſhips do perceive this latter Sermon, which was Preach'd on the Fifth of *November* laſt, was Preach'd in the Great Metropolis of this Kingdom, before the Lord Mayor, Aldermen, and Citizens of *London*; from whoſe ſteady Loyalty to Her Majeſty, and firm Affections to the Revolution, ſuch vaſt Sums have been contributed for carrying on this long War againſt *France*, which hath proved ſo fatal to the *French* King, and other Enemies of this Kingdom.

And what more likely to give a fatal Wound to the Publick Credit at this Time, than ſuch Doctrine, which tends to the Overthrow of all the Acts of Parliament which have been made in Support of this Conſtitution.

And how ſtrange an Attempt was it for the Doctor to Preach againſt the Revolution and this Government, before thoſe Citizens who owe the Reſtoration of their Charters, and all their Franchiſes and Immunities to it.

But, to do Juſtice to the Doctor, he in his Anſwer denies he hath ſaid any thing of the Means which brought about the Revolution.

And,

And, if your Lordſhips can believe him, he ſays, *he has endeavour'd to Vindicate the Revolution from the black and odious Colours the Enemies of the Revolution would throw both upon that and his late Majeſty.*

To what End and Purpoſe then are theſe Doctrines Preach'd with ſo much Vehemence at this Time, unleſs it be to reflect backwards upon what was done at the Time of the Revolution?

There is certainly no Occaſion to Preach Non-Reſiſtance to Her Majeſty's Loyal and Dutiful Subjects, who have never ſhewn the leaſt Inclination to give Diſturbances to this preſent Government.

Was there ever known a Time, in which there was ſo univerſal an Agreement in all Ranks and Degrees amongſt us? Does not every one almoſt ſtrive to ſhew their Zeal and Affection for Her Majeſty and Her Government? If there be any that are leſs quiet than their Neighbours, we ſhall find them amongſt the Friends of Doctor *Sacheverell*, who are profeſſedly no Friends to the Revolution. Nothing is more certain, than that all that are not ſatisfied with what was done at the Time of the Revolution, muſt be Enemies to the preſent Eſtabliſhment: And 'tis from this Source, all theſe Declamations againſt Men of Character and Station, both in Church and State, do proceed.

But I would have the Doctor conſider, that we have Laws to puniſh Spreaders of falſe News, and horrible Stories, of the Great Men and Great Officers of the Kingdom; and 'tis to put a ſtop to theſe malicious Practices now on Foot, that this Delinquent is now brought to this Bar.'

When we ſhall have read our ſeveral Proofs, which will juſtify every Particular charged on the Doctor in the Articles of Impeachment, the Commons will not doubt of your Lordſhips Judgment againſt this Defendant.

Mr. *Lechmere.* MY Lords, I am commanded to aſſiſt in ſtating to your Lordſhips the Grounds of the Charge of the Commons, and the Nature and Tendency of the Crimes now before you, in Judgment.

Your Lordſhips have had open'd to you an Impeachment of the Commons of *Great-Britain*: The Subjects of both Nations had an equal Concern in that which is the Ground of it: They are happily united in this Proſecution; and the common Intereſt of your Lordſhips, and us all, is inſeparable in its Event.

I need ſay no more to your Lordſhips of the Greatneſs of this Cauſe; not for the Perſon of the Offender, but for the High Importance of thoſe Matters which he has preſumed to draw in Queſtion.

The Commons, on their Part, have been exceeding careful, in every Step of this Proceeding, that it ſhould receive a Deliberation ſuitable to the *Weight of the Cauſe*, and the *Dignity of the Commons*; and they obſerve it to your Lordſhips, with great Satisfaction, That by your ready Concurrence, no Difficulties have ariſen to delay or diſcourage their Impeachment. They aſcribe this to a Deſire in your Lordſhips, equally with themſelves, to cultivate a good Correſpondence on ſo important an Occaſion, and to that due Regard your Lordſhips ſhew to the Courſe of Impeachments, *the Ancient Right*, and *Great Security* of the Commons.

In framing their Charge, the Commons have thought fit, by a Preamble to their Articles, to lay before you the Grounds of their Accuſation, in Terms the moſt cogent and expreſſive; to the end, your Lordſhips might have early and perfect Notice of the Points on which the Commons intended to proceed; that your Lordſhips, and the whole Kingdom, might know the unanimous and hearty Zeal of the Commons, to aſſert the Juſtice of the late Happy Revolution, and the Foundations of Her Majeſty's Government and Adminiſtration; And that the *Judgment* of the Commons, on this weighty Occaſion, might ſtand *fully on the Records of Parliament*, and be *tranſmitted to all Poſterity.*

Your Lordſhips will obſerve, in reading their Evidence, many Things excepted to by the Commons, precedent to the Ground of their firſt Article; but you will ſoon perceive, that all Parts of the Deſign of the Priſoner center in that. They could not therefore have acquitted themſelves, if they had not made that their Foundation: Being firmly convinc'd, they never can have the Honour and Juſtice of that Glorious Work too much at Heart; nor be too jealous of thoſe, who under any Pretences, *tho' never ſo ſpecious, ſhall attempt* to leſſen it. And when they conſider the certain Dependance that the Juſtice of the late Revolution it ſelf muſt have upon the Steps that led to it, they can have no doubt but your Lordſhips will think him equally Criminal, who condemns the Means by which it was effected.

My Lords, *The Neceſſary Means*, (which is the Phraſe us'd by the Commons in their firſt Article) are Words made choice of by them *with the greateſt Caution.* Thoſe Means are deſcribed (in the Preamble to their Charge) to be, That Glorious Enterprize, which his late Majeſty undertook with an armed Force, to deliver this Kingdom from Popery and Arbitrary Power; the Concurrence of many Subjects of the Realm, who came over with him in that Enterprize, and of many others of all Ranks and Orders, who appear'd in Arms in many Parts of the Kingdom, in Aid of that Enterprize.

Theſe were the *Means* that brought about the Revolution, and which the Act that paſſed ſoon after, declaring the Rights and Liberties of the Subject, and ſettling the Succeſſion of the Crown, intends, when His Late Majeſty is therein called *the Glorious Inſtrument of delivering the Kingdom*; and which the Commons, in the laſt Part of their firſt Article, expreſs by the Word *Reſiſtance.*

But the Commons, who will never be unmindful of the *Allegiance* of the Subjects to the *Crown* of this Realm, judg'd it highly incumbent upon them, out of regard to the Safety of Her Majeſty's Perſon and Government, and the Ancient and Legal Conſtitution of this Kingdom, to call that Reſiſtance the *Neceſſary* Means; thereby plainly founding that Power, and Right of Reſiſtance, which was exerciſed by the People at the Time of the Happy Revolution, and which the Duties of Self-Preſervation and Religion call'd them to, upon the Neceſſity of the Caſe; and at the ſame time, effectually ſecuring Her Majeſty's Government, and the due Allegiance of all Her Subjects.

Your Lordſhips will find, That the Priſoner, in his Sermon preach'd at St. *Paul*'s, has aſſerted a Doctrine in direct Defiance and Contradiction of that Reſiſtance us'd to bring about the Revolution; when he affirms the utter Illegality of Reſiſtance, on any Pretence whatſoever, to be a Fundamental of our Conſtitution: And, as your Lordſhips will hear it fully made out from the Proofs, by thoſe

Gentlemen to whom that Part is aſſigned, he has alſo plainly declared himſelf, that even that Reſiſtance uſed at the Time of the late Happy Revolution, is not to be excepted out of his Fundamental Rule.

My Lords, When a Preacher of the Goſpel, and a Miniſter of the Church of *England*, even under this Happy Eſtabliſhment, ſhall thus publickly condemn the Foundations on which it ſtands, in Defiance of Her Majeſty and the Great Council of the Nation then ſitting in Parliament; it becomes an indiſpenſible Duty upon us, who appear in the Name and on the Behalf of all the Commons of *Great-Britain*, not only to demand your Lordſhips Juſtice on ſuch a Criminal, but clearly and openly to aſſert our Foundations.

I crave Leave to remind your Lordſhips of the Condition of Things in both Kingdoms, immediately preceding the late Revolution: The Caſe is ſtated and recorded, between the late King *James* and the Subjects of both Kingdoms, in the ſeveral Declarations of the Rights of both Nations made by them at that Time.

I ſhall forbear to aggravate the Miſcarriages of that unhappy Prince, further than by ſaying, That it is declared in the Preamble to the Bill paſſed in *England*, *That by the Aſſiſtance of Evil Counſellors, Judges and Miniſters, employ'd by him, he did endeavour to ſubvert and extirpate the Proteſtant Religion, the Laws and Liberties of the Kingdom, in the ſeveral Inſtances there enumerated.* And in that paſſed in the Kingdom of *Scotland*, it ſtands declared, *That, by the Advice of Evil Counſellors, he did invade the Fundamental Conſtitution of that Kingdom, and alter'd it from a Legal Limited Monarchy, to an Arbitrary Deſpotick Power.*

Your Lordſhips, on this Occaſion, will again conſider the Ancient Legal Conſtitution of the Government of this Kingdom; from which it will evidently appear to your Lordſhips, That the Subjects of this Realm had not only a Power and Right in themſelves to make that Reſiſtance, but lay under an indiſpenſible Obligation to do it.

The Nature of our Conſtitution is that of a Limited Monarchy, wherein the Supreme Power is communicated and divided between Queen, Lords and Commons, tho' the Executive Power and Adminiſtration be wholly in the Crown. The Terms of ſuch a Conſtitution do not only ſuppoſe, but expreſs an Original Contract, between the Crown and the People; by which that Supreme Power was [by mutual Conſent, and not by Accident] limited and lodg'd in more Hands than one: And the uniform Preſervation of ſuch a Conſtitution for ſo many Ages, without any fundamental Change, demonſtrates to your Lordſhips the Continuance of the ſame Contract.

The Conſequences of ſuch a Frame of Government are obvious: That the Laws are the Rule to both, the common Meaſure of the Power of the Crown, and of the Obedience of the Subject; and if the Executive Part endeavours the Subverſion, and total Deſtruction of the Government, the Original Contract is thereby broke, and the Right of Allegiance ceaſes: That Part of the Government, thus fundamentally injur'd, hath a Right to Save or Recover that Conſtitution, in which it had an Original Intereſt.

Nay, the Nature of ſuch an Original Contract of Government proves, That there is not only a Power in the People, who have inherited its Freedom, to aſſert their own Title to it, but they are bound in Duty to tranſmit the ſame Conſtitution to their Poſterity alſo.

'Tis miſ-ſpending your Lordſhips Time to illuſtrate this: 'Tis an Eternal Truth, eſſential to the Government it ſelf, and not to be defaced, or deſtroy'd, by any Force or Device.

That the Rights of the Crown of *England* are Legal Rights, and its Power ſtated and bounded by the Laws of the Kingdom; That the Executive Power and Adminiſtration it ſelf is under the ſtricteſt Guard, for the Security of the People; And that the Subjects have an Inheritance in their Ancient Fundamental Conſtitutions, and the Laws of the Land; appears from every Branch of this Government. 'Tis the Tenor of all Antiquity; Our Hiſtories and Records afford innumerable Proofs of it: And when your Lordſhips look back on the Hiſtory of *Magna Charta* alone, you can't doubt of the Senſe of our Anceſtors, that they were Maſters of Franchiſes that were truly their own, and which no Earthly Power had Right to extort from them. Many others, of inconteſtible Authority, are thoſe Valuable Relicts, which our Popiſh Anceſtors have left us, as Proofs of the Freedom of our Conſtitution, of the conſtant Claims they made, both in and out of Parliament, to their Inheritance in their Laws, againſt the Encroachment of Arbitrary Power; and when the *Laſt Extremity* call'd them to it, they never fail'd to vindicate them by the Arms of Reſiſtance.

" Such was the Genius of a People, whoſe Go-
" vernment was built on that Noble Foundation,
" *Not to be bound by Laws, to which they did not*
" *conſent*; that, muffled up in Darkneſs and Su-
" perſtition, as our Anceſtors were, yet that Noti-
" on ſeem'd engraven on their Minds, and the Im-
" preſſions ſo ſtrong, that nothing could impair
" them.

Upon the Reformation of Religion, when all Foreign Power was aboliſh'd, and the Supremacy of the Crown was reſtor'd to its Height by many Acts of Parliament, your Lordſhips will always find Declarations at the ſame Time made of the Rights of the People; particularly that of the 25th of *H.* VIII. where 'tis ſaid, That *the Realm of* England *is free from any Man's Laws, but ſuch as have been deviſed, made and ordained within the ſame, for the Wealth of it; or ſuch other, as the People of the Realm have taken at their free Will and Conſent, and by long Uſe have bound themſelves to, as the Ancient Eſtabliſh'd Laws of the Realm*, and none otherwiſe.

Your Lordſhips will, I doubt not, conſider thoſe Laws made at that Time, to be freſh and remarkable Declarations, and Ratifications of the Original Contract.

This Excellent Conſtitution of our Government has been, thro' many Struggles, preſerv'd from that Time to this, and the true Spirit of the *Engliſh* Nation ſtill kept alive, down to the Times of the late Happy Revolution; at which Time the Danger being imminent, not only to the Laws and Liberties of the Kingdom, but to the Proteſtant Religion, THE ANCIENT VIRTUE OF THE *ENGLISH* NATION EXERTED IT SELF, AND SHONE OUT IN ITS FULL LUSTRE, IN THAT GLORIOUS WORK.

The many Laws paſs'd ſince, more particularly thoſe for the Settlement of the Crown and Succeſſion, are ſo many repeated Declarations of their Late Majeſties, and Her Majeſty now on the Throne, together with the Repreſentative Body of

the Nation, in Confirmation of their Ancient Conſtitution. Nay, my Lords, we have higher Teſtimonies to appeal to; the many Glorious Succeſſes with which God Almighty has bleſſed the Arms of Her moſt Sacred Majeſty, employ'd in Defence of the Arms of Reſiſtance, are ſo many Teſtimonies from Heaven in our Vindication.

Your Lordſhips take notice on what Grounds the Doctor continues to aſſert the ſame Poſition in his Anſwer. But is it not moſt evident, that the General Exhortations to be met with in the Homilies of the Church of *England*, and ſuch like Declarations in the Statutes of the Kingdom, are meant only as Rules for the Civil Obedience of the Subject, to the Legal Adminiſtration of the Supreme Power in ordinary Caſes? And it's equally abſurd, to conſtrue any Words in a Poſitive Law to authorize the Deſtruction of the whole; as to expect that King, Lords and Commons ſhould, in expreſs Terms of Law, declare ſuch an ultimate Reſort as the Right of Reſiſtance, at a Time when the Caſe ſuppoſes that the Force of all Law is ceaſed.

But the Commons think he hath, by his Anſwer, highly aggravated his Crime, by charging ſo pernicious a Tenet, as that of abſolute unlimited Non-Reſiſtance, to be a fundamental Part of our Government, and by aſſerting this as the Doctrine of the Church of *England*.

It is a great Reproach to the Excellency of our Conſtitution, to impute ſuch Principles to it as inevitably infer its Deſtruction; and an equal Diſhonour to the Crown of this Realm, the great Glory of which is to be ſet over and govern a Nation of Free-born Subjects, the meaneſt of which has an Inheritance in the Government and the Laws equal with the greateſt.

They likewiſe eſteem it an high Reflection on Religion it ſelf, and the Church of *England*, to charge its pureſt Doctrines with ſuch Conſtructions, by which all Irreligion and Oppreſſion would be Authoriz'd.

The Commons muſt for ever conſider themſelves under the ſtrongeſt Obligations of Gratitude to our great Deliverer, to aſſert the Honour and Juſtice of that Reſiſtance by which he reſcued an oppreſſed People from inevitable Deſtruction; and think they ſhould not deſerve the Name of Subjects of *Great Britain*, or the leaſt Bleſſing of ſo good a Government, if at this Time before your Lordſhips, and for ever hereafter, they did not aſſert, in the moſt ſtrenuous Manner, the Honour and Juſtice of that Reſiſtance which brought about the late Happy Revolution. And upon this Foundation it is, that they doubt not but your Lordſhips will, in a Parliamentary way, faſten a Brand of indelible Infamy on that enſlaving Tenet by which it's condemn'd.

I ſhall take up leſs of your Lordſhips Time on the following Articles.

The Commons eſteem the Toleration of Proteſtant Diſſenters to be one of the earlieſt and happieſt Effects of the late Revolution, wiſely calculated for the Support and ſtrengthning the Proteſtant Intereſt, the great End of the Revolution it ſelf.

They remember, with the higheſt Gratitude to Her Majeſty, Her Royal Reſolution declared from the Throne, to preſerve it inviolably; and they obſerve to your Lordſhips, that it appears to them, from a Report on their own Journals of a Conference between both Houſes, on the Bill againſt *Occaſional Conformity*, (not meant to enlarge the Liberties of Proteſtant Diſſenters) That the Perſecution of Proteſtants is, in the Preamble to that Bill, declared *to be contrary to the Chriſtian Religion, and the Doctrine of the Church of* England, *and that the Act of Toleration ought to be kept inviolably*; and the Commons find no Exception then taken by your Lordſhips to that Declaration; but on the contrary, many Expreſſions from both Houſes, highly extolling the Policy and good Effects of that Law.

Your Lordſhips will perceive, from the Evidence of the Commons, many plain Declarations of the Priſoner in Maintenance of this Article; but we offer it to your Lordſhips, as a further Evidence, that he moſt ſhamefully arraigns the Memory of a Prelate, Eminent for his Zeal to the Proteſtant Religion; for his compaſſionate Interceſſions with Queen *Elizabeth*, in favour of Diſſenting Proteſtants; a Reflection plainly meant by him to caſt an Odium on the Act of Toleration, and on the preſent Fathers of the Church, ſo Eminent for their Charity and Moderation; and from the Applauſes he gives to the Severities ſhown by that Queen, he illuſtrates the Calumny thrown by him on Her preſent Majeſty, and Her Approbation of the Toleration: Your Lordſhips will duly conſider the Malignity of Expreſſions meant to condemn ſo good a Law, now ſtanding in its full Force, and to encourage the Unchriſtian Principles of Perſecution.

The latter Part of the Second Article is founded on the Legal Supremacy of the Government in Matters Eccleſiaſtical, by which all Eccleſiaſtical Juriſdiction, by the Ancient undoubted Laws of the Kingdom, is made ſubject to the Civil Power.

The Priſoner, in Terms very unbecoming, has ſtruck at this Eſſential Part of our Conſtitution, in thoſe Words; wherein, after having perſuaded the ſuperior Paſtors of the Church to Thunder out their Anathema's againſt Proteſtant Diſſenters, *He defies any Earthly Power to reverſe ſuch Sentences.*

My Lords, The reſtoring the Legal Supremacy of the Crown, was the Effect of the Reformation of Religion in this Kingdom; and the Abuſe of that Power, to the apparent Danger and Deſtruction of the Church of *England*, in the Inſtance of the late illegal Eccleſiaſtical Commiſſion, remains condemn'd by the Bill of Rights.

But the Commons crave Leave to obſerve, that the Independent Power, or Juriſdiction of the Church, or of Eccleſiaſtical Judges, which is the Doctrine advanc'd by the Priſoner, is not leſs dangerous. It ſtands in utter Defiance and Contradiction of *Magna Charta*, and the Laws of the Land; 'tis deſtructive of the Legal Supremacy of the Crown and Legiſlature; a Violation of the Oath of Supremacy; contrary to the Principles of the Reformation, and the Doctrine and Intereſt of the Church of *England*, of which he is a Member.

The Commons are ſtrengthned in their Concern for the Legal Supremacy, when they call to Mind Her Majeſty's Letter to his Grace of *Canterbury*, of the 25th of *February* 1705, for Proroguing the Convocation; wherein Her Majeſty is pleaſed to declare Her conſtant Care and Endeavours to preſerve the Conſtitution of the Church of *England* as by Law Eſtabliſh'd, and Her Reſolution to preſerve the Supremacy, as being a Fundamental Part of it: And upon theſe Conſiderations, they have an Abſolute Aſſurance of an equal Regard on your Lordſhips Part, to a Matter of ſo great Importance.

Your Lordſhips will obſerve the Third Article to be included within the general Charge of the Fourth: But, the Commons being ſenſible, with how diſtinguiſh'd a Malice the Subſtance of this Charge is

levell'd, by the Priſoner, againſt the Honour of Her Majeſty and the Two Houſes of Parliament, they thought it their Duty to Her Majeſty to lay this before your Lordſhips in a diſtinct Article for your particular Conſideration and Judgment.

When your Lordſhips reflect on the late heavy Cenſure, which the Queen and both Houſes ſo juſtly laid on the Authors of the like groundleſs Slander, you will think that the Priſoner has reviv'd and avow'd the ſame, from an inveterate Pride to ſignalize his Enmity to Her Majeſty and both Houſes, and in the moſt publick Manner to inſult the Honour of the Queen and Legiſlature at the ſame time that he was endeavouring to ſubvert their Foundations.

The Commons will ever ſhew the utmoſt Jealouſy for the Safety and Honour of Her Majeſty's Perſon, and muſt always eſteem it their peculiar Concern to vindicate every Attempt that ſhall be made againſt it; and aſſure your Lordſhips, they can't be forgetful of that ſignal Regard Her Sacred Majeſty ſhewed to the Church of *England*, at the time of the late Revolution; of that conſtant Uniform Zeal She has expreſs'd for it from that Day to this; that perpetual Monument of Her Royal Bounty to the Clergy of the Church of *England*, to the Diminution of Her own Revenue; nor of Her Royal Care for the perpetual Eſtabliſhment of its Diſcipline and Worſhip, in making it a fundamental and eſſential Part of the Union of the Two Kingdoms: Theſe Things they eſteem an Abſolute Security, that Her Royal Protection and Affection for the Church of *England* can never fail.

The Commons doubt not of your Lordſhips particular Notice of the Parallel mention'd in this Article, by which your Lordſhips will collect the Inveteracy of the Deſign, from the Odiouſneſs of the Compariſon.

In their Fourth Article the Commons have laid before your Lordſhips many Charges; which, tho' of different Conſiderations, yet all conduce to the main Charge of the Commons; as tending to undermine Her Majeſty's Government, and to raiſe Sedition and Rebellion.

Your Lordſhips will find, from many and pregnant Proofs ſupporting this Article, That Her Majeſty's Adminiſtration, whereby ſhe has juſtly gain'd the Affections of all Her true Subjects, is repreſented by the Priſoner as deſerving the utmoſt Odium and Contempt of Her People.

That the Civil and Religious Rights of Her Subjects, which Her Majeſty has protected with the Tenderneſs of a moſt indulgent Mother, are betray'd by thoſe to whom She has committed the Care of them, and that they are now in a Condition more Calamitous, than at that time, when Superſtition and Tyranny were ready to have ſwallow'd them up.

Your Lordſhips will find him labouring to perſuade the People, that the Condition of Peace and Proſperity, which the good Government of Her Majeſty has ſecured to Her Kingdom, is a State of utter Diſtraction and Confuſion, wherein all Irreligion and Diſorder is not only unpuniſh'd, but encourag'd.

Nor will your Lordſhips wonder to find a Perſon, who has thus ſet himſelf to weaken the Title of Her Majeſty to the Throne, repreſenting Her Adminiſtration like that of one who has no Title at all.

And from this ruinous and almoſt irretrievable Poſture of Affairs, your Lordſhips will find him conſidering himſelf as a peculiar Meſſenger, appointed and called out to open the Eyes of the deluded People, and to undeceive a Nation thus abuſed. And this, my Lords, he has done, not in the Words of Meekneſs and Peace; not by exhorting them to the Exerciſe of the ſubmiſſive Doctrines of Paſſive-Obedience and Non-Reſiſtance; but he aſſures them, that he does not come to Preach Peace, but to ſound a Trumpet; he endeavours to excite ſuch true Sons of the Church as are of his Perſuaſion, to recover, defend, and maintain, with their Lives and Fortunes, their invaded Rights, and ſuch Doctrines as he has thought fit to deliver to them.

My Lords, I take Liberty to acquaint your Lordſhips, that the Commons conceive, that the Laws and Statutes of the Realm, and the Order and Peace of Government, neceſſarily enjoin it as a Duty upon all private Subjects, to repreſent their Senſe of the Nation's Grievances in a Courſe of Law and Juſtice, and not otherwiſe; and whenever the Oppreſſions become National and Publick, They claim it as the peculiar Right of their own Body, to purſue the evil Inſtruments of them, 'till Publick Vengeance be done; and at the ſame time, the Commons aſſure your Lordſhips, that they will account it their Indiſpenſible Duty to Her Majeſty and their Country, to aſſert the Juſtice and Wiſdom of Her Adminiſtration, againſt the Enemies of both.

I have thus ſtated to your Lordſhips the Nature of this Cauſe; wherein, I perſuade my ſelf, you perceive many Points of the higheſt Moment to the Peace and Welfare of the Kingdom.

The Tendency of the Crimes of which the Priſoner ſtands Accuſed, lies Open and Apparent: But I yet beg your Patience, to draw the Scene a little cloſer.

Your Lordſhips will conſider the Neceſſary Conſequence of a Poſition, meant and expounded ſo as to perſuade the World, that the Glorious Work of the Revolution was the Fruit of Rebellion, and the Work of Traitors. Does it not declare the late Reign to be one continued Uſurpation? And under what better Circumſtances does it bring the preſent?

Is the Act of Toleration condemn'd with any other Tendency than to weaken ſo great a Support of the Revolution it ſelf? And I intreat your Lordſhips, to conſider the certain Fatal Effects of an Univerſal Diſſatisfaction of the People, in Things that concern them neareſt, the Safety of the Church of *England*, and the Proteſtant Intereſt, and the Security of themſelves and their Poſterity.

It's true, my Lords, That, conſidered at a Diſtance, there ſeems a Repugnancy in this Gentleman's Syſtem. How comes it to paſs, that abſolute Non-Reſiſtance and the Spirit of Rebellion ſtand ſo well together, and are made ſo ſuitable, in the ſame Diſcourſe?

But, if your Lordſhips ſhould diſcern, in any Part of his Sermon, any dark Hints, or diſguiſed Opinions, of a *Sole Hereditary Right of Succeſſion* to the Crown, that will ſhew your Lordſhips the true Conſiſtency of the whole; your Lordſhips will find, that in his Opinion, the Duty of the Abſolute Non-Reſiſtance is owing to him only that has the Divine Commiſſion to Govern; and from thence, your Lordſhips can't fail of knowing againſt what Queen, what Government, what Eſtabliſhment, he Encourages the taking up the Arms of Reſiſtance.

I have

I have thus endeavoured to discharge the Trust reposed in me by the Commons, and am not unsensible how far short I have fallen; but, my Lords, I assure my self that the Cause can't suffer by it, its own Strength and Vigor will support it at this time, and so long, I hope, as the Nation endures.

Your Lordships see plainly, that the Duty of the Commons, which they will always discharge, called upon them very loudly, to make Inquisition on so remarkable an Offender as the Prisoner at the Bar.

Your Lordships see, they had not acquitted themselves aright, if they had intrusted the Prosecution of this great Cause in any other Hands but their own, or suffered these Points to have been handled in any Place, but in full Parliament; or before any other Judicature, but that of yonr Lordships: And it is with the greatest Chearfulness and Security, that they submit the Cause of the Queen, of the whole Nation, of the Protestant Religion, and Protestant Succession, to the Weight and Wisdom of your Lordships Judgment.

Mr. Attorney General. I did acquaint your Lordships that there were Two Sermons deliver'd into the House of Commons, which I desire may be now delivered in, and read to your Lordships. We must desire Mr. *Jodrell* to give an Account where he had those Books in his Hands.

Then Mr. Jodrell *was Sworn.*

Mr. *Jodrell.* These two Books were deliver'd in at the Table of the House of Commons, by one of the Members.

Mr. At. Gen. Were they shown to Dr. *Sacheverell*, when he attended the House?

Mr. *Jodrell.* They were shown to him at the Bar of the House.

Mr. *At. Gen.* Did he own them to be his Books, or what did he own about them?

Mr. *Jodrell.* That which is the Sermon Preach'd the Fifth of *November*, he owned to be his, and that he directed to be Printed.

Then that Book was deliver'd in.

Mr. *At. Gen.* There is another Sermon which was Preach'd at the Assizes at *Derby*, that was also shown him at the Bar, and he own'd it.

Lord Chancellor. What say you as to the Preface of the other Sermon?

Mr. *Jodrell.* He owned the Dedication of it to be agreeable with the Dedication of that Impression which he ordered to be Printed.

Mr. *At. Gen.* We pray that Dedication may be shown to him; if he denies it, we are ready to prove it by the Printer.

Sir *Simon Harcourt.* My Lords, The Doctor did own the Sermon, and the Dedication of both the Sermons, before the House of Commons; and he will not give your Lordships the Trouble of hearing any Proof of them. He doth own them.

Mr. *At. Gen.* Then we desire they may be read.

Clerk *reads the Dedication of the* Derby *Sermon; and the Dedication and Sermon at St.* Paul's.

The DEDICATION of a SERMON Preach'd at the *Assizes* held at *Derby*, *August* 15, 1709. By *Henry Sacheverell*, D. D. Fellow of *Magdalen-College*, *Oxon*, and Chaplain of St. *Saviour's*, *Southwark*.

To the Right Worshipful

GEORGE SACHEVERELL, Esq;

High Sheriff of the County of *Derby*;

AND TO

The Honourable Gentlemen of the *GRAND-JURY*,

Gilbert Thacker, Esq;
Robert Wilmot, Esq;
John Fitz-Herbert, Esq;
John Beresford, Esq;
Henry Vernon, Esq;
William Cook, Esq;
William Cavendish, Esq;
Francis Pole, Esq;
William Horton, Esq;
George Savill, Esq;
William Brown, Esq;
Paul Balledon, Esq;
James Chetham, Esq;
William Wolley, Esq;
George Turner, Gent.

Gentlemen,

THE Peculiar Honour *You were pleas'd to confer upon me after the Delivery of this* plain Discourse, *was so* Signal, *that nothing less than this* Publick Acknowledgment *can acquit Me of* Ingratitude.

Now, when the Principles, *and* Interests, *of our* Church, *and* Constitution, *are so shamefully* Betray'd, *and* Run down, *it can be no little* Comfort *to all those who* wish *their* Welfare *and* Security, *to see, that notwithstanding the* Secret Malice, *and* Open Violence *they are Persecuted with, there are still to be found such* Worthy Patrons *of both, who* dare Own *and* Defend *them as well against the* Rude *and* Presumptuous Insults *of the* One Side, *as the* Base, Undermining Treachery *of the* Other; *and who Scorn to Sit silently by, and partake in the Sins of these* Associated Malignants.

Tho' the Truth *seems to be so much Forsaken at present, yet, God be thank'd, they shall yet find, to our Honour, that We have still amongst Us those who have* Courage *to Speak it, as well as those who have* Lives *and* Fortunes *to Maintain it: And tho the Age is sunk into the* Lowest Dregs *of* Corruption *that it cannot endure Sound Doctrine, there are not wanting Some to* Preach *it, and Others to* Support *it, at the Expence of Both. May the* Influence *of your* Good Examples, *which as much Animates our* Friends, *as it Terrifies our* Enemies, *be as diffusively Prevailing, as 'tis nobly Conspicuous, and the Blessing of that* Church *attend you, which you so Eminently* adorn *and* sustain!

And, as I am oblig'd by the Relation *I have the Honour to bear to your* Family, *may a double Portion of the Divine Favour rest on You* (*Mr.* High-Sheriff) *whose Commands I was very ready to execute in this Office, since you thought neither the Advancement of your* Years, *so generously expended for the* Good

Good *of your Country, nor the great Trouble attending this* Poſt, *ſufficient to exempt you from ſhewing that ſteady* Loyalty *and* Zeal *to ſerve* Her Majeſty *and the* Government, *for which you have been ſo remarkably Diſtinguiſh'd.*

I am, with all Regard,

GENTLEMEN,

Your very Humble Servant,

Henry Sacheverell.

The PERILS *of* FALSE BRETHREN, *both in Church and State:*

Set forth in a

SERMON Preach'd before the Right Honourable the LORD-MAYOR, Aldermen, and Citizens of *London*, at the *Cathedral-Church of St.* Paul, on the Fifth of *November*, 1709. By *Henry Sacheverell*, D. D. Fellow of *Magdalen-College*, *Oxon*, and Chaplain of St. *Saviour's Southwark.*

To the Right Honourable

Sir *SAMUEL GARRARD*, Bart

Lord-Mayor of the City of *London.*

My LORD,

BY *Your* Lordſhip's *Command this* Diſcourſe *ventures to appear in* Publick, *in Contempt of all thoſe* Scandalous Miſrepreſentations *the* Malicious Adverſaries *of our* Church *have traduc'd it with, and that* Impartial Sentence *it had the* Honour *to receive from ſome of thoſe* Acute, *and* Wiſe Judges, *who* Condemn'd *it without* Sight, *or* Hearing. *But 'tis no New Thing with ſome Men to* Cenſure *at* random *what lies out of their* Sphere; Examining *a Cauſe may prove* Dangerous, *for fear of their* own Conviction *of its* Merits. *When Men are* reſolv'd *to* leap *into a* Gulph, *the beſt way is to* ſhut their Eyes, *for fear they ſhould* ſee *their* Danger, *and* Repent *of their* Folly. *When they are thus* abandon'd, *and* given up *to* Ruin, *the* Charitable Hand, *that would hold out an* unwelcome Light *to* prevent *it, muſt expect to be treated with that ungrateful* Inſolence, *and* Reproach, *which uſually attends the* Generous Freedom *of thoſe who* Dare *ſpeak* Seaſonable, *and* Neceſſary Truths. *That* Patient's Caſe *doubtleſs is very* Deſperate, *that ſets himſelf againſt his* Cure; *and when Men are ſo ſtupidly* harden'd *in their Errors as to* reſiſt *the moſt* glaring Evidence, *there's no room for* Argument, *or* Goſpel. Moſes, *and the* Prophets, *may with* Chriſt, *and his* Apoſtles, *be* Baniſh'd *our* Synagogues, *when* Truth *muſt be* Oppreſs'd *by* Number, *and* Noiſe, *and* Rebellious Appeals *to the* People, *as the only* Judges *of* Right, *and* Wrong, *and the* dernier Reſort *of* Juſtice, *and* Dominion. *Are not theſe the* Faſhionable Methods *now made uſe of to* Overbear, *and* Silence *our* Church, *to* Affront *and* Revile *our* Legiſlature, *in order to* Break in *upon the* Prerogative *of the* Crown? *By* Threatning *them with* Imaginary Legions, *and a* popular Tribunal, *where their* Authority, *and* Eſtabliſhment *are to be* Try'd *and Determin'd? To put a ſtop to which* Dangerous *and* Encroaching Miſchief, *that now with* Impunity *walks up and down thro' this* Diſtracted Kingdom, *I thought it my* Duty (*being Summon'd to this* Office *by your* Lordſhip) *to* Diſcharge *it in the* BEST METHOD *I could, to* Preſerve *Us from theſe* Malicious Deſigns, *by endeavouring, if poſſible, to Open the* Eyes *of the* Deluded People *in this Our* Great Metropolis; *being Conſcious of what* Prodigious Importance *it is to the Welfare of the* whole Nation, *to have its* Rich, *and* Powerful Inhabitants *ſet right in their* Notions of Government, *both in* Church, *and* State; *that they may not be* Flatter'd *into their* Ruin, *but ſeeing the* Fatal Conſequences *of theſe* Damnable Falſe Doctrines, *which ſome* Seditious Impoſtors *have labour'd to* Poyſon *'em with, may* Forſake, *and* Deteſt *them. I am confident*, My Lord, *that this* Glorious, *and* Renown'd City *can* Boaſt of *ſo many Excellent Examples of* Unſhaken Steadineſs, Diſintereſted Probity *and* True Zeal, *and* Loyalty *for* Our Church, *and* Sovereign, *that if they would act with the ſame Open, and Undaunted* Reſolution *Your* Lordſhip *does, theſe* Affrighting Fantoms *muſt Vaniſh. But if* Honeſt Gentlemen *will ſit ſtill, and give up their* Cauſe *through* want *of* Courage, *or a* Juſt Senſe *of the* Dangerous Attempts *of Our* Enemies, *without the Spirit of Prophecy, We may foretel what will become of Our* Conſtitution, *when 'tis ſo* Vigorouſly Attack'd *from* Without, *and ſo* Lazily Defended *from* Within.

We are told by theſe Men, who would fain ſhut both our Eyes, *and* our Mouths, *in order the more effectually to* Undermine, *and* Deſtroy *Us, that the* Pulpit *is not a Place for* Politicks; *and that 'tis the Buſineſs of a* Clergyman *to* Preach Peace, *and not* ſound a Trumpet in *Sion*; *ſo expreſly contrary to the Command of* God, *to* Cry aloud, *and* Spare not. My Lord, *I was humbly of Opinion, that the* Fifth Commandment *was* Genuine; *the* Fanaticks *would do well to ſtrike that* Dangerous Precept *out of the* Decalogue, *as the* Papiſts *have the* Second, *that neither might* Riſe in Judgment *againſt theſe* United Friends, *and Brethren. Now as* This *ſtands the* Firſt *in the* Second Table, *is it not of the utmoſt* Importance, *to be rightly* Underſtood, *as containing the* Principal Duty *that we owe to God's* Vice-Gerents, *which has been ſo Scandalouſly, and Villanouſly* Miſinterpreted *of late, to the* Great Diſhonour *of* Both? *Certainly* Our Church *thought ſo Formerly, when it took ſuch Care to* Guard *Our* Obedience, *with more* Homilies *concerning the* Peril of Rebellion, *than of any other* Sin. *And when was more Reaſon for Enforcing their* Doctrines *than now, when We ſee theſe admirable* Diſſuaſives *againſt* Faction, *and* Sedition, *maliciouſly* Wreſted *to* Countenance, *and* Support *it? If our* Excellent Conſtitution *apprehends no* Hazard *from theſe* Licentious Proceedings, *I am ſure* Thoſe *who would* defend *it from them, have reaſon to do ſo, with regard to their* Own Perſons: *Our Paſtors can't do their Duty, without being* Menac'd *for it, and* Slander'd *by the Vile* Amanuenſes *of the* Mob, *to expoſe us to their Fury, as* Papiſts, *and* Men Diſaffected *to Her* Majeſty's Government, *whoſe* Safety, Rights *and* Eſtabliſhment *together with* Thoſe *of the* Church, *We ſo earneſtly contend for*; *which I ſolemnly here Declare*

clare (as I did before in this Diſcourſe*) to be my only* Aim *and* Intention; *and in an humble way to follow the* Footſteps *of Your* Lordſhip, *who is ſo Bright an* Ornament, *and* Support *of them. That This* Great City *may Flouriſh under Your* Auſpicious Conduct, *and never want a* Magiſtrate *of Your ſteady* Principles *to* Guide *and* Govern *it, is the hearty Prayer of,*

My LORD,

Your LORDSHIP's

moſt Humble Servant,

HENRY SACHEVERELL.

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2 COR. xi. 26.

In Perils among Falſe Brethren.

'AMONG All the moſt Dreadful *Plots* 'that ever Threaten'd this *Church*, and '*Kingdom*, the Diſmal *Tragedy* contriv'd 'as this Day to be *Executed* on *Both*, may juſtly 'claim the *Horrible Precedence*, and conſequently 'the *Higheſt Expreſſions* of Our *Gratitude* for ſo 'Aſtoniſhing and *Miraculous* a *Deliverance* from it. 'For whether we conſider the *Black Depth* of 'its ſubtle *Contrivance*, the Deſtructive *Extent*, 'and *Sanguinary Conſequences* of it, or its Sur-'prizing, and Unaccountable *Diſcovery*, We muſt 'confeſs, that nothing but the *All-Powerful*, and 'Gracious *Hand of God*, interpoſing againſt the ut-'ter Subverſion of Our *Nation*, and *Religion*, could 'have prevented ſuch a *Fatal Conſpiracy*. A Con-'ſpiracy! ſo full of the moſt Unheard-of *Malice*, 'moſt Inſatiable *Cruelty*, moſt Diabolical *Revenge*, 'as only could be *hatch'd* in the *Cabinet-Council* of 'Hell, and *brought forth* in a Conclave of *Romiſh* '*Jeſuits!* Now tho' the Hiſtory of this Unparal-'lel'd *Myſtery of Iniquity* was *Deſign'd* againſt Us 'at ſuch a *Diſtance* of Time, and the *Fact* ſo evi-'dently *Acknowledg'd*, that the *Papiſts* themſelves 'are ſo far from *Denying*, that they *Extol* it with 'the Higheſt *Panegyrics*; ſo that there needs nei-'ther *Proof* of the one, nor *Repetition* of the other: 'Yet doubtleſs 'tis as much our *Duty*, as *Intereſt*, 'to keep up the *Annual Celebration* of this *Never-'to-be-forgotten Feſtival*. For that the very Face, 'and Shadow of our *Church*, and *Conſtitution*, is 'yet *Surviving*; That this *Good*, and *Pious Relict* 'of the *Royal Family* Sits now Happily upon the 'Throne of Her Great *Anceſtors*; That our *Hierar-'chy*, and *Nobility* was not finally *Extirpated* and 'cut off; That our *Country* was not made an *Acel-'dama*, a *Field of Blood*, and a *Receptacle* of U-'ſurping *Robbers*; That We yet, without *Slave-'ry*, *Superſtition*, or *Idolatry*, enjoy the *Benefit* of 'our Excellent *Laws*, and moſt Holy *Profeſſion* Un-'defil'd: In a word, That God has yet vouch-'ſaf'd us *this Opportunity* of coming into his Pre-'ſence, to *Acknowledge* theſe Ineſtimable Bleſſings, 'is owing to his *Mercy* ſo ſignally ſhewn to Us, in 'Diſappointing the *Barbarous Maſſacre* intended 'This Day. A *Day!* which ought to ſtand for 'Ever in the *Engliſh Kalender*, as an Eternal *Æra*, 'at the *One* End, as the *Thirtieth* Day of *January* 'at the *Other*, for *Indelible Monuments* of the Irre-'concilable Rage, and *Blood-Thirſtineſs* of both the '*Popiſh*, and *Fanatick* Enemies of Our *Church*, and '*Government!* For theſe are *equally* ſuch Treache-'rous *FALSE BRETHREN*, *from* whom we 'muſt always expect the utmoſt Perils, and *againſt* 'whom we can never ſufficiently Arm Our ſelves 'with the greateſt *Caution*, and *Security*. Theſe 'TWO DAYS indeed, are but One *United Proof*, 'and *Viſible Teſtimonial* of the ſame *Dangerous*, and '*Rebellious Principles*, theſe *Confederates in Iniquity* 'maintain: And as the *One* is but a *Thankſgiving* 'for our *Deliverance from* what the *Firſt Projected*; 'ſo is the *Other* an *Humiliation*, for what God per-'mitted the Latter, by *Their Help and Direction*, to 'put in Execution. I think therefore the *Beſt way* 'of Acknowledging theſe Great *Mercies*, and *Judg-'ments* of God, and Acquitting *Both Solemnities* 'in a Proper way, is by ſo juſtly Conſidering Our '*Circumſtances* with reſpect to *Each Side*, as to 'Guard againſt Their *Malicious*, and *Factious De-'ſigns* for the future; that we may never *Truſt 'Either*, to need a Second *Deliverance* from thoſe '*Villainous Enterprizes*, they will never ceaſe to 'put in Practice, whenever they ſee an *Opportunity* 'of Doing it with *Security*.

'Now as *Perſecution*, and *Affliction*, were the '*diſtinguiſhing Badges* of the *Meſſiah*, who was a '*Man of Sorrows*, and *Acquainted with Griefs*; ſo 'to convince his *Diſciples*, that his *Kingdom was 'not of this World*, He *Bequeath'd* the ſame *Sad 'Legacy* to Them, to *ſhare* the *Character*, as well 'as *imitate* the *Example*, of their *dying Lord*, and '*Maſter*. With unſhaken *Courage*, and *Reſolution*, 'to take up His *Bloody Croſs*, and follow the *Great 'Leader of Their Salvation*: To *March* with a 'Chearful Magnanimity through all the *Powers of 'Darkneſs*, *looking unto Jeſus the Author and Fi-'niſher of their Faith, who for the Joy that was 'ſet before Him, Endur'd the Croſs, deſpiſing the 'Shame, and is ſet down at the Right-hand of the 'Throne of God*. Thus was *His Church* to expect 'no *Better Treatment* than Her *Great Founder*, 'and *Original*, to paſs through the ſame *Fiery Try-'al*, to be *made Perfect through Sufferings*, to be '*Militant here*, in order to be *Triumphant here-'after*; and like *Him*, to be *Crown'd with Thorns 'in this World*, to Obtain a *Crown of Glory* in the '*Next*. Not only to Encounter the *Open Fury* 'and *Violence* of Her *Profeſs'd*, and *Inveterate Ene-'mies*; but (which was the *Bittereſt* Part of Her '*Sufferings*) like Her *Saviour*, to be *Betray'd*, and 'perfidiouſly Given up by Her Own *Falſe-hearted*, 'and *Inſidious Apoſtles*.

'As the *Hiſtories* of the *Church* in *All Ages*, 'are as 'twere but One Continu'd *Ratification* of 'this *Melancholly Truth*, made up of ſo many 'Mournful *Narratives*, of the *Unhappy Lives*, and '*Diſaſtrous Deaths of Saints*, *Martyrs*, and *Confeſ-'ſors*, who Bravely *ſeal'd the Faith with their Blood*; 'ſo it is Exemplified in no One Inſtance more 'than in that *Primitive*, and *Heroick Champion* of 'Chriſtianity, the *Author* of this *Epiſtle*. Where-'in, for the *Wonder*, and *Emulation* of Poſterity, 'He has Recorded a Long and *Frightful Catalogue* 'of thoſe Aſtoniſhing *Calamities* He had underwent 'in the *Propagation* of the *Goſpel*. Such Ample '*Satisfaction*, did the *Pious Labours* of the *Con-'vert*, make for the wicked *Perſecution* of the '*Jew*; when by a *Miraculous Turn* of *Providence*,

'the

'*Greateſt Sinner* was changed into the *Devouteſt* '*Saint*, and the moſt *Zealous Bigot againſt*, into 'the moſt Reſolute *Sufferer for*, Religion. Yet 'however this *Great Apoſtle* might have Attain'd 'ſo extraordinary a Degree of *Merit*, as to *Out-* '*ſhine* all that *Noble Army of Martyrs*, which Adorn 'the *Bloody Kalendar* of the *Church*; nay, as He 'expreſſes it, *to come never a whit ſhort of the* 'Greateſt *Apoſtles*, and as 'twere to *Vye Characters* 'with the very *Choſen* of the *Son of God*; Does it 'not ſeem a little to carry the *Air* of *Oſtentation*, 'and *Vain-glory*, thus to claim the *Pre-eminence*, 'and *Supremacy*, and to Boaſt himſelf in that *Pom-* 'pous *Shew* of *Services* that He hath done for *God*, 'and the *Church*? But We ſhall eaſily *Reconcile* 'the *Apoſtle*, and the *Orator*, and find no Imputa- 'tion upon his *Modeſty*, if we conſider the *Occa-* '*ſion of it*. He had (as He informs Us) with 'much *Pains*, and *Expence*, Planted Chriſtianity 'in *Corinth*, where he had no ſooner by a *Mira-* 'culous *Miniſtry* Eſtabliſh'd it, but ſeveral *Falſe* 'Apoſtles, and *Seducers*, were in his Abſence *Crept* 'into the Church, to Vitiate, and Corrupt his 'New *Proſelytes*, under the Pretence of *More Pu-* 'rity and *Holineſs*, (like Our *Modern Sectariſts*) to 'raiſe a *Schiſm* amongſt 'em, and to Draw them off 'from the Opinion they had of St. *Paul*; by *Ri-* 'diculing Him for his *Perſon*, and *Addreſs*, as a 'Little *Unedifying*, *Ungifted Preacher*, *of a weak* 'Bodily *Preſence*, *and Contemptible Speech*; thus 'Wounding the *Miniſtry*, thro' the *Sides* of the 'Miniſter. Such *Slights* and *Provocations*, certain- 'ly were a *ſufficient* Ground for the *Apoſtle* to in- 'ſiſt upon his *Character*, leſt the *Goſpel* ſhould 'Suffer by it: And with *Authority* to *Rebuke* the 'Ingratitude of the *Corinthians*, and *Vindicate* his 'Dignity, and *Tranſcendent Exellencies*, againſt the 'baſe *Lies*, and *Calumnies* caſt upon Him by ſuch '*falſe Apoſtles*, *deceitful Workers*, *transforming* 'themſelves into the *Apoſtles of Chriſt*, *like their* 'True Father the Devil, *transforming himſelf into* 'an Angel of Light. With what Juſtice then 'might He here ſtand upon the *Compariſon*, when 'thus vilely *Run down*, by ſuch *Wretched*, *Emp-* 'ty, *Hypocritical Sophiſters*? To Appeal to his 'Spiritual *Gifts*, and *Revelations*, and *Sufferings*, 'in Competition with ſuch *Impudent*, *Boaſting*, 'Self conceited Pretenders, was the Loweſt Act of 'Humility, and *Good-Nature*; to Condeſcend to 'Diſpute with ſuch as ought to be *Anſwer'd*, not 'with *Arguments*, but *Anathema's*! Yet behold the 'Singular *Modeſty* of this *Great Apoſtle*! He can- 'not enter upon his own *Juſtification*, without 'much Reluctance, and a long *Apology* to intro- 'duce it. *I am become a Fool in Glorying* (ſays 'He) *but you have Compell'd Me to it. I ſpeak* 'as concerning Reproach, *as tho' we had been Weak:* 'Howbeit, *wherein any is Bold*, *I ſpeak fooliſhly*, *I* 'am bold alſo. *Are they Hebrews? ſo am I! Are* 'they *Iſraelites? ſo am I! Are they the Seed of* 'Abraham? *ſo am I! Are they Miniſters of Chriſt?* 'I *ſpeak as a Fool*, *I am more. In Labours more* 'Abundant, *in Stripes above Meaſure*, *in Priſons* 'more Frequent, *in Deaths often*; *of the Jews five* 'Times received *I forty Stripes*, *ſave One. Thrice* 'was I beaten with Rods, *Once was I ſton'd*, *Thrice* 'I *ſuffer'd Shipwreck*, *a Night and a Day have I* 'been in the Deep. *In Journeyings often*, *in Perils* 'of Waters, *in Perils of Robbers*, *in Perils by my* 'own Countrymen, *in Perils by the Heathen*, *in Pe-* 'rils in the City, *in Perils in the Wilderneſs*, *in Pe-* 'rils *in the Sea*, *in Perils amongſt* FALSE 'BRETHREN. In this *Rhetorical Abridgment* 'of the *Sufferings*, and *Dangers* of his *Life*, there 'a very *Obſervable Gradation*; the *Apoſtle* ſtill *Ri-* 'ſes in his *Calamities*, and puts this *Laſt* as the 'Higheſt *Perfection* of his *Miſery*, as that which 'made the *deepeſt Impreſſion* upon his *Paſſions*, and 'what He bore with the greateſt *Reſentment* and 'Difficulty. The many ſevere *Pains*, and *Tortures* 'inflicted on his *Body*, were *nothing* to *This*; nay, 'the *Good-Nature*, and *Mercy* of *Highway-men*, and 'Pagans, and even the *Devouring Boſom* of the 'Deep, were to be *Preferr'd* before, and ſooner '(it ſeems) to be *Truſted* to, than the more cer- 'tainly *Deſtructive*, and *Fallacious Boſom* of a *Trea-* 'cherous, *FALSE BROTHER*.

'I ſhall take the Expreſſion in its full *Latitude*, 'without confining it to the expreſs Deſign of the 'Place; tho' it were very Obvious to draw a *Parallel* 'here, betwixt the ſad *Circumſtances* of the *Church of* 'Corinth formerly, and of the *Church of England* at 'preſent; wherein Her *Holy Communion* has been 'Rent, and *Divided* by *Factious*, and *Schiſmatical* 'Impoſtors; Her *pure Doctrine* has been *Corrupted*, 'and *Defil'd*; Her *Primitive Worſhip*, and *Diſcipline* 'Prophan'd, and *Abus'd*; Her *Sacred Orders Deny'd* 'and *Villify'd*; Her *Prieſts*, and *Profeſſors* (like 'St. *Paul*) *Calumniated*, *Miſrepreſented*, and *Ridi-* 'cul'd; Her *Altars*, and *Sacraments Proſtituted* to 'Hypocrites, *Deiſts*, *Socinians*, and *Atheiſts*; and 'this done, I wiſh I could not ſay, without *Diſcou-* 'ragement, I am ſure with *Impunity*, not only by our 'profeſs'd *Enemies*, but which is worſe, by our *pre-* 'tended *Friends*, and FALSE BRETHREN. But 'to proceed to the Matter before us: In my Diſcourſe 'upon theſe Words I ſhall endeavour,

'I. *Firſt*, To ſhew in what *Senſe*, and upon what 'Accounts Men may be Denominated FALSE 'BRETHREN.

'II. *Secondly*, I will lay before you the Great PERIL, 'and *Miſchief* of ſuch, both in *Church* and 'State.

'III. *Thirdly*, I will ſet forth the Heinous *Malignity*, 'Enormous *Guilt*, and *Folly* of this *Prodigious* 'Sin.

'IV. *Laſtly*, As a Conſequence from the Whole, I 'will undertake to Evince what mighty Reaſon 'we have at all Times, and more eſpecially *at* 'preſent, to *ſtick* firmly to the *Principles* both 'of our *Church* and *Conſtitution*; and how much 'it *concerns* Us to *Beware* of all thoſe FALSE 'BRETHREN, that *Deſert*, or *Betray* them.

'I. And *Firſt*, *I will ſhew you in what Senſe*, *and* 'upon what Accounts *Men may be Denominated* 'FALSE *Brethren*. In order to which it will be 'Neceſſary to State the full Extent of the Nature 'of *FALSE BROTHERHOOD*.

'This Term Ψευδαδελφία being of a *Relative* Sig- 'nification, muſt reſpect Men as conſidered under 'all *Social Caſes*, or as they are plac'd under ſuch 'Regards, and *Circumſtances*, as in Duty *oblige* 'them both to *Think*, *Speak*, and *Act*, with *Truth*, 'and *Integrity*, correſpondent to their *inward Prin-* 'ciples, and *outward Profeſſions*. And wherein they 'are found *deviating wilfully* from either, by an un- 'reaſonable *Alteration* of *Judgment*, by any *tacit* 'Mental *Reſerve*, or *Equivocation*, upon any *indi-* 'rect *Ends*, or *Deſigns*, or guiding their *Expreſſions* 'and *Actions* contrary to theſe *ſtated Rules*, they 'are guilty of *Falſhood*, both in *Conſcience* and 'Practice, of a Breach of that *Veracity*, *Juſtice*,

'and *Truſt* that they owe to *God*, *themſelves*, and 'the *World*, and are properly what are ſtil'd in the 'Text FALSE BRETHREN. For whereas every 'Man that either *believes*, *ſpeaks*, or *acts Rationally*, 'muſt be ſuppos'd to have ſome *Standing-Ground*, 'and *Meaſure* of *Judgment*, ſettled upon ſome 'Grand, Primitive *Maxims* of *Truth*, both *Speculative* and *Practical*, whether founded upon *Revelation*, *Reaſon*, or *Honour*, which are what we call 'any Man's *Principles* either in *Religion*, *Society*, or 'Friendſhip: If theſe *Fundamental Axioms* have 'with true Deliberation been *ſifted*, and *weighed*, 'not only as to their *intrinſic Nature*, and *Goodneſs*, 'but as to their *outward Tendency*, and *Conſequences*, 'they muſt appear, tho' not perhaps as *infallible* 'in *themſelves*, yet with Reſpect to the *Perſon* ſo 'conſidering them, as *demonſtrative Truths*, as the 'Light, and *Oracles* of *God*, and *Reaſon*, ſet up 'in his *Breaſt*; by which He is always *oblig'd* to 'Direct, and *Govern* his *Thoughts*, *Reſolutions*, and 'Actions; and which if He *ſwerves* from, *diſowns*, 'or *betrays* upon any *ſiniſter Motive* whatſoever '(tho' after this nice Search they ſhould prove 'Erroneous) involve the Man in a very heinous *Sin*, 'treacherouſly acting againſt his *Judgment*, and 'giving the Lye both to his *Faith*, his *Reaſon* and 'his *Knowledge*. This Matter being thus briefly 'Premis'd, it is Evident, that with *regard* to the 'ſeveral *Objects* it is Converſant about, Men may 'in *three Reſpects* be term'd Guilty of FALSE 'BROTHERHOOD.

'1. *Firſt*, With Relation to *God*, the *Church*, 'or *Religion*, in which they hold *Faith*, or *Communion*.

'2. *Secondly*, With Relation to the *State*, *Government*, or *Society*, of which they are *Members*.

'3. *Thirdly*, With Relation to thoſe *Private* 'Perſons, with whom they have either *Friendſhip*, 'Correſpondence, or *Dealing*.

'1. And *Firſt*, *He is a FALSE BROTHER* 'with Relation to God, Religion, or the Church in 'which he holds Communion, that *Believes*, *Maintains*, or *Propagates* any *Falſe*, or *Heterodox* Tenet, or *Doctrine*, repugnant to the Expreſs *Declarations* of *Scripture*, and the *Decrees*, or *Senſe* of 'the *Church*, and *Antiquity* thereupon. For as in 'the *firſt alone* are contain'd the *Eſſential Points*, 'and *Articles* of our moſt Holy *Faith*; ſo the 'Primitive *Expoſitions*, *Deciſions*, and *Practice* of 'the *ancient Writers* of the *Pure*, and *uncorrupted* 'Ages of *Chriſtianity*, muſt certainly be acknowledg'd 'the *beſt*, and moſt *Authentic Comments* upon their 'Meaning. In *Oppoſition* to which, if any *upſtart* 'Noveliſt, or *ſelf-conceited Enthuſiaſt*, out of *Pride*, 'as ſetting *Himſelf* above theſe *Genuine Oracles* of 'Truth; or out of *Ignorance*, as being *unacquainted* 'with the *Learning*, and *Records* of *Antiquity*; or 'out of *Perverſeneſs*, ſcorning to ſubmit his *Underſtanding* to the *Dictates*, or better *Reaſon* of 'others; or out of *Ambition*, and *Vain-glory*, as affecting to be the *Head*, and *Leader* of ſome *New* 'Sect, or *Party*; (*all*, or *either* of which have, 'and will be found for ever the *Parents* of *Hereſy*) 'and ſhould break in upon this Sacred *Depoſitum* 'of the *Church*; and ſhould attempt Blaſphemouſly to *Corrupt* that inviolable Fountain of 'Truth, *with Erroneous Conjectures*, and Vain *Philoſophical Syſtems*; to Prophane and Degrade the *Holy Myſteries* of *Religion*, by abſurd *Interpretations*, and impudent *Reaſonings*; ſhould we ſtick 'to call ſuch a *Rebel* to *God*, and *Traytor* to his 'Church, a FALSE BROTHER? If a Man ſhould 'Dare not only to *Revive*, but to *Juſtify* any *Execrable*, Exploded *Hereſies*, as thoſe of *Arrius*, 'and *Neſtorius*, denying the *Hypoſtatical Union*, or 'the *Eternity* of the *Son of God*; or ſhould affirm 'that *He was God in Man*, or that the *Godhead was only Locally in his Manhood*, as *God was in the Cloud*; or that ſhould Preſume to *Evacuate* the 'great *Sanction* of the *Goſpel*, the *Eternity of Hell-Torments*; or Expound any of the *Articles* of 'Our Faith, in ſuch a Looſe and Vagrant way, as 'may ſuit 'em as well to a *Mahometan*'s as a *Chriſtian*'s *Creed*; and to lay open all thoſe Sacred 'Boundaries of the *Church*, to let in all *Sectariſts*, 'and *Schiſmaticks*, of whatſoever *Wild*, *Romantic*, or *Enthuſiaſtick Notions*, ſo as to make the *Houſe* 'of God, not only a *Den of Thieves*, but a Receptacle of *Legions of Devils*: Should we cover ſuch 'a *Falſe Apoſtle* under the Sacred *Umbrage* of a 'True Church-man? In ſhort, whoſoever preſumes 'to *Recede* the leaſt *Tittle* from the *expreſs Word* 'of God, or to explain the great *Credenda* of our 'Faith in *New-fangl'd Terms* of *Modern Philoſophy*, 'muſt publiſh a *New-Goſpel*, *Un-god* his Saviour, 'and *Deſtroy* his *Revelation*; and by unſettling the 'Univerſal, Receiv'd Doctrine of the *Church*, give 'up *Chriſtianity* into *Scepticiſm*, and *Atheiſm*; and 'to ſpeak the beſt of his *Character*, is FALSE both 'to his *God*, and his *Religion*, *and ſhall be called hereafter*, *The Leaſt in the Kingdom of Heaven*, 'how *Great* ſoever he may be in the Kingdoms 'here *below*. And as a Man may thus *Betray* the 'Doctrine of his Church, ſo is he no leſs FALSE to 'its *Intereſt*, that gives up any *Point*, of her *Diſcipline*, and *Worſhip*. Theſe are the *Exterior* 'Fences to Guard the *Internals* of *Religion*, without 'which they are left *Naked*, without *Beauty*, *Order*, or *Defence*. Should any Man, out of *Ignorance*, or *Prejudice*, to the Ancient *Rights*, and 'Eſſential Conſtitution, of the *Catholick Church*, 'Affirm, That the *Divine Apoſtolical Inſtitution of Epiſcopacy*, *is a Novel Doctrine*, *not ſufficiently Warranted by Scripture*, and *that 'tis indifferent whether the Church is Govern'd by Biſhops*, or *Preſbyters*; Is not ſuch an one an *Apoſtate* from his 'own *Orders*? Let the Chriſtian World be Judge, 'who beſt *deſerve* the Name of *Church-Men*, thoſe 'that *ſtrictly Defend*, and *Maintain* the *Catholick* 'Doctrines, upon which the *Church*, as a *Society*, 'is *Founded*, or thoſe who would *Barter* them for 'a *Mungril-Union* of all *Sects*? Thoſe who Zealouſly ſupport her *Miſſion*, which only can *ſupport* her, or thoſe who would *deſtroy* it, to take in 'Schiſmatical Presbyters without *Epiſcopal Ordination*, which would *Un-Church* the very *Church*, 'and *Annihilate* her Conſtitution? Is this the *Spirit*, and *Doctrine* of our Holy Mother? To aſſert 'Separation from Her *Communion*, to be no *Schiſm*; 'or if it was, that *Schiſm* is no *Damnable Sin*; 'that *Occaſional Conformity* is no *Hypocriſy*, *but rather for the Benefit of the Church*; that *any one may be an Occaſional Conformiſt with Schiſmaticks*, 'and *yet not Guilty of Schiſm*; that a *Chriſtian* may 'ſerve God in any *Way* or *Congregation of Worſhip*, 'as well by *Extemporary Prayers*, as by a *Preſcrib'd Form*, and *Liturgy*; that *Conformity* to the Church, 'and *Eccleſiaſtical Authority*, are no Parts of *Morality*, and a *Good Life*, which are *only neceſſary* to 'Salvation: That the *Orders* and *Ceremonies* of the 'Church, are only *Carnal*, *Arbitrary Ordinances*,

'to be *Dispens'd* with as Men please, both by *Clergy* 'and *Laity*; that the *Censures* and *Excommunica-* 'tions of the *Church*, are meer *Bruta Fulmina*; 'Canonical Obedience, and *Absolution*, *Spiritual Ty-* 'ranny, and *Usurpation*; and in a Word, that the 'whole Body of the *Worship*, and *Discipline* of the 'Church of *England*, is nothing else but *Priestcraft*, 'and *Popery* in *Masquerade*. If upon all Occasions 'to comply with the *Dissenters* both in *Publick*, 'and *Private* Affairs, as Persons of *Tender Con-* 'science, and *Piety*, to promote their *Interests* in 'Elections, to *sneak* to 'em for *Places*, and *Prefer-* 'ment, to Defend *Toleration*, and *Liberty of Con-* 'science, and under the Pretence of *Moderation*, 'to excuse Their *Separation*, and lay the Fault upon 'the *True Sons of the Church*, for *carrying Matters* 'too high; if to Court the *Fanaticks* in Private, 'and to hear 'em with *Patience*, if not *Approbation*, 'Rail at and *Blaspheme* the *Church*, and upon occa- 'sion to *Justify* the *King*'s *Murder*; If to *Flatter* 'both the *Dead* and the *Living* in their *Vices*, and 'to tell the World, that if they have *Wit*, and 'Money enough, they need no *Repentance*, and 'that only *Fools* and *Beggars* can be *Damn'd*; If 'these, I say, are the Modish, and Fashionable 'Criterions of a *True Church-Man*, God deliver *Us* 'all from *Such* FALSE BRETHREN.

'There is another sort of them who are for a 'Neutrality in Religion, who *really* are of *none*, but 'are a *secret* sort of *Reserv'd Atheists*, who always 'pretend to be *of* the *Church*, join in the *Herd*, and 'will sometimes frequent our *Publick Communion*, 'as long as the *Government* appears on our side; 'but if any thing is to be got by it, can with as 'safe a *Conscience* slide privately into a *Conventicle*, 'and look as *demure* as the *slyest Saint* amongst 'em. 'They are equally of *all*, and of *no Communion*, they 'are the *Gallio*'s that *care for none of these Things*; 'They tell us they are for the *Religion Established by* 'Law, but no longer than 'tis so; they can see nei- 'ther Sin nor Danger in that *Ecclesiastical Bugbear*, 'as they call *Schism*, yet talk very loud about *Union*, 'Comprehension, and *Moderation*; by all which *cant-* 'ing Expressions, they mean nothing but getting *Mo-* 'ney, and *Preferment*, by holding in with Persons 'of all *Parties*, and *Characters*, *halting* betwixt the 'Diversity of Opinions, and Reconciling *God*, and 'Belial for Gain. To these we may add those who 'either out of *Fear*, or *Complaisance*, can tamely 'and without Vindication, hear their *God* and *Reli-* 'gion Blasphem'd and Abus'd. But there is *another* 'sort of FALSE BRETHREN, who set up for 'a greater *Perfection of Piety* than their Neighbours, 'who like their Originals, the *Pharisees* in the Gos- 'pel, are always pleading their *Merits* before *God*, 'and the *World*, with an *Ostentation* of *Sanctity*, in 'comparison with their *Profane Brethren*, with a 'Stand off, for I am Holier than Thou! These are 'the *Saints*, that under the pretence of *Conscience*, 'shall commit the most *abominable Impieties*, and 'justify *Murder*, *Sacrilege*, and *Rebellion*, by Texts 'of Scripture. There are yet another sort of FALSE 'BRETHREN, of a quite *opposite* Character to 'these, who wish well to the *Church of England*, 'and really believe her Constitution in *Doctrine*, 'Discipline, and *Worship*, the best and purest in the 'Christian World; and when either their *Tongues*, 'Hands, or *Purses* are wanting in her Defence, are 'ready to Sacrifice their *Persons*, and *Estates* in 'her Vindication. These indeed are *noble Qualifica-* 'tions, and 'tis pity so good a Character should 'want any thing to *Compleat* it. And to turn the 'Words of our *Blessed Saviour* to the *rich Man*, 'yet one thing thou lackest, thy Zeal is to be shewn 'in, as well as *for*, the Communion of the *Church*, 'in obeying Her *Precepts*, as well as defending Her 'Rights. In all these Cases there is a Serious and 'Deliberate Act of *Treachery* against *Conscience* and 'Conviction, a base Forfeiture of that *Spiritual Al-* 'legiance we owe to God, and our Church, as a 'sacred *Body*, and *Fraternity*, that ought to preserve 'inviolable *Unity*, professing *one Faith*, *one Bap-* 'tism, *one God*, and *Saviour* of us all.

'2. But *Secondly*, *Men may be Denominated* 'FALSE BRETHREN, *with Relation to the* 'State, *Government*, *or Society of which they are* 'Members. The Constitutions of most *Govern-* 'ments differing according to their several *Frames*, 'and *Laws*, upon which they are Built, and Found- 'ed, it is impossible to lay down any *one Universal* 'Rule, as the Scheme and Measure of *Obedience*, 'that may *square* to every one of them. Only this 'Maxim in general, I presume, may be *Establish'd* 'for the Safety, Tranquility, and Support of *all* 'Governments, that no *Innovation* whatsoever should 'be allow'd in the *Fundamental Constitution* of any 'State, without a very pressing, nay, unavoidable 'Necessity for it; and whosoever *singly* or in a pri- 'vate Capacity should attempt it, is Guilty of the 'Highest *Misdemeanour*, and is an Enemy to that 'Politick Body of which he is a Member. To ap- 'ply this Maxim to *our Government*, in which the 'Truth of it will very evidently appear. Our 'Constitution both in *Church* and *State*, has been 'so admirably contriv'd, with that *Wisdom*, *Weight*, 'and *Sagacity*, and the *Temper*, and *Genius* of each 'so exactly Suited, and Modell'd to the *mutual* 'Support, and *Assistance* of one another, that 'tis 'hard to say, whether the *Doctrines* of the Church 'of *England* contribute *more* to Authorize, and En- 'force our *Civil Laws*, or our *Laws* to Maintain 'and Defend the *Doctrines* of our *Church*. The 'Natures of both are so nicely Correspondent, and 'so happily Intermixt, that 'tis almost impossi- 'ble to offer a *Violation* to the *one*, without *Break-* 'ing in upon the *Body* of the *other*. So that in all 'those Cases before mention'd, whosoever presumes 'to Innovate, Alter, or Misrepresent any *Point* in 'the *Articles* of the *Faith* of our *Church*, ought to 'be *Arraign'd* as a *Traytor* to our *State*; *Hetero-* 'doxy in the *Doctrines* of the *one*, naturally pro- 'ducing, and almost *necessarily inferring Rebellion*, 'and *High Treason*, in the *other*; and consequently 'a *Crime* that concerns the *Civil Magistrate*, as 'much to *Punish*, and *Restrain*, as the *Ecclesiasti-* 'cal. However this Assertion at first View may 'look like an *High-flown Paradox*, the Proof of it 'will fully appear in a few *Instances*. The *Grand* 'Security of our *Government*, and the very *Pillar* 'upon which it *stands*, is founded upon the *steady* 'Belief of the *Subject*'s Obligation to an *Absolute*, 'and *Unconditional Obedience* to the *Supreme Pow-* 'er, in *all* Things *lawful*, and the utter *Illegality* of 'Resistance upon any *Pretence* whatsoever. But 'this *Fundamental Doctrine*, notwithstanding its *Di-* 'vine Sanction in the *Express Command* of *God* in 'Scripture, and without which, it is impossible any 'Government of any *Kind*, or *Denomination* in the 'World should *subsist* with Safety, and which has 'been so long the *Honourable* and *Distinguishing* 'Characteristick of Our *Church*, is now, it seems, 'quite *Exploded*, and *Ridicul'd* out of Counte- 'nance, as an *Unfashionable*, *Superannuated*, nay '(which is more wonderful) as a *Dangerous Te-*

net,

'*net*, utterly *Inconſiſtent* with the *Right*, *Liberty* 'and *Property*, of the PEOPLE; who, as our '*New Preachers*, and *New Politicians* teach us, (I 'ſuppoſe by a *New* and *Unheard-of Goſpel*, as well 'as *Laws*) have in Contradiction to *Both*, the *Pow-* 'er Inveſted in *Them*, the Fountain and *Original* of 'it, to *Cancel* their *Allegiance* at pleaſure, and call 'their *Sovereign* to account for *High Treaſon* againſt 'his *Supreme Subjects* forſooth; nay to *Dethrone* 'and *Murder* Him for a Criminal, as they did the '*Royal Martyr* by a *Judiciary* Sentence. And, 'what is almoſt incredible, preſume to make their 'Court to their *Prince*, by maintaining ſuch *Anti-* 'monarchical Schemes. But, God be Thanked! 'neither the Conſtitution of our *Church* or *State*, 'is ſo far *Alter'd*, but that by the *Laws of Both*, '(*ſtill* in Force, and which I hope *for ever* will be) 'theſe *Damnable Poſitions*, let 'em come either from '*Rome*, or *Geneva*, from the *Pulpit*, or the *Preſs*, 'are condemn'd for *Rebellion*, and *High Treaſon*. 'Our Adverſaries think they effectually ſtop our 'Mouths, and have Us Sure and Unanſwerable on 'this Point, when they urge the *Revolution of this* 'Day in their *Defence*. But certainly They are the 'Greateſt *Enemies* of *That*, and His *Late Majeſty*, 'and the moſt *Ungrateful* for the *Deliverance*, 'who endeavour to caſt ſuch *Black* and *Odious* 'Colours upon Both. How often muſt they be 'told, that the * *King Himſelf* ſolemnly *Diſclaim'd* 'the leaſt Imputation of *Reſiſtance* in His *Declara-* 'tion; and that the *Parliament* declar'd, That they 'ſet the *Crown* on His Head, upon no other *Title*, 'but that of the *Vacancy of the* Throne? And did 'they not Unanimouſly condemn to the Flames '(as it juſtly Deſerv'd) that *Infamous Libel*, that 'would have *Pleaded* the *Title* of *Conqueſt*, by 'which *Reſiſtance* was ſuppos'd? So *Tender* were 'they of the *Regal* Rights, and ſo averſe to in-'fringe the leaſt Tittle of our *Conſtitution*! We ſee 'how ready theſe *Incendiaries* are to take the leaſt 'Umbrage, to charge their own *Curſed Tenets* on 'the *Church* of *England*, to Derive *their Guilt* up-'on it, and Quit *Scores* with it for *Their Iniquity*! 'Thus do they endeavour to draw *Compariſons*, 'and to Juſtify the *Horrid Actions* and *Princi-* 'ples of *Forty One*, which have been of late Years, 'to the Scandal of Our *Church*, and Nation, ſo 'Publickly Defended, not only by the *Agents* and 'Writers of the *Republican Faction*, but by ſome 'that have the *Confidence* to Style themſelves *Sons*, 'and *Presbyters* of the *Church of England*; who, 'in open *Defiance* of the moſt *peremptory Declara-* 'tions of God in *Scripture*, (never to be evaded 'by any *Shifts* or *Miſinterpretations*) and the *U-* 'niverſal Doctrine, and *Expoſitions* of the *Catholick* 'Church upon it in *all Ages*, with the *Expreſs Te-* 'ſtimony, and *Concurrence* of Our *Church*, from its 'Reformation down to the *Preſent Times*, *Corrobo-* 'rated with the *Senſe* of Our *Legiſlature*, ſo *un-* 'exceptionably Confirm'd in Our *Laws*, Dare, in 'Deſpite and *Contempt* of all *this Evidence*, mani-'feſtly Defend the *Reſiſtance of the Supreme Pow-* 'er, under a *New-fangl'd Notion* of *Self-Defence*; 'the only Inſtance they ſhew of *Shame*, that they 'dare not YET maintain *Rebellion* by its *Pro-* 'per Name. Yet, if thoſe *ſilly Pretences*, and '*weak Excuſes* for it alledg'd, carry any *Strength*, 'or *Reaſon* in them at all, they will equally ſerve 'to *Juſtify All the Rebellions* that ever *were* or *can* 'be committed in the World. Now as the *Repub-* 'licans Copy after the *Papiſts* in moſt of their *Do-* 'ctrines and *Practices*, I would fain know in *this* 'where the Difference lies, betwixt the *Power* 'Granted to, (as 'tis ſuppos'd Originally *Inveſted*, 'but from what *Commiſſion* God knows, in) the 'People, to *Judge* and *Dethrone* their *Sovereigns*, 'for any *Cauſe* they *think* fit; or a no *leſs Uſurped* 'Power of the *Pope*, to *ſolve* the People from 'their *Allegiance*, and *diſpoſe* of *Sceptres*, and *Dia-* 'dems to his *Favourites*, whenever he thinks it his 'Intereſt to pluck them from his *Enemies* Heads. '*Compariſons* are generally *Odious*; but a *Learned* '*Biſhop of our Kingdom*, whoſe Averſion to *Po-* 'pery, I hope, is not doubted, I mean the * Right 'Reverend the Lord Biſhop of *Sarum*, has been 'bold Judiciouſly to Determine, even on the *Papiſts* 'Side in this Caſe, That if ſuch a *Depoſing Power* 'is to be intruſted in *Mortals Hands*, leſs *Inconve-* 'niencies will enſue in placing it in *One*, than in '*Many*; tho' God forbid it ever ſhould be Lodg'd 'in any other than that of *God* himſelf, the *Origi-* 'nal of all Power, from whom it proceeds, and to 'whom it muſt Return; the *King of Kings*, *Lord* 'of Lords, *and ONLY Ruler of Princes*. So that 'theſe *Romantick wild* Notions will carry Us into 'ſomething *worſe* (if 'tis poſſible) than *Popery* it 'ſelf; more *Fatal* to the *Rights* and *Intereſts* of 'the *Crown*, and the *Welfare* and *Tranquility* of 'Our *Conſtitution*, which can never be *Safe* under 'ſuch *Precarious Dependencies*, and *Deſpotick Ima-* 'ginations. A *Prince* indeed in *another* Senſe, will 'be the *Breath of his Subjects Noſtrils*, to be blown 'in, or out, at their *Caprice*, and *Pleaſure*, and a 'worſe Vaſſal than even the meaneſt of his Guards. 'Such *Villanous* and *Seditious Principles* as theſe, 'Demand a *Confutation* from that *Government* they 'ſo *inſolently Threaten* and *Arraign*, and which are 'only *Proper* to be *Anſwer'd* by that *Sword* they 'would make our Princes *bear in Vain*, by the *So-* 'long-call'd-for *Cenſure* of an *Eccleſiaſtical Synod*, 'and the *Correction* of a Provok'd and Affronted 'Legiſlature; to whoſe Strict *Juſtice*, and un-'deſerv'd *Mercy*, I commit both *them* and Their 'Authors. Only give me leave to diſmiſs 'em with 'a *Remark* of the *Pious* and *Learned* Biſhop *An-* 'drews, upon ſome of their FALSE BRE-'THREN in his Time. † "*What* (ſays that "Good Prelate) *is now become of thoſe Words of* "*God*, Touch not mine Anointed? *Are we not* "*fallen into Strange Times*, *that Men dare thus* "*Print and Publiſh*, *yea*, *even Preach and Pro-*

* His *Highneſs* Declares, in Oppoſition to thoſe who give out, That we do intend to CONQUER and ENSLAVE theſe NATIONS, that we have thought fit to add a few Words to our *Declaration*; "It is not to be imagin'd, that either *thoſe* who "have *invited* Us, or *thoſe* who are already come to *Aſſiſt* Us, "can join in a *WICKED ATTEMPT OF* CONQUEST, to "make void their own *Lawful Titles* to their *Honours*, *Eſtates*, "and *Intereſts*." *See the Prince of* Orange's *Declaration*. Dr. Kennet's *Hiſtory of the Four Laſt Reigns*, p. 493.

* Leſs *Diſorder* may be apprehended from the *Pretenſions* of the *Roman Biſhops*, than from *theſe Maxims*, that put the *Power* of *Judging* and *Controlling* the *Magiſtrate* in the PEOPLE's Hands, which opens a Door to *Endleſs Confuſions*, and indeed, ſets every *Private Perſon* upon the *Throne*, and introduceth an *Anarchy*, which will never admit of *Order* and *Remedy*; whereas, Thoſe who have but *One* PRETENDER over Them, could more eaſily deal with Him, and more Vigorouſly RESIST Him. [*Vindication of the Church of* Scotland. *Printed at* Glaſgow, 1673. *p.* 68, 69.

† Sermon 3. on the Conſpiracy of the *GOWRIES*, Preach'd before the King at *Holdenbergh*, *Aug.* 5. 1610. *p.* 808.

" *claim their Sins*; *even those sinful and shameless* " *Positions, to the Eyes, and Ears of the whole* " *World? Whereby God's Anointed are Endan-* " *ger'd, Mens Souls are Poison'd, Christian Reli-* " *gion is Blasphem'd as a Murtherer of her Own* " *Kings*; *God in his Charge is openly Contradicted,* " *and Men made Believe, they shall go to Heaven* " *in breaking God's Commandments.* What could ' have been spoken with a more *Prophetical* Spi- ' rit, of these *filthy Dreamers*, these *Presumptuous* ' and *Self-will'd Men*, *Despisers of Dominion*, and ' *Government*, who *are not afraid to speak Evil of* ' *Dignities*, who *wrest the Word of God to their* ' *Own*, and their deluded *People's Perdition*, and ' think to *Consecrate* even the worst of Sins, with ' what is almost *Analogous* to the *Blasphemy against* ' *the Holy Ghost!* These FALSE BRETHREN ' in Our *Government*, do not *Singly*, and in *Pri-* ' *vate* spread their *Poyson*, but (what is lamentable ' to be spoken) are suffer'd to combine into *Bo-* ' *dies*, and *Seminaries*, wherein *Atheism*, *Deism*, ' *Tritheism*, *Socinianism*, with all the *Hellish Prin-* ' *ciples* of *Fanaticism*, *Regicide*, and *Anarchy*, are ' openly *Profess'd* and *Taught*, to *Corrupt* and *De-* ' *bauch* the *Youth* of the *Nation*, in all *Parts* of it, ' down to *Posterity*, to the *Present Reproach*, and ' *Future Extirpation* of Our *Laws*, and *Religion*. ' Certainly the *Toleration* was never intended to *In-* ' *dulge*, and *Cherish* such *Monsters*, and *Vipers* in ' our Bosom, that scatter *Their Pestilence* at *Noon-* ' *day*, and will *Rend*, *Distract*, and *Confound*, the ' firmest and *Best-settl'd Constitution* in the World. ' In short, as the *English Government* can never be ' Secure on any other *Principles*, but *strictly* Those ' of the *Church of England*, so I will be bold to ' say, where any Part of it is *Trusted* in Persons of ' any *Other Notions*, They must be *False* to *Them-* ' *selves*, if They are *True* to Their *Trusts*; or if ' They are *True* to Their *Opinions*, and *Interests*, ' must *Betray* That *Government* They are *Enemies* ' to upon *Principle*. Indeed, We must do 'em that ' Justice, to confess, That since the *Sectarists* have ' found out a Way (which their *Forefathers*, God ' knows, as Wicked as they were, would have Ab- ' horr'd) to swallow not only *Oaths*, but *Sacra-* ' *ments*, to *Qualify* themselves to get into *Places*, ' and *Preferments*; these *Sanctify'd Hypocrites* can ' put on a *Shew* of *Loyalty*, and seem *tolerably* Easy ' in the *Government*, if they can Engross the *Ho-* ' *nours* and *Profits* of it: But let *Her Majesty* ' *reach out Her little Finger to touch their Loins*, ' and these *Sworn Adversaries* to *Passive Obedience*, ' and the *Royal Family*, *shall fret themselves*, *and* ' *Curse their Queen*, *and their God*, *and shall look* ' *upwards*. And so much for Our *Political* FALSE ' BRETHREN, till I come to speak with 'em again ' by and by. I proceed,

' 3. In the Third Place, to a more *Inferior Spe-* ' *cies* of Them, that *Act in a lower Sphere*, name- ' ly, *Those who in their Private Capacities*, *are* ' *FALSE either in their Friendship*, *Correspon-* ' *dence*, *or Dealing*: But these *Sins of Unfaithful-* ' *ness*, as the *Psalmist* calls them, being of so *Copi-* ' *ous*, and *Extensive* a Nature, and respecting the ' *Private Concerns* of *Human Life*, I shall only ' trouble You with enumerating some of the *Gene-* ' *ral Instances* of them: Such as are, *Betraying* ' Our *Friend* in his *Secrets*, *Deserting* him in his ' *Misfortunes*, in not *Defending* his *Reputation*, ' when *falsly Accus'd*, in an *Obsequious Compliance* ' with Him in any *Indirect*, or *Dishonourable Mea-* ' *sures*, in a Nauseous *Flattery* of his *Follies*, or ' *Vices*, in *Permitting* him in any *Error*, without ' *Admonition*, and in giving him *wrong Advice*, and ' not leading him out of it. Such are also with ' regard to Our *Neighbour*, the *Concealing*, or ' *Misrepresenting* any *Truth* that he is *Concern'd* to ' *know*, *Playing upon his Faith* with *doubtful* and ' *ambiguous Insinuations*, with *Double Equivocati-* ' *ons*, and *Dissimulatory Expressions*, an *Actual* ' *Breach* of *Word*, *Promise*, or *Profession*, *Clande-* ' *stine Undermining*, by *Circumvention*, *Fraud*, or ' *Craft*, *Back-biting*, and secretly Slandering, *Pro-* ' *pagating Scandal*, and *Bearing False Witness*, and ' *Partaking* several ways in his *Sins*; which are all ' the *Characteristicks* of an *Insidious*, *Treacherous*, ' and *False-hearted Knave*. But these *Vices* being ' of a *Private Consideration*, I hasten to the next ' *General Head* propos'd, *Namely*,

' II. Secondly, *To lay before You the Great Peril,* ' *and Mischiefs of these* FALSE BRETHREN ' *in Church and State*; which I shall endeavour to ' do, by Proving that They *Weaken*, *Undermine*, ' and *Betray* in *themselves*, and *Encourage*, and ' put it in the Power of Our *Profess'd Enemies*, to ' *Overturn*, and *Destroy* the *Constitution* and *Esta-* ' *blishment* of *Both*.

' 1. And First, as to the *Church*. But here it is ' very *Necessary* to Premise, That by the *Church* ' *of England*, We are to understand the *True Ge-* ' *nuine Notion* of it, as it stands *Contra-distin-* ' *guish'd* in its *Establish'd Doctrine*, *Discipline*, and ' *Worship*, from all Other *Churches*, and *Schisma-* ' *ticks*, who would *Obtrude* upon Us a *Wild*, *Ne-* ' *gative Idea* of a NATIONAL CHURCH, ' so as to *Incorporate Themselves* into the *Body*, as ' *True Members of it*; Whereas 'tis evident that ' this *Latitudinarian*, *Heterogeneous Mixture* of ' all Persons of what *Different Faith* soever, *Uni-* ' *ting* in *Protestancy*, (which is but One *Single* ' *Note* of the *Church of England*) would render it ' the most *Absurd*, *Contradictory*, and *Self-Inconsi-* ' *stent Body* in the World. This *Spurious*, and ' *Villanous Notion*, which will take in *Jews*, *Qua-* ' *kers*, *Mahometans*, and any thing as well as *Chri-* ' *stians*, as ridiculously incongruous as 'tis, may be ' first Observ'd, as One of those Prime, Popular ' *Engines*, Our FALSE BRETHREN have ' made Use of to Undermine the very *Essential* ' *Constitution* of Our *Church*; which as it stands ' *Guarded* with its *Own* Sacred *Fences*, with Her ' only *True Sons* in Her *Bosom*, may Defy all the ' *Malice* of the *Devil*, and Her *Enemies*, to *Pre-* ' *vail against* Her. But such is Her *hard For-* ' *tune*, Her Worst *Adversaries* must be let into ' Her *Bowels*, under the *holy Umbrage* of Sons, ' who neither *Believe* Her *Faith*, Own Her *Mis-* ' *sion*, submit to Her *Discipline*, or Comply ' with Her *Liturgy*. And to admit this *Reli-* ' *gious Trojan Horse*, big with *Arms* and *Ru-* ' *in*, into Our *Holy City*, the *Strait Gate* must be ' laid quite *Open*, Her *Walls*, and *Inclosures pull'd* ' *down*, and an *High Road* made in upon Her ' *Communion*, and this *Pure Spouse of Christ Pro-* ' *stituted* to more *Adulterers* than the *Scarlet* ' *Whore* in the *Revelations*. Her *Articles* must be ' Taught the *Confusion* of all *Senses*, *Nations*, and ' *Languages*, to render Her a *Babel*, and *Desolation*. ' This was indeed the Ready way to *Fill the House* ' *of God*, but with what? With *Pagan Beasts*, in- ' stead of *Christian Sacrifices*, with such *Unhallow'd*, ' *Loathsome*, and Detestable Guests, as would have ' Driven out the *Holy Spirit* of God with Indig-

' nation.

'nation. This Pious Design of making Our 'House of Prayer a Den of Thieves, of re-'forming Our Church into a Chaos, is well known, 'to have been *Attempted* several Times in *This* 'Kingdom, and lately *within our Memory*, When 'all Things seem'd to *Favour* it, but that *Good* 'Providence, which so happily interpos'd, against 'the *Ruin* Our *Church*, and *Blasted* the *Long-pro-*'*jected Scheme* of these *Ecclesiastical Achitophels*. 'A *Scheme* so *Monstrous*, so *Romantic*, and *Absurd*, 'that 'tis hard to say, whether it had more of 'Villany, or *Folly* in it, and which even the *Secta-*'*rists* of all Sorts (who will not be satisfied with 'any thing less than Sovereignty) *Exploded*, and 'Laugh'd at, as *Ridiculous*, and *Impracticable*. It 'was doubtless a *Wise* way to Exemplify Our *Bro-*'*therly Love*, and *Charity* for the *Souls* of Men, 'to put both *Them*, and *Our selves* into a *Gulph* 'of *Perdition*, by throwing up the *Essentials* of Our 'Faith, and the *Uniformity of Our Worship*. But 'since this *Model* of an *Universal Liberty*, and *Co-*'*alition* fail'd, and these FALSE BRETHREN 'could not carry the *Conventicle* into the *Church*, 'they are now Resolv'd to bring the *Church* into 'the *Conventicle*, which will more *Plausibly*, and 'Slily Effect Her *Ruin*. What could not be gain'd 'by *Comprehension*, and *Toleration*, must be brought 'about by *Moderation*, and *Occasional Conformity*; 'that is, what they could not do by *Open Violence*, 'they will not fail by *Secret Treachery*, to *Accom-*'*plish*. If the *Church* can't be *Pull'd down*, it may 'be *blown up*; and no Matter with these Men *How* 'tis *Destroy'd*, so that it *is Destroy'd*. Now let 'Us, I beseech You in the Name of God, fairly 'consider what must be the *Consequence* of this 'Scandalous *Fluctuation*, and *Trimming* betwixt the 'Church, and *Dissenters*, both in *Conscience*, and 'Prudence. Does not this *Innovating* in, *Giving* 'up, or *Receding from*, any *One Point*, or *Article* 'in our *Faith*, *Violate*, and *Affect* the *Whole Frame*, 'and *Body* of it? Can we either *Add to*, or *Di-*'*minish from*, the *Least Jot* of our *Religion*? Are 'we to take it's *Constitution* as our *Saviour*, and 'his *Apostles Deliver'd* it down to Us; or have we 'Authority to *Curtail*, *Mangle*, or *Alter* it, to *Suit* 'it to the *Pride*, *Humours*, *Caprice*, and *Qualm-*'*sick Stomachs*, of Obstinate, Moody, Wayward, 'and Self-conceited *Hypocrites*, and *Enthusiasts*? 'Will not such a Base, and *Time-serving Compli-*'*ance* give the *Enemies of Our Church* an *Occasion* 'of *Blaspheming* Her as *Weak*, and *Inconstant*? Will 'it not Argue the *Illegality* of *Her Ordinances*, and 'Laws, or that they were too *Rigid*, and wanted 'an *Abatement*? Will not this *Harden*, *Encourage*, 'nay *Justify* the *Dissenters* in their Opinion of 'their *Separation*, when they see such large *Allow-*'*ances*, and Concessions made in it's Favour? What 'Dishonourable, and *Unworthy Opinions* must they 'entertain of the *Priests* of *that Church*, who can 'Sacrifice their most Solemn *Declarations*, and 'Oaths to *Complaisance*, and *Preferment*? What 'would be the *End* of All this, but to *Establish* 'Heresy, and *Erastianism* upon the *Ruins* of our 'Faith, and *Discipline*? Would not this *Spiritual* 'Legerdemain, this *Fallacious Tricking*, and *Double-*'*dealing*, eradicate all the *Principles* of *Truth*, 'and *Honesty*, or Piety out of Men's Minds, make 'em *Unconcerned*, whether there is *Any*, or *No* 'Religion, Run 'em into an *Universal Scepticism*, 'and *Infidelity*, and make 'em All *Atheists*, or *Pa-*'*pists*? For when they had *Turn'd about*, *and* 'about, and were grown *Giddy* with *Change*, they 'would either Give up Themselves to the *Dishe-*'*lief of all Things*, or Rest their *Weary'd Judg-*'*ments* in the *Authority* of *that Church alone*, that 'can Delude 'em with the *Specious Pretences* of 'an *Infallible Guide*. Thus our FALSE BRETHREN 'as the *Jews* did our *Blessed Saviour*, crucify his 'Church Betwixt Thieves; and as they commit-'ted that *Execrable Villany* under a *Pretended* Fear 'lest the *ROMANS should come and take away* 'their Place, and Nation, which by *that very Fact* 'They *brought* upon *Themselves*: So these *Men*, 'out of a *Fictitious Fear* lest the *Modern ROMANS* 'should come, and Destroy *Our Church*, are Work-'ing *that Ruin* they *pretend* to *Avoid*, and under 'a *False Zeal* of *Keeping* out *Popery*, are Them-'selves infallibly *Bringing* in *That very POPERY* 'into *Our Kingdom*, with which they so *Falsly* 'and ungratefully endeavour to *Attaint the Church* 'of England, the *Greatest Bulwark*, and only Safe-'Guard against *Popery* in the whole *World!* Tho' 'it were highly to be wish'd that those *Excellent* 'Laws made for Her *Defence and Security*, were 'at present put strictly into Execution; for the 'Roman-Catholic Agents, and Missionaries that 'swarm about this Great City, as it were in De-'fiance and Contempt of them, were never more 'Busy in making Proselytes to their *Superstition*, 'and *Idolatry*, and Perverting and Debauching 'Her *Majesty's Subjects* in every Corner of our 'Streets.

'2. Thus we see how *Dangerous* these FALSE 'BRETHREN are to Our *Church*, which is so 'Great, and Considerable a *Branch* of our *Civil Con-*'*stitution*, that the *Support* of Our *Government* 'depends upon *it's Welfare*, and what *Affects* 'That, must strike at the *Foundation* of Our *State*; 'Innovations in *Either* tending to the *Subversion* 'of their *Laws*, and the Unsettling the *Establish-*'*ment*, and consequently to *Anarchy*, and *Confu-*'*sion*. But to draw this *Argument* more home to 'the *Point*; I will endeavour to prove, that our 'FALSE BRETHREN are as Destructive of our 'Civil, as *Ecclesiastical Rights*. For first, it can-'not be deny'd, that though They do submit to 'the *Government*, their *Obedience* is *Forc'd*, and 'Constrain'd, and therefore so *Treacherous*, and *Un-*'*certain*, as never to be *Trusted*, because proceed-'ing upon no *Principle*, but meer *Interest* and *Am-*'*bition*; and whenever That *changes*, their Alle-'giance must follow it; and therefore (to use 'their *Own Expression*) are as much *Occasional* 'Loyalists to the *State*, as They are *Occasional Con-*'*formists* to the *Church*; that is, They will *Betray* 'either, whenever it is in their *Power*, and They 'think it for their *Advantage*. FALSHOOD 'always implies *Treachery*; and whether That is 'a *Qualification* for any One to be *Trusted*, espe-'cially with the *Guardianship* of our *Church*, or 'Crown, let our *Governors* consider. And certain-'ly nothing but the most *Sottish Infatuation*, can so 'far *Blind* both our *Eyes*, and our *Judgments*, as 'to make us *Believe*, that the *same Causes* should 'not produce the *same Effects*, and that the same *La-*'*titudinarian*, and *Republican* Notions should not 'bring forth the same *Rebellious* and Pernicious 'Consequences. They are pleas'd now to *Soften* 'their *Lewd Principles*, and cover their *Dangerous* 'Tenets with the Name of *Speculative Opinions*; 'but what *Fatal Practices* they have created, and 'whether these *Seditious Thoughts* will not again 'Exemplify themselves in the same *Bloody Actions*, 'We shall be *Convinc'd*, to our *Sorrow*, if We don't

'*Appre-*

'*Apprehend*. That the *Old Leaven* of their *Fore-Fathers* is ſtill *Working* in their *Preſent Generaion*, and that this *Traditional Poyſon* ſtill remains in this *Brood* of *Vipers*, to *Sting* Us to *Death*, is ſufficiently *Viſible*, from the *Dangerous Encroachments* They now make upon our *Government*, and the *Treaſonable Reflections* They have *Publiſh'd* on Her *Majeſty*, God bleſs Her! Whoſe *Hereditary Right* to the *Throne*, They have had the Impudence to *Deny*, and *Cancel*, to make *Her* a *Creature of their own Power*; and that by the ſame *Principles* They plac'd a *Crown* upon Her, They tell Us, *They*, (that is, the *Mob*) may re-aſſume it at their Pleaſure. Nay, now They have Advanc'd themſelves from the *Religious Liberty* Our *Gracious Sovereign* has *Indulg'd* them, to Claim a *Civil Right*, as they *Term* it, and to *Juſtle* the *Church* out of *Her Eſtabliſhment*, by Hoiſting their *Toleration* into it's Place; and to convince Us what *alone* will *ſatisfy* 'em, inſolently Demand the *Repeal of the Corporation* and *Teſt Acts*, as an *Eccleſiaſtical Uſurpation*, which indeed under *Her Majeſty* (whom God long preſerve for it's Comfort and Support!) is the only *Security* the *Church* has to Depend upon. And which they have ſo far *Eluded* by their Abominable *Hypocriſy*, as to have Undermin'd Her *Foundation*, and *Indanger* the *Government*, by filling it with it's *Profeſs'd Enemies*. *Theſe Charges* are ſo *Flagrant*, and *Undeniable*, that a Man muſt be very *Weak*, or *ſomething worſe*, that thinks, or pretends, that *Diſſenters* are to be *Gain'd*, or won over by any other *Grants*, and *Indulgences*, than giving up our *Whole Conſtitution*: And He that *recedes* the *leaſt Tittle* from it, to ſatisfy, or *Ingratiate* with theſe *Clamorous*, *Inſatiable* and *Church Devouring Malignants*, knows not what Spirit They are of, or He ought to ſhew who is a *True Member* of *Our Church*. Have They not ever ſince their firſt *Unhappy Plantation* in this Kingdom, by the Interceſſion of *That Falſe Son* of the *Church*, *Biſhop Grindall*, always *Improv'd*, and *Riſe* upon their *Demands* in the *Permiſſion* of the *Government*? Inſomuch the *Queen Elizabeth*, that was Deluded by that *Perfidious Prelate* to the *Toleration* of the *Genevian Diſcipline*, found it ſuch an *Headſtrong*, and *Encroaching Monſter*, that in *Eight Years*, *She* foreſaw it would *Endanger* the *Monarchy*, as well as the *Hierarchy*: And like a Queen of *True Reſolution*, and *Pious Zeal* for Both, pronounc'd, That "ſuch were the *Reſtleſs* "*Spirits* of that FACTIOUS *People*, that no *Quiet* "was to be *Expected* from them, till they were "utterly *Suppreſs'd*: Which like a *Prudent Princeſs*, She did by *Wholſome Severities*, that the Crown for many Years ſat *Eaſy*, and *Flouriſhing* on Her Head. And had *Her Succeſſor*, *King James*, but follow'd Her *Wiſe Politicks*, his Son had never fall'n a *Martyr* to their *Fury*, nor any of his *Unhappy Offspring* ſuffer'd thoſe *Diſaſtrous Calamities*, which made the *Royal Family* one *continu'd Sacrifice* to their *Malice*. And what better could have been expected from *Miſcreants*, *Begot* in *Rebellion*, *Born* in *Sedition*, and *Nurs'd up* in *Faction*? I would not here be Miſunderſtood, as if I intended to caſt the leaſt Invidious Reflection upon that *Indulgence* the Government has condeſcended to give 'em, which I am ſure all thoſe that wiſh well to our Church are very ready to Grant to *Conſciences truly Scrupulous*; let *Them* Enjoy it in the full Limits the *Law* has Preſcrib'd. But let them alſo *move* within their *Proper Sphere*, and not grow *Eccentrick*, and like *Comets* that *Burſt* their *Orb*, Threaten the *Ruin* and *Downfal* of Our *Church*, and *State*. Indeed they tell us they have *Relinquiſh'd* the *Principles*, as well as the *Sins* of their *Fore-fathers*: If ſo, why do they not *Renounce* their *Schiſm*, and come *Sincerely* into Our *Church*? Why do they *Pelt* Her with more *Blaſphemous Libels*, and *Scurrilous Lampoons*, than were ever Publiſh'd in *Oliver's Uſurpation*? Have they not lately Villanouſly Divided us with *Knaviſh Diſtinctions* of *High* and *Low-Church* Men; Are not the *Beſt Characters* they can give Us, thoſe of *Papiſts*, *Jacobites*, and *Conſpirators*? And what do they mean by all this *Inſidious Cant*, but by *Falſe Inſinuations*, and raiſing *Groundleſs Jealouſies*, and *Fears*, to *Imbroil* the *Publick*, and to bring it into that *Confuſion*, they are *Suggeſting* upon Us? Whether theſe Men are not *Contriving*, and *Plotting* our utter *Ruin*, and whether all thoſe FALSE BRETHREN, that fall in with theſe *Meaſures*, and *Deſigns*, do not contribute baſely to it, I leave every Impartial Man that wiſhes the *Welfare* of Our *Conſtitution* to Determine; And if we find this true *in Fact*, What Reaſon have we to think, but that the *National Sins* are *Ripen'd* up to a full Maturity, to call down Vengeance from *Providence* on a Church and Kingdom, thus *Debauch'd* in its *Principles*, and *Corrupted* in its *Manners*, and inſtead of the *True Faith*, *Diſcipline*, and *Worſhip*, given over to all Licentiouſneſs, both in *Opinion*, and *Practice*, to all *Senſuality*, *Hypocriſy*, *Lewdneſs*, and *Atheiſm*? And now are we under no *Danger* in theſe *Deplorable Circumſtances*? Muſt we *Lull* Ourſelves under this *ſad Repoſe*, and in ſuch a *Stupid*, *Lethargick Security*, *Embrace* our *Ruin*? When *Eliſha* the Great *Prophet of* God, was Surrounded with an *Hoſt of Enemies*, that ſought for his Life, his *Blind Servant* beheld not the *Peril* his *Maſter* was in, till his *Eyes* were Open'd by *Miracle*, and he found himſelf in the *midſt of Horſes and Chariots of Fire*. I pray God We may be out of *Danger*! but we may remember the *King's Perſon* was *Voted* to be ſo, at the *ſame Time* that his *Murtherers* were *Conſpiring* his *Death*. What I have thus freely ſpoken, I hope is as much without Offence, as it proceeds from a Good Intention, and a Tender Concern for Her *Majeſty's Perſon*, and *Government*, and an hearty Zeal for the *Honour* and *Safety* of our Excellent *Church*, and *Conſtitution*. I intreat Your Patience,

'III. Briefly to *ſet forth the Heinous Malignity*, *Enormous Guilt*, *and Folly of this Prodigious Sin of* FALSE BROTHERHOOD.

'1. And Firſt, With Regard to *God* and *Religion*. It is a moſt Perfidious *Apoſtacy* from, and *Reproach* upon *Both*. It is no Leſs than *Renouncing* Our *Allegiance* to our *Almighty Sovereign*, an Open *Denial*, and *Proſtitution* of Our moſt *Holy Faith*, and *Church*, upon which *Crime* God has *Entail'd* ſo many Dreadful *Threats*, and *Anathema's*. It is *Betraying* Our moſt Solemn *Oaths*, proving *Falſe* to Our Sacred *Truſt*, and *Commiſſion*, *Adminiſtring* to, and *Indulging* Men in the moſt *Mortal Sins*, Endangering both our *Own*, and the Salvation of that *Dear Flock*, for which *Chriſt* Dy'd, by Expoſing it to the Corruptions of *Hereſy* and *Schiſm*, the Impoſtures of *Falſe Apoſtles*, and the Deceit, and Malice of *Wolves in Sheep's Cloathing*. It is Deriving the higheſt *Blaſphemy*, and *Diſhonour* upon the *Holy Spirit of* God, thus to

'Prevari-

'Prevaricate with his *Immutable Oracles of Truth*, 'in Wresting 'em to maintain the most *Diabolical* 'Falshoods, and *Errors*, and making *Veracity itself* 'the *Author* and *Patronizer* of *Lyes*. It is *For-* 'saking Our *Baptismal Covenant*, Basely *Deserting* 'the Glorious *Colours* we are *Listed under*, turning 'Refugees from our *Saviour*, and *Adherents* to his 'most *Abjur'd Enemies*. In a Word, to accomplish 'any wretched Secular Design, to Gratify their 'Pride, or *Ambition*, to Feed their *Lust*, or *Avarice*, 'to wreak their *Spleen*, or *Revenge*, out of *Envy*, 'or *Disappointment*, for a Little, Paultry *Honour*, 'Money, or *Preferment*: These FALSE BRE- 'THREN will *Renounce* their *Creed*, and *Read the* 'Decalogue backward, be the very *Reverse* of Our 'Blessed Saviour (whom like their *Primitive Pat-* 'tern, they first *sell*, and then *betray*) *Fall down* 'and Worship the very Devil himself for the Riches 'and Honours of this World.

'2. *Secondly*, In Regard to the *World*. What a 'vast Scandal, and Offence must it give to all Per- 'sons of *Piety*, and *Integrity*, to see Men of *Cha-* 'racter, and *Stations*, thus Shift and Prevaricate 'with their *Principles*, and Starting from their *Re-* 'ligion upon any Occasion of *Difficulty*, or *Trial*, 'and like the *Disciples*, flying from, and forsaking 'our *Saviour*, when his Life lay at Stake? To see 'Men's *Opinions sit as loose* about 'em as their Gar- 'ments, to be put on, or off, for *Convenience*? 'What can *Unwary* Persons conclude from such 'Tergiversation, and *Hypocrisy*, but that all Reli- 'gion is *State-Craft*, and *Imposture*? That All *God-* 'liness is *Gain*; and that the *Doctrines* of the 'Church lie not so much in Her *Articles*, as Her 'Honours, and *Revenues*? Without doubt, this 'Modern *Latitude*, and Infamous *Double-Dealing*, 'as it can proceed from nothing but the *rankest* 'Atheism, so it must Propagate it wheresoever it 'goes; and 'tis not to be Question'd, but that the 'Wonderful Increase, and *Impudent Appearance* of 'all *Sects* and *Heresies* in this Kingdom at present, 'beyond what was ever known in *Former Ages*, is 'chiefly to be attributed to it. But this *Crime* is as 'Pernicious to *Human Society*, as *Religion*; for it 'Destroys all *Common Honesty*, *Faith*, and *Credit* 'in the *World*, and in the place of it sets up an 'Universal Trade of *Cousenage*, *Sharping*, *Dissimu-* 'lation, and downright *Knavery*. For, what *De-* 'pendance can there be upon a Man of *no Principles*? 'What *Trust* in *Equivocations*, *Evasions*, and *Lyes*? 'Nor indeed could any one be suppos'd so Sottish, 'as to place the least Confidence in these *Men*, 'did they not *Bait* their *Hook*, and *Cover* their 'Treachery with the Sacred and Plausible *Pretences* 'of FRIENDSHIP, whereby they are capable of 'doing *much more Mischief*, than a *bare-fac'd* and 'profess'd *Enemy*. In what moving and *Lively* 'Colours does the Holy Psalmist paint out the 'Crafty Insidiousness of such wilely *Volpones*? 'Wickedness, (says he) *is therein, Deceit and Guile* 'go not out of their Streets. *For it is not an Open* 'Enemy that has done me this Dishonour, for then 'I could have born it: Neither was it mine Adver- 'sary, that did Magnify himself against me, for 'then peradventure I would have hid my self from 'him. But, it was even Thou! my Companion, my 'Guide, and mine own Familiar Friend. We took 'sweet Counsel together, and walked in the House of 'God as Friends. There is no Faithfulness in their 'Mouths, their inward Parts are very Wickedness; 'Their Throats are Open Sepulchres, and their Words 'are smoother than Oil, yet be they very Swords. 'Like* Joab, *they pretend to* speak Peaceably, *and* 'smite us Mortally under the fifth Rib.

'3. *Thirdly, With Regard to a Man's Self*, it is 'hard to distinguish whether our FALSE BRE- 'THREN prove themselves Guilty of more excessive 'Knavery, or *Folly*. For whatever these *Cunning*, 'Temporizing Politicians may think, they will find, 'after all their *Shuffling*, and *Compliance*, that the 'Plain Road of *Truth*, *Honesty*, and *Integrity*, is 'both the most *Prudent*, as well as the *Safest Way* 'they can follow, and that the *Wisdom of this* 'World is as much *Foolishness* with *Men*, as 'tis 'with *God*. For certainly there is no Sin that so 'much *Disappoints* its *Own Ends* as *This* does. Per- 'haps *the Man* may Obtain the *Present Advantage*, 'He has in *Prospect*, by relinquishing his *Old* 'Friends, and *Principles*; but is ever such *a Merce-* 'nary Convert received *heartily* into the *Bosom* of 'his *Former Enemies*? Or are *They* ever found so 'Credulous, and *Good-natur'd*, as to *Forgive*, and 'Believe such an *Apostate Cordial* and Sincere, and 'fit to be *Trusted* in any Matter of *Weight*, or *Im-* 'portance, who has *Betray'd* his *Own Party* for the 'Little, *Sordid Lucre* of a *Place*, or *Preferment*? 'And is again ready to be *Retrograde*, whenever the 'Wind shall *Change*, and *Veer* about? Such a FALSE 'BROTHER may serve the *Present Turn* of his 'Adversaries, who may seem whilst they want the 'TOOL, to *Flatter*, and *Caress* him; but let such 'a *Turn-Coat* rest assur'd, He shall meet with *Hypo-* 'crisy, for *Hypocrisy*; and since he is got upon the 'Stage, shall *Act his Part*, and be *Hiss'd off* when 'He has done? Such a *Wise Game* do our *Pro-* 'jectors *Play*, they *Barter*, and *Betray* their *Friends*, 'only to *sell* themselves *Slaves* into the Hands of 'their *Enemies*, who shall *Treat* them with more 'Insolence, *Disdain*, and *Tyranny*, than *Honest Men* 'do with *Scorn*, and *Contempt*, if they don't go the 'whole *Lengths of their Party*, *stick at Nothing*, 'tho' never so *Impious*, and Absurd, and run from 'one *Extream* to a *quite Contrary*. Thus *Little*, 'thus *Base*, thus *Odious*, thus *Contemptible*, thus 'Servile, nay thus *Execrable* is the *Traytor*, and 'Double-Dealer, in the Sight, not only of all 'Honest Men, but the most *Profess'd Knaves*, and 'Hypocrites! Who cannot but have a *Tacit Regard*, 'and *Veneration* for a Man of *Steadiness*, and *Pro-* 'bity, that upon *All Occasions* is *True* to *Himself*, 'and his *Cause*, is above the *Threats*, as well as 'Flatteries of this World, still *Trusting* in his *God*, 'and his own *Integrity*, and *Justice*, *Despising* his 'Interest, or *Success*, and is under all Circumstances 'like that *God*, and *Religion* He *Believes* and Serves, 'without *Variableness*, *or Shadow of Change*, *but is* 'the same, to day, to morrow, and for ever? Far- 'ther, these FALSE BRETHREN cannot be more 'Odious to *God*, and *Man*, than they are to *Them-* 'selves, who are always *a Self-Contradiction*, full 'of *Confusion*, and *Perplexity*, perpetually *Haunt-* 'ing themselves, the *Worst* of *Dæmons*, maintaining 'an *Irreconcileable War* betwixt the *Outward* and 'Inward Man, *Conformists in Profession*, *Half-Con-* 'formists in Practice, and *Non-Conformists* in *Judg-* 'ment. Such a *Mixture* of *Inconsistency* and *Non-* 'sense, that any one that has the least *Spark* of *Con-* 'science, or *Reason*, must *Renounce*, and *Detest*. 'But this Dismal Effect has such a *State* of *Habitual* 'Hypocrisy, that it quite *Damps*, and *Extinguishes* 'Both, *Quenches* the *Holy Spirit of God*, and *Cru-* 'cifies *his Son afresh*; and as it *finds* a Man *void* of 'Shame, generally without a Miraculous Conversion 'leaves him incapable of *Repentance*, and both

'*Damns*

'*Damns* him *here*, and *hereafter*; and as He *Chose* 'it in *This World*, *Appoints* him in the *Next*, his 'Portion *with Hypocrites, and Unbelievers, with all* 'Lyars, *that have their Part in the Lake which* 'Burns *with Fire and Brimstone*, with the Grand-'Father of *Falshood*, the *Devil* and his *Angels*. 'And so here We leave our FALSE BRETHREN, 'in the *Company* they always *keep Correspondence* 'with.

''IV. Now what should be the *Result* of this 'Long *Discourse*, but that if We bear any *True* 'Concern for the *Interest*, *Honour*, and *Safety* of 'Our *Church*, and *Government*, We ought *stedfast-*'ly to *Adhere* to those *Fundamental Principles*, up-'on which *Both* are *Founded*, and upon which 'their *Security*, under *God* alone, depends; and 'consequently that it highly *Behoves* Us, *Cautiously* 'to *Watch against*, to *Mark*, and *Avoid* All those 'that thus *Treacherously Desert* them. And in-'deed it would be both for *Our Advantage*, as 'well as *Their Credit*, if such Men would *throw* 'off the *Mask*, entirely *Quit Our Church*, of which 'they are no *True Members*, and not *fraudulently* 'Eat *Her Bread*, and *lay wait for Her Ruin*, *Pur-*'loin Her *Revenues*, and ungratefully *Lift up their* 'Heels against Her. For then We should be *One* 'Fold *under One Shepherd*, all those *Invidious Di-*'stinctions that now *Distract*, and *Confound* Us *Lost*, 'and We should be *Terrible like an Army of* 'Banners to our *Enemies*, who could never *Break* 'in upon such an *Uniform*, and *Well-compacted Bo-*'dy. This indeed would be a *True Peace*, and 'Solid *Union*, when we should *All with One Mind*, 'and *One Mouth*, *Glorify God*, and not with a *Con-*'fus'd *Diversity* of *Contradictious Opinions*, and in-'consistent *Jargon* of Worship, which the *God of* 'Peace, *Purity*, and *Order* cannot but *Abhor*. As 'it is a *Maxim* in *Politicks*, that *All Governments* 'are best *supported by the same Methods, and Coun-*'sels *upon which they were Founded*; so it will 'appear undeniably True in its *Application* to *our* 'Constitution, which can be *Maintain'd* by no *Other* 'Principles, but *Those* on which it is *Built*, and 'like their *Basis*, the *Gospel*, if there's any *Viola-*'tion, or *Breach* made in any *Branch* of it, it *shakes* 'and *endangers* the *whole Frame*, and *Body*. These 'Things, however *Little* they may be *Represented* 'by Our *Adversaries*, will be found of the most 'Considerable *Consequence*. Let Us therefore, as 'We are unhappily *Sharers* of St. *Paul*'s *Misfor-*'tune, to have our *Church in Perils among* FALSE 'BRETHREN, follow his *Example*, and *Conduct* 'in a Parallel Case. He tells us in his *Epistle* to 'the *Galatians*, c. 2. That he was Obstructed, and 'Pester'd in his Preaching the Gospel, by FALSE 'BRETHREN, *unawares brought in, who came* 'privily *to spy out his Liberty, which he had in* 'Christ *Jesus, that they might bring him into Bon-*'dage. *To whom he gave place by Subjection, no* 'not *for an Hour, that the Truth of the Gospel* 'might *continue with the Church. Doubtless* this 'Brave, and *Bold Resolution* did the *Apostle* take 'by the peculiar *Command*, and *Inspiration* of the 'Holy *Ghost*; and yet if our *Dissenters* had Lived 'in those Times, they would have *Branded* him 'as an *Intemperate*, *Hot*, *Furious Zealot*, that 'wanted to be Sweeten'd, by the Gentle Spirit of 'Charity, and *Moderation*, *forsooth! Schism*, and 'Faction, are Things of *Impudent* and *Incroaching* 'Natures; they *Thrive* upon *Concessions*, take *Per-*'mission for *Power*, and Advance a *Toleration* im-'mediately into an *Establishment*; and are there-'fore to be treated like *Growing Mischiefs*, or 'Infectious *Plagues*, kept at a Distance, lest their 'Deadly *Contagion* spread. *Let Us therefore have* 'no *Fellowship with these Works of Darkness, but* 'rather *reprove them.* Let our *Superior Pastors* 'do their Duty in *Thundering* out their *Ecclesiasti-*'cal *Anathema's*, and let any *Power on Earth* 'Dare Reverse a *Sentence Ratify'd in Heaven.* Let 'them Discountenance all these *Seditious*, *Luke-*'warm, *Almost-Christians*, and Promote Men of 'Probity, *Conscience*, and *Courage*. I say *Consci-*'ence, and *Courage*, for the *One* without the Other 'is like *Faith* without *Works*, *Dead*, and *Insignifi-*'cant. A *Christian*, and a *Coward*, are such *Con-*'tradictions, as were never found in the *Church* 'Militant; Men of *Timorous* and *Dastardly Spirits*, 'who are Asham'd to *Own*, or Afraid to *defend* 'their *Principles*, lest they should *lose*, or *suffer* 'by it, will prove very *Poor Disciples* of the *Cross*! 'Such *Men* (as an *Ingenious Prelate* Wittily ex-'presses it) are only *Honest by Chance*. Let us 'Despise the *Sneaking*, *Shuffling Compliances* of 'such as Consult their *Safety*, and not their *In-*'nocence, and *dare to be True* in the *Worst of* 'Times, with this *All-sustaining Cordial Comfort*, 'that whatever *Enemies* We *gain*, or *Friends* We 'lose, We carry *One within* Us, that can *Confront*, 'Vanquish, and *Counter-Ballance* All. *Woe unto* 'them that have a Fearful Heart, *and to the Faint* 'Hands, *and to the Sinner that goeth two manner* 'of ways! says the Wise Man, *Ecclus.* 2. 12. And 'agreeable to Him the *Apostle* in very Sarcastic Ex-'pressions, *Jude* 11, 12, 13. *Woe unto them that* 'have gone in the Way of Cain, *and ran greedi-*'ly after the Error of Balaam *for Reward, and* 'Perish'd in the Gain-saying of Corah! *These are* 'Spots in your Feasts of Charity, *Clouds without Wa-*'ter, carry'd about of Winds, *Trees whose Fruits* 'are wither'd, *without Fruit, Twice Dead, pluck'd* 'up by the Roots: *Raging Waves of the Sea, foam-*'ing out their Own Shame; *Wandring Stars, to* 'whom is reserv'd the Blackness of Darkness *for* 'ever. Let Us therefore, being well assur'd how 'much Our *Cause* Deserves, and how much at pre-'sent it Requires Our *bravest Resolutions*, hold 'fast *our Integrity*, and *Religion, without Wavering*, 'and *earnestly contend for the Faith, which was once* 'deliver'd *unto the Saints. My Brethren, be strong* 'in the Lord, *and in the Power of his Might. Put* 'on the whole Armour of God, *that Ye may be able* 'to stand *against the Wiles of the Devil. For we* 'Wrestle not only *against Flesh and Blood, but against* 'Principalities, *against Powers, against the Rulers of* 'the Darkness of this World, *against Spiritual Wicked-*'nesses in High Places. *Wherefore take unto you* 'the whole Armour of God, *that ye may be able* 'to withstand in the Evil Day, *and having done All,* 'to stand, Eph. 6. 10. &c. Not doubting, but that 'if We shew the same *Courage*, and *Indefatigable* 'Zeal, and Labour, to *Defend*, as Our Adversa-'ries to *Reproach*, *Divide*, and *Ruin* our *Church*, 'neither their united *Malice*, nor *Power*, nor all the 'Plots, and *Machinations* of *Rome*, nor the very 'Gates of *Hell* it self, shall ever be able to *Pre-*'vail against Her. And let us *Trust* in that *Gra-*'cious *Providence*, which so Miraculously Deliver'd 'Her on this Day, that tho' She lies *Bleeding of* 'the Wounds *she has receiv'd in the House of Her* 'Friends, Lam. 2. 2, 4. tho' *the ways of Zion may* 'Mourn for a Time, and Her *Gates be Desolate*, 'her Priests Sigh, *and she in Bitterness, because* 'Her Adversaries *are Chief*, *and Her Enemies* at

'pre-

'present *Prosper*; tho' *among all her Lovers she has* 'few to comfort Her, *and many of her* Friends *have* 'dealt Treacherously *with Her, and are become her* 'Enemies, Zech. 13. 6. *Tho' there are few to Guide* 'Her *among all the* Sons *whom she hath brought* 'forth; *neither are there many that take Her by* 'the hand, *of all the Sons that she hath brought up,* 'Isa. 51. 18. *Tho' her Enemies cry, Down with her,* 'Down with her, *even to the Ground*; Yet there is 'a God that *can*, and *will, Raise* Her up, if We 'Forsake Her not. Let us not therefore ungratefully contribute to Her Destruction; but let us 'continue *Stedfast, Immoveable, always abounding* 'in the *Work of the Lord, forasmuch as We know* 'that our *Labour will not be in vain in the Lord,* 1 Cor. 15. 58. Now *the God of all Grace, who* 'hath called *Us into his Eternal Glory by Christ Je*sus, *after that ye have* suffer'd *a while, make you* 'Perfect, Stablish, Strengthen, Settle *You*, 1 Pet. 5. 10, 11. To Him be *Glory, and Dominion, for* 'ever and ever. Amen.

'Let Us conclude all in that Excellent Collect of 'Our Church;

O *Lord, We beseech thee, let thy continual Pity* Cleanse, *and* Defend *thy Church*; *and because it cannot continue in* Safety, *without thy* Succour, Preserve *it evermore by thy* Help, *and* Goodness, *through Jesus Christ, Our Lord.*

After which the Lords Adjourned to the House of LORDS.

Tuesday, Feb. 28. The Second Day.

THE Lords coming down into *Westminster-Hall*, and being seated in the manner beforementioned, Proclamation was made by the Serjeant at Arms as follows:

Our Sovereign Lady the Queen doth strictly Charge and Command all manner of Persons to keep Silence, upon Pain of Imprisonment.

Then another Proclamation was made: *Henry Sacheverell*, Doctor in Divinity, come forth, save thee and thy Bail, else thou forfeitest thy Recognizance.

The Doctor appearing at the Bar accordingly, with his Council as before.

Lord Chancellor. Gentlemen of the House of Commons, you may proceed in your Evidence.

Sir *Joseph Jekyll.* MY Lords, Yesterday your Lordships heard the Articles against Doctor *Sacheverell*, his Answer, and the Commons Replication, read; and the Charge being open'd, your Lordships likewise heard the Doctor's Sermon preach'd at St. *Paul's*, and the Dedication of his *Derby* Sermon; so that the Case is now fully before your Lordships.

That Part which is assigned to me, and some other Gentlemen, is to maintain the First Article of the Commons Charge. The Method I shall take will be, first, to show the Importance of this Article; Secondly, To clear up and vindicate the Justice of the *Revolution*; and, Thirdly, To state the Evidence or Proof of this Article, which charges the Doctor with traducing and condemning the Revolution.

My Lords, I must premise, that the Commons cannot but think it hard, that in this Assembly of the *British* Nation, they should now after more than Twenty Years Enjoyment of the Benefits arising by the Revolution, they can't but think it hard, I say, that in this Place, and at this Time, they should be forced to plead in Vindication of the Justice of that Revolution. But since we must give up our Right to the Laws and Liberties of the Kingdom, or (which is all one) be precarious in the Enjoyment of them, and hold them only during Pleasure, if this Doctrine of unlimited Non-Resistance prevails, the Commons have been content to undertake this Prosecution; and they who share in the Legislature with your Lordships, have put themselves into the Condition of Suiters for Justice against this Offender, in whom your Lordships will find the Reverse of a true *British* Subject: For such an one is dutiful and submissive to his Prince, and true to the Liberty of his Country; but in this Criminal your Lordships will find virulent Faction, and slavish Submission.

As to the Importance of this Article, your Lordships were rightly told Yesterday, that the whole Charge centers in this Article. If the Justice of the Revolution be establish'd, the Toleration will be rejoic'd in by some, and be acquiesc'd in by all; the Resolutions of the Two Houses of Parliament will have a just Regard shown to them; Her Majesty's Administration will be no longer defamed, nor will that unhappy Distinction of Parties be capable of being heightned amongst us. But if the Justice of the Revolution (which is our Foundation) be question'd, every Thing that is built on it is in some Degree shaken, and Occasion is given for Disputes and Factions, never to be ended but by a total Subversion of our Constitution.

My Lords, As it is self-evident that the Honour of Her Majesty's Government stands upon the Justice of the Revolution, so doth the Peace and Tranquility of it depend upon that also. The Commons may appeal to your Lordships, and the whole Nation, in this Matter: From what Quarter is it, that all that Opposition and Obstruction to the Administration of the late King, and Her present Majesty have come? Has it not been from those who have question'd the Lawfulness of the Resistance made use of in the Revolution? Whose Pursuit after Power is indefatigable, and to obtain which they would make a willing Sacrifice of the Common Liberty; whilst others who have a contrary Principle, and are convinced of the Justice of that Proceeding, have acted a quite contrary Part. Have they not contributed every thing in their Power to strengthen the Government in Her present Majesty's Hands, as well as the late King's; and that with a Zeal and Constancy thro' several Changes, which nothing but a Principle could inspire? How much is owing to this Zeal in promoting the Settlement of the Protestant Succession, and how little to the contrary Principle, every one that remembers the State of Things at the End of the late King's Reign can tell. Upon the present Question therefore, my Lords, depend our present Happiness, and future Hopes. Hath not this Principle of unlimited Non-Resistance been revived by the professed and undisguized Friends of the Pretender? Hath it not been prosecuted, with an unusual Warmth, since his Attempt upon Her Majesty's Crown? Can the Pretender have any Hopes, but from the keeping alive such Notions? Or can the Queen's Title receive any Advantage from them?

Or can it be ſeaſonable to preach this Doctrine in the Reign of the Beſt of Princes, which can be of no Uſe to any but the worſt?

In clearing up and vindicating the Juſtice of the Revolution, which was the Second Thing propoſed, it is far from the Intent of the Commons to ſtate the Limits and Bounds of the Subject's Submiſſion to the Sovereign. That which the Law hath been wiſely ſilent in, the Commons deſire to be ſilent in too; nor will they put any Caſe of a juſtifiable Reſiſtance, but that of the Revolution only; and they perſwade themſelves that the doing Right to that Reſiſtance, will be ſo far from promoting Popular Licence or Confuſion, that it will have a contrary Effect, and be a Means of ſettling Mens Minds in the Love of, and Veneration for the Laws; to reſcue and ſecure which, was the only Aim and Intention of thoſe concerned in that Reſiſtance.

To make out the Juſtice of the Revolution, it may be laid down, That as the Law is the only Meaſure of the Prince's Authority, and the Peoples Subjection, ſo the Law derives its Being and Efficacy from common Conſent: And to place it on any other Foundation than common Conſent, is to take away the Obligation this Notion of common Conſent puts both Prince and People under to obſerve the Laws. And upon this ſolid and rational Foundation, the Lawyers, in all Ages, have placed that Obligation, as appears by all our Law-Books. But inſtead of this, of later Times, Patriarchical and other Fantaſtical Schemes have been framed, to reſt the Authority of the Law upon; and ſo Queſtions of Divinity have been blended with Queſtions of Law; when it is plain, that Religion hath nothing to do to extend the Authority of the Prince, or the Submiſſion of the Subject, but only to ſecure the Legal Authority of the one, and enforce the due Submiſſion of the other, from the Conſideration of higher Rewards, and heavier Puniſhments. And if this Diſtinction were attended to, it might ſerve to bury the uſeleſs Labours (to ſay no worſe of them) of ſeveral Divines, and others, on theſe Subjects, in utter Oblivion.

My Lords, Nothing is plainer than that the People have a Right to the Laws and the Conſtitution. This Right the Nation hath aſſerted, and recover'd out of the Hands of thoſe who had diſpoſſeſſed them of it at ſeveral Times. There are of this Two Famous Inſtances in the Knowledge of the preſent Age; I mean that of the Reſtoration, and that of the Revolution; in both theſe great Events were the Regal Power, and the Rights of the People recover'd. And it is hard to ſay, in which the People have the greateſt Intereſt; for the Commons are ſenſible, that there is not one Legal Power belonging to the Crown, but they have an Intereſt in it; and I doubt not, but they will always be as careful to ſupport the Rights of the Crown, as their own Privileges.

My Lords, That the Conſtitution was wholly loſt before, and recovered by the Reſtoration, is known to all; and before the Revolution, it is known how Popery and abſolute Power had invaded the Conſtitution. The Regal Supremacy, of ſuch Abſolute Neceſſity to preſerve the Peace of the Kingdom, was diſclaimed, and the Papal Supremacy, by a ſolemn Embaſſy to *Rome*, owned and acknowledged, and no Footſteps left of the Regal Supremacy but that which was worſe than nought, an Illegal High-Commiſſion Court: And at that Time the Popular Rights, in almoſt all the Species of them, were invaded. That great Privilege of the People, on which all others depend, that of giving their Conſent to the making new, or repealing old Laws, was invaded; and a diſpenſing Power, ſuch as rendred all our Laws precarious, and at the Will of the Prince, was exerciſed. Theſe, and a great many other Acts of abſolute Power, are mentioned in that Act of Parliament, called *The Bill of Rights*. It would be to miſpend your Lordſhips Time, to mention all the Inſtances there given: For, my Lords, the whole Tenor of the Adminiſtration then in being, was agreed by all to be a total Departure from the Conſtitution; the Nation was at that Time united in that Opinion, all but the Criminal Part of it. And as the Nation joined in the Judgment of their Diſeaſe, ſo they did in the Remedy. They ſaw there was no Remedy left, but the laſt; and when that Remedy took Place, the whole Frame of the Government was reſtor'd entire and unhurt. This ſhewed the Excellent Temper the Nation was in at that Time, that after ſuch Provocations from an Abuſe of the Regal Power, and ſuch a Convulſion, no one Part of the Conſtitution was alter'd, or ſuffer'd the leaſt Damage; but on the contrary, the whole received new Life and Vigor.

My Lords, As that Doctrine of unlimited Non-Reſiſtance was implicitly renounced by the whole Nation in the Revolution, ſo divers Acts of Parliament afterwards paſs'd, expreſſing that Renunciation. I beg leave to read a few Paſſages out of the Laws that were then made. In the Firſt of King *William* and Queen *Mary*, was the Act for Abrogating the Oaths of Supremacy and Allegiance, and appointing other Oaths. By that Act, the Declaration enjoin'd to be taken by ſeveral Acts in the Time of King *Charles* II. to this Purpoſe, *That it is not lawful, on any Pretence whatſoever, to take up Arms againſt the King*, was taken away. Then in the Second Seſſion of that Parliament, was the Act for declaring the Rights and Liberties of the Subject: In that Act Notice is taken, that the Late King *James* did endeavour to ſubvert and extirpate the Proteſtant Religion, and the Laws and Liberties of the Kingdom; and the particular Inſtances of Male-Adminiſtration are ſet forth: Then it declares, that that unhappy Prince had abdicated the Government, and the Throne was thereby vacant; and that it had pleaſed Almighty God to make the Prince of *Orange* the Glorious Inſtrument of delivering the Kingdom from Popery and Arbitrary Power. And if the Inſtrument, who brought about that Deliverance, be ſtiled Glorious, ſurely the Means uſed by him is (in Conſequence) approved and applauded; and His Late Majeſty is mentioned as the ſame Glorious Inſtrument, in the Act for paying the *States-General* the Charges of his Expedition. And ſurely this is an Approbation of the Means uſed by him, when that Act charges the People with Six Hundred Thouſand Pounds for thoſe Means, *viz.* the Force he brought along with him. But if it ſhould be thought theſe Words are too general, and do not particularly approve the Reſiſtance at the Revolution; there came a Memorable Occaſion, when the Parliament had that Particular under their Conſideration; and that was, when they were conſidering whether they ſhould meddle with ſo tender a Thing, as the taking away the Benefit of the Law from a great many of the Subjects of the Kingdom; which was done by an Act in the ſame Second Seſſion of that Parliament, entituled, *An Act for preventing vexatious Suits,*

againſt ſuch as acted in order to the bringing in their Majeſties, or for their Service. There they take notice, that at the Time of His Majeſty's Glorious Enterprize, for delivering this Kingdom from Popery and Arbitrary Power, and in Aid and Purſuance of the ſame, divers Lords, Gentlemen, and other good People well affected to their Country, did act as Lieutenants, Deputy-Lieutenants, Juſtices of the Peace, or other Officers, Civil or Military, tho' not ſufficiently authorized thereunto; and did apprehend and put in Cuſtody ſeveral criminous and ſuſpected Perſons; and did ſeize and uſe divers Horſes, Arms, and other Things; and did enter into the Houſes and Poſſeſſions of ſeveral Perſons, and did Quarter, and cauſe to be Quartered, Soldiers and others there; which Proceedings, in Times of Peace and common Safety, would not have been warrantable: Yet that Act declares they were neceſſary, in regard of the Exigence of Publick Affairs, and ought to be juſtified; and provides an Indemnity for thoſe who acted in that Reſiſtance, from the Actions that might be brought by their Fellow-Subjects.

My Lords, I ſhall conclude this Head with taking notice of the Form of Prayer, appointed by Royal Authority, for the Fifth of *November*, now doubly memorable: There is in that Form not only Thanks offer'd to Almighty God for the Revolution, but for the Succeſs given to thoſe Means that were uſed to bring about that wonderful Deliverance: What elſe is the Meaning of thanking God, for giving his late Majeſty a ſafe Arrival here, and making all Oppoſition fall before him, till he became our King and Governor?

But, my Lords, notwithſtanding the Juſtice of thoſe Steps that were taken to bring about the Revolution, notwithſtanding the Temper and Prudence that was ſhewn in the Settlement of it, and the Sanction ſince given to it, not only by the Royal, but the whole Legiſlative Authority, Dr. *Sacheverell* hath condemned the Reſiſtance, (which was the principal, if not the only Means) by which that Deliverance was wrought; which was the laſt Thing I propoſed to ſhew to your Lordſhips.

My Lords, This Article is divided into Three Branches: Firſt, The General Charge, that he ſuggeſts and maintains, that the Neceſſary Means uſed to bring about the Revolution, were odious and unjuſtifiable. The Second and Third Branches are Particulars of that General; *viz.* That his late Majeſty diſclaimed the leaſt Imputation of Reſiſtance; and that to impute Reſiſtance to the Revolution, is to caſt black and odious Colours upon his late Majeſty and the ſaid Revolution.

To maintain this Article, I will not repeat the particular Words of the Sermon, in order to the Application of them; that is a Province which is aſſigned to another Gentleman, who will ſpeak after me: But I ſhall offer to your Lordſhips what I apprehend to be the clear Senſe and Meaning of thoſe Paſſages in the Sermon, which maintain this Article. In the Eleventh Page of the *Quarto* Edition, he lays down a General Poſition, of the utter Illegality of Reſiſtance, upon any Pretence whatſoever. He ſays, there are ſome who deny this Poſition, who are New Preachers, and New Politicians, who teach divers Antimonarchical and pernicious Doctrines. He goes on, and ſays, They do not only deny this Poſition, but urge the Revolution in Defence of their Denial; that is, by producing that as an Inſtance of a juſtifiable Reſiſtance. Then he exclaims againſt theſe Men, as endeavouring to caſt black and odious Colours on the late King and the Revolution; whereas he ſays, the King diſclaimed the leaſt Imputation of Reſiſtance by his Declaration; and the Parliament diſowned it, becauſe they declare they only fill'd a vacant Throne, without taking notice how it became ſo; and they burnt a Book which alledg'd Conqueſt, becauſe it had that Ingredient of Reſiſtance in it.

This Extract out of the Sermon makes out the Firſt Article, which is, his condemning the Reſiſtance, which the Commons call the Neceſſary Means uſed to bring about the Revolution. For firſt, that general Poſition of his condemns Reſiſtance in any Caſe whatſoever. Secondly, he introduces ſome as denying this Poſition, and faſtens a vile and odious Character upon them. Thirdly, he makes thoſe that deny this Doctrine object to it an Authority or Preſident of a lawful Reſiſtance, *viz.* that at the Revolution; but, my Lords, this he does only to give up the Lawfulneſs of that Reſiſtance, and condemn that as well as any other. For, Fourthly, he anſwers this Objection, by denying there was any Reſiſtance in that Caſe, a Fact as clear as the Sun at Noon-day, and which all the Nation ſaw and rejoiced at. He brings the late King and the Parliament to witneſs againſt any Reſiſtance in the Revolution; and yet he has ſhewn by two Quotations out of the Prince of *Orange*'s Declaration, one in his Anſwer, and the other in the Printed Sermon, that his late Majeſty was ſo far from diſclaiming Reſiſtance, that he avowed it, and invited the Subjects of this Kingdom to join in that Reſiſtance; for in his Anſwer, he cites that Paſſage in his Declaration; wherein his Majeſty takes notice, that he carried a Force with him, ſufficient, by the Bleſſing of God, to defend him from the Violence of Evil Counſellors; and that he deſigned that Expedition to oblige King *James* to call a Free Parliament: And by his Quotation of another Paſſage in the Prince of *Orange*'s Declaration, it appears his late Majeſty was, by divers Subjects of King *James*'s, Invited to and Aſſiſted in that Expedition; which being an Expedition by Force, to oblige that King to call a Free Parliament, doth it not carry in it a plain and manifeſt avowing of Reſiſtance? My Lords, as to what he ſays in relation to the Parliament's diſowning any Reſiſtance at the Revolution, by aſſerting, that they ſet the Crown on the King's Head on no other Title than that of the Vacancy of the Throne, that appears to be directly otherwiſe from the ſeveral Paſſages in divers Acts of Parliament which I have before-mention'd: To which I only add, that in the Conference between the Two Houſes, previous to the ſettling the Crown on the King's Head, the Word *Abdicated* was inſiſted upon and carried; for that it included in it the Male-Adminiſtration of King *James*, which the Word *Deſerted* (deſired to be uſed inſtead of it) did not: And this appears by the Journal. He therefore knowing that there was Reſiſtance at the Revolution, and that the late King and the Parliament avowed that Reſiſtance; and he pretending to defend it only by denying thoſe Facts, hath (by a neceſſary Implication) aſſerted, That that Reſiſtance was not an Exception to his General Rule, but ſtands condemned by it.

My Lords, I ſhall not enter upon the Conſideration of the Doctor's Anſwer to this Article, becauſe I don't know whether his Council will think fit to abide by it; nor would I meddle with any Thing that is proper for the Reply.

The Sum of the whole Proof is this: The Doctor lays down a Doctrine, condemning Reſiſtance in all Caſes whatſoever: He makes thoſe who deny this Doctrine, Aſſerters of Antimonarchical Principles: He takes notice of the Revolution, only to give it up: He admits, that if there were Reſiſtance in that Caſe, that it was as unlawful as any other Reſiſtance. He aſſerts that to be true, which every one knows to be falſe: He ſays, the late King diſclaimed the leaſt Imputation of Reſiſtance; the Parliament diſown'd it; and they who ſay there was any Reſiſtance in it, caſt black and odious Colours on the late King and the Revolution; and conſequently, he condemns the Reſiſtance uſed to bring about the Revolution, which is the Matter of the Firſt Article.

This, my Lords, is what the Commons rely upon, to maintain and make out the Firſt Article of their Charge againſt the Criminal at the Bar; and they refer the Conſideration of it to your Lordſhips Wiſdom and Juſtice.

Mr. *Sollicitor General.* MY Lords, It falls to my Share, to ſtate to your Lordſhips the ſeveral Paſſages in the Sermon preach'd at St. *Paul's*, which the Commons rely upon as a Proof of the Firſt Article; and to ſhew the particular Weakneſs and Inſufficiency of the Anſwer given to this Charge.

The Charge is, That the Gentleman at the Bar doth ſuggeſt and maintain, That the neceſſary Means us'd to bring about the late Happy Revolution, were Odious and Unjuſtifiable; That his late Majeſty, in his Declaration, diſclaim'd the leaſt Imputation of Reſiſtance; and, That to impute Reſiſtance to the Revolution, is to caſt Black and Odious Colours upon his late Majeſty and the ſaid Revolution.

The Paſſages upon which the Firſt Article is founded, are in the Eleventh and Twelfth Pages of this Sermon; where Dr. *Sacheverell* having firſt aſſerted, "That the grand Security of our Govern-" ment, and the very Pillar upon which it ſtands, " is founded upon the ſteady Belief of the Sub-" jects Obligation to an Abſolute and Unconditional " Obedience to the Supreme Power in all Things " Lawful, and the utter Illegality of Reſiſtance up-" on any Pretence whatſoever; *which*, He ſays, has " been lately exploded and ridiculed, *goes on in theſe Words:*

" Our Adverſaries think they effectually ſtop our " Mouths, and have us ſure and unanſwerable on " this Point, when they urge the Revolution of this " Day in their Defence; but certainly they are the " greateſt Enemies of that, and his late Majeſty, " and the moſt ungrateful for the Deliverance, who " endeavour to caſt ſuch Black and Odious Colours " upon both. How often muſt they be told, that " the King himſelf ſolemnly diſclaim'd the leaſt " Imputation of Reſiſtance, in his Declaration? " And that the Parliament declar'd, that they ſet " the Crown on his Head upon no other Title but " that of the Vacancy of the Throne? And did " they not unanimouſly condemn to the Flames " that infamous Libel, that would have pleaded the " Title of Conqueſt, by which Reſiſtance was ſup-" pos'd?

Theſe Words the Commons apprehend to be a full Proof of the Aſſertions charg'd in the Firſt Article, for Reſiſtance was the neceſſary Means uſed to bring about the Revolution.

And the Doctor expreſly affirms in this Place, that the King diſclaim'd the leaſt Imputation of Reſiſtance; he aſſerts it as a thing notorious, which no Body could be a Stranger to: He ſays, the King diſclaim'd it ſolemnly; he diſclaim'd it in his Declaration.

And he as plainly affirms, That to impute Reſiſtance to the Revolution, is to caſt Black and Odious Colours upon his late Majeſty and the Revolution; for he firſt lays down the utter Illegality of Reſiſtance upon any Pretence whatſoever, as a Fundamental Doctrine; and then acquaints his Auditory, that his Adverſaries thought they could effectually ſtop his Mouth, and had him ſure and unanſwerable *On this Point*, when they urg'd the Revolution in their Defence; but that they were the greateſt Enemies to the King and to the Revolution, who endeavour'd to caſt ſuch *Black and Odious Colours upon Both.*

Now *this Point*, which he ſays his Adverſaries thought they had him ſure and unanſwerably upon, is plainly the Point of Reſiſtance, which he had aſſerted to be Illegal upon any Pretence whatſoever; and others, he ſays, had denied, and had urg'd the Revolution in their Defence.

And the urging of the Revolution in that Caſe, as an Inſtance of the Legality of Reſiſtance, in Oppoſition to his general Doctrine, is what he calls caſting Black and Odious Colours upon the King and the Revolution; for his Argument runs thus. All Reſiſtance is utterly Illegal; the King diſclaim'd the leaſt Imputation of Reſiſtance; the Parliament ſet the Crown upon his Head upon no other Title than that of the Vacancy of the Throne; and burnt a Book becauſe it aſſerted a Title by which Reſiſtance was ſuppoſed; and therefore to impute Reſiſtance to the Revolution, is to caſt *Black and Odious Colours* upon his late Majeſty and the Revolution.

This, my Lords, is the Force of his Reaſoning, and the plain and obvious Senſe of this Part of the Paragraph; and therefore fully makes out the Charge of his aſſerting and maintaining, that to impute Reſiſtance to the Revolution, is to caſt Black and Odious Colours upon his late Majeſty and the ſaid Revolution.

I come now to conſider the Anſwer he makes to this Article, which he divides into Three Parts.

" And firſt, he denies that he doth Suggeſt and " Maintain, that the neceſſary Means uſed to bring " about the happy Revolution were Odious and Un-" juſtifiable; and ſays, that he doth not affirm in " any Part of that Sermon any thing concerning " the neceſſary Means uſed to bring about the hap-" py Revolution; the ſaid *Henry Sacheverell* is ſo " far from reflecting on his late Majeſty or the happy " Revolution, that he endeavours in that Sermon " to clear the Revolution, and his late Majeſty, " from the Black and Odious Colours which their " greateſt Enemies had caſt upon Both.

Now the material Part of the Anſwer to this Branch of the Article is, " That he denies his " maintaining that the neceſſary Means uſed to bring " about the Revolution were Odious and Unjuſti-" fiable, and his affirming any thing concerning " thoſe neceſſary Means. But this is no more than ſaying that he has affirmed nothing by the Words *Neceſſary Means*; and 'tis very true, that the Words *Neceſſary Means* are not uſed in any Part of the Sermon.

But no Body will ſay, that 'tis requiſite to charge the Aſſertion in the very Words.

And

And therefore if Reſiſtance was neceſſary, and the Means uſed, in that extraordinary Caſe of the Revolution, he has aſſerted the Means to be Odious and Unjuſtifiable, tho' he has done it in other Terms, and by Words more particular and expreſs.

" And as to that Part of the Article whereby he " is charged with Suggeſting and Maintaining, That " his late Majeſty in his Declaration diſclaimed the " leaſt Imputation of Reſiſtance:

" He acknowledges himſelf to have made this " Suggeſtion; but ſays, that he made it not in " Diſhonour, but in Vindication of his Majeſty; " the Reſiſtance he repreſents the King to have Diſ- " claimed, being ſuch a Reſiſtance as tended to the " Conqueſt of this Realm; for which he refers to " that Part of the Declaration which is Printed at " the Bottom of the Eleventh Page in the Sermon; " and upon this Ground he obſerves, that there " are theſe other Paſſages in the Declaration----- " We have thought fit to go over to *England*, and " to carry over with us a Force ſufficient, by the " Bleſſing of God, to defend our ſelves from the " Violence of evil Counſellors. ----- We think fit to " declare, that this our Expedition is intended for " no other Deſign than to have a free and lawful " Parliament Aſſembled.

Now in this part of his Anſwer Doctor *Sacheverell* admits, that he made the Suggeſtion charged upon him, in the ſame Words that are uſed in the Article; but defends himſelf by alledging, that the Commons have miſtaken his Meaning.---- He meant only, that the King diſclaim'd a Reſiſtance which tended to Conqueſt.

But 'tis clear and plain, that the Words have no ſuch limited or reſtrain'd Senſe, and that the Meaning he would now put upon them is a meer Shift and Evaſion; for the Propoſition is General, The King Diſclaim'd the leaſt Imputation of Reſiſtance: And the uſe he makes of it ſhews, that his Meaning was as General as his Words; for he is Replying upon thoſe who urge the Revolution in Anſwer to his general Poſition, That Reſiſtance is utterly illegal upon any Pretence whatſoever; and how does he anſwer the Caſe of the Revolution, or is it poſible to be anſwer'd, but by ſaying, that there was no Reſiſtance at all in the Revolution; the King, who was principally concern'd in it, diſclaim'd the leaſt Imputation of Reſiſtance?

The Queſtion is ſtated upon Reſiſtance in general; Whether Reſiſtance in any Caſe, or upon any Occaſion, be lawful?

And therefore, if the Lawfulneſs of Reſiſtance in any Caſe be allow'd, 'tis impoſſible that his general Aſſertion ſhould ſtand; and 'tis equally impoſſible to get clear of the Objection, without denying the Reſiſtance.

Doctor *Sacheverell* was aware of this, and therefore denies that there was any Reſiſtance at all in the Revolution, and ſays, That the leaſt Imputation of it was ſolemnly diſclaim'd and diſavow'd.

For had he ſaid, in expreſs Terms, that the King diſclaim'd all Imputation of Reſiſtance that tended to Conqueſt, this wou'd have been no Anſwer to the Objection: For if there was any Reſiſtance, tho' not the particular Reſiſtance which the King diſclaim'd; and if that Reſiſtance which was us'd be agreed to be lawful, his fundamental Doctrine muſt certainly be ſhaken. And therefore if your Lordſhips ſuppoſe him to make any uſe at all of this Aſſertion, his Words plainly ſpoke his Meaning, and repreſent the King to have diſclaim'd all Reſiſtance whatſoever.

But he excuſes the making of this Suggeſtion, by declaring, " That he made it not in Diſhonour, " but in Vindication of His Majeſty; and therefore " whether he was miſtaken or not in expreſſing " himſelf, as if the late King had diſclaim'd all " Imputation of Reſiſtance, when he meant there- " by, that the late King diſclaim'd the Imputation " of a Deſign of Conqueſt, he humbly conceives " ſuch a Suggeſtion, plainly deſign'd for the Honour " of the late King, cannot in any reaſonable Con- " ſtruction be thought a Reflection upon his ſaid " late Majeſty, or deem'd any high Crime or Miſ- " demeanor.

My Lords, had theſe Words been ſpoken in Vindication of his late Majeſty, our great and glorious Deliverer, the Commons, who have ſo much at Heart the Honour of the late King, and the Juſtice of the Revolution, had never charg'd them upon this Gentleman as a Crime.

But they carry with them the higheſt Reflection upon the Honour and Juſtice of his Majeſty; for they ſuppoſe that he denied the Lawfulneſs of Reſiſtance when he was actually engag'd in it, and diſclaim'd the leaſt Imputation of Reſiſtance when he brought over an Army on purpoſe to maintain that Reſiſtance, to which all the People of *England* were invited and encourag'd by his Declaration.

And this Aſſertion, of the King's diſclaiming all Reſiſtance, could never be meant in Vindication of his Majeſty from any Imputation of a Deſign of Conqueſt; for there was no Occaſion for vindicating the King upon this Point, the Subject-Matter of the Diſcourſe did not lead him to it; for the Buſineſs of the Sermon, or of this particular Paragraph, is not to vindicate the Honour of the King from any ſuch Aſperſion, or to maintain the Liberties of *England*, by aſſerting, That the Conſtitution of Government ſtill remains, and was not broken and diſſolved by Conqueſt at the Revolution: Had that been his Ground, his Miſtake had been more excuſable; for then it had been proper to have urg'd that there was no Step taken towards the Revolution, which look'd like a Deſign of Conqueſt; and that the armed Force which was uſed in it, and had the Appearance of ſuch a Deſign, was not intended to conquer; for the King, who commanded it, diſclaim'd all Imputation of Reſiſtance that tended to Conqueſt. Upon ſuch a Queſtion theſe things had been very properly urg'd, and there might have been ſome Indulgence to a general Expreſſion, that in any Propriety of Speech could have received ſuch a Meaning.

But when the Queſtion is not, Whether the Revolution was brought about by Conqueſt, or what would be the Conſequence of ſuch an Aſſertion, either in regard to the Honour of the King, or the Condition of the People, there can be no Colour for ſaying that he meant by this general Expreſſion, which carries no ſuch Meaning in it ſelf, that the King diſclaim'd Conqueſt, or a Reſiſtance which tended to Conqueſt only.

Eſpecially, my Lords, when the Subject-Matter of his Diſcourſe naturally led him to aſſert this Propoſition in the common and ordinary Senſe which the Words import: For he is aſſerting the Doctrine of abſolute Non-Reſiſtance; and ſhewing, that the Lawfulneſs of the Revolution was no Argument againſt it; and why? Becauſe the King diſclaim'd the leaſt Imputation of Reſiſtance; there was no ſuch wicked Ingredient as Reſiſtance in it; no other

other Anſwer would have ſerv'd him; and therefore it can never be ſuppos'd that he meant to clear the King from any Deſign of Conqueſt, or intended to ſay any thing in Vindication of his Majeſty upon that Head.

And in Truth, it is an apparent Scandal upon the Memory of the late King, to ſay there was any Occaſion to clear him from this Imputation; his Actions ſpoke the Juſtice and Sincerity of his Intentions; his Buſineſs was not to conquer and enſlave us, but to deliver us from Popery and Slavery, the moſt dreadful Calamities that could befal us, and to reſettle and eſtabliſh our Conſtitution both in Church and State. This was the Ground of the Glorious Enterprize he undertook, and the general Aim and Deſign of all his Labours through the whole Courſe of his Reign.

'Tis therefore plain, that what Doctor *Sacheverell* ſays in his Anſwer, in Excuſe of his Aſſertion, relating to the King's diſclaiming all Imputation of Reſiſtance, was rather made to the Diſhonour, than in Vindication of his Majeſty; for there was no Colour to ſuggeſt that he needed any ſuch Vindication or Defence.

And that the King did not diſclaim all Imputation of Reſiſtance, is evident, even from that Part of his Declaration which is cited in the Anſwer, whereby "He declares to the People (to encourage "them to join with him) that he had brought over "a ſufficient Force to defend himſelf from the Vio-"lence of evil Counſellors----And that his Expedition "was deſign'd to have a free and lawful Parliament "aſſembled, which was a plain Force upon the "Executive Power that was directed by thoſe evil "Counſellors, who, by ſubverting the Liberties of "Corporations, and practiſing upon the Freedom "of Elections, never intended that any ſuch free "or lawful Parliament ſhould be aſſembled.

This is plain Reſiſtance in the Senſe that Doctor *Sacheverell* takes the Word; and is ſo far from a Juſtification, that there is no Colour to ſay, that his Majeſty diſclaim'd the leaſt Imputation of Reſiſtance.

As to the laſt Branch of the Article, whereby he is charg'd that he ſuggeſts and maintains, "That "to impute Reſiſtance to the Revolution, is to caſt "black and odious Colours upon his late Majeſty "and the ſaid Revolution; he denies that he ſuggeſts "or maintains any ſuch Poſition.

But this Negative is fully anſwer'd by what has been offer'd to your Lordſhips upon the firſt Head of this Article, his aſſerting, That the neceſſary Means uſed to bring about the Revolution were odious and unjuſtifiable; for if Reſiſtance be utterly illegal upon any Pretence whatſoever, and there was Reſiſtance in the Revolution, it neceſſarily follows, that to impute Reſiſtance to the Revolution, is to caſt black and odious Colours upon it. And this is expreſly aſſerted by his ſtating the Caſe of the Revolution, in which there was Reſiſtance, as an Objection to his general Doctrine of Non-Reſiſtance upon any Pretence whatſoever; and then anſwering this Objection, by ſaying, That the urging of the Revolution, as an Inſtance of the Legality of Reſiſtance, was caſting black and odious Colours upon his late Majeſty and the late Revolution: For there could be no black or odious Colours caſt, but from the ſhaking that fundamental Doctrine of Abſolute Non-Reſiſtance, the Belief of which he aſſerts to be the Pillar upon which the Government of *England ſtands*.

And therefore the imputing of Reſiſtance to the Revolution muſt, according to the Principle he lays down, caſt black and odious Colours upon the Revolution, and upon the great and glorious Inſtrument of it, his late Majeſty, by whom it was happily brought about.

And Doctor *Sacheverell* himſelf, by the ſubſequent Part of his Anſwer, ſeems to think that this Aſſertion is fairly and plainly inferr'd from the Tenor of his Diſcourſe.

For he is pleaſed to excuſe it, by ſaying, "That "he intended to apply it not to ſuch Perſons who "impute Reſiſtance to the Revolution, of whom he "affirms nothing; but to thoſe new Preachers, and "new Politicians, who teach in Contradiction both "to the Goſpel and the Laws, that the People "have the Power inveſted in them, the Fountain "and Original of it, to cancel their Allegiance at "their Pleaſure, and call their Sovereign to Account "for High-Treaſon againſt his Subjects, and who "urge the Revolution in Defence of ſuch Princi-"ples; and that, unleſs thoſe who impute Re-"ſiſtance to the Revolution be the ſame with thoſe "new Preachers and new Politicians, he affirms "nothing concerning them.

But, my Lords, this Part of his Anſwer is far from excuſing or extenuating his Crime; for if a Propoſition be true, it will loſe nothing of its Weight and Force, though the vileſt Man upon Earth ſhould make uſe of it; and it can be no Argument againſt a true Principle, that it has been made uſe of to ill Purpoſes, and to maintain Poſitions which are not warranted by it. 'Tis rather an Aggravation of his Crime, and a high Reflection upon the Commons, and the Juſtice of this Proceeding, to ſuppoſe that any ſuch wicked Conſequences as he mentions, can poſſibly be inferr'd from defending the Reſiſtance at the Revolution: And the Queſtion is, Whether Doctor *Sacheverell* himſelf aſſerts, that to impute Reſiſtance to the Revolution, be to caſt black and odious Colours upon it; and not, OF WHOM he affirms the caſting ſuch black and odious Colours?

I go on to the laſt Part of his Anſwer to this Article, where he ſays, "That upon the ſtricteſt Search into "his ſaid Sermon preach'd at St. *Paul*'s, he doth not "find that he hath given the leaſt colourable Pretence "for the Accuſation exhibited againſt him in this firſt "Article, but barely by his aſſerting the utter Ille-"gality of Reſiſtance to the Supreme Power upon "any Pretence whatſoever; for which he conceives "he has the Authority of the Church of *England*, "which has taught and inculcated this Doctrine in "her Homilies------And he doth further inſiſt, That "this Aſſertion is agreeable to and warranted by "the Common Law of *England*, and divers Acts "of Parliament now remaining in full Force.

Now it muſt be agreed, that there is no colourable Pretence to charge him with Suggeſting and Maintaining that the Reſiſtance us'd at the Revolution was Odious and Unjuſtifiable, if the Doctrine of the utter Illegality of Reſiſtance upon any Pretence whatſoever be true; for upon this Principle his Cenſure is juſt, and it muſt neceſſarily follow, that the Reſiſtance us'd in bringing about the Revolution is not to be maintained.

And therefore the Commons ſhould think themſelves ungrateful for the Deliverance, if they did not vindicate the Honour of the late King, and of thoſe Illuſtrious Perſons, who, upon his Invitation, defended the Conſtitution at that time by Reſiſtance,

and

and declare that this Reſiſtance was Lawful, Honourable and Juſt.

They had Reaſon to hope, that after ſo many Years had paſs'd in a happy Enjoyment of all the Advantages of a Free-born People, and at a Time when the Subjects of this Kingdom are in the full Poſſeſſion of their Rights and Liberties under Her Majeſty's Gracious Protection, and the wiſeſt and happieſt Adminiſtration that *England* ever ſaw, that no Body could have been ſo wicked as to caſt an Odium upon the neceſſary Means whereby theſe Bleſſings were obtain'd, and are continued to us. But ſince, notwithſtanding our bleſſed Deliverance from Popery and Arbitrary Power, and the Benefits we enjoy by reſtoring the Conſtitution both in Church and State; and above all, by Her Majeſty's happy Adminiſtration, which has improv'd the Luſtre of the Crown to the Honour of the Nation, and the common Benefit of every particular Subject; yet there are Men of reſtleſs and turbulent Spirits, Enemies to the Revolution, who are continually urging the Reſiſtance then uſed as a Fundamental Error, fatal to every thing that has been built upon it: This, my Lords, ſtrikes ſo directly at the preſent Eſtabliſhment, that the Commons think it their indiſpenſible Duty to demand your Lordſhips Judgment upon this important Subject.

And they think it the more neceſſary at this time, becauſe 'tis plain and obvious to every one's Obſervation, that ſince the late Attempt made by the Pretender, this Principle of the utter Illegality of Reſiſtance upon any Pretence whatſoever, has been eſpous'd and maintain'd with more than ordinary Warmth and Zeal; and the Commons apprehend, that it can have no other Aim or Tendency than to blacken the Revolution, and thereby to ſhake the Foundation of our preſent happy Settlement.

Your Lordſhips will therefore, in your great Wiſdom, conſider the Conſequences of this Aſſertion, in regard to her Majeſty, the Proteſtant Succeſſion, and the future Happineſs of this Kingdom.

The Commons muſt always reſent, with the utmoſt Deteſtation and Abhorrence, every Poſition that may ſhake the Authority of that Act of Parliament, whereby the Crown is ſettled upon her Majeſty, and whereby the Lords Spiritual and Temporal, and Commons, do, in the Name of all the People of *England*, moſt Humbly and Faithfully ſubmit themſelves, their Heirs and Poſterities, to Her Majeſty, which this general Principle of Abſolute Non-Reſiſtance muſt certainly ſhake.

For if the Reſiſtance at the Revolution was illegal, the Revolution ſettled in Uſurpation, and this Act can have no greater Force and Authority than an Act paſs'd under a Uſurper.

And the Commons take Leave to obſerve, that the Authority of this Parliamentary Settlement is a Matter of the greateſt Conſequence to maintain, in a Caſe where the Hereditary Right to the Crown is conteſted; for her Majeſty's moſt bitter and implacable Enemies, the Friends of the Pretender, (who all aſſert the utter Illegality of the Reſiſtance uſed at the Revolution) can advance his Title to the Crown, and call him King, upon no other Ground than the Pretence of an Hereditary Right.

The Commons therefore, out of the moſt profound Duty and Allegiance which they owe, and ſhall ever pay to her Majeſty, and to maintain the Security of her Government, and guard her Throne againſt every Inſinuation that may promote or favour the Intereſt of the Pretender, think themſelves obliged to take Notice of this Aſſertion, as tending to weaken the Authority of this Act of Parliament, whereby her Majeſty's Title is declared.

Your Lordſhips will likewiſe conſider of what Conſequence the Diſhonouring of the Revolution may be to Poſterity, and the future Happineſs of this Kingdom in a Proteſtant Succeſſion to the Crown. For by the ſame Act, all Perſons who ſhall hold Communion with the See of *Rome*, or ſhall Marry Papiſts, are declared uncapable to Inherit, Poſſeſs or Enjoy the Crown. And 'tis Enacted, That the Crown and Government ſhall from time to time deſcend to, and be enjoyed by, ſuch Perſons being Proteſtants, that ſhould have Inherited and Enjoyed the ſame, in caſe ſuch Popiſh Prince were naturally Dead.

And the immediate Proteſtant Succeſſion in the Illuſtrious Houſe of *Hanover*, is likewiſe ſettled by an Act of the ſame Reign.

This ſhews of what Importance it is, to the preſent and future Happineſs of this Kingdom, to clear his late Majeſty and the Revolution from thoſe Black and Odious Colours which this Gentleman has caſt upon Both.

But, my Lords, he makes it part of his Defence, that his Aſſertion is agreeable to the Common Law of *England*, and divers Acts of Parliament now remaining in Force.

The Gentleman that ſpoke before me, has ſhewn how far that Aſſertion is a direct Contradiction to ſeveral Acts of Parliament; and therefore I ſhall only ſay, that it can never be ſuppos'd that the Laws were made to ſet up a Deſpotick Power to deſtroy themſelves, and to warrant the Subverſion of a Conſtitution of Government which they were deſign'd to Eſtabliſh and Defend.

This would be a ſtrange, abſurd and contradictory Imagination, and was thought ſo at the Revolution by the wiſeſt Men of that Time, by the beſt Friends to the Monarchy, and Men the moſt Eminent for their Sufferings in the Cauſe of the Church.

And it appears, by the ſeveral Inſtances mention'd in the Act declaring the Rights and Liberties of the Subject, and ſettling the Succeſſion of the Crown, that at the Time of the Revolution there was a total Subverſion of the Conſtitution of Government both in Church and State, which is a Caſe that the Laws of *England* could never ſuppoſe, provide for, or have in view.

And the ſame Anſwer may with equal Reaſon be applied to the general Doctrine of the Church, expreſs'd in her Homilies.

This, my Lords, is what I have to offer to your Lordſhips in Maintenance of the firſt Article; I am ſenſible how defective I have been, but what I have failed in, will be abundantly ſupplied by the Gentlemen who are appointed to aſſiſt in maintaining this Article.

Sir *John Holland*. MY Lords, The preſent Conſideration is of the greateſt Importance; no leſs, than whether ſo many of your Lordſhips, and the Commons of *Great Britain*, who took up Arms at the Revolution, and were then thought Patriots of your Country, were really Rebels; whether our late Deliverer was an Uſurper; and whether the Proteſtant Succeſſion is Legal and Valid.

All theſe Conſiderations depend upon the Lawfulneſs of the Reſiſtance at the Revolution. That there was a Reſiſtance, is moſt plain, if taking up Arms in *Yorkſhire*, *Nottinghamſhire*, *Cheſhire*, and almoſt all the Counties of *England*; if the Deſer-

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tion of a Prince's own Troops to an Invading Prince, and turning their Arms againſt their Sovereign, be Reſiſtance. But if Subjects be obliged to *Abſolute and Conditional Obedience*, the Convention of the States, the Settlement and Entail of the Crown by them, and the further Settlement in the Proteſtant Succeſſion under that Settlement, muſt, from that Reſiſtance, be unlawful and void.

The Criminal was aware of this juſt Objection to his general Doctrine, when apply'd to the Revolution; as appears from his Endeavouring, upon ſecond Thoughts, to conceal it by his Marginal Note, to hint, that by *Reſiſtance* he meant *Conqueſt*. And no wonder he endeavour'd to colour ſo bold a Stroke, which he could not but expect to hear of with the utmoſt Reſentment from the Government.

But it ſo falls out, my Lords, that what he truſted to for a Screen, aggravates the Heinouſneſs of his Crime; for it ſhows, that he inſtils into his Auditors thoſe Notions from the Pulpit, which he dares not own in Print. Nothing can be more manifeſt, than that he could not by *Reſiſtance* mean *Conqueſt*, even from his own Expreſſions: For in the very next Period, he ſays, And *did they not*, i. e. the Parliament, *unanimouſly condemn to the Flames (as it juſtly deſerved) that infamous Libel, that would have pleaded the Title of* Conqueſt, *by which* Reſiſtance *was ſuppoſed*? So that he knew 'em to be diſtinct Notions; and indeed ſo they muſt be, becauſe one may be without the other.

It is an unaccountable Preſumption, that he could ſuppoſe ſo weak a Pretence could paſs upon the World; but much more ſurprizing it is, that he could apprehend ſo mean a Subterfuge could prevent your Lordſhips Juſtice. But from hence the Commons obſerve, that he is a Concealed Man, and of a Dangerous Spirit: And as ſuch we have brought him hither to reform him, and to be an Example to others.

My Lords, The Commons would not be underſtood, as if they were Pleading for a Licentious Reſiſtance; as if Subjects were left to their Good-will and Pleaſure, when they are to *Obey*, and when to *Reſiſt*. No, my Lords, they know they are obliged by all the Ties of Social Creatures, and Chriſtians, for Wrath and Conſcience-ſake to ſubmit to their Sovereign. The Commons do not Abet Humourſome Factious Arms: They aver 'em to be Rebellions. But yet they maintain, that that Reſiſtance at the Revolution, which was ſo Neceſſary, was Lawful and Juſt from that Neceſſity.

We do agree that the Laws concerning Obedience, both Human and Divine, are very Expreſs and Poſitive; and no wonder that *the Homilies and Fathers dead and living*, follow the ſame way of expreſſing our Duty in general Terms. We readily grant this, but it does not follow that there can be no Exceptions from theſe General Rules in Conſcience.

There is no Law more Poſitive and Expreſs than that which enjoins the Obſervation of the Sabbath, for therein we are commanded to *do no manner of work*. But yet we know, that Neceſſity makes an Allow'd Exception to that General Law. And the Reaſon why that Neceſſity is allow'd as a juſt Exception to that poſitive Law, will guide us to know, what Laws will admit of Exceptions from Neceſſity, and what Not. The Reaſon our Divine Lawgiver aſſigns is, becauſe *the Sabbath was made for Man, and not Man for the Sabbath*; from whence plainly follows this Corollary; That where there is a Poſitive Law, and that Law reſpects not ſome Principal End for which Man was made, there Neceſſity may make a juſtifiable Exception, how expreſs ſoever that Law is.

Now, my Lords, whether Government was made for Man, or Man for Government, will eaſily appear from this ſhort Obſervation, That Man was made in a State of Perfection; and the Rectitude of that State ſuppoſes the Abſence of all thoſe Crimes, which are the Objects of Government, and which Government is to Reform. And therefore Government could not be one End of Man's Creation; and theſe general Rules of Obedience may, upon a Real Neceſſity, admit a Lawful Exception; and ſuch a Neceſſary Exception we aſſert the Revolution to be.

'Tis with this View of Neceſſity, only Abſolute Neceſſity of Preſerving our Laws, Liberties and Religion; 'tis with this Limitation that We deſire to be underſtood, when Any of us ſpeak of Reſiſtance in general. The Neceſſity of the Reſiſtance at the Revolution was at that Time obvious to every Man. Every one, who either was not, or did not find his eaſy Mind, prepar'd to be a Tool to Popery and Slavery, dreaded the Inſtances of that Neceſſity. The Cancelling all the Security from Laws by a Diſpenſing Power; the Erecting Commiſſions to Deprive Subjects of their Property, not according to Law, but Humour; the making the whole Government Depend upon the Arbitrary Pleaſure of the then Prince, cannot but be a Juſtification of that Neceſſity before God and Man.

And thus, my Lords, it was thought, at the Time this Reſiſtance was on Foot. For then, when the Time was moſt proper for Admonitions of this Nature, the Clergy were ſo far from averring the *Unlawfulneſs of Reſiſtance upon any Pretence whatſoever*, that the *true diſtinguiſhing Characteriſtick of a Church of*-England-*Man* then was, wiſhing that Reſiſtance Good Luck, and rejoicing at its Succeſs. And yet the Gentleman at the Bar makes this Exception the Inſtance of an unjuſt Reſiſtance, by an Ironical Aſſertion of *the late King's ſolemnly diſclaiming the leaſt Imputation of Reſiſtance in his Declaration*; for Ironical it muſt be, when every Body muſt believe that he himſelf knew the contrary; a Figure of Speech very well underſtood, and known to be the moſt Biting Sarcaſm.

My Lords, So much Depends upon the Revolution, that the Commons are highly Jealous of the Honour of it. It is, indeed, Twenty Years ſince the Revolution was ſettled; but it is within much leſs than Twenty Years that a Pretender has attempted to invade our Country, to ſet this Revolution aſide. That Perſon, even with his own good Opinion of his Right, knows, he can have no Pretence to the Crown, unleſs the Priſoner's Political Divinity be true, which We Aver it is Not. But leſt this Pretender ſhould apprehend that his Friends are much increas'd, when he hears that the Revolution is publickly branded in Sermons as *Black and Odious*; the Commons have Impeached this Preacher, that he might not be Guilty of this High Crime and Miſdemeanor *without Diſcouragement*, and have brought him to your Lordſhips Bar for Juſtice, that he may not do it *with Impunity*.

Mr. *Walpole*. MY Lords, The Commons are now making good their Charge againſt Doctor *Henry Sacheverell* contain'd in the firſt Article, wherein he is accus'd for Suggeſting and Maintaining, that the neceſſary Means uſed to bring about the happy Revolution, were Odious and Unjuſtifiable, and that to impute Reſiſtance to the Revolution, is

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to caſt *Black and Odious Colours* on his late Majeſty and the Revolution.

By what has been already offer'd to your Lordſhips, I make no doubt but you are fully convinc'd, how injurious theſe Poſitions muſt be to the Peace and Quiet of the Kingdom, and how highly they deſerve, and loudly call for your Lordſhips ſpeedy and exemplary Juſtice.

The great Licentiouſneſs of the Preſs, in cenſuring and reflecting upon all Parts of the Government, has of late given too juſt Cauſe of Offence; but when only Pamphlets and common Libels are Matters of Complaint; when none but Mercenary-Scriblers, and the Hackney-Pens of a diſcontented Party, are employ'd to vent their Malice, 'tis fit to leave them to the common Courſe of the Law, and to the ordinary Proceedings of the Courts below. But, my Lords, when the Trumpet is ſounded in *Sion*; when the Pulpit takes up the Cudgels; when the Cauſe of the Enemies of our Government is call'd the Cauſe of God, and of the Church; when this bitter and poiſonous Pill is gilded over with the ſpecious Name of Loyalty, and the People are Taught for their Souls and Conſciences ſake to ſwallow theſe pernicious Doctrines; when inſtead of ſound Religion, Divinity, and Morality, Factious and Seditious Diſcourſes are become the conſtant Entertainments of ſome Congregations; the Commons cannot but think it high time to put a Stop to this growing Evil, and for the Authority of a Parliament to interpoſe, and exert it ſelf, in Defence of the Revolution, the preſent Government, and the Proteſtant Succeſſion. All which the Commons think ſo materially concern'd in this Queſtion, that if the Doctrines advanc'd by Doctor *Sacheverell*, are not Criminal in the higheſt degree, it will follow, that the Neceſſary Means us'd to bring about the Revolution were Illegal, and conſequently, that the preſent Eſtabliſhment, and Proteſtant Succeſſion, founded upon that Revolution, are Void and of no Effect.

The Commons cannot but apprehend that the juſt Reſentment and Indignation they have ſhewn upon this occaſion, will meet with the general Applauſe of all that are heartily and ſincerely well affected to Her Majeſty, and Her Government; but for all thoſe, whoſe Principles and Practices render them moſt juſtly ſuſpected to have other Views, they are not at all ſurprized to find them alarm'd, and under the greateſt Concern, at this Tryal.

I am very ſenſible, my Lords, of the Difficulty and Nicety that attends the ſpeaking to this Point, and that whilſt a Loyal Subject and Faithful Servant of the beſt of Queens, is ſpeaking in Defence of the Neceſſary and Commendable Reſiſtance uſed at the Revolution, his Arguments may be miſconſtrued, and miſrepreſented, as maintaining Antimonarchical Schemes.

But ſurely, my Lords, to plead for Reſiſtance, that Reſiſtance, I mean, which alone can be concern'd in this Debate, is to aſſert and maintain the very Being of our preſent Government and Conſtitution; and to Aſſert Non-Reſiſtance in that boundleſs and unlimited Senſe in which Doctor *Sacheverell* preſumes to Aſſert it, is to Sap and Undermine the very Foundations of our Government, to remove the natural Baſis and Fundamental Strength of our Conſtitution, and to leave it underſet with imaginary Props and Buttreſſes, which do, at beſt, but ill ſupport a ſhaken Foundation: And 'tis a moſt ſurprizing Aſſurance in the Enemies of our Government, that whilſt they are ſtriking at the Root, and digging up the Foundations, upon which our preſent and future Settlement is built, that they ſhould hope to paſs upon the World as Friends to either. But ſo irreconcileable are the Profeſſions and Practices of ſome Men, ſo awkardly do they ſpeak well of what they do not in their Hearts approve, that in Vindication of his late Majeſty (for that's a Part that ſometimes they think uſeful to Act) they declare his moſt glorious Enterprize to ſave a ſinking Nation, utterly Illegal: To recommend themſelves to the Queen, they condemn that Revolution, without which She never had been Queen, and we a moſt unhappy People: To teſtify their Zeal and Affection for the Proteſtant Succeſſion, they invalidate all the Laws that have been made for ſecuring that Bleſſing to Poſterity: And laſtly, to manifeſt their Averſion, and for ever to blaſt all Hopes of the Pretender, they advance and maintain the Hereditary Right, as the only true Right, to the Crown. But what Intereſt theſe Opinions may at one time or other be produced to ſupport, and in favour of whoſe Pretenſions theſe Inſinuations are eaſily underſtood to be, and in favour of what Settlement they can hardly be conſtru'd, I ſubmit to your Lordſhips Conſideration.

The utter Illegality of Reſiſtance, upon any Pretence whatſoever, is the General Poſition laid down in the Sermon, which, if it be ſtrictly, and in the moſt extenſive manner true, The aſſuming and exerciſing a Power of diſpenſing with, and ſuſpending the Laws; The Commitment and Proſecution of the Biſhops; The Erecting a Court of Commiſſioners for Eccleſiaſtical Cauſes; The Levying Money by Pretence of Prerogative; The raiſing and keeping a ſtanding Army without Conſent of Parliament, The Violating the Freedom of Elections of Members to ſerve in Parliament; and all the Grievances enumerated in the Bill of Rights, were all meer Pretences, and not ſufficient to Warrant and Juſtify what was then done, in Defence of the true, ancient, and indubitable Rights and Liberties of the People of this Kingdom; which are now again Enacted, Ratified and Confirm'd, and Enjoin'd to be firmly and ſtrictly holden and obſerv'd. By what Evaſions, or Diſtinctions, the Doctor will explain himſelf off upon this Head, I cannot eaſily foreſee; unleſs he will be ſo ingenuous as now to confeſs, what there is too much Reaſon to believe will be his Opinion, if ever a proper Time ſhall ſerve for declaring, That the Acts of Parliament made upon, and ſince the Revolution, are only the Effects of a happy Uſurpation, and no part of the true Law of the Land.

Reſiſtance is no where Enacted to be Legal, but ſubjected, by all the Laws now in Being, to the greateſt Penalties; 'tis what is not, cannot, nor ought ever to be deſcrib'd, or affirm'd, in any poſitive Law, to be excuſable: When, and upon what never-to-be-expected Occaſions, it may be exerciſed, no Man can foreſee; and ought never to be thought of, but when an utter Subverſion of the Laws of the Realm threaten the whole Frame of a Conſtitution, and no Redreſs can otherwiſe be hoped for: It therefore does, and ought for ever to ſtand, in the Eye and Letter of the Law, as the higheſt Offence. But becauſe any Man, or Party of Men, may not out of Folly or Wantonneſs commit Treaſon, or make their own Diſcontents, ill Principles, or diſguiſed Affections to another Intereſt, a Pretence to reſiſt the Supreme Pow-

er, will it follow from thence, that the utmoſt Neceſſity ought not to engage a Nation in its own Defence, for the Preſervation of the whole? Or on the other ſide, Becauſe the greateſt and moſt inexpreſſible Emergencies did ſufficiently juſtify and warrant the Reſiſtance of the Revolution, will it be a Conſequence, that therefore, upon ev'ry ſlight Pretext or common Occaſion, the Laws that fence againſt Treaſon will be of no Effect? No, my Lords, I hope your juſt Judgment in this Caſe will convince the World, that every *Seditious*, *Diſcontented*, *Hot-headed*, *Ungifted*, *Unedifying Preacher* (the Doctor will pardon me for borrowing one String of Epithets from him, and for once uſing a little of his own Language) who had no Hopes of diſtinguiſhing himſelf in the World, but by a matchleſs Indiſcretion, may not advance, with Impunity, Doctrines deſtructive of the Peace and Quiet of Her Majeſty's Government, and the Proteſtant Succeſſion, and prepare the Minds of the People for an Alteration, by giving them ill Impreſſions of the preſent Eſtabliſhment and its Adminiſtration.

The Doctrine of unlimited, unconditional Paſſive Obedience, was firſt invented to ſupport Arbitrary and Deſpotick Power, and was never promoted or countenanc'd by any Government that had not Deſigns ſome time or other of making uſe of it: What then can be the Deſign of Preaching this Doctrine now, unask'd, unſought for, in Her Majeſty's Reign, where the Law is the only Rule and Meaſure of the Power of the Crown, and of the Obedience of the People? If then this Doctrine can neither be an Advantage or Security to Her Majeſty, who neither wants, nor deſires it, to what End and Purpoſe muſt every thinking Man conclude 'tis now ſet on Foot, but to unhinge the preſent Government, by ſetting aſide all that has been done in Oppoſition to that Doctrine; and when, by theſe Means, the Way is made clear to Another's Title, the People are ready inſtructed to ſubmit to whatever ſhall be impoſed upon them.

It may be expected, after I have ſaid thus much in general, that I ſhou'd proceed to ſhew in what Parts of the Sermon theſe Aſperſions are contain'd: But, my Lords, that Part has been ſo fully and diſtinctly ſpoke to, by thoſe Learned Gentlemen who are more proper, and a great deal more able, to manage that Province, that I will not miſpend your Lordſhips Time, by repeating what has been already ſo fully and juſtly made out; but ſo much I will venture to ſay, That if we remove the Rubbage, with which the Doctor has an excellent Talent at puzzling Common Senſe, and bring together the ſeveral Sentences, that can only be Relative to one another, 'tis impoſſible for the Art of Man to make any Inferences or Conſtructions, ſo cloſe and ſtrong, as the plain and genuine Senſe of the whole Scope of his Sermon, muſt, at firſt View, ſuggeſt to every Man's Underſtanding. And all that the Doctor alledges in his Defence, is, That in the Revolution there was no Reſiſtance at all; and that the King did utterly diſclaim any ſuch Imputation. But ſurely, my Lords, it cannot be now neceſſary to prove Reſiſtance in the Revolution; I ſhould as well expect that your Lordſhips would deſire me, for Form's ſake, to prove the Sun ſhines at Noon-day. If then, there was moſt undoubtedly Reſiſtance uſed to bring about the Revolution, it will follow that all the Cenſures, which are ſo freely beſtowed upon Reſiſtance in general, muſt attend, and will be imputed to the Revolution: And if *Reſiſtance be utterly Illegal, upon any Pretence whatſoever*; if it is a *Sin*, which unrepented of, by the Doctrine of the Church of *England*, carries *ſure and certain Damnation*; if, upon *Repentance*, there is no *Remiſſion of Sins* without a ſtedfaſt Purpoſe to amend the Evil we have done, and to make all poſſible *Reſtitution*, or at leaſt to do our utmoſt Endeavours for that Purpoſe; I beg your Lordſhips to conſider what a Duty is here preſſed, upon the Peril of Damnation, upon every Man's Conſcience, that knows, or believes, that there was Reſiſtance in the Revolution, and is conſcious to himſelf, of being any ways aſſiſting, or even conſenting, to this *Damnable Sin*; and what muſt be the Conſequence, if theſe Doctrines, without any Reſerve or Exception, are with Impunity preach'd throughout the Kingdom. All which, my Lords, I hope is ſufficient to ſatisfy your Lordſhips, that Doctor *Sacheverell* is guilty of the Charge exhibited againſt him in the firſt Article; and that he is an Offender of that Nature and Malignity, that this Court only could be the proper Judges of ſuch High Crimes; and from your Lordſhips Juſtice, the Commons hope, That his Puniſhment will be adequate to the Heinouſneſs of his Offence.

Sir *John Hawles*. MY Lords, I am commanded by the Commons of *Great Britain* to be aſſiſting to the Gentlemen that ſpoke before me, for the proving the Priſoner at the Bar guilty of the Crime charged in the firſt Article of his Impeachment; which is, That he did Suggeſt and Maintain, in his Sermon preached at St. *Paul's*, That the Neceſſary Means uſed to bring about the happy Revolution were odious and unjuſtifiable; and that his late Majeſty in his Declaration diſclaimed the leaſt Imputation of Reſiſtance; and that to impute Reſiſtance to the ſaid Revolution is to caſt black and odious Colours on his late Majeſty. In making good which Article againſt the Doctor, I hope the Gentlemen that have ſpoke before me will Excuſe me, if I make uſe of another Method than what they have done; which I ſhall do, not miſliking the Courſe they have taken, nor that I think the Method I ſhall take is better than theirs, but only becauſe I would not repeat what's ſaid by them, which I am ſure would come with a worſe Grace from me, than it did from them; and becauſe I am ſure what was ſaid is very well remembred by your Lordſhips. What I ſhall offer is, I think, ſomewhat to the Purpoſe, and was not mentioned by the Gentlemen before. As to the Paſſages taken out of the Sermon to prove the Doctor Guilty of the Fact of this Firſt Article, they have been ſo fully open'd, and ſo very well apply'd, that I have very little to add to what has been ſaid; I ſhall therefore only ſay, that the Clauſe of his Sermon, wherein he Aſſerts that "The grand Security of "our Government, and the very Pillar on which it "ſtands, is founded upon the ſteady Belief of the "Subjects Obligation to an abſolute and unconditional Obedience to the Supreme Power in all "things Lawful, and the utter Illegality of Reſiſtance upon any Pretence whatſoever", he lays down not as a Doctrine he would teach his Congregation; but in order to draw an Argument from thence for ſome other Purpoſe; and what that is, appears plainly afterwards. For having alledged ſome Things not proper for the Occaſion for which the Day upon which he preach'd was Solemniz'd, he adds, "Our "Adverſaries think they effectually ſtop our "Mouths, and have us ſure and unanſwerable on "this Point, when they urge the Revolution of "this Day in their Defence; but certainly they are

" the greateſt Enemies of that, and his late Maje-
" ſty, and the moſt ungrateful for their Deliverance,
" who endeavour to caſt ſuch black and odious
" Colours upon both. How often muſt they be
" told, that the late King himſelf ſolemnly diſ-
" claim'd the leaſt Imputation of Reſiſtance"? By which 'tis plain, that the Poſition of the Subjects Obligation to an abſolute and unconditional Obedience to the Supream Power laid down, was only to ſhock and lay odious Colours upon the Revolution, or the Means whereby it was brought about; he knowing that the Means whereby the Revolution was brought about was by Force, and he knew it was ſo declared by the Act of Parliament made in the firſt Year of King *William* and Queen *Mary*, for preventing vexatious Suits againſt ſuch as acted in Order to the bringing in the late King and Queen. And tho' he would inſinuate that the ſame was not done by Force, I muſt own he does not aſſert that either it was or was not done by Force; but he ſtrongly inſinuates it was not done by Force, when he aſſerts, tho' untruly, that the late King diſclaim'd any Reſiſtance upon his coming. I'll ſay nothing more as to that Matter; and nothing as to that other, that has been largely open'd, relating to the Subjects Obligation to an abſolute and unconditional Obedience to the Supreme Power; the rather, becauſe, if it was doubtful, the Acts of Parliament mention'd in the Preface to the Articles, whereby the Revolution has been declar'd to be a glorious Enterprize, and the Means whereby it was brought about juſtified, have determin'd that Matter; and becauſe your Lordſhips, as I think, will not ſuffer the Doctor or his Council to ſay any thing againſt the Revolution, or the Means whereby it was brought about.

The Commons of *Great Britain* own your Lordſhips to be the Supreme Court of Judicature in this Goverment, but yet they think that Acts of Parliament, whereof your Lordſhips are in part the Makers, are as binding upon your Lordſhips, as a Court of Judicature, as they are upon any Court of *Weſtminſter-Hall*, where Matters determin'd by Act of Parliament are never ſuffer'd to be diſputed afterwards; but I own, what is practis'd in *Weſtminſter-Hall* is not a Rule whereby your Lordſhips ought to be govern'd, and therefore I rely only upon the Reaſon of what I aſſerted; for altho' your Lordſhips are the Supreme Court, and from whom no Appeal lyes to any other Court of Judicature, yet your Lordſhips, as you are Part of the Legiſlature, are greater than you are in your Judicial Capacity, in which you are ſubject to the Law; tho' in your Legiſlative Capacity, in Concurrence with two other Powers, you are above the Law. It is therefore incongruous, that a Court of Perſons of leſs Power ſhould judge otherwiſe than the Court of greater Power had determin'd; but this I ſubmit to your Lordſhips, and am ſure the Gentlemen of Council with the Doctor know their Duty ſo well in this Matter, that they will not give your Lordſhips the Trouble of an Admonition upon this Occaſion. I won't add more upon this Subject, but proceed, with your Lordſhip's Permiſſion, to prove the Doctor Guilty of what he is charg'd with in this Firſt Article, by the Doctrine by himſelf laid down in his Sermon, and admit for Argument-ſake the ſame to be true; tho' this I muſt aſſert, that he carries the Doctrine ſomewhat farther than the Apoſtles did in ſome Reſpect, but in other Reſpects ſeems to reſtrain it more than they did. In the reſtraining Part he ſeems to confine the abſolute and unconditional Obedience to Things lawful; which Reſtraint looks like ſomething, but in Truth, upon Examination, is nothing; for ſuppoſe the Supreme Power Commands the Subject to do ſomething which it thinks is Lawful, but the Subject not willing to Obey, pretending the thing to be Unlawful, the true Reaſons being that they are chargeable, troubleſome, hazardous, or the like; in this Caſe who is to be Judge, the Supreme Power, or the Subject? In the Reaſon of the thing, neither of them are proper Judges; for the Supreme Power will be byaſs'd, by reaſon of the Command given by them at firſt, and will be aſham'd to own what they commanded was Unlawful, and therefore will give Judgment on their own ſide, to juſtify themſelves in what they have commanded; and the Subject will be as much byaſs'd for the ſame Reaſon that he was at firſt diſſatisfied with the Command. And there being no higher Power of Authority to Appeal to than the Supreme Power, that muſt needs be the Judge, from whom there can be no Appeal. But perhaps the Doctor and I differ in the Perſons in whom the Supreme Power is lodg'd; for the Doctor has not mention'd that Matter, either in his Sermon, or in his Anſwer to the Articles; but I hope, in the Anſwer he is to give to what's now objected againſt him, he will tell us in whom that Power is lodg'd. I'll tell him in whom I think it is lodg'd, I think it is lodg'd in the Queen's Majeſty, the Lords Spiritual and Temporal and Commons in Parliament aſſembled: And I think when the Acts mentioned in the Impeachment did paſs (except the Act for declaring the Rights and Liberties of the Subject) the Supreme Power was lodg'd in the late King *William* and Queen *Mary*, and the Lords Spiritual and Temporal and Commons in Parliament aſſembled. But as the Doctor ſeems to have reſtrain'd his Doctrine of Non-Reſiſtance, he has as much enlarged his Doctrine of Abſolute Obedience; for, as I think, what hitherto written or aſſerted, upon the Occaſion of that Matter, went no further than Paſſive Obedience and Non-Reſiſtance; but the Priſoner's Doctrine extends to Active Obedience as well as Paſſive; becauſe, as I think, the Words of the Apoſtles, from whom this Doctrine is taken, ſeems to reſtrain it only to Paſſive Obedience and Non-Reſiſtance; and the Reaſons why the Apoſtles inculcated no other Obedience, as I believe, was, becauſe that was ſufficient to ſecure the Government under which the Apoſtles liv'd, which was the *Roman* Government, and which ſtood in Fear of no Foreign Force, and which Government was ſaid and believ'd could not be ruin'd but by its own Subjects, which afterwards prov'd to be true. That that their Doctrine was the Doctrine of Chriſtianity, and truly ſo call'd, I'll readily agree to the Priſoner; but I do not think that Chriſtianity introduc'd that Doctrine into the World; for I think, as the Doctor does, that it was as ancient as Government, becauſe it was impoſſible that Government could ſubſiſt, unleſs ſupported by its Subjects; but how ancient that Doctrine was, can't be aſſerted, without knowing how Government came to be introduc'd into the World. If it was Patriarchal, as ſome have aſſerted, it was as ancient as *Adam*; if it was introduc'd by Conqueſt, then its Date was no higher than *Nimrod*; if it was by Compact, then I can't ſay when it began; but this is certain, that it was as ancient as the *Roman* People, which was above ſeven Hundred Years before the Coming of our Saviour; but how long before the *Roman*

Name was known, I can't take upon me to ſay. But tho' this Doctrine was not introduc'd by Chriſtianity, yet I think it may well and properly be call'd the Chriſtian Doctrine; for tho' amongſt the Heathens it was a Political Law, and oblig'd (as other Laws did) for fear of Puniſhment; yet Chriſtianity firſt preſs'd this Doctrine upon the Conſcience of the Subject, which no other Religion did, and that was ſufficient to entitle it to the Name of Chriſtian. But the Doctor, as I ſaid, has carry'd it farther than the Words of the Apoſtles did, extending it to an Active Obedience, which the Words of the Apoſtles do not warrant, in the Strictneſs of the Expreſſions. But yet I won't conteſt with the Doctor in that Matter; for if the Doctrine, as preach'd by the Apoſtles, was ſufficient to ſecure the Government they liv'd under, as it was, and that Doctrine is not ſufficient to ſecure the Government we now live under, as it is not; the Doctor might very well think, that what he now aſſerts, by the Equity, as we call it (that is) the Reaſon of the Doctrine preach'd by the Apoſtles, was well warranted.

Having thus ſtated the Matter of the Subjects Obedience to the Supreme Powers, in which I have agreed with the Doctrine ſet forth in the Sermon, I can't imagine how the Doctor can juſtify himſelf in declaring againſt the Revolution, as he has done; when he knows, as well as any, that the Revolution has been juſtify'd by the Supreme Power, in the Acts of Parliament mention'd: For certainly it muſt be granted, that the Doctrine that commands Obedience to the Supreme Power, tho' in Things contrary to Nature, even to ſuffer Death, which is the higheſt Injuſtice that can be done a Man, rather than make an Oppoſition to the Supreme Power; becauſe the Death of one, or ſome few private Perſons, is a leſs Evil than diſturbing the whole Government; that Law muſt needs be underſtood to forbid the doing, or ſaying any Thing to diſturb the Government, the rather, becauſe the obeying that Law cannot be pretended to be againſt Nature: And the Doctor's refuſing to obey that implicit Law, is the Reaſon for which he is now proſecuted; tho' he would have it believ'd, that the Reaſon he is now proſecuted, was for the Doctrine he aſſerted of Obedience to the Supreme Power; which he might have preach'd as long as he had pleas'd, and the Commons would have taken no Offence at it, if he had ſtopt there, and not have taken upon him, on that Pretence or Occaſion, to have caſt odious Colours upon the Revolution. If he is of the Opinion he pretends, I can't imagine how it comes to paſs, that he that pays that Deference to the Supreme Power, has preach'd ſo directly contrary to the Determinations of the Supreme Power in this Government; he very well knowing that the Lawfulneſs of the Revolution, and of the Means whereby it was brought about, has already been determin'd by the aforeſaid Acts of Parliament; and do it in the worſt manner that he could invent. For queſtioning the Right to the Crown here in *England*, has procur'd the ſhedding of more Blood, and caus'd more Slaughter, than all the other Matters tending to Diſturbances in the Government put together. If therefore the Doctrine which the Apoſtles have laid down, was only to continue the Peace of the World, as thinking the Death of ſome few particular Perſons better to be born with than a Civil War; ſure it is the higheſt Breach of that Law, to queſtion the firſt Principles of this Government.

It is not forgotten how much Blood was ſpilt upon the Account of the Title between the Houſes of *York* and *Lancaſter*, in which the Learned in the Law did differ; and the ſetting on Foot that Queſtion of the Title of the preſent Government, which was above Twenty Years ago determin'd, and that Determination acquieſc'd in from that Time till now, in all Probability, if not ſuppreſs'd, would tend to as great Miſchief as that War entail'd on the Nation. But yet the Doctor, who preaches up the Subjects Submiſſion to the Supreme Power, even to Death it ſelf, thinks he hath not only a Licenſe, but a Command from God, to enquire into the late King and Queen's Right to the Crown; and to blow a Trumpet, to ſet his Fellow-Subjects to cut one another's Throats upon that Account. This ſurely is the abſurdeſt Conſtruction of a Text that ever was made; and yet this I'll ſay is the Caſe, if you'll compare the Priſoner's Practice with his Doctrine.

Methinks the Doctor ought to have conſider'd what our Saviour and his Apoſtles did in their Time: We don't find that any of them ever queſtion'd the Title of the Emperors under whoſe Government they liv'd; or ever ſaid any thing relating to their Titles, or that Power they exercis'd; and yet if they had thought it lawful or expedient, they had juſt Occaſions to have done it. St. *John*, the Survivor of the Apoſtles, liv'd (as 'tis ſaid) to the Time of *Trajan*; ſo that by that Account he liv'd under Thirteen Emperors, including *Auguſtus* and *Trajan*; and yet neither of them had ſo much as a Pretence of Right to the Empire, according to the Opinion we have of that Right now. The firſt and laſt of thoſe Emperors were the very beſt the *Romans* had, except perhaps *Titus Veſpaſian*; and yet *Auguſtus* came to the Empire by the worſt Means of any of them, for he waded thro' a Sea of Blood, and was guilty of a great many Acts of Treachery and Cruelty: But after the World had reap'd ſo many Benefits by his Excellent Government, it forgot the Iniquity of the Means whereby the Empire was obtain'd. And the beſt Means of obtaining the Empire, by the following Emperors, till the Time of *Titus Veſpaſian*, were by Force, and moſt of them by Treacherous Murders; and yet we don't find, that either our Saviour, or his Apoſtles, reproach'd any of thoſe Emperors with the Injuſtice of the Means whereby they became ſo. And methinks it would have become the Doctor to have follow'd thoſe good Examples. But the Doctor is of another Opinion, and thinks the aforeſaid Words of *Iſaiah*, to *Cry aloud*, &c. do well warrant that his Opinion; not conſidering that that Prophet had that Expreſs Command from God, for reproving the Hypocriſy of the *Jews*: And if the Doctor had the like Command for Preaching as he has done, I think he has quoted a good Authority for ſo doing; but he muſt give us a better Proof of ſuch Command than hitherto he hath done.

If he thinks the Command given to *Iſaiah* extends to him; how came it to paſs that the Apoſtles did not think that the ſame Command extended to them? Did not they live nearer the Time of *Iſaiah*? Were not they acquainted with the Writings of *Iſaiah*, as well or better than the Doctor, and ſo might have known the Authority given to that Prophet better than the Doctor? but yet forbore to do as the Doctor has done: And their having forborn ſo to do, cannot proceed from any other Reaſon, than that they thought thoſe Words did not extend to the Apoſtles; or that they thought

thought it was not Lawful or Expedient for them to queſtion the Title of thoſe Princes, or the Juſtice or Means whereby they obtained it.

I'll only add to this Matter, That if the Doctor had been contented with the Liberty he took of Preaching up the Duty of Paſſive Obedience in the moſt extenſive manner he had thought fit, and would have ſtopp'd there, your Lordſhips would not have had the Trouble in relation to him that you now have; but it is plain, that he preached up his Abſolute and Unconditional Obedience, not to continue the Peace and Tranquility of this Nation, but to ſet the Subjects at ſtrife, and to raiſe a War in the Bowels of this Nation; and it is for this that he is now proſecuted; tho' he would fain have it believed, that the Proſecution was for Preaching the peaceable Doctrine of Abſolute Obedience.

I can't but take notice of the Scandal the Doctor charges upon the late King, as if when he landed here, he had diſclaimed all manner of Imputation of Reſiſtance; than which nothing is more untrue, even by his own Confeſſion in his Anſwer, and the Words of the Declaration mention'd in the Print of the Sermon, tho' no Part of the Sermon; whereby he pretends to explain himſelf, by ſaying, He intended a Diſclaimer of Reſiſtance in order to a Conqueſt; than which nothing could be more abſurd: For never was a Conqueſt made, or ever will be made, by bare Reſiſtance; nor ever was there a weaker Thing charged upon a Prince, than to make him diſclaim all Reſiſtance, at a Time when he was actually making War: For his bringing an armed Force of that Number he did into this Kingdom, with a great Train of Artillery with him, was making War by the Law of Nations, and then and now by the Law of *Great Britain*: And he hath charged the Prince of *Orange* with an Act of the higheſt Treachery, in pretending Peace, when he actually made War.

The laſt Matter I ſhall take notice of, are the Words in the Nineteenth Page of the Doctor's Sermon; *viz. That old Leaven of their Forefathers is ſtill working in the preſent Generation; that this traditional Poyſon ſtill remains in this Brood of Vipers, to ſting us to Death, is ſufficiently viſible, as to the dangerous Encroachment they now make upon our Government, and the treaſonable Reflection they have publiſhed upon Her Majeſty, God bleſs Her! whoſe Hereditary Right to the Throne they have had the Impudence to Deny and Cancel, to make Her a Creature of their own Power; and that by the ſame Principles they placed a Crown upon Her, they tell us, they (that is, the Mob) may Reaſſume it at their Pleaſure.* Now I think it cannot be doubted who it is the Doctor means by the Word *Mob*, which is the People of *England*: For tho' the Word *Mob* is a Cant Word amongſt a Sort of People called Gypſies, and with them ſignifies the Meaneſt, or the Scum or Dregs of the People, yet as the Doctor has uſed it in this Place, it can ſignify nothing elſe than the Body of the People of *England*; of whom, I think, your Lordſhips do not think it beneath you to be thought a Part, and the Chiefeſt Part: For he aſſerts, They ſay, that they placed a Crown upon Her Majeſty; and from thence makes an Inference, that they may reaſſume it at their Pleaſure; which can be intended nothing elſe than what was done in reſpect of Her Majeſty by the Bill of Rights; wherein 'tis ſaid, "That the "Lords Spiritual and Temporal, and Commons in "Parliament aſſembled, did declare Her Majeſty, "after the Death of the late King and late Queen, "without Heirs of her Body, was Lawful and "Rightful Queen of this Realm. Now, tho' Her Majeſty hath an Hereditary Right and Title to the Crown, and ſo She is not ſo much concerned in the Declaration by the ſaid Act, as the laſt King and Queen, in what that Act conferred upon them, which was done only by the People of *England*, under the Denomination of Lords Spiritual and Temporal, and Commons in Parliament aſſembled: And if that did not confer a Title to the Crown on the late King and Queen, they, who were in their Lives Time thought to be lawful and rightful King and Queen of theſe Realms, by the Doctor's Reaſoning, were no better than the Uſurpers of another's Right. And tho' that Bill of Rights was afterwards confirmed by an Act in the Second Year of their Reign, yet that will not at all mend the Matter; for if they did not obtain a Right, by the Bill of Rights, to the Crown of theſe Realms, they were no more King and Queen of theſe Realms, than they were before the ſaid Bill of Rights. But the Truth is, that when a Government is brought out of Frame, by the extraordinary Steps of a Prince, 'tis a vain Thing to hope that it ever can be ſet right by regular Steps; this never was done, nor ever will be done: But thoſe Methods which were neceſſary to ſet the Government in a right Frame again, have been always taken to be Legal, tho' by the Nicety of Law it could not be well juſtified. Upon the Change of Government from *Richard* the Second to *Henry* the Fourth, the Parliament called in the Time of *Richard* the Second, and by his Authority, continued to ſit in the Time of *Henry* the Fourth, and paſſed ſeveral Acts in the Time of *Henry* the Fourth; which was never practiſed before, nor warranted by any Laws that we know of; yet what was done, was allowed to be Legal. To the ſame Purpoſe was that which was done in the Time of *Henry* the Seventh: For he and thoſe of his Friends being attainted of High Treaſon, which, according to the Rules of Law at that Time, prevented the Deſcent of the Crown on him; and his Friends being moſtly attainted, were uncapable of Sitting in Parliament till thoſe Attainders were reverſed, which could not be done but by Act of Parliament, or the Court of *King's-Bench*; and he did not care to have a Parliament, till his Friends were capable of ſitting there; nor could he make Judges, till he was King; which Difficulty ſeemed to be inſuperable: But the Judges made a Reſolution according to the Exigence of the Thing, and declared that Sir *William Stanley*'s placing the Crown upon the Earl of *Richmond*'s Head, purged his Attainder, and he thereby became from thenceforwards King of *England*, and the King thereby enabled to Conſtitute Judges, and the Judges to reverſe the Attainder of all the King's Friends. 'Tis true, *Henry* the Seventh married the Heireſs of the Houſe of *York*, and was thereby (as we now think) King in Right of his Queen; but he never would own her Title to the Crown, nor ever ſuffered her to join with him in any Act of Government, nor ever declared by what Title he poſſeſs'd the Crown; but yet none of the Acts paſs'd in his Time, nor any Thing then tranſacted, was afterwards queſtion'd upon the Account of his Title to the Crown. 'Tis true, there was an Act paſs'd in his Time, that indemnified ſuch as ſhould Obey, or Aſſiſt the King that was in Being, whether he had Right to the Crown or no: But if he had not been allowed to be King before the paſſing of that Act, the Acts of Parliament that paſſed in his Time would have been of no more Validity,

lidity, than the Acts paſſed in the Time of *Cromwell*, or any other Uſurper. Whereby 'tis plain, that the Doctor now, and the Perſons who had the beſt Knowledge of Matters of this kind in thoſe Days, diſagreed in Opinion. And I can't but take notice, that the Doctor, notwithſtanding his little Knowledge in the Matters he diſcourſes of, makes the Declaration by Parliament of the Queen's Title to the Crown, to be the Cancelling of Her Title by Deſcent; and therefore he ſeems to adviſe Her Majeſty, to quit that Title She claims from Her People, and to rely upon Her Title by Inheritance. Whereas, if the Doctor had but known what our Law allows, or if he had read any thing of this Matter, he would have known that thoſe Titles did by no means diſagree, but were conſiſtent with one another; and that Princes that ſometimes have claimed by ſeveral Titles, would not make their Choice of which they relied on. *Henry* the Eighth, who was Heir of the Houſe of *York* and *Lancaſter*, never declared on which Title he relied. Queen *Elizabeth*, after the Death of her Brother and Siſter, claimed as Heir to *Henry* the Eighth, and was likewiſe Deviſee of the Government of *England* by the Will of her Father, who was (by Act of Parliament) enabled to give it by his Will to whom he pleaſed: But notwithſtanding that, ſhe deſired to have an Act of Parliament, which ſhe had, declaring her to be Queen of *England*, &c. Which Act of Parliament was to the ſame Purpoſe, as was the Bill of Rights in reſpect of Her Majeſty's Title to the Crown. I'll trouble your Lordſhips with no more, to prove the Priſoner guilty of the Crimes charged upon him by the Firſt Arricle of the Impeachment; but I cannot but obſerve ſome aggravating Circumſtances of the Priſoner's Crime. As firſt, That the Doctrine in the Impeachment was preach'd by a Divine of the Church of *England* as by Law Eſtabliſhed: For a Divine of the Church of *England* is a Perſon of that Credit, that the People are ready to aſſent to what he ſays, without conſidering what the ſame is, or how made out. In the next place, 'Twas preach'd in the Cathedral-Church of the Metropolis of this Kingdom: Had it been preach'd in ſome obſcure Country Town, 'twould have hardly been taken notice of. In the Third place, 'Twas preach'd before the Lord-Mayor and Court of Aldermen of the City of *London*, and ſo far approv'd of by them, or ſome of them, as to be Commanded to be printed; for which Reaſon, what he preach'd hath done more Miſchief than otherwiſe 'twould have done; there having been about Forty Thouſand printed, to vilify the Revolution, on which depends the Security of the Proteſtant Religion both at Home and Abroad, and the Succeſſion of the Crown in the Proteſtant Line, the Union of the Two Kingdoms, the Queen's Bounty to the poor Clergy, and ſeveral other Benefits we enjoy by the Revolution, and amongſt others, that Her Majeſty was and is ſo peaceably poſſeſs'd of the Crown. For if the Force before the Revolution, which ſuppreſs'd Her Majeſty's Hereditary Right to the Crown, had not been removed by the Revolution, as 'twas, that Her Majeſty's Title would never have been able to have exerted it ſelf: And if ever the Doctor, or any of his Accomplices, ſhould ever be able ſo to ſhock the Revolution, as to remove what is built upon it, I doubt that Force which the Revolution removed, will return again, and oppreſs the Queen's Title to the Crown, as it did before.

I can't paſs by the Doctor's Anſwer to the Articles, without taking Notice of one Paſſage in the ſame, *viz. Hard is the Lot of the Miniſters of the Goſpel, if when they Cite the Word of God in their general Exhortations to Piety and Virtue, the ſeveral Texts by them Cited ſhould be ſaid to be by them meant of particular Perſons and Things.* Now I muſt ſubmit to your Lordſhips Judgment the Unreaſonableneſs of this Complaint; and whether the ſeveral Texts and Paſſages cited by him in his Sermon, can bear any other Conſtruction than what has been made; and whether it be not the Duty of the Preacher to deliver himſelf ſo in the Pulpit, that his Meaning ſhould not be doubtful to his Congregation. The Commons of *Great-Britain* don't go about to make him Aſſent or Swear to what the Supreme Power hath determin'd, tho' the Doctor in his Sermon has thought fit to impoſe Matters of that kind upon other Perſons, ſo as to make them Swear to them: No, the Commons of *Great-Britain* would only have him reſtrained from publiſhing any thing, and eſpecially in the Pulpit, which reflects upon the Supreme Power; or what they have or ſhall determine, which even the niceſt Conſcience never yet boggled at. I can add more Aggravations of the Doctor's Crimes, but will forbear to do it, rather following the Example of the Commons of *Great-Britain*; who have, indeed, demanded Judgment againſt this Perſon of your Lordſhips, but they have done it in Mercy; for they might have charged theſe Matters againſt the Doctor as High-Treaſon, and ſo it has been done in Indictments againſt ſome Divines, in a Reign known to your Lordſhips, for Matters in their Sermons leſs Heinous than thoſe for which he is Impeached; yet the Commons have called the Matters of this Impeachment only High Crimes and Miſdemeanors; and it is a Rule in our Law, that the Court in which a Proſecution is had, cannot call the Crimes greater than what the Proſecutor thought fit to charge them, and cannot adjudge a greater Puniſhment to the Crimes than uſual; but in ſome Caſes may leſſen the Puniſhment for ſuch Crimes; and whatſoever Cenſure your Lordſhips ſhall paſs upon this Criminal, the Commons of *England* will acquieſce, and be well ſatisfy'd with the ſame.

Major-General Stanhope. MY Lords, The Gentlemen who ſpoke before me to this Article, have ſaid ſo much to it, that they have left little to me, who am laſt in it. I ſhall therefore particularly apply my ſelf to make out to your Lordſhips, that as the Priſoner at the Bar is guilty of the Matter charg'd in this Firſt Article, ſo he has done it (as the Preamble of the Article ſets forth) with a Wicked and Malicious Intention to Undermine and Subvert Her Majeſty's Government, and the Proteſtant Succeſſion as by Law Eſtabliſhed; to Defame Her Majeſty's Adminiſtration; to Aſperſe the Memory of His late Majeſty, and to Traduce and Condemn the late happy Revolution; as in the ſame Preamble to the Articles it is charged againſt him.

My Lords, if it be Truth, (as your Lordſhips have been told by moſt of the Gentlemen who went before me) that Non-Reſiſtance, aſſerted in general Terms, does deſtroy the Foundation of the Revolution, the preſent Eſtabliſhment, and Her Majeſty's Title to the Crown, and the Settlement of the Proteſtant Succeſſion; If that be true, it is as true, that the Doctor, who has advanced that Doctrine in general Terms, is guilty of that Charge of intending to ſubvert the Government: And then your

your Lordſhips ought to proceed againſt him, as an Enemy to the Government.

What has been ſaid by the Gentlemen that ſpoke before me, concerning the Doctrine of Non-Reſiſtance, has been ſaid with ſo much Regard to Truth, to Her Majeſty and Her Government, that I am perſuaded, nothing that has been ſaid on that Subject can juſtly be miſconſtrued. But on the contrary, to aſſert in general Terms the abſolute Illegality of Reſiſtance, on any Pretence whatſoever, (as this Doctor, and all the profeſs'd Enemies of the Government avowedly do) muſt be underſtood, by all impartial and thinking People, to overthrow Her Majeſty's Title and Government; ſince at the ſame Time that they ſkreen themſelves under the ſpecious Notion of profeſſing Abſolute and Paſſive Obedience to the Supreme Powers, they cannot conceal their true Meaning; That the true and real Object of their darling Doctrines, ſuch as *Jus Divinum*, *Non-Reſiſtance*, *the Undefeaſible*, *Unalienable*, *Hereditary Right*, that (I ſay) the true Object of theſe Doctrines, is a Prince on the other ſide the Water. They could not otherways be conſiſtent with themſelves. For in the ſame Breath, in the ſame Diſcourſe, to preach Paſſive Unlimited Obedience to Magiſtrates, and to revile and defame the Magiſtrates; to preach Non-Reſiſtance on any Pretence whatſoever, and to encourage Sedition, by inveighing in the ſtrongeſt manner againſt the Adminiſtration; theſe are ſuch Contradictions, as can no otherways be reconcil'd, no otherways, than by concluding, what is very plain from their Conduct, that however they are pleaſed to colour and diſguize their Diſcourſes, their true End is only to diſengage and alienate the People's Affections from their preſent Governors; to inſinuate to them, that the Foundation of the Revolution was wrong; that the Revolution it ſelf was an Uſurpation; that whatever has been built upon that Foundation, can have no Weight; and to miſrepreſent thoſe who had a Hand in it, as Rebels and Traytors.

As to the Doctrine it ſelf of abſolute Non-Reſiſtance, it ſhould ſeem needleſs to prove by Arguments, that it is inconſiſtent with the Law of Reaſon, with the Law of Nature, and with the Practice of all Ages and Countries. Nor is it very material, what the Opinions of ſome particular Divines, or even the Doctrine generally preach'd in ſome particular Reigns, may have been concerning it. It is ſufficient for us to know what the Practice of the Church of *England* has been, when it found it ſelf oppreſſed. And indeed, one may appeal to the Practice of all Churches, of all States, and of all Nations in the World, how they behaved themſelves when they found their Civil and Religious Conſtitutions invaded and oppreſſed by Tyranny: I believe one may further venture to ſay, that there is not, at this Day, ſubſiſting any Nation or Government in the World, whoſe firſt Original did not receive its Foundation either from Reſiſtance, or Compact: And as to our purpoſe, it is equal, if the latter be admitted. For where-ever Compact is admitted, there muſt be admitted likewiſe a Right to defend the Rights accruing by ſuch Compact. To argue the Municipal Laws of a Country in this Caſe, is idle. Thoſe Laws were only made for the common Courſe of Things; and can never be underſtood to have been deſigned to defeat the End of all Laws whatſoever; which would be the Conſequence of a Nation's tamely ſubmitting to a Violation of all their Divine and Human Rights.

That there is a Latitude left to the Subjects in ſuch a Caſe, is allowed by the moſt ſtrenuous Advocates of Paſſive-Obedience: And I ſhall on this Occaſion quote to your Lordſhips, the Sermon of a Reverend Divine, who, I am ſure, is not thought to be a Favourer of Antimonarchical Principles; nor to deſerve any of thoſe pretty Epithets, which the Doctor ſo liberally beſtows on thoſe who differ from him in Opinion. 'Tis the *Latin* Sermon of Doctor *Atterbury*, preached to the Convocation. The Scope and Drift of that Diſcourſe, my Lords, was to preach up Abſolute Obedience; yet ſuch is the invincible Force of Truth, and ſuch the Nature of this Argument, that the Doctor, not to betray his own Conſcience, after having well thought upon it, is obliged to expreſs himſelf in the following Words, which your Lordſhips will give me Leave to read to you out of his Sermon, which I have here in my Hand. *Quando autem, quibuſq; de cauſis Magiſtratuum imperia detrectare*, Noſpetipſos in libertatem vindicare *liceat*, *ne verbulo quidem indicant: niſi cum aliquid ab hominibus fortè imperatum fuerit, latis à Deo legibus contrarium. Id ubi acciderit, quid agendum ſit, Petri vox illa declarat*, Obedire oportet Deo magis quam Hominibus.

The Senſe of this Paſſage, my Lords, if I miſtake not, is this: "But when, and upon what "Cauſes it may be lawful to oppoſe the Power "of the Prince, and *aſſert our Liberties*, the Scrip- "tures do not ſay; unleſs in Caſes when Men ſhall "command Things contrary to the Laws of God. "When that ſhall happen, St. *Peter* tells us what "we muſt do, *We muſt Obey God before Men.*

To apply this, my Lords, to our preſent Argument; I appeal to the Memory of your Lordſhips, whether King *James* did not command Things contrary to the Laws of God; whether his Commands to the Reverend Fathers of our Church were conſonant to the Law of God; whether his Commands to execute a Diſpenſing Power; whether his Commands to all ſuch of both Houſes, as he could influence to vote for a Diſpenſing Power, contrary to their own Conſciences, were agreeable to the Law of God; or, in ſhort, whether the whole Courſe of his Reign was not a Series of illegal Commands, calculated to deſtroy our Holy Religion, and to violate all our Religious and Civil Rights. Your Lordſhips thought ſo (my Lords;) the Commons thought ſo; and the Nation thought ſo; and in Conſequence of this Doctrine, preach'd by St. *Peter*, they choſe to obey God before Men.

But to return to Dr. *Atterbury*'s Sermon, he goes on thus, my Lords. *Petenda ſunt iſta (ſi quidem peti neceſſe ſit) à Juriſconſultis, à Theſium Politicarum tractatoribus; è legibus, è Rerumpublicarum Formis, cuiq; Genti propriis, tanquam è fonte ſuo, ſunt haurienda.*

In *Engliſh* thus.

"But in ſuch Caſes, you muſt adviſe with the "Lawyers, and thoſe learned in Politicks; and "have Recourſe to the Laws and Conſtitutions pecu- "liar to each ſeveral Country, as to the Springs "and Fountains of this Knowledge.

My Lords, in Compliance to what is recommended by this Reverend Dean, I have endeavoured to follow his Advice, to conſult with thoſe learned in the Laws of Nations, and Politicks. I have heard that *Grotius* is of as good Authority on thoſe Subjects as any that have wrote about them; that he has ever been reckon'd a Favourer of Monarchy, and held in great Repute amongſt the Divines of our Church.

Church. I ſhall beg Leave, out of the many Paſſages to be found in his excellent Treatiſe *de Jure Belli & Pacis*, which ſupport this Argument, to quote only one, for the ſaving of your Lordſhips Time. 'Tis in his Firſt Book, the 4th Chapter, and 13th Section. *Si Rex partem habeat ſummi Imperii, partem alteram Populus, aut Senatus, Regi in partem non ſuam involanti vis juſta opponi poterit, quia eatenus imperium non habet: quod locum habere cenſeo, etiamſi dictum ſit, Belli poteſtatem penes Regem fore; id enim de bello externo intelligendum eſt, cùm alioquin quiſquis Imperii ſummi partem habeat, non poſſit non jus habere eam partem tuendi.*

The Senſe of this Paſſage I conceive to be this, "If the King hath one Part of the Supreme Power, "and that the other Part is in the Senate, or Peo- "ple, when ſuch a King ſhall invade that Part that "doth not belong to him, it ſhall be lawful to op- "poſe a juſt Force to him, becauſe his Power doth "not extend ſo far. Which Poſition I hold to be "true, even tho' the Power of making War ſhould "be veſted only in the King; which muſt be un- "derſtood to relate only to Foreign War: For as for "Home, it is impoſſible for any to have a Share of "the Supreme Power, and not to have likewiſe a "Right to defend that Share.

This Paſſage, my Lords, is exactly adapted to the Conſtitution of *England*; and the latter Part of it is perfectly agreeable to what I have always heard quoted as a Maxim of our Law, *That where-ever there is a Right, there is a Remedy.* That your Lordſhips have Rights, no Body will preſume to deny; that the Commons have Rights, no Body will deny; that every Subject of *Britain* has Rights, no Body will deny. Now to ſay that, when a Prince ſhall invade all theſe Rights at once; to ſay that the whole Collective Body of the Nation has no way to vindicate thoſe Rights, is ſo inconſiſtent, ſo contrary to Reaſon, that 'tis to be wonder'd it could ever enter into the Mind of Man.

If I did not fear to tire your Lordſhips, I might, from many Paſſages out of *Forteſcue* *, and Mr. *Hooker* †, evince beyond Contradiction, that the Conſtitution of *England* is founded upon Compact; and that the Subjects of this Kingdom have, in their ſeveral publick and private Capacities, as legal a Title to what are their Rights by Law, as a Prince to the Poſſeſſion of his Crown.

Your Lordſhips, and moſt that hear me, are Witneſſes, and muſt remember the Neceſſities of thoſe Times which brought about the Revolution: That no other Remedy was left to preſerve our Religion and Liberties; that Reſiſtance was Neceſſary, and conſequently Juſt. It was then by no good Man thought a black and odious Crime to take up Arms for the Defence of his Country. Many of your Lordſhips were Actors in that Reſiſtance. The greateſt Part of the Nation did either actually reſiſt, or countenance, abett, and ſupport thoſe who ſet them the glorious Example. I hope we have all ſo much Gratitude to the beſt and greateſt of Queens, as to retain for ever a grateful Memory, how great a Share Her Majeſty had in promoting that Revolution. When theſe Facts are ſo freſh in our Memories; What muſt we ſay to thoſe who give the injurious Names and Epithets of *Republicans*, of *Enemies and Traytors to Church and State*, to thoſe who were concerned in that Reſiſtance which brought about the Revolution? Sure it might have become them to conſider *who* were concerned, and *who* had a Share in it. It is not only traducing the late King and Queen, our Glorious Deliverers; it goes yet further: But I ſhall out of Reſpect forbear to mention what they not only think, but have frequently the Inſolence to own.

My Lords, If it be true that this Doctrine of Non-Reſiſtance, aſſerted in ſo unlimited a Senſe, as not to except the Revolution, does certainly ſap the Foundation of the ſaid Revolution, and the preſent Eſtabliſhment which is built upon it; If it be true that to arraign as guilty of black and odious Crimes, all ſuch as were concerned in the Reſiſtance at the Revolution, doth involve the greateſt Part of this Nation in the Guilt of Rebellion, and Treaſon; If it neceſſarily follows, from the ſame Poſitions, that our Allegiance is not due to the preſent Government; I think we may as neceſſarily conclude, that this Sermon of the Doctor's, before your Lordſhips, does tend, as is ſet forth in the Preamble of the Impeachment, to undermine and ſubvert Her Majeſty's Government, and the Proteſtant Succeſſion, which ſtands on the ſame Foundation.

My Lords, If the Doctor had in this Sermon only preached up Obedience to the Supreme Power, as a Chriſtian Duty, without meddling with Politicks, he might have been allow'd perhaps to plead for Excuſe, that he was ignorant of the Conſequences that might be deduced from ſuch general Propoſitions; that his only Aim was Charity, Peace, and Submiſſion to the Magiſtrates in Being. We muſt therefore pray your Lordſhips to compare one Part of his Sermon with the other; and your Lordſhips will then, I am perſuaded, be of Opinion with us, not only that the Concluſion we have drawn from his Poſitions, does neceſſarily flow from them, but that the Doctor himſelf muſt have been conſcious of it; and conſequently that what he has done, muſt have been, as we ſet forth in our Charge, *with a wicked and malicious Intention.*

Had the Doctor, my Lords, in the remaining Part of his Sermon, preach'd up Peace, Quietneſs, and the like; and ſhewn how happy we are under Her Majeſty's Adminiſtration; and exhorted Obedience to it, he had never been called to anſwer a Charge at your Lordſhips Bar. But the Tenor of all his ſubſequent Diſcourſe, is one continued Invective againſt the Government. Paſſive Obedience is ſet down as an indiſpenſible Duty: But 'tis evident, by the whole Sermon, that it is not due to Queen *ANNE*, or Her Adminiſtration. Now what can that be, but to uſher in *a Rightful Title* (I think they call it) of one on the other ſide the Water?

There is ſuch an Affinity, my Lords, between this Sermon, and the Doctrines which are preached and propagated by a certain Set of Men, that I cannot but obſerve to your Lordſhips on this Occaſion, how induſtrious they have been ever ſince the Revolution, to prepare a Way for another. They are the Pure and Undefiled Church of *England!* The only Men of Loyal and Steady Principles! They never took the Oaths to the Government; never bent their Knee to *Baal!* They have their own Archbiſhops, Biſhops, and Paſtors, and conſtitute the only true and pure Church of *England!* We are all Schiſmaticks, that is, all the reſt of *England* are Schiſmaticks, Hereticks, and Rebels! Now pray, my Lords, What are the peculiar and diſtinguiſhing Characteriſticks, the Favourite and Darling Tenets of theſe Men? What elſe but *Paſſive-Obedience, Jus Divinum,*

* *Forteſcue de laudibus legis Angliæ*, Cap. 10, 11, 12, 13.
† *Eccl. Polity*, Pag. 86, 444, 446, 470.

Divinum, an *Hereditary, Indefeaſible Right of Succeſſion*, which no Neceſſity, no Act of Parliament, no Preſcription of Time, no natural or legal Incapacity, can ever invalidate or ſet aſide? If they are in the right, my Lords, What are the Conſequences? The Queen is not Queen; Your Lordſhips are not a Houſe of Lords, for you are not duly ſummoned by a Legal Writ; We are no Houſe of Commons, for the ſame Reaſon; all the Taxes which have been rais'd for this Twenty Years have been Arbitrary and Illegal Extortions; all the Blood of ſo many brave Men, who have died (as they thought) in the Service of their Country, has been ſpilt in Defence of an Uſurpation; and they were only ſo many Rebels and Traitors.

My Lords, If theſe Puritans, (I think I may call them) theſe undefiled pure Church-Men, would confine themſelves to their own Conventicles, to get Money from a few deluded Women; it may, perhaps, be conſiſtent with the Indulgence of the mildeſt of Governments, to ſuffer them to enjoy the Benefit of that Toleration which is allowed to Proteſtant Diſſenters, how pernicious and deſtructive ſoever to the Publick may be their Principles. But when they ſhall come and vent their Treaſons abroad; when they ſhall occaſionally conform, and take the Oaths to the Government, in order the better to deſtroy it; when they ſhall abjure the Pretended Prince of *Wales*, but not forget him; when they ſhall invade the Pulpits of the true Church of *England*; when the Pulpit of your Metropolis, inſtead of teaching the People to pay their Anniverſary Tribute of Praiſe and Thanks to Almighty God for the many wonderful Succeſſes with which he has bleſs'd thoſe Arms which were taken up in Defence of the Revolution; when (I ſay) that Pulpit ſhall be proſtituted and polluted by venting Sedition againſt the beſt of Queens; it is high Time for your Lordſhips to animadvert upon it, for the Honour of thoſe glorious Princes who are dead; for the Honour of Her Majeſty, who ſo happily rules over us; and for the Peace and Tranquility of all Her Subjects.

My Lords, If I was not afraid of being thought too tedious to your Lordſhips, I would offer to you a few Words, concerning that Adminiſtration which the Doctor has ſo maliciouſly defamed; for as fond as this Gentleman, and thoſe like him, are of meddling with Politicks in the Pulpit; and, as himſelf expreſſes it, *of ſetting the People right in their Principles*; I do not find they ever teach what the Ends of Government truly are.

Oratio pro Publio Sextio.

My Lords, *Tully*, who takes it from *Ariſtotle*, ſtates the ultimate End of Government, and the Mark which Rulers ought to aim at, to be *Otium cum Dignitate*, or Peace with Reputation. Towards attaining this End, he enumerates the ſeveral Particulars which it requires the greateſt Application and Vigilance of good Governors to promote and maintain. And the chief Branches, as he ſtates them, are, Religion; the juſt and legal Powers and Rights of the Legiſlative, and of the Magiſtrates ſubordinate to that; a due Adminiſtration of Juſtice; the Publick Treaſure and Credit; Military Virtue; and concludes with *Laus Publica*; which, indeed, is the Reſult of a good Adminiſtration of the ſeveral Branches mention'd. For Praiſe both at Home and Abroad will never fail to attend good Management.

Now, my Lords, if any Man will but reflect on every one of theſe Particulars, and inſtance when in any Age there has been in this Iſland, a more univerſally glorious Adminiſtration, I will allow what the Doctor ſays to be true.

To begin with Religion, my Lords, let any one look upon that Reverend Bench, and ſay when it was ever filled with greater Examples of Piety, Learning, and Chriſtian Charity. That truly Chriſtian Moderation, and extenſive Zeal, and Charity to the Proteſtant Religion, will, in all human Probability, my Lords, (if our ſelves, by little Animoſities, do not obſtruct it,) will, I ſay, raiſe the Luſtre and Reputation of our Church to ſuch a Degree, that, as the Glory of our Arms juſtly entitles our Nation at preſent to hold the firſt Rank, ſo ſhall our Church be looked upon as the Mother of all the Reformed Churches in *Europe*.

As to the juſt Rights and Powers of our Legiſlative, your Lordſhips, and all of us know, whether ever any Prince on our Throne, has had a more tender Concern for them than Her Majeſty; or whether at any time there has been a more due and impartial Adminiſtration of Juſtice.

For the Treaſure and Credit of the Nation, I appeal to all that hear me, whether ever ſuch large Sums were more chearfully given, or more juſtly adminiſtred. Never were there greater Demands than during this neceſſary War, nor ever Demands more freely complied with by the People. Such is the Confidence they have in the Publick Management, and ſo ineffectual this Doctor, and his Brethren's ſounding a Trumpet to Sedition.

As for our Arms, and Reputation; the many unparallel'd Succeſſes during Her Majeſty's Reign, by Sea and Land, ſpeak ſufficiently, and do ſufficiently proclaim, that Her Majeſty has far exceeded all Her Predeceſſors. Our *Henrys* and our *Edwards* have juſtly left behind them Immortal Fame, for having broke and ſubdued in their Times, the Power of *France*. Queen *Elizabeth* will be ever Glorious for having humbled the Pride of *Spain*. Thoſe Two great Monarchies have each in their Turn aimed at the Univerſal Monarchy of *Europe*; and each hath been near compaſſing it, notwithſtanding that the one always oppoſed the other. But it was never imagined, that if they once became united, any Force in *Europe* could have diſputed with them. Yet, my Lords, we have lived to ſee thoſe two formidable Powers united, and threatning Deſtruction to all the Liberties of *Europe*. It was a Task reſerv'd for Her Majeſty to encounter this united Force. She has attacked, and reduced them to ſue for Peace; and we are perhaps juſt now at that very deciſive Period of Time, when we are to reap the Fruits of a long, and expenſive War, by the Concluſion of a ſolid and laſting Peace.

Now, my Lords, at ſuch a critical Juncture, at a Time when it behoves us more than ever to preſerve that Union amongſt our ſelves, upon which the Union of the whole Alliance does ſo much depend; upon which the happy Concluſion of this War, and conſequently the Safety and Honour of our Church and State does depend; What does this Pious Son of the Church? What does this Loyal Subject, this Paſſive-Obedience Gentleman do? He is preaching to the City of *London*, from whence we are to receive the greateſt Part of the Supplies granted for carrying on the War: Does he ſay one Word to them to promote and carry on the Publick Good? No, my Lords: He does, to the utmoſt of his Ability, endeavour to create in them groundleſs Miſtruſts and Jealouſies of the Adminiſtration. And I will appeal to the Conſcience of every one that hears me, and deſire, that laying their Hand upon their Heart,

they will truly determine within themſelves, whether, if thoſe Citizens who heard this Sermon had been byaſſed by it, we could have expected one Penny of Money from them, to ſupport a Government which was repreſented ſo odious. But thoſe honeſt Citizens, my Lords, heard this Trumpeter of Sedition with Indignation. Their Affection to the Government is not to be ſhaken. Her Majeſty is Abſolute in the Hearts of Her Subjects; which is the beſt way of being Abſolute: And all the artificial Suggeſtions of theſe *Falſe Brethren* (to uſe his own Language) will never leſſen their Affections to Her.

But, my Lords, how impotent and weak ſoever the Malice of theſe Men may prove; yet when ſuch Doctrines are broached, and publickly preached, as tend to inſlave a free Nation, to foment Diviſions and Parties, to ſeduce us from our Allegiance to the beſt of Princes; it becomes the Houſe of Commons, who are Guardians of the Conſtitution and Liberties of the People, to bring ſuch Delinquents to Juſtice; and it will become your Lordſhips, who are Guardians of the Conſtitution of the People, to prevent the growing of ſuch an Evil. This Man, my Lords, is an inconſiderable Tool of a Party; no ways worth the Trouble we have given your Lordſhips: But we look upon it that your Lordſhips Judgment in this Caſe, will be giving a Sanction which ſhall determine what Doctrines of this kind ſhall or ſhall not be preached. We are perſuaded therefore that your Lordſhips, in giving Judgment on this Caſe, will have a Regard to the Honour of the late King and Queen, ſo highly aſperſed; to the Security of Her Majeſty and Her Government; to the Proteſtant Succeſſion; to the Preſervation of the Peace at Home, and Reputation Abroad; where, if it ſhall be heard that you have Men amongſt you, inſolent enough to vent ſuch Notions, they may likewiſe hear that it has not been done with Impunity. For all theſe Reaſons, we do hope that your Lordſhips will inflict ſuch condign Puniſhment on this Offender, as may deter others from the like Inſolence for the future.

Sir *Peter King*. MY Lords, The Gentlemen who have gone before me, having finiſh'd the Firſt Article of the Impeachment, by Command of the Houſe of Commons, I proceed to make out the Second, which relates to the Toleration, one of the principal Conſequences of the Revolution. It is well known that great Severities had been formerly uſed againſt Proteſtant Diſſenters, which were fomented by Popiſh Practices, in order to divide us, and thereby weaken the common Proteſtant Intereſt, and particularly that of the Church of *England*: This the whole Church of *England* plainly ſaw in the Reign of the late King *James*, when Popery was coming in like a Flood, and threatned an univerſal Ruin; and then they did univerſally profeſs their Readineſs and Intention to ſhow all manner of Tenderneſs to other Proteſtants, when it ſhould be in their Power to do it.

The Seven Biſhops, who, to their everlaſting Honour, made ſo noble a Stand for the Liberties of the Church and Kingdom, did in their Petition to King *James*, declare, That their not reading the Declaration for Liberty of Conſcience, was not from any want of due Tenderneſs to the Diſſenters, in relation to whom they were willing to come to ſuch a Temper as ſhould be thought fit, when that Matter ſhould be conſidered and ſettled in Parliament and Convocation.

And to the Glory of the Church of *England*, it muſt be remembred, that when the Revolution was afterwards effected, they were as good as their Word, and an Act paſs'd, in the very Firſt Year of their late Majeſties King *William* and Queen *Mary*, Intituled, *An Act for Exempting their Majeſties Proteſtant Subjects, diſſenting from the Church of* England, *from the Penalties of certain Laws*. This is that Act that is commonly called *The Act of Toleration*, and was confirmed by another Act made in the ſucceeding Parliament. As this Act is agreeable in it ſelf to the Profeſſion of the Chriſtian Religion, and particularly to the Doctrine of the Church of *England*; ſo it hath been found by Experience ſo much for the Honour of the Kingdom, and for the Credit of the Church, that Her Majeſty has been pleaſed to declare from the Throne her Intention inviolably to maintain it; and both Houſes of Parliament have done the ſame in the moſt ſolemn Manner.

Here the Duke of Buckingham *moved the Lords to adjourn to their own Houſe; which they did: And the Lords being returned to the Court, and Proclamation commanding Silence made:*

Lord Chancellor. Gentlemen, you that are the Managers for the Houſe of Commons may proceed in the Method you were in.

Sir *Peter King*. My Lords, The Act of Parliament that I was mentioning to your Lordſhips, is the Act relating to the Toleration, referr'd to in the Preamble to the Articles; your Lordſhips, and every one elſe, remember the Neceſſity there was for that Act; and having experienced the Benefit of it, Her Majeſty and both Houſes of Parliament have concurred in a Declaration, that that Act ſhall be inviolably obſerved: This being then not only a poſitive Law, but alſo a beneficial One, as well for the Benefit of the Church in particular, as the Welfare and Support of the Proteſtant Intereſt in general, it very ill became any private Perſon to endeavour to bring that Law, by any publick Diſcourſe, into Contempt or Diſrepute.

The Article the Doctor is charged with, in relation hereto, is, " That he ſuggeſts and maintains, " That that Toleration granted by Law is unreaſo- " nable, and the Allowance of it unwarrantable; " and aſſerts, that he is a Falſe Brother, with rela- " tion to God, Religion, and the Church, who de- " fends Toleration and Liberty of Conſcience; that " Queen *Elizabeth* was deluded by Archbiſhop " *Grindall*, whom he ſcurrilouſly calls a Falſe Son " of the Church, and a perfidious Prelate, to the " Toleration of the *Genevian* Diſcipline; and that " it is the Duty of the Superior Paſtors to Thunder " out their Eccleſiaſtical Anathema's againſt Perſons " intituled to the Benefit of the ſaid Toleration, and " inſolently dares and defies any Power on Earth to " reverſe ſuch Sentences.

My Lords, The firſt Part of this Article, which is the principal Part, contains a general Charge againſt the Doctor, for affirming and maintaining, " That the Toleration granted by Law is unreaſona- " ble, and the Allowance of it unwarrantable" The reſt of the Article conſiſts of particular Paſſages, taken out of his Sermon, tending to make good and prove that general Charge.

As to the general Charge contain'd in the firſt Part of this Article, of his maintaining the Toleration granted by Law to be unreaſonable, and the Allowance

lowance of it unwarrantable: His Answer is very observable, and is, That upon the most diligent Enquiry, he has not been able to inform himself that a Toleration hath been granted by Law; but admits, that an Act did pass in the first Year of King *William* and Queen *Mary*, intituled, *An Act for Exempting their Majesties Protestant Subjects, dissenting from the Church of* England, *from the Penalties of certain Laws.* Which Exemption, he saith, he doth not any where maintain to be unreasonable, or the Allowance of it unwarrantable; but hopes that he had prevented any such Misapprehension, by declaring in his Sermon preach'd at St. *Paul*'s, that he intended not to cast the least invidious Reflection upon that Indulgence which the Government had given.

Indeed, it is almost difficult to be serious in giving a Reply to that part of his Answer, That he cannot inform himself that a Toleration hath been granted by Law. 'Tis true, the Word Toleration is not mention'd in that Act, neither is the Word Indulgence to be found in that Law; but every Body knows that the Exemption granted by that Act is commonly called *The Toleration*, and the Act it self, *The Toleration Act:* What is the Intent of that Act, but to tolerate and allow Persons, qualified by that Act, to exercise their Religion, notwithstanding Penal Laws to the contrary. Toleration is really a Word of less Import than Indulgence, it is a bare Permission, and Allowance; and this Word has gain'd such a known and fix'd Notion and Signification in every one's Mind, that whenever it is mention'd, there is not any Doubt what is meant by it: It is now become a Word of Art, that not only in common Conversation, but even in the most publick Acts of State, the Exemption granted by the Act made in the 1st of King *William* and Queen *Mary*, is called *the Toleration.* Did not her Majesty, in Her Speech to both Houses of Parliament from the Throne, in the Year 1705, declare that she would always inviolably maintain *the Toleration?* Did not both Houses of Parliament, in their several Addresses to Her Majesty for that most gracious Speech, express their deep Satisfaction of Her Majesty's Resolution to maintain *the Toleration?* In the free Conferences between the Lords and Commons about the Bill for preventing Occasional Conformity, in the Year 1702. Is not this Act of the 1st of *William* and *Mary*, called *the Act of Toleration*, and the Exemption granted by that Act called *the Toleration?* So that it seems strange the Doctor should not know that a Toleration had been granted by Law; and it is more strange yet, when he himself, in this very Sermon, called the Indulgence granted by that Act, *the Toleration.*

In the 14th Page of his Sermon, where he is complaining of False Brethren in the Kingdom, who are permitted and suffered to combine into Bodies and Seminaries, wherein Atheism, Deism, Tritheism and Socinianism, and a great many other wicked Principles are taught; he concludes thus, "Certainly, (says he) *The Toleration* was never intended to indulge and cherish such Monsters and "Vipers in our Bosom." What was it possible for the Doctor to mean in that Place, by the *Toleration*, but the Indulgence, as he calls it, granted to the Dissenters by the Act of 1 *Gul.* and *Mar.*

In the 19th Page of the Sermon, speaking of the Dissenters, he says, "Now they have advanced "themselves, from the Religious Liberty our gra-"cious Sovereign has indulged them, to claim a Civil "Right, as they term it, and to justle the Church "out of her Establishment, by hoisting *their Tole-*"*ration* into its Place:" What could he possibly mean here by these Words, but that Toleration, or that Indulgence, which was granted in the Time of the late King and Queen to the Dissenters? So that it is plain, that when he made, and preached, and published this Sermon, he knew very well, that that Indulgence that was granted by the Law made in the First Year of King *William* and Queen *Mary*, was commonly called *the Toleration*; and this Toleration, granted by that Law, is that which the Commons in their Impeachment say he maintains to be unreasonable, and the Allowance of it unwarrantable; and this is what I am now to make out and prove.

But I must do the Doctor Justice to own, that Page 20. of his Sermon preach'd at St. *Paul*'s, he doth use these Words, referr'd to by him in his Answer, *viz.* "I would not here be misunderstood, "as if I intended to cast the least invidious Re-"flection upon that Indulgence the Government has "condescended to give them; which I am sure all "those that wish well to our Church, are very rea-"dy to grant to Consciences truly scrupulous; "let them enjoy it in the full Limits the Law has "prescribed.

The Doctor, by putting in that Caution, seems himself to be apprehensive, his Words were otherwise in danger to be esteem'd a Reflection upon that Indulgence or Toleration that the Government had given. Having just before commended the Severities that were used in the Reign of Queen *Elizabeth* against the Dissenters; which could not be spoken in Commendation of the Toleration; but would reasonably be understood to be a Condemnation of it, because it removed and took away those Severities; he then subjoins the fore-mention'd Passage; which dry Caution will not excuse the Doctor, if in the other Parts of his Sermon he doth visibly and plainly condemn the Toleration, and censure it as unreasonable, and the Allowance of it unwarrantable; which that he doth, I shall endeavour to prove from other direct and formal Passages in his said Sermon.

The first Passage that I shall Cite to this Purpose is in the 10th Page of the Sermon, and is in these Words; "So that, in all those Cases before-"mentioned, whosoever presumes to innovote, al-"ter, or misrepresent any Point in the Articles of "the Faith of our Church, ought to be Arraign'd "as a Traytor to our State; Heterodoxy in the "Doctrines of the one, naturally producing, and "almost necessarily inferring Rebellion and High-"Treason in the other, and consequently a Crime that "concerns the Civil Magistrate, as much to punish, "and restrain, as the Ecclesiastical. The beginning of this Passage is tied up to the Cases before-mentioned, *so that in all those Cases before-mentioned*, which being a term of Relation, must be expounded in Reference to what went before.

This Passage is contained in his second Head of False Brethren, of those who are False Brethren with Relation to the State, Government or Society of which they are Members. And on Perusal thereof I do not find any one Article of the Faith of our Church before-mentioned under that Head, to which these relative Terms do refer; for all that he saith before under that Head is, "That the Constitutions of most Go-"vernments differing according to their several "Frames, and Laws, upon which they are built

" and founded, it is impoſſible to lay down any " one univerſal Rule, as the Scheme and Meaſure " of Obedience, that may ſquare to every one of " them: Only this Maxim in general, he preſumes, " may be Eſtabliſh'd for the Safety, Tranquility " and Support of all Governments, That no Inno- " vation whatſoever ſhould be allowed in the Fun- " damental Conſtitution of any State, without a " very preſſing, nay, unavoidable Neceſſity for it; " and whoſoever ſingly or in a private Capacity ſhould " attempt it, is Guilty of the higheſt Miſdemea- " nour, and is an Enemy to that Politick Body of " which he is a Member.

Then the Doctor applies this Maxim to our Government: " Our Conſtitution, ſaith he, both in " Church and State, has been ſo admirably con- " trived, with that Wiſdom, Weight, and Sagaci- " ty, and the Temper and Genius of each, ſo " exactly ſuited, and modell'd to the mutual Sup- " port and Aſſiſtance of one another, that 'tis hard " to ſay, whether the Doctrines of the Church of " *England* contribute more to Authorize and En- " force our Civil Laws, or our Laws to Main- " tain and Defend the Doctrines of our Church. " The Natures of both are ſo nicely correſpon- " dent, and ſo happily intermixt, that 'tis almoſt " impoſſible to offer a Violation to the one, with- " out breaking in upon the Body of the other: " So that in all thoſe Caſes before-mentioned, " whoſoever preſumes to alter, innovate or miſ- " repreſent any Point in the Articles of the Faith " of our Church, ought to be Arraign'd as a Tray- " tor to our State, *&c.*

I read your Lordſhips this whole Paragraph, to ſhew, that the Caſes ſaid to be before-mentioned, are not contained in this Head of the Sermon, but they are plainly contained in a former Paragraph, *viz.* in his firſt Head of falſe Brethren, with relation to God, Religion, and the Church in which they hold Communion; under which Head the Doctor enters into a long Deſcription of ſuch kind of falſe Brethren, and enumerates ſeveral Articles and Rites of the Church, the Disbelievers or Deniers whereof are termed Falſe Brethren; and amongſt other of his Characters, in *p.* 8. he brands him for being falſe to the Intereſt of the Church, that gives up any Point of her Diſcipline and Worſhip; theſe are the exterior Fences to guard the Internals of Religion, without which they are left naked, without Beauty, Order, or Defence. Should any Man out of Ignorance, or Prejudice to the Ancient Rights and Eſſential Conſtitution of the Catholick Church, affirm, " That the Divine Apoſto- " lical Inſtitution of Epiſcopacy is a novel Doctrine, " not ſufficiently warranted by Scripture, and that " 'tis indifferent whether the Church be Governed " by Biſhops or Presbyters: Is not ſuch an one an Apoſtate from his own Orders? So that one of the before-mentioned Caſes of Falſe Brotherhood is, the affirming that the Divine Apoſtolical Inſtitution of Epiſcopacy is a novel Doctrine, not ſufficiently warranted by Scripture, and that it is indifferent whether the Church be Governed by Biſhops or Presbyters. This is affirmed and held by all the Diſſenters; and tho' they ſhould be miſtaken in their Opinion, yet ſtill it is their Opinion; and they are notwithſtanding tolerated, and are exempted by the Toleration Act from Subſcribing the 36th Article, that the Book of Conſecration of Archbiſhops and Biſhops, and of the Ordination of Prieſts and Deacons, ſet forth in the Times of King *Edward* the Sixth, contain in it all things neceſſary to their Conſecration and Ordination, and hath nothing in it either Superſtitious or Impious: Now notwithſtanding this Innovation or Alteration of this Article of the Church by the Diſſenters, the Law doth nevertheleſs Tolerate and Indulge them.

But the Doctor is of another Opinion, and he affirms, That whoever Innovates, Alters, or Miſrepreſents this Point in the Articles of the Faith of our Church, ought to be Arraign'd as a Traytor to the State, and ought to be puniſhed, as well by the Temporal, as the Eccleſiaſtical Magiſtrate. For he goes on, and carries it yet a great deal further, by the Reaſon he gives for his Aſſertion, which is, " Heterodoxy in the Doctrines of the one, natu- " rally producing, and almoſt neceſſarily inferring, " Rebellion and High Treaſon in the other; and " conſequently a Crime that concerns the Civil " Magiſtrate, as much to puniſh and reſtrain, as " the Eccleſiaſtical. Here's an Aſſertion to the Purpoſe; that Heterodoxy, that is, the holding a different Opinion from any Article of the Faith of our Church, naturally produces, and almoſt neceſſarily infers Rebellion and High-Treaſon in the State, and conſequently a Crime that concerns the Civil Magiſtrate to puniſh, as well as the Eccleſiaſtical. He himſelf, in the immediate ſubſequent Words, doth own, That this Aſſertion at firſt View may look like an High-flown Paradox; and I believe it will ſtill appear to be ſo upon a Review, That whoſoever is of a different, or other Opinion, in any of the Articles of the Faith of the Church, is Guilty of High-Treaſon; and the Temporal, as well as the Spiritual Magiſtrate, ought to puniſh him as a Traitor for it. The Articles of the Church are in number Thirty nine; ſome of the Diſſenters are by the Act of Toleration exempted from Subſcribing three and a half of them, *viz.* the 34th Article, which relates to the Traditions and Ceremonies of the Church, and the Power of the Church to Ordain, Change, and Aboliſh Ceremonies and Rites: The 35th Article, concerning the Book of Homilies, and reading of them in Churches: The 36th Article, concerning the Conſecration of Archbiſhops and Biſhops, and the Ordination of Prieſts and Deacons; and the former Part of the 20th Article, which Aſſerts the Power of the Church to Decree Rites and Ceremonies, and Authority in Controverſies of Faith. Other Diſſenters, who ſcruple the Baptizing of Infants, are alſo exempted from Subſcribing that Part of the 27th Article which relates to Infant Baptiſm; and the Quakers are exempted from Subſcribing any of the Articles, and are only required to Subſcribe a ſhort Declaration of the Trinity, and that the Scriptures are given by Divine Inſpiration. All theſe ſeveral ſorts of Diſſenters, notwithſtanding their Heterodoxy in theſe Points, are exempted by the Toleration Act from the Penalties of the former Laws, and are by this Act preſerved in the free Exerciſe of their Religion or Worſhip; and not only the Penalties inflicted on them by former Laws are taken away, but ſeveral Immunities and Privileges are given them, as an Exemption of their Teachers from Pariſh Offices, and a Penalty for diſturbing their Congregations. Now when this is Eſtabliſh'd by a Law, and that Act of Toleration is in full Force, for the Doctor to affirm, notwithſtanding all this, that Heterodoxy, or a different Opinion from any of the Articles of Faith of our Church, almoſt neceſſarily infers Rebellion and High-Treaſon in the State, and is a Crime that concerns the Civil Magiſtrate to puniſh, as well as the Eccleſiaſtical;

What

What can be a more direct breaking in upon, and disavowing of the Toleration than this? Is not this to maintain the Toleration granted by Law to be unreasonable, and the Allowance of it unwarrantable?

Another Passage that I shall Cite to prove the general Charge against the Doctor, is in the 16th and 17th Pages of the Sermon: *What could not be gained by Comprehension and Toleration, must be brought about by Moderation and Occasional Conformity; that is, what they could not do by open Violence, they will not fail by secret Treachery to accomplish. If the Church can't be pulled down, it may be blown up; and no matter with these Men how 'tis destroyed, so that it is destroyed.* In this Place the Doctor is speaking of the great Mischiefs and Perils of his false Brethren to the Church. And to prevent any mistaken Notions of the Church, he intimates, that we are to understand the true genuine Notion of it, as it stands contradistinguish'd in its Establish'd Doctrine, Discipline and Worship from all other Churches and Schismaticks, who would obtrude upon us a wild Negative Idea of a National Church, so as to incorporate themselves into the Body as true Members of it; whereas that Latitudinarian Heterogeneous Mixture would render it the most Absurd, Contradictory and Self-inconsistent Body in the World: And from thence he proceeds to shew that this Design of a Comprehension miscarried, and that that long projected Scheme of the Ecclesiastical *Achitophel*'s was blasted; "But, says he, since this Model of universal "Liberty and Coalition failed, and these false "Brethren could not carry the Conventicle into the "Church, they are now resolved to bring the "Church into the Conventicle, which will plausi-"bly and slily effect her Ruin". And how is that to be done? Why, "What could not be gain'd by "Comprehension and Toleration must be brought "about by Moderation and Occasional Conformi-"ty; that is, what they could not do by open Vio-"lence, they will not fail by secret Treachery to "accomplish; if the Church can't be pulled down "by Comprehension and Toleration, it may be blown "up by Occasional Conformity and Moderation; and "no Matter with these Men how 'tis destroy'd, so "that 'tis destroy'd." Is not this calling the Toleration an open Violence to the Church? That it was an Attempt made to destroy the Church, tho' the Church it self came into, and settled this Toleration? I say, the Legislature in the Time of their late Majesties King *William* and Queen *Mary*, and particularly the Bishops, the Fathers of the Church, were very well satisfied that this Toleration granted to the Dissenters, was no way prejudicial to the Safety and Security of the Church. Now for the Doctor to come and say, the Toleration was intended to pull down the Church, and that it is an open Violence to the Church; is not this to maintain, that the Toleration is unreasonable, and the Allowance of it unwarrantable?

My Lords, These Passages which I have cited to your Lordships, do prove the general Charge of this Article: There are other Passages in the Sermon, particularly referr'd to in the Article, which likewise prove this general Charge, to which I shall next proceed. And,

The next part of the Charge in the second Article is, That he asserts, that he is a false Brother with relation to God, Religion or the Church, who defends Toleration and Liberty of Conscience.

These Words are contained in so many express Terms in the 8th Page of his Sermon, where after he hath copiously described his false Brethren, he comes and Sums up the whole in these Words; *If upon all Occasions to comply with the Dissenters both in publick and private Affairs, as Persons of tender Conscience and Piety, to promote their Interests in Elections, to sneak to 'em for Places and Preferment, to defend Toleration, and Liberty of Conscience, and under the pretence of Moderation to excuse their Separation, and lay the Fault upon the True Sons of the Church for carrying Matters too high; If to Court the Fanaticks in private, and to bear them with Patience, if not Approbation, Rail at and Blaspheme the Church, and upon Occasion to justify the King's Murder; If to Flatter both the Dead and the Living in their Vices, and to tell the World, that if they have Wit and Money enough, they need no Repentance, and that only Fools and Beggars can be Damn'd; If these, I say, are the Modish and Fashionable Criterions of a true Church-Man, God deliver us from all such False Brethren!*

So that one Mark of these False Brethren, in this part of his Sermon, is to defend Toleration and Liberty of Conscience. As to this, the Doctor gives two Answers, one by way of Inference or Presumption, and the other Direct; that by way of Inference is, "That he having so plainly declared "himself in Favour of the Exemption granted by "Law; when he blames those who upon all Occa-"sions defend Toleration and Liberty of Consci-"ence, he cannot be thought to reflect on the De-"fenders of that Legal Exemption or Indulgence, "which he himself approves and defends.

Now if he had not in other Parts of his Sermon condemn'd the Toleration expresly, it might have pass'd for an Answer. But now, if the Doctor has more than once in other Parts of his Sermon directly inveighed against this Toleration, then his Meaning is more naturally to be understood by so many several Passages, than by one single Sentence, and with what View thrown in, the reading of the Sermon will plainly shew. And therefore the true way to come at the true Meaning of his Words, is to take them as they stand in his Sermon, and that is what your Lordships will judge by. In the next Place he gives a direct Answer to this Part of the Charge, which is, that he does not mean by this Description of a False Brother, those who only defend Toleration and Liberty of Conscience, and do no more; but he only blames those who upon all Occasions defend Toleration and Liberty of Conscience, and to excuse their Separation, lay the Fault upon the true Sons of the Church for carrying Matters so high; so that I don't reckon him, says he, as a False Brother who barely defends Toleration and Liberty of Conscience; except that at the same time that he is defending Toleration, he lays the Fault of the Separation upon the true Sons of the Church for carrying Matters too high. Now I submit to your Lordships, upon reading of this Passage, whether it is capaple of such an Interpretation. If it be look'd into, it will be found that the several particular Characters there mention'd, are all of them so many particular Marks of a False Brother; it is not necessary that two, or three, or all of them meet together in one Person to make up the Character of a False Brother; but if any one of them be found in any Person, 'tis sufficient to Characterize him a False Brother: Whoever is guilty of any one of those Acts, of which defending Toleration is one, is a False Brother;

ther; and his asserting the defending of Toleration to be a Mark of a False Brother, is an evident Declaration against the Justice and Expediency of the Toleration.

The next particular Charge upon him in this Article is for Asserting, "That Queen *Elizabeth* was "deluded by Archbishop *Grindall*, whom he scurrilously calls a False Son of the Church, and a "Perfidious Prelate, to the Toleration of the *Genevian* Discipline". This Charge upon him is founded on those Words of his Sermon, in the 19th Page; these are his Words: *Have they not, ever since their first unhappy Plantation in this Kingdom, by the Intercession of that False Son of the Church*, Bishop Grindall, *always improv'd, and rise upon their Demands in the Permission of the Government? Insomuch that Queen* Elizabeth, *that was deluded by that perfidious Prelate to the Toleration of the* Genevian *Discipline, found it such an Headstrong and Encroaching Monster, that in Eight Years She foresaw it would endanger the Monarchy, as well as the Hierarchy; and like a Queen of true Resolution, and pious Zeal for both, pronounc'd, That such were the restless Spirits of that factious People, that no Quiet was to be expected from them, 'till they were utterly suppress'd: Which, like a prudent Princess, She did by Wholesome Severities, that the Crown for many Years sat Easy and Flourishing on her Head.*

As to that Part of the Charge where he says, That Queen *Elizabeth* was deluded to the Toleration of the *Genevian* Discipline by Archbishop *Grindall*, the Doctor's Answer is, "That he hum"bly conceives he hath good Authority from the "Histories and Monuments of those Times for "such Assertion; but whether he hath, or hath "not, humbly apprehends such Assertion to be no "Proof of his Maintaining or Suggesting, That "the Exempting of Protestant Subjects dissenting "from the Church of *England*, from the Penalties "of certain Laws, granted by an Act made in the "First Year of the Reign of King *William* and "Queen *Mary*, (which Exemption he supposes to "be intended by the Legal Indulgence, or Toleration granted to Dissenters, mention'd in the Preamble of the Articles, and by the Toleration "granted by Law mention'd in this Second) is unreasonable, or the Allowance of it unwarrantable.

My Lords, It might not perhaps be difficult to shew that there are some Mistakes in this Fact; but whether there be or no, will not now be worth spending your Lordships Time; for I do agree with him, That the material Point is what he puts it upon, Whether this Assertion, as printed and delivered by him in his Sermon, be a Censure or Condemnation of the Toleration Act. Now whether it be so or no, will appear by taking the whole Clause together. This Passage is in the 19th and 20th Pages, and is in that Part of his Sermon where he is shewing the great Perils and Mischief of his False Brethen to the State, and that they are destructive to our Civil Rights and Liberties; and in the Pursuit of his Argument he plainly shews that the False Brethren there meant are the Dissenters, who are Tolerated by this Act of Parliament. "These False Brethren, says he, have now advan"ced themselves from the Religious Liberty our "Gracious Sovereign has indulged them, to claim "a Civil Right, and to justle the Church out of "her Establishment, by hoisting their Toleration "into its Place". So that 'tis plain, these false Brethren here spoken of are the Dissenters, those who have the Benefit of the Toleration Act. And then he goes on; "And to Convince us what alone "will satisfy them, insolently demand the Repeal "of the Corporation and Test Acts, as an Ecclesiastical Usurpation, which indeed under Her "Majesty (whom God long preserve for its Support and Comfort) is the only Security the "Church has to depend upon; and which they "have so far eluded by their abominable Hypocrisy, as to have undermined her Foundations, and "endanger the Government, by filling it with its "profess'd Enemies. These Charges are so flagrant and undeniable, that a Man must be very "weak, or something worse, that thinks or pretends the Dissenters are to be gain'd or won over by any other Grants and Indulgences, than "by giving up our whole Constitution: And he "that recedes the least Tittle from it, to Satisfy "or Ingratiate with these Clamorous, Insatiable "and Church-devouring Malignants, knows not "what Spirit they are of, or he ought to shew who "is a true Member of our Church.

These Passages I have read to your Lordships, to shew that these False Brethren here spoken of are the Dissenters, who are now Tolerated by the Law granted to them in the Time of their late Majesties King *William* and Queen *Mary*; and of these Dissenters follows this Passage: "Have they not, "ever since their first unhappy Plantation in this "Kingdom, by the Intercession of that False Son "of the Church, Bishop *Grindall*, always im"prov'd, and rise upon their Demands in the Per"mission of the Government? Insomuch, that "Queen *Elizabeth*, that was deluded by that perfi"dious Prelate to the Toleration of the *Genevian* "Discipline", *id est*, The Discipline and Polity of the Dissenters, so called because taken from *Geneva*, "found it such a Headstrong and Encroach"ing Monster, that in Eight Years she foresaw it "would endanger the Monarchy, as well as the "Hierarchy; and, like a Queen of true Resoluti"on and pious Zeal for both, pronounc'd, That "such were the restless Spirits of that Factious "People, that no Quiet was to be expected from "them, 'till they were utterly Suppress'd; which, "like a prudent Princess, she did by Wholesome "Severities, that the Crown for many Years sat "Easy and Flourishing on her Head.

In this memorable Passage he represents Archbishop *Grindall* as a False Son of the Church, and a perfidious Prelate, for deluding the Queen into a Toleration of the *Genevian* Discipline. Whether that Fact be true, or not, is not material to our Purpose; but this is, that he charges it for a Fault on the Archbishop, and for which he calls him a False Son of the Church, and a Perfidious Prelate, for inducing the Queen to give a Toleration to the Dissenters in those Days: The Fault is not, that it was a Regal Toleration only, but the Fault was in the Toleration itself, in consenting to a Liberty to the Dissenters. Now what is this in Effect, but to preach to the whole World, That the Parliament are in the Wrong to grant a Toleration to the Dissenters; That the Lords and Commons, who consented to the Toleration, are not true Sons of the Church; And that the Bishops, who are for Tolerating the Dissenters, are neither Fathers nor Sons of the Church, but corrupt and perfidious Prelates?

That this Character of Archbishop *Grindall* was design'd for a Censure of the present Toleration, will appear more fully by the contrary Character he gives

gives of Queen *Elizabeth*; he commends her Reſolution and pious Zeal for "the Monarchy and Hie-"rarchy, in declaring that no Quiet was to be "expected from the reſtleſs Spirits of that Factiſ-"ous People, 'till they were utterly Suppreſs'd; "which, like a prudent Princeſs, ſhe did by Whole-"ſome Severities, that the Crown for many Years "ſat Eaſy and Flouriſhing on her Head". Now what can the *Engliſh* of all this be, but to inflame the Government againſt the Diſſenters? What could be ſaid more prevalent for this Purpoſe, than to recommend it as a noble Reſolution and pious Zeal in Queen *Elizabeth*, utterly to ſuppreſs the Diſſenters? And if that Reſolution be to be followed, the Legiſlature muſt Repeal the Toleration Act. And what could be ſaid more contrary to the Toleration Act, than to recommend the Severities uſed in Queen *Elizabeth*'s Reign, becauſe they were Wholeſome in themſelves, and of happy Conſequence to the Perſon and Government of that Renowned Queen. If there were not a Neceſſity for it on this Occaſion, I would not mention what thoſe wholſome Severities were, but rather caſt a Veil over that Part of the Reign of that Great and Glorious Queen.

To give a ſhort View of theſe Wholeſome Severities; ſome Hereticks were burnt, other Perſons were hang'd, ſome had their Goods confiſcated, others had their Perſons impriſon'd; and to mention more particularly a publick Act in Writing that connot be falſified or miſrepreſented, and which is ſince relax'd by the Toleration Act, an Act paſs'd in the 35th Year of Queen *Elizabeth*, Intituled, *An Act to retain the Queen's Majeſty's Subjects in their due Obedience*; by which the Diſſenters are, among other Penalties, to Abjure the Realm in Forty Days, or ſuffer Death without Benefit of the Clergy.

This Penalty of Abjuration of the Realm was taken from the ancient Common Law of *England* in relation to Felony, by which if a Man committed any Felony, excepting Sacrilege, and fled to a Pariſh Church, he might within Forty Days before the Coroner confeſs the Felony, and take an Oath to Abjure the Kingdom for ever; and if he thus confeſs'd and took that Oath, he was thereby Attainted of the Felony, and then he had Forty Days from the Coming of the Coroner to provide and prepare for his Voyage; and the Coroner aſſign'd him ſuch a Port as he choſe for his Departure out of the Kingdom; and if he did not go ſtraitway out of the Kingdom, or being gone out, did return without Licenſe, he had Judgment to be Hang'd, except he was a Clerk, and then he had his Clergy.

This Practice was what the Law call'd Abjuration; and being by ſeveral Regulations (in the Time of *Henry* the Eighth) in effect taken away, the Reviſal of this Practice was thought to be a wholeſome Severity, fit to be inflicted on the Proteſtant Diſſenters of thoſe Times: And therefore the 35th of Queen *Elizabeth* doth enact, 'That if a-'ny Perſon, obſtinately refuſing to repair to ſome 'Church or Chapel, or uſual Place of Common-'Prayers, and forbearing by the Space of a Month 'to hear Divine Service, ſhould after Forty Days af-'ter the End of that Seſſion of Parliament, willing-'ly join or be preſent at any Conventicle or Meet-'ing, under Pretence of Religion, contrary to the 'Laws and Statutes of the Realm; that then ſuch 'Perſon ſhould be committed to Priſon, till he 'ſhould conform and come to Church: And if 'within Three Months after Conviction he ſhould 'not conform and come to Church, and make his 'publick Confeſſion and Submiſſion, being thereun-'to required according to the Form of the ſaid 'Act; that then ſuch Offender ſhould abjure the 'Realm; and if, being thereunto required, ſhould 'refuſe to make ſuch Abjuration, or after ſuch Ab-'juration made, ſhould not within the Time ap-'pointed him depart the Realm, or after ſuch De-'parture ſhould return without the Queen's Li-'cenſe; then, in every ſuch Caſe, every Perſon ſo 'offending, ſhould be a Felon without Benefit of 'Clergy." So that the Abjuration inflicted on Proteſtant Diſſenters by this Act, was worſe than Abjuration for Felony at the Common Law; in that they had the Benefit of the Clergy, in this they had not.

This is one of the Severities of Queen *Elizabeth*'s Reign. Whether it be a wholeſome Severity or not, Human Nature will determine: However wholeſome it might have been eſteem'd in thoſe Days, by thoſe who had the Power and Will to puniſh others, yet the Legiſlature have *in Terminis* declar'd it unwholſome for theſe Times; and the Toleration-Act doth expreſly, and by Name, exempt the Proteſtant Diſſenters from the Penalties of this Act of the 35th of Queen *Elizabeth*.

Now when the Toleration-Act hath granted this Exemption, for the Doctor to come and publickly repreſent an Archbiſhop as a Falſe Son of the Church, and a Perfidious Prelate, for being for the Toleration of Diſſenters in his Time; and at the ſame Time recommend the Reſolution and pious Zeal of Queen *Elizabeth*, for declaring that ſhe would utterly ſuppreſs them, and her great Prudence in exerciſing wholeſome Severities againſt them, which were of happy Conſequence to her Perſon and Government; What could be ſaid more againſt the Toleration-Act, than this is? The Toleration-Act exempts the Diſſenters from the Penalties and Severities inflicted in Queen *Elizabeth*'s Reign; the Doctor recommends them all again, as wholeſome and neceſſary. Let any Perſon judge, whether this is not an expreſs Declaration againſt the Toleration-Act?

There is yet one Thing more charged upon the Doctor in this Part of the Second Article; *viz.* That he ſcurrilouſly calls Archbiſhop *Grindall* a Falſe Son of the Church, and a Perfidious Prelate, for deluding Queen *Elizabeth* to the Toleration of the *Genevian* Diſcipline. Whether this, conſider'd abſtractedly by it ſelf, be in Law a Crime, or not, is not neceſſary for me here to examine. The Doctor conceives, that no Words ſpoken of an Archbiſhop, above One Hundred and Twenty Years ſince deceaſed, will in Conſtruction of Law amount to an High Crime and Miſdemeanor: Whether it be ſo or not, in it ſelf, I ſhall ſay nothing of at preſent; becauſe I take it, that this is only taken notice of as an Aggravation of the Crime charged upon him, and to ſhew his Zeal againſt the Toleration; That he was not contented with Cenſuring the Toleration it ſelf, but rakes into the Aſhes of an Archbiſhop, that had been in his Grave One Hundred and Twenty Years, and blackens his Memory, becauſe he was for the Toleration of thoſe People who are now by Law tolerated.

My Lords, I would on this Occaſion ſay a Word or two to the Memory of that Archbiſhop. The Doctor ſays, He was under the Diſpleaſure of Queen *Elizabeth*; that is very true: And he pretends, the Occaſion of his being under her Diſpleaſure, was, for permitting Innovations to be ob-

truded

truded upon the Church. Those Innovations were no other than what several other Bishops at the same Time likewise practis'd, and some Bishops since have done not much unlike: It was for encouraging the Meetings and Exercisings in those Days, call'd Prophesyings; which were Meetings of the Clergy, to improve one another in the Knowledge of the Scriptures, and tended to make a Learned and Industrious Clergy. This was misrepresented to the Queen, and was the visible Cause of his Disgrace. But the true Reason of his Disgrace, as Historians say, sprung from the Hatred of the Earl of *Leicester*, who was then in great Power and Credit with the Queen, and her great Favourite. This Earl of *Leicester* cast a Covetous Eye upon *Lambeth-House*, and would have had the Archbishop to have alien'd it, but he would not comply with him; which, as the Historian says, made the *Leicestrian* Party to malice him. The Earl was likewise provoked and incensed against him for another Reason, *viz.* for Prosecuting one *Julio*, a Physician of the Earl's, an *Italian* Physician, for having Two Wives, one of which was the Wife of another Man, with whom he lived in Adultery: For these Two Offences against the Earl of *Leicester*, who bore a mighty Power at Court with the Queen at that Time, was this Storm raised against him. But, my Lords, for his Life and Doctrine, the Archbishop was one of the most Pious, Learned and Considerable Prelates of that Time. 'Tis very true, that he was one of those Bishops that look'd upon the Exercises used in those Times by the Clergy, called Prophesyings, to be very necessary for their Improvement, and for the Benefit of the Church; and some of the best Bishops of those Times concurr'd with him in the same Opinion. He was a Man of a most Exemplary Life and Conversation, free from the Suspicion of a Crime. In his younger Days he was Chaplain, with *Rogers* and *Bradford*, to *Ridley* Bishop of *London*, who gave this Character of him, That he was known to be a Man of Virtue, Honesty, Discretion, Wisdom and Learning. In the Persecution under Queen *Mary*, when his Master and Fellow-Chaplains were burnt for Religion, he became an Exile on the same Account, and quitted his Ease, Preferments, and Hopes at Home, to enjoy the Liberty of his Conscience in a Foreign Country, and went to *Strasburgh*: And when the famous Troubles begun at *Frankfort*, about the Use of the *English* Service, where the Foundations were laid of the Divisions that have since divided and rent the Church, he was so far from disliking the *English* Method, that he went from *Strasburgh* to *Frankfort*, to encourage and persuade the Congregation there to submit to the *English* Establishment; and he himself stuck close to it all his Life-time. At his coming Home, in the Beginning of the Reign of Queen *Elizabeth*, he had a great Hand, and was very instrumental, in preparing the Liturgy and Book of Common-Prayer: And the first Time that the *English* Service-Book was introduc'd at St. *Paul*'s in *London*, the Privy Council, and Great Officers of State, for the greater Solemnity, came to St. *Paul*'s; and *Grindall* was appointed to preach to that Great Audience, upon that Solemn Occasion. He was one of the first Five Bishops made by Queen *Elizabeth*; and was first Bishop of *London*, afterwards Archbishop of *York*, and last of all Archbishop of *Canterbury*. And when afterwards, by the Earl of *Leicester*'s Artifice, he was out of Favour, and under the Queen's Displeasure; yet he had so great an Interest in the Clergy, and their Esteem of him was so extraordinary, that even whilst he was under Disgrace at Court, and the Displeasure of the Queen, a considerable Number of the Convocation, then met, presented an Elegant Petition in *Latin* to the Queen, to restore him; wherein they represent to Her Majesty, 'That the Archbishop had led 'a Life free, not only from all Crime, but even 'from the Suspicion of a Crime: That he had 'preserved his Religion from all, not only Corruption 'of Popery, but Schism; and had suffer'd Persecution for Righteousness sake, having wander'd 'abroad in other Countries for the Cause of the 'Gospel: And therefore they most humbly be-'sought Her Majesty, not only to lift up the Arch-'bishop broken with Grief, but to restore the 'Church to the Archbishop, and the Archbishop 'to the Church, to her Subjects, to his Brethren, 'to Foreign Nations, and, in a word, to all Pious 'People." These were the Thoughts of the Clergy of the Archbishop at that Time, even when he was under the Displeasure of the Queen; so that there was no Reason for the Doctor to asperse him as a False Son of the Church, or a Perfidious Prelate; for it appears on the contrary, that he was a Man universally esteem'd for his Virtue, Piety, and Learning.

The last Charge of this Article is, that he asserts, "That it is the Duty of Superior Pastors to thunder out their Ecclesiastical *Anathema's* against "Persons entitled to the Benefit of the Toleration; and insolently dares or defies any Power on "Earth to reverse such Sentences.

To which the Doctor gives this Answer; "That "the Persons entitled to the Benefit of the Toleration, are not by him mentioned or intended: "But if these Expressions in his Sermon must be "determin'd to any one Sort of Persons, he conceives that the Connection of his Discourse will "determine them to those Schismatical and Factious Persons, who take Permission for Power, "and advance Toleration immediately into an Establishment.

Now be it so, that he means those Schismatical and Factious Persons; the next Question, which will set this Matter in a clear Light, will be, Who those Schismatical and Factious Persons are, who take Permission for Power, and advance Toleration immediately into an Establishment? And it is plain from the Passage it self, which is in *Page* 25. of the Sermon, that he means the Dissenters, those who are entitled to the Benefit of the Toleration.

"If our Dissenters, saith he, had lived in the "Times of St. *Paul*, they would have branded him "as an intemperate, hot, furious Zealot, that "wanted to be sweeten'd by the gentle Spirit of "Charity and Moderation, forsooth. Schism and "Faction are Things of impudent and incroaching "Natures; they thrive upon Concessions, take Permission for Power, and advance a Toleration immediately into an Establishment; and are therefore to be treated like growing Mischiefs, or infectious Plagues, kept at a distance, lest their "deadly Contagion spread. Let us therefore *have no "Fellowship with these Works of Darkness, but rather reprove them.* Let our Superior Pastors do "their Duty, in thundering out their Ecclesiastical "*Anathema's*; and let any Power on Earth dare reverse a Sentence ratified in Heaven." And indeed the Doctor doth, in the following Part of his Answer, in effect own it: For, saith he,

" As to the laſt Part of the Second Article, where-
" by the ſaid *Henry Sacheverell* is charged with in-
" ſolently daring, or defying any Power on Earth
" to reverſe the Eccleſiaſtical Sentences there men-
" tion'd ; He the ſaid *Henry Sacheverell* ſaith,
" That the Sentence which he the ſaid *Henry*
" *Sacheverell* dares any Power on Earth to reverſe,
" is ſuch, and ſuch only, as is ratified in Heaven ;
" and ſuch Sentence he ſtill affirms to be by any
" Earthly Power irreverſible : And hopes it will
" not be thought Inſolence in him to affirm, what
" he conceives would be Blaſphemy in any one
" to deny : And doth further acknowledge him-
" ſelf firmly to believe, that ſome Sentences pro-
" nounced by the Paſtors of the Church are rati-
" fied in Heaven ; and that ſome Perſons exempted
" from Puniſhment by the particular Laws of the
" Land, may yet by the Laws of Chriſt be juſt-
" ly liable to ſuch Sentence ; and that Schiſm, or
" a cauſeleſs Separation from a Church enjoining
" no ſinful Terms of Communion, is a Sin, which
" expoſes the Perſon guilty thereof to the Cenſures
" of the Church.

The Houſe of Commons charge the Doctor with Inſolence, in daring or defying any Power on Earth to reverſe the Eccleſiaſtical Sentences mentioned in his Sermon ; and he, by Inſinuation, retorts upon them the Charge of Blaſphemy. This the Houſe of Commons thought they had Reaſon to reſent, and to call upon your Lordſhips for immediate Puniſhment of him, for treating them in this manner ; but they leave it to your Lordſhips, in what manner you will think fit to do them Juſtice, in vindicating them againſt ſuch a Charge. But as to this Paſſage now before you, he affirms, " That " ſome Sentences pronounced by the Paſtors of the " Church, are ratified in Heaven ; That ſome Per- " ſons exempted from Puniſhment by the Laws of " the Land, may yet by the Laws of Chriſt be lia- " ble to ſuch Sentence : And that Schiſm, or a cauſe- " leſs Separation from a Church enjoining no ſinful " Terms of Communion, is a Sin, which expoſes " the Perſon guilty thereof to the Cenſures of the " Church." Now what is this but to ſay, The Diſſenters cauſeleſly Separate from the Church, which impoſes no ſinful Terms of Communion, and ſo are guilty of Schiſm ? Tho' the Law of the Land doth exempt them from Puniſhment for this Schiſm, yet for this Sin they are expos'd to the Cenſures of the Church ; thoſe Cenſures, when inflicted, are ratified in Heaven : Therefore, notwithſtanding the Law of the Land hath given them this Exemption, let the Eccleſiaſtical Superiors do their Duty, in thundering out their *Anathema's* againſt them, and let any Power upon Earth dare to reverſe their Sentences if they can. As to the Power of the Church in Cenſuring or Excommunicating, it is not neceſſary for me to ſay any Thing of it upon this Occaſion : But the Doctor is a Miniſter of the Church of *England*, who hath ſubmitted to the Queen's Supremacy, and by the Canon is bound to maintain and preach the Queen's Supremacy ; Her Majeſty is Supreme over all Cauſes, and over all Perſons, as well Eccleſiaſtical as Civil ; and by an Act of Parliament made ſince Her Majeſty's happy Acceſſion to the Crown, *viz.* the Act relating to Her Majeſty's Bounty for the Augmentation of the Maintenance of the poor Clergy, ſhe is Owned and Recognized to be the only Supreme Head on Earth of the Church of *England* : Her Majeſty hath by Law a Supreme controling Power over all the Cenſures and Excommunications of the Church ; this Power ſhe Exerciſes according to the Rules of Law, by her ſeveral Officers and Miniſters of Juſtice. The exerciſe of the Church's Cenſures, Juriſdiction and Power, muſt be according to Law ; and if any Perſon be Excommunicated againſt Law, the Queen's Courts may and will command the Eccleſiaſtical Judge to abſoil ſuch Excommunicated Perſon, and reſtore him to the Communion of the Church again : This is the Supremacy of the Queen, which is the Doctrine of the Church of *England* ; and by Vertue of this Supremacy, if any Judge of the Spiritual Court ſhall pretend to excommunicate any of the Diſſenters for any Thing which by Law they are not obliged to do, or which by Law they are excuſed or exempted from, the Courts of Juſtice in *Weſtminſter-Hall* will in ſuch Caſe award a Prohibition, and compel the Eccleſiaſtical Judge to abſolve him. Suppoſe that notwithſtanding the Toleration Act, a Diſſenter ſhould for not coming to the Church, be ſentenced in the Spiritual Court by the Judge there, or be proceeded againſt there, in order to an Excommunication ; a Prohibition will lye to that Judge from the Queen's Courts upon the ſaid Act, and the Courts of Common Law will prevent him from ſuch Proceeding ; and if Sentence be paſs'd, will compel the Judge to annul the Excommunication, and receive the Party again. Now, for the Doctor to come and ſay, That though the Diſſenters are tolerated by this Act of Parliament, and though they are exempted by Law from Penalties, yet let the Law of the Land be what it will, let the Eccleſiaſtical Paſtors do their Duty, let them fulminate their Excommunications, and thunder out their *Anathema's*, and let the Civil Magiſtrate, the Earthly Powers, dare to reverſe them, if they can : I ſubmit this to your Lordſhips, whether this is not directly impugning the Queen's Supremacy, as well as weakning and cenſuring the Toleration, which is what he is charg'd with in this Article.

My Lords, I will not take up more of your Lordſhips Time ; there are other Gentlemen to come after me, who will abundantly ſupply my Defects, and offer to your Lordſhips ſome farther Conſiderations to make out the Charge contained in the Second Article.

Lord *William Pawlet.* MY Lords, The Charge againſt the Doctor in this Second Article is a Crime of a very heinous Nature : It has always been eſteemed one of the happy Conſequences of the late Revolution, that Her Majeſty's Proteſtant Subjects, by a Legal Indulgence granted to Diſſenters, were united in Intereſt and Affection, in the Defence of her Majeſty's Sacred Perſon and Government.

It is too well known, my Lords, how in former Times, when Popery had almoſt prevailed in the Ruin of our State and Church, the Proteſtants of the Kingdom were, by the Artifice of Papiſts, ſet againſt each other, that by ſuch Diviſions Popiſh Tyranny might be Eſtabliſhed among us.

The Act of Parliament, made in the firſt Year of the Reign of their late Majeſties King *William* and Queen *Mary*, to exempt Proteſtant Diſſenters from the Church of *England* from the Penalties of certain Laws, was made to defeat any ſuch future Attempts of the Papiſts ; The Preamble of the Act declares, that *ſome Eaſe to ſcrupulous Conſciences, in the Exerciſe of Religion, may be an effectual Means to unite Her Majeſty's Proteſtant Subjects in Intereſt and Affection.*

We have ſeen, my Lords, the good Effects of the Wiſdom of the Legiſlature in making this Act; Her Majeſty's Proteſtant Subjects are now all eaſy under Her Adminiſtration; and how many Diſſenters have we ſeen, who ſince the Toleration are become ſincere Converts to the Church. And I may ſay, that by this Toleration the Prejudices of the Diſſenters in general wear off, and their Number daily decreaſes.

And yet with what odious Colours, and Language unbecoming a Divine, does the Doctor paint out this Toleration, and how does he factiouſly endeavour to excite and ſtir up People againſt it?

'Tis, my Lords, a poor Shift which the Doctor makes in his Anſwer, that he knows of no Toleration granted by Law; and yet in the ſame Anſwer he owns there is an Indulgence which the Government hath condeſcended to give Diſſenters. My Lords, the word *Indulgence* is no more in the Act of Parliament than the word *Toleration*; and it is well known that the Act of Parliament he alludes to is every where, not only in Courts of Juſtice, but even in Parliament, called *The Toleration Act*; and is frequently ſo called by your Lordſhips in the Account of your Lordſhips Proceedings in Parliament, in Relation to the Bill againſt *Occaſional Conformity*, which Account was Publiſhed and Printed by your Lordſhips Order.

When the Doctor ſays, that he has not been able to inform himſelf that a Toleration hath been granted by Law, it plainly ſeems to import, as if the Doctor doubted of the Authority of the Parliament that made that Law; it looks like the common Sophiſtry of Papiſts and Jeſuits, who pretend to own the Church of *England* as by Law Eſtabliſhed; becauſe they diſown the Authority of all our Laws made ſince the Reformation.

My Lords, Her Majeſty hath always been pleaſed graciouſly to declare She will defend this Toleration, and this Her gracious Reſolution has, among the innumerable Bleſſings of Her Reign, united all Her Proteſtant Subjects in their Loyalty and Duty to Her.

The Commons reſt aſſured that your Lordſhips will always aſſiſt theſe gracious Purpoſes of Her Majeſty, and that as there can hardly be any Inſtance given of ſo Seditious and Barefaced an Attempt againſt the Peace and Quiet of the Kingdom, as the Doctor hath been guilty of, ſo your Lordſhips will, by an Exemplary Puniſhment ſuitable to ſo high a Crime, vindicate the Authority of Parliaments, and give an effectual Diſcouragement for the future, to all ſuch Turbulent and Seditious Preachers.

Mr. *Cowper*. I Think, my Lords, it is unneceſſary at this Time to urge all the Arguments which might be made uſe of, to juſtify the Reaſonableneſs of the Toleration granted to Proteſtant Diſſenters, by exempting them from the Penalties of certain Laws. It may ſuffice to ſay, that this Indulgence is required from us as Chriſtians, and as we are Men profeſſing Humanity and good Will towards one another.

Whoever maintains, that the Toleration is unreaſonable, and the Allowance of it unwarrantable, ſeems neceſſarily to aſſert, that the Exemption granted to Her Majeſty's Subjects from the Penalties of former Laws, ought to be reaſſumed; unleſs we are to ſuppoſe, that it can be reaſonable to allow what is unwarrantable.

This Aſſertion therefore evidently Arraigns the Act of Toleration, a Law now in being, a Law by which the People (throughout the whole Series of this dangerous War) have been more firmly United, in Intereſt and Affection, than formerly; I mean, in the Days when the Penalties of thoſe Laws were inflicted with intemperate Zeal.

My Lords, Before I proceed to make good the Charge contained in the ſecond Article of the Impeachment exhibited againſt the Priſoner by the Commons, I muſt beg leave to take notice of the Introduction to his Anſwer: It ſeems he cannot, upon the moſt diligent Enquiry, be able to inform himſelf, that a Toleration has been granted by Law. I take it, the *Stat.* 1. *Will.* and *Mar.* which exempts Diſſenters from the Penalties of former Laws, amounts to a Legal Indulgence, or Grant of Liberty of Conſcience; for by that Repeal a Liberty is given, which was before reſtrained, ſo that without Impropriety it may be ſaid, that Toleration is granted by Law. Doctor *Sacheverell* I find had rather it ſhould be called an Exemption, for no other Reaſon, that I ſee, but becauſe he has not ſaid much, if any Thing of the word *Exemption* in his Sermon, how free ſoever he has made with the Toleration.

Now taking it for granted (as I think with reaſon I may) that Indulgence, Toleration, or Exemption from Penalties, ſignifies one and the ſame Thing, (eſpecially as ordinarily made uſe of amongſt us,) Can any Thing be more plain, than that many Paſſages in this Infamous Libel caſt black and odious Reflections upon the Toleration? They have been all read, and for fear (after what has been already ſaid) of being too tedious, I will mention one only. The Words are theſe,

What could not be gained by Comprehenſion and Toleration, muſt be brought about by Moderation and Occaſional Conformity; that is, what they could not do by open Violence, they will not fail by ſecret Treachery to accompliſh. If the Church cannot be pulled down, it may be blown up; and no matter with theſe Men how it is deſtroy'd, ſo it is deſtroy'd, &c.

Pray, my Lords, Is it reaſonable to allow Toleration, or rather is not the Allowance of it unwarrantable, if it was the open and violent Means made uſe of to deſtroy the Church of *England*? And is not this a moſt uncharitable Cenſure, highly reflecting upon the Act of Toleration, and the Legiſlative Authority? Is not this maliciouſly and falſely Suggeſted, with a wicked and ſeditious Purpoſe, to create Jealouſies and Miſunderſtandings amongſt Her Majeſty's People?

Comprehenſion and Toleration are repreſented as open Violence; Moderation and Occaſional Conformity, as ſecret Treachery, by which the Church may be blown up, though it could not be pulled down by the violent Means of Comprehenſion and Toleration.

I ſhould waſte too much Time unneceſſarily, if I ſhould take particular Notice (after what has been already ſo well urged in Maintenance of the ſecond Article) of all the Paſſages which ſeem to be equally liable to Cenſure.

The *Antiſtaſis* throughout this Paragraph is ſo very plain, that I hope it is not one of thoſe mentioned in the Doctor's Anſwer to carry a dubious Senſe. The Priſoner ſeems to have taken care to explain himſelf, for fear his Meaning ſhould have been doubtful; and therefore after having ſaid,

What could not be gained by Comprehenſion and Toleration, muſt be brought about by Moderation and Occaſional Conformity; then he adds, *that is, what they*

they could not do by open Violence, they will not fail by Treachery to accompliſh.

Having thus inveighed againſt the Toleration, with much ill Nature and Bitterneſs of Spirit, he is pleaſed in the next Place to aſſert, That he is a Falſe Brother with relation to God, Religion, or the Church, who Defends it.

The Anſwer to this Branch of the Second Article is long, and, as I apprehend, ſeems to be Evaſive. Firſt, there is a Differerence again taken, between Toleration and Liberty of Conſcience, and an Exemption or Indulgence; and under this Diſtinction, which, for the Reaſons I have mentioned, is a Diſtinction without a Difference, the Doctor takes the Liberty to maintain and juſtify, that he is a Falſe Brother who Defends Toleration and Liberty of Conſcience.

I muſt own he endeavours to evade the Charge, by ſaying he means thoſe only, who at the ſame Time they defend Univerſal Toleration and Liberty of Conſcience, do alſo excuſe the Separation, and lay the Fault upon the true Sons of the Church, by carrying Matters too high.

Whatever he is pleaſed to ſay he meant, in Anſwer to this Part of the Article, ſurely no ſuch Meaning can be collected from his Sermon. Throughout the whole Libel, I preſume to ſay there is not one Word of Univerſal Toleration, or Univerſal Liberty of Conſcience; this is another Kind of Toleration, never heard of, 'till it was new Coined, in order to extenuate his vile and uncharitable Aſſertions.

Here he is pleaſed to ſum up the modiſh *Criterions*, as he terms them, of a true Church-Man, in a figurative and ironical Manner, and plainly Aſſerts they are the ſeveral Characteriſticks of a falſe Brother; amongſt the reſt, to defend Toleration is ſaid to be one; and under Pretence of Moderation to excuſe the Separation (*i.e.*) of the Diſſenters, of whom he had next before ſpoken, is another; and concludes the Paragraph with this pathetick Expreſſion, *God deliver us all from ſuch Falſe Brethren.*

Having thus treated thoſe who defend Toleration, his Superior Paſtors are in the next Place to be admoniſhed of their Duty, which is to thunder out their Eccleſiaſtical *Anathema*'s againſt the Perſons entituled to legal Indulgence; which *Anathema*'s are ſtiled Sentences ratified in Heaven, and ſuch as no Power on Earth dare reverſe.

Far be it from me to ſay, that Sentences ratified in Heaven can be reverſed by the Powers of this World. But if Doctor *Sacheverell* were a Superior Paſtor, and ſhould Anathematize, or, in plain *Engliſh* Curſe and Sentence all thoſe who enjoy the Benefit of Toleration, to Damnation, he muſt excuſe me, if I could not believe that ſuch a Sentence would be Ratified in Heaven.

And as to any Eccleſiaſtical Cenſure not ratified in Heaven, it is downright Inſolence to ſay, there is no Power upon Earth that can Reverſe it.

But ſince our Superior Paſtors will exerciſe a truly Chriſtian and noble Spirit of Charity and Moderation, and indulge ſcrupulous Conſciences, the Doctor is pleaſed however to bear his Teſtimony againſt it, and is not contented with delivering over to Satan thoſe only who enjoy the Indulgence, but they who defend Toleration muſt alſo bear them Company.

His indeed is a very comprehenſive *Anathema*, and is conceived in theſe Words; *viz. And as he choſe it in this World, appoints him in the next his Portion with Hypocrites and Unbelievers, with all Liars, that have their Part in the Lake, which burns with Fire and Brimſtone, with the Grand Father of Falſhood, the Devil and his Angels. And ſo here we leave our Falſe Brethren, in the Company they always kept Correſpondence with.*

This, my Lords, is a moſt dreadful unchriſtian Sentence, a Sentence ſo Barbarous, ſo Aſtoniſhing, that I am at a loſs to imagine, how it could enter into the Mind of Man to conceive it?

Perhaps, my Lords, it may be equally dangerous to defend the Aſhes of the Venerable Prelate Archbiſhop *Grindall*; he, it ſeems, was a falſe Son of the Church, and a perfidious Prelate, becauſe he deluded Queen *Elizabeth* to a Toleration of the *Genevian* Diſcipline. Here we may obſerve the Doctor's great Averſion to all kind of Toleration.

Methinks, for the ſake of the Reformation, better Language ſhould have been given, and more decent Expreſſions ſhould have been beſtowed, upon a Man we all know bore ſo conſiderable a Part in the Eſtabliſhment of it.

Here likewiſe we may obſerve the Doctor's Inclination to wholeſome Severities, ſuch as Queen *Elizabeth* made uſe of, which were ſuch as I hope will never be ſeen more in this Kingdom. And by the Way, what a Spirit is this Man of, who can find nothing to commend in the Reign of that Glorious Queen, but the blackeſt and worſt Part of it.

I cannot agree, that theſe harſh Expreſſions, as the Anſwer owns they are, are the rather to be excuſed, becauſe the Remains of the Archbiſhop were ſo long ſince depoſited, eſpecially when we conſider that his Memory has been had in the higheſt Eſteem and Veneration by all the Reformed Churches in *Chriſtendom*, from that Time down to the Fifth Day of *November* laſt.

For my own Part, I think it very Immoral to caſt Reflections upon the Dead, how ill ſoever they may have deſerved from us; and the longer a Man has been ſo, in my Opinion, rather aggravates than leſſens the Immorality.

I am free to own, he whoſe Morals will permit him to reflect upon the Departed, is not therefore to be Impeached for it, as for an High Crime and Miſdemeanor; but that is not the preſent Caſe. Archbiſhop *Grindall* is thus ſeverely treated upon a Suppoſition he deluded the Queen to a Toleration; and all the hard Words which are falſely and unreaſonably beſtowed upon him, are evidently levelled at the preſent Toleration, and deſigned maliciouſly to Aſperſe and Traduce it, by repreſenting it as injurious to the Character of all concern'd in it, dangerous to Her Majeſty, and deſtructive to the Conſtitution both in Church and State.

By theſe Means, my Lords, and others (if poſſible worſe than theſe) one Part of the People, through groundleſs Fear and Jealouſy, unreaſonably and maliciouſly inſtilled, are to be ſtirred up to Arms and Violence; others, upon the Peril of Damnation, are not ſo much as to utter one Word in Defence of Toleration; whilſt the third and laſt Part are to have the Doctor's wholſome Severities executed upon them.

My Lords, 'Tis too notorious that this Incendiary, for ſo the Articles of the Commons of *Great-Britain* have called him, has already ſtirred up unaccountable Feuds and Quarrels throughout the Nation; the Commons are too ſenſible of it, and have therefore brought the Offender before your Lordſhips in Juſtice and in Judgment.

Many are the Seeds of Sedition which he has ſown; and the Fruit to be expected, is Civil Diſcord and Confuſion, unleſs ſome Remedy ſhall be applied to prevent it.

The Commons, for Her Majeſty's Safety, and for the Security of the Conſtitution, have thought it abſolutely neceſſary to bring him to anſwer for theſe High Crimes and Miſdemeanors before your Lordſhips Tribunal; conceiving his Offences to be of ſo Exorbitant a Nature, that they deſerve the Solemnity of this Proceeding.

And then the LORDS *Adjourned to their Houſe Above.*

Wedneſday, March 1. The Third Day.

THE Lords coming down into *Weſtminſter-Hall*, and being ſeated in the manner beforementioned, Proclamation was made by the Serjeant at Arms as follows:

Our Sovereign Lady the Queen doth ſtrictly Charge and Command all manner of Perſons to keep Silence, upon Pain of Impriſonment.

Then another Proclamation was made: *Henry Sacheverell*, Doctor in Divinity, come forth; ſave thee and thy Bail, elſe thou forfeiteſt thy Recognizance.

The Doctor appearing at the Bar accordingly, with his Council, as before:

Lord Chancellor. Gentlemen of the Houſe of Commons, you may proceed in your Evidence.

Mr. *Thompſon.* MY Lords, Your Lordſhips having heard what has been produced in Maintenance of the Two firſt Articles of this Impeachment, I ſhall take the Liberty to proceed, and endeavour to diſcharge the Truſt repoſed in me by the Commons, to ſupport the Third Article, and the Accuſations contained in it. I will not waſte your Lordſhips Time, by making any Apology for my Inabilities, and being unequal to this Undertaking; not doubting but that I ſhall find from your Lordſhips a candid Interpretation of whatever I ſhall offer upon this Occaſion.

This Article, my Lords, is founded on a Vote or Reſolution of your Lordſhips, and the Commons, in Parliament aſſembled, which is recited in the Preamble of theſe Articles, and the Occaſion of which it may be neceſſary to mention to your Lordſhips. It was ſome few Years ago that there were many ſcandalous and ſeditious Rumours ſpread abroad, of the Danger of the Church of *England*, as Eſtabliſhed by Law. There were ſeveral Libels diſperſed over the Kingdom, reviling Her Majeſty's Adminiſtration in Church and State; and among the reſt, one entitled, *The Memorial of the Church of* England. Her Majeſty was pleaſed to take notice of theſe ſeditious Reports from Her Throne to the Parliament; and thereupon your Lordſhips and the Commons, on the 17th of *December*, 1705. came to the Vote or Reſolution mentioned in the Preamble, and an Addreſs, which is recited to this effect; "That "your Lordſhips, and the Commons, in Parliament aſſembled, did addreſs and lay before "Her Majeſty a Vote or Reſolution, That the "Church of *England*, as Eſtabliſhed by Law, and "which was reſcued from the extremeſt Danger "by his Late Majeſty, of Glorious Memory, was, "by God's Bleſſing, under Her Majeſty in a ſafe "and flouriſhing Condition; and that whoever "ſhould go about to ſuggeſt and inſinuate that "the Church is in Danger under Her Majeſty's "Adminiſtration, is an Enemy to the Queen, the "Church, and the Kingdom.

"And that your Lordſhips, and the Commons, "by their ſaid Addreſs, did humbly beſeech Her "Majeſty to make the ſaid Vote or Reſolution "publick, and to take effectual Meaſures for the "puniſhing the Authors and Spreaders of ſuch "malicious and ſeditious Reports. And that on "the 20th of the ſame *December*, Her Majeſty "was pleaſed to iſſue Her Royal Proclamation accordingly.

Now, my Lords, this Article charges, "That "in Oppoſition to, and Defiance of, and in order "to arraign and blacken that Vote or Reſolution, "Doctor *Sacheverell*, in his Sermon preach'd at "St. *Paul's*, does ſuggeſt and aſſert the Church "of *England* to be in a Condition of great Peril "and Adverſity under Her Majeſty's Adminiſtration." The Article further ſays, "That he wickedly and maliciouſly inſinuates, That the Members of Parliament, who paſſed that Reſolution, "were themſelves conſpiring the Ruin of the "Church, which they voted to be out of Danger: And this by way of Parallel, or Alluſion to "that Aſſembly, who voted the Perſon of King "*Charles* the Firſt to be out of Danger, at the "ſame Time when they were Conſpiring his Deſtruction.

My Lords, I will now do the Doctor the Juſtice to take notice of what he ſays in his Anſwer, and alledges as his Juſtification. He denies that he aſſerts the Church to be in Danger, under Her Majeſty's Adminiſtration; or otherwiſe than from Vice and Infidelity, Blaſphemy and Prophaneneſs. And as to the Parallel in the Vote, and the Inſinuation of the Members conſpiring the Ruin of the Church; He ſays, he never mentions that Vote, nor did he deſign the Parallel as laid to his Charge. He only meant, That while ſome Men were Conſpiring the Death of the King, others, not privy to this Deſign, voted him out of Danger: So, tho' the Members voted the Church to be out of Danger, yet others were conſpiring againſt the Church, and by their Vice and Infidelity were drawing down Vengeance on the Church and Kingdom. And as to that Vote made Four Years ago, He ſays, it concerns only thoſe who did then inſinuate the Church of *England* to be in Danger under Her Majeſty's Adminiſtration.

Now, my Lords, having ſtated the Charge, and the Defence, I ſhall proceed to acquaint your Lordſhips with the ſeveral Paſſages of the Sermon, which the Commons apprehend will make out their Accuſation. And here, my Lords, I ſhall take Leave to ſay, That no ſtrained or forced Conſtructions can be deſired by the Commons, or expected from your Lordſhips, or any Inferences to be deduced, but what naturally ariſe from a fair, impartial, and candid Interpretation.

My Lords, The firſt Paſſage which the Commons apprehend is for their Purpoſe, is in the 5th Page; the Doctor, juſt before, enumerates St. *Paul's* Misfortunes that befel him, while he was propagating the Goſpel, and ſays, "There is a "very obſervable Gradation in his Sufferings,; but "that, of all his Calamities, the higheſt of them "proceeded from Falſe Brethren: And taking No-

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tice of the Condition of the Church of *Corinth*, then follows these Words; " Tho' it were very obvious " to draw a Parallel here betwixt the ſad Circum- " ſtances of the Church of *Corinth* formerly, and of " the Church of *England* at preſent, wherein her " Holy Communion has been rent and divided by " factious and ſchiſmatical Impoſtors, her pure Do- " ctrine has been corrupted and defiled; her Primi- " tive Worſhip and Diſcipline prophaned and a- " buſed; her Sacred Orders denied and vilified; " her Prieſts and Profeſſors (like St. *Paul*) calum- " niated, miſrepreſented and ridicul'd; her Altars " and Sacraments proſtituted to Hypocrites, Deiſts, " Socinians and Atheiſts; and this done, I wiſh I " could not ſay, without Diſcouragement, I am " ſure with Impunity, not only by our profeſſed " Enemies; but, which is worſe, by our pretended " Friends, and Falſe Brethren.

It may be obſerved, that the Doctor is very free in his Parallels; and when either Church or State is to be repreſented by Compariſons, he is pleaſed to make uſe of the worſt he can find. He ſays, The Church of *Corinth* was in the utmoſt of Perils; and then it was to his Purpoſe to make the Alluſion, and bring the Church of *England* into the ſame Condition.

Here are many Particulars in this Paſſage, whereby the Church is ſaid to be in ſad Circumſtances, and I cannot tell how to apply them according to the Doctor's Way of Interpretation; for he ſays, all theſe Enormities are practiſed, not only without Diſcouragement, but with Impunity; not by profeſſed Enemies, but by Falſe Brethren: So he plainly ſhows who he aims at, as the Authors of theſe Calamities. He excludes vicious Infidels, Blaſphemers, and Hereticks, who are profeſſed Enemies, and lays it upon Falſe Brethren: And he explains what Sort of Falſe Brethren he means; For who can proſtitute Altars and Sacraments to Deiſts, Atheiſts, and *Socinians*, but ſome of his own Order? And who are to puniſh ſuch Offences among the Clergy, but their Spiritual Superiors? And whether they are not Part of Her Majeſty's Adminiſtration, I ſubmit to your Lordſhips.

But, my Lords, ſuppoſing the Fact to be true, That there are Erroneous Doctrines publiſhed; to what End muſt the World be told in this manner that they are vented with Impunity, but to reflect on thoſe who ſhould puniſh them? And can that be done without a Proſecution? If the Doctor had produced any of his undeniable and ample Proofs of theſe Matters, (which he mentions in his Anſwer) before any Court that had a proper Connuſance of them, and been denied Juſtice, he might have had more Reaſon for Complaint: But to blame his Superiors for not puniſhing what they might be ignorant of, and which he ſays he was not, (and for which he might have promoted a Proſecution) ſeems to retort the Guilt upon himſelf, which he would lay upon them.

My Lords, The Second Paſſage is in *Page* the 16th. He is talking of a Comprehenſion which was deſigned, not long ſince, to unite the Church and Diſſenters; and complains of the Perſons who were concerned in that Heinous Intention; and then he aſſerts, " That ſince this Model of an U- " niverſal Liberty and Coalition failed, and theſe " Falſe Brethren could not carry the Conventicle " into the Church, they are now reſolved to bring " the Church into the Conventicle, which will " more plauſibly and ſlily effect her Ruin. What " could not be gained by Comprehenſion and Tole- " ration, muſt be brought about by Moderation " and Occaſional Conformity; that is, What they " could not do by open Violence, they will not " fail by ſecret Treachery to accompliſh. If the " Church can't be pull'd down, it may be blown " up; and no Matter, with theſe Men, how it be " deſtroyed, ſo that it is deſtroyed." Now, my Lords, who were theſe Falſe Brethren that were concerned in this Deſign of Comprehenſion, which failed, and who introduce worſe Miſchiefs? Do theſe Dangers proceed from Vice and Infidelity, from Blaſphemy and Erroneous Doctrines? No, my Lords, theſe Falſe Brethren are deſcribed in the Page before, under his Second General Head, to be in Church and State: Which muſt be Perſons in Power and Authority; the Expreſſion it ſelf imports it; nor could they otherwiſe be capable of accompliſhing that Deſign, of uniting the Diſſenters and the Church: To which Deſign, and the Authors who intended it, he is pleaſed to give the moſt vile and ſcurrilous Names imaginable; and afterwards he lays to their Charge an Intention to blow up the Church by Moderation. And this, I ſuppoſe, is one of the Vices which the Doctor mentions in his Anſwer, as one Means of Danger to the Church. If Moderation be a Vice, I will do the Doctor the Juſtice to acquit him from the leaſt Tincture of it, in any of his Works that I have ever met with.

My Lords, The Third Paſſage is in *Page* the 18th: He is continuing his Obſervations of the Danger from the ſame Falſe Brethren in Church and State; and then his Words are, " Falſhood always " implies Treachery; and whether that is a Quali- " fication for any one to be truſted, eſpecially with " the Guardianſhip of our Church or Crown, let " our Governors conſider." This, my Lords, muſt relate to Perſons, who (as he would inſinuate) are not fit to be truſted with the Guardianſhip of the Church or Crown: And whether this Reflection does not ſeem to aim higher than the Adminiſtration, I ſubmit to your Lordſhips.

The next Paſſage is in *Page* the 20th: The Words are theſe; " And now are we under no " Danger in theſe deplorable Circumſtances? Muſt " we lull our ſelves under this ſad Repoſe, and in " ſuch a ſtupid Lethargick Security embrace our " Ruin? When *Eliſha*, the Great Prophet of God, " was ſurrounded with an Hoſt of Enemies that " ſought for his Life, his blind Servant beheld not " the Peril his Maſter was in, till his Eyes were " open'd by a Miracle, and he found himſelf in " the midſt of Horſes and Chariots of Fire. I " pray God we be out of Danger; but we may re- " member, that the King's Perſon was voted to be " ſo, at the ſame Time that his Murtherers were " conſpiring his Death.

Now, my Lords, the Doctor, to excuſe this Paſſage, ſays, the deplorable Circumſtances we are in, proceeds from the Maturity of National Sins, *&c.* as in his Anſwer. But who are mention'd in his Sermon as the Occaſion of the Maturity of National Sins but the Diſſenters, who, he ſays, are plotting the Ruin of the Church, and Falſe Brethren join with them? So that here neither is the Danger aſſerted from Vice and Infidelity, but as it is occaſioned by the Diſſention from the Church, which the Law has thought fit to apprehend as no Danger to the Church; and therefore it did not become him to aſſert the contrary. Then as to the Parallel of the Aſſembly who Voted King *Charles* the Firſt out of Danger, and of the Members who made

the Vote about the Danger of the Church Four Years ago, he ſays, he meant no Reflection on any of the Members who paſſed that Vote, becauſe he never mentioned that Vote; and as to the Vote about King *Charles*, others were conſpiring his Ruin than thoſe who voted him out of Danger; ſo while the Parliament voted the Church out of Danger, there were other Enemies conſpiring her Ruin. If the Doctor intended no Reflection upon that Vote, Why was Voting in any Caſe mention'd? Can any one imagine that the Doctor did not know of that Vote, ſince the Danger of the Church is ſo much his Topick? Nor can I preſume him ignorant of the Time when that Vote about King *Charles* was paſſed; which, as far as I can obſerve from the Hiſtory of that Time, was in *November* 1648, that he was voted out of Danger; and when he was Tried and Beheaded, I need not mention to your Lordſhips: And whatever Alteration might be made in that Aſſembly after the Vote, and before his Death, was done by thoſe Perſons who conſpired his Deſtruction, and who were Part of that Aſſembly who voted him out of Danger. So that it ſeems plain, that the Vote of Safety, and the Conſpiracy of Ruin, came from moſt of the ſame Perſons; and it does not ſeem very ſtrange to ſuppoſe the Doctor intended his Alluſion in the ſame manner.

And as to the Scripture he quotes to this Purpoſe, "That the blind Servant beheld not the Peril "his Maſter *Eliſha* was in, 'till his Eyes were "opened by Miracle, and he found himſelf in the "midſt of Horſes and Chariots of Fire." My Lords, theſe Horſes and Chariots of Fire were not the Prophet's Enemies, but his Friends; nor was there any Danger to be feared from them; on the contrary, they were a Security from his Enemies; ſo that he plainly perverts the Senſe of that Text, to make a ſtronger Impreſſion, and more effectually to delude the People.

My Lords, The laſt Paſſage is in the laſt Page: He is ſtill talking of the Danger of the Church, and quotes a Text as in the *Lamentations*, (viz.) "Tho' ſhe lies bleeding of the Wounds ſhe receiv'd "in the Houſe of her Friends." Indeed, my Lords, I can't find it there; therefore it ſeems to me to be a Lamentation of the Doctor's own making. Then he goes on, "Tho' the ways of *Sion* may mourn for a Time, "and her Gates be deſolate, her Prieſts ſigh, and "ſhe in Bitterneſs, becauſe her Adverſaries are Chief, "and her Enemies at preſent proſper; tho' among "all her Lovers ſhe has few to comfort her, and "many of her Friends have dealt treacherouſly with "her, and are become her Enemies." My Lords, I mention theſe Paſſages only to ſhew, that the Doctor, by the moſt Pathetick Expreſſions of his own, mixt with theſe Texts of Scripture, endeavours to repreſent the Church of *England* to be in the utmoſt Danger.

I ſhall trouble your Lordſhips no further with the Paſſages in this Sermon; but ſhould not omit to take Notice, that there is a Suggeſtion in the Doctor's Anſwer, that the Vote Four Years ago did not concern him; but that it related only to them that then did aſſert the Church to be in Danger: If he had minded the Words of the Vote, he would have found there was no Pretence for that Objection; for it is, "Whoever ſhall go about to inſinuate, "that the Church is in Danger under her Majeſty's "Adminiſtration;" which muſt relate to any Time during the Continuance of her Majeſty's Reign.

And now, my Lords, I beg Leave to obſerve ſome Circumſtances attending this Offence, which give it the higheſt Aggravation. That Memorial which was publiſhed ſome Years ago, and was the chief Occaſion of the Vote in Parliament, was a Libel that reviled her Majeſty and her Adminiſtration, as the Occaſion of the Danger of the Church. The Author was pleaſed to conceal himſelf, and durſt not avow his Doctrine; but the Book had the Fate it deſerved: And from the Aſhes of that Phœnix aroſe another Memorial, with many of the ſame virulent Expreſſions againſt Her Majeſty's Adminiſtration, agreeing in the whole Scope of it, as to the ſame ſcandalous Purpoſe; but far exceeding it in Malice and Inveteracy.

And this new Memorialiſt has preſumed to publiſh his Seditious Reflections in the moſt open manner imaginable; firſt at the Aſſizes at *Derby*, and afterwards in the great Church of this Metropolis; and has thought fit to Print and Diſperſe about Forty Thouſand of them over the Kingdom. From whence could this extraordinary Zeal proceed? Was it to exhort Men to revere their Governors, and to ſubmit to thoſe in Authority over them? Was it intended to preſerve Peace and Good-will amongſt Men? To promote Charity, Brotherly Love and Affection? No, my Lords, there is plain Evidence to the contrary, *Ex ore ſuo judicabitur*. He tells you the Reaſon of his Topicks in that Place; he ſays, he intended "To open the Eyes of the "deluded People in that great Metropolis; to ſet "the Rich and Powerful Inhabitants right in their "Notions of Government in Church and State." They were obliged to him for his pious Deſign, and for inſtilling thoſe Doctrines, which, as your Lordſhips were told Yeſterday, would make their Religion, Liberty, Property, and all that is dear and valuable, Precarious: He tells you further, "That our Conſtitution of Church and State is "vigorouſly attack'd from without, and lazily de-"fended from within; that there are Attempts up-"on the Friends of the Church, to ſhut their Eyes "and Mouths, in order to Undermine and Deſtroy "them; that he thinks the Pulpit a proper Place "for Politicks; and that it is the Buſineſs of "a Clergyman to ſound a Trumpet in *Sion*, to cry "aloud and ſpare not." And in his Preface to the *Derby* Sermon he explains himſelf ſtill further upon this Topick, "That the Church is ſhamefully be-"trayed and run down; that there are ſome ſtill "who will defend it with their Lives and Fortunes." And ſtates the Caſe as if there was an immediate Neceſſity to take up Arms for a Holy War upon this Occaſion.

My Lords, This Crime is more heinous, for that there is the leaſt Reaſon for theſe Seditious Murmurs, that has been in any Reign whatever. Is there any Invaſion or Attempt upon the Liturgy, even the leaſt Ceremony of the Church, or any Part of the Eccleſiaſtical Conſtitution? Are her Revenues impaired, or any of her Temporal Rights violated? No, my Lords; but our Royal Sovereign has diſtinguiſhed Her Care for this Church in a more peculiar manner than any of her Predeceſſors; She has given from Her own Revenue to increaſe that of the Clergy, for their more creditable Support, and to enable them to Preach ſound Doctrine for the Welfare of Her Subjects; nor is Her Majeſty wanting to promote Religion, Piety and Virtue, by Her own Royal Example, the moſt effectual Encouragement. Theſe are the true Baſis of the Church, and the beſt Pillars to ſupport it. And what Occaſion was there for theſe Reflections on Her Majeſty's Adminiſtration? Has not that venerable

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Bench given the World abundant Proof of their Care and Vigilance to preſerve that Church, of which they are the Guardians, by their Learning and unblameable Conduct; by their zealous and reſolute Defence of her in the worſt of Times, and againſt all her Enemies? It is very ſurprizing that a Gentleman, whoſe Education has been in the Fountain of Learning and Religion ſo many Years, (who cannot be preſumed to err through Ignorance) that he ſhould preſume in his private Capacity to contradict the Senſe of the whole Nation, and caſt ſuch Aſperſions on his Superiors. To what End could he ſo zealouſly diſperſe his Notions, if not to animate a deluded People to the Execution of Seditious Deſigns.

It were to be wiſhed, that a Government could be ſupported by Mildneſs and Clemency; but ſuch is the State of depraved Nature, even theſe moſt Paſſive-Obedience Natures, that they are not contented to be only ungrateful for the Benefits they enjoy from the Church and State, but they muſt Rebel againſt Principle, and fly in the Face of that Government from which they receive their Support and Protection.

The Doctor cries aloud, and there are many others that ſpare not: Some have preſumed to cenſure this very Proceeding before your Lordſhips, as a Perſecution of the Church. And what muſt be the Conſequence of Tolerating ſuch bold daring Spirits to go on in their Seditious Practices!

If your Lordſhips do not vindicate your own Reſolutions, and exert your Power and Authority to ſuppreſs that audacious and unparallel'd Inſolence, that daily flies abroad from the Pulpit and the Preſs, (which, as the Doctor ſays truly, are become the Mints of Faction and Sedition) I may take Leave to ſay, there will be too much Reaſon for his Aſſertions of Danger both to Church and State: But the Commons are ſo well ſatisfy'd of your Lordſhips true Concern for the Preſervation of our Conſtitution, that they cannot imagine you will ſuffer any Attempts that may be pernicious to the Welfare of the Government, to paſs without condign Puniſhment; and therefore they entirely rely on your Lordſhips Wiſdom and Juſtice.

Mr. *Compton.* MAY it pleaſe your Lordſhips, I am commanded by the Commons to aſſiſt in maintaining the Third Article of their Impeachment againſt Doctor *Henry Sacheverell*, which has been fully opened to your Lordſhips by the Learned Gentleman that ſpoke before me.

My Lords, The Commons think they have good Reaſon to aſſert, that Dr. *Sacheverell*, in his Sermon Preach'd at St. *Paul's*, doth falſly and maliciouſly contradict and arraign a Reſolution of both Houſes of Parliament, approv'd of by Her Majeſty, and made publick by Her Royal Proclamation.

My Lords, Your Lordſhips cannot but have obſerv'd, that it has been one of the conſtant Artifices of the Enemies of the preſent happy Eſtabliſhment, who very well know the juſt Value the People of this Nation have for the Eſtabliſh'd Church, to ſuggeſt and inſinuate, that this Church is in a Condition of great Peril and Adverſity, in order to foment Animoſities, and to cover Deſigns which they dare not publickly own. But how frequent ſoever this has been, I believe I may ſafely affirm, that this ſcandalous and ſeditious Aſſertion was never ſo boldly maintain'd, nor with ſuch invidious and aggravating Circumſtances, as by the Criminal at your Lordſhips Bar.

The Learned Society, of which he is a Member, reap'd ſuch ſignal, ſuch immediate Advantages from the Revolution, that he could not be unmindful, he could not be ignorant of the extreme Danger from which our Laws and Liberties, our Church and Conſtitution were reſcued by his late Majeſty. But ſuch is his Ingratitude to our Great Deliverer, ſuch is his Inveteracy to the Revolution, that he makes that very Revolution the Period of Time from whence the Enemies of our Church firſt had Hopes to deliver her up to her worſt Adverſaries. Nor does his Malignity ceaſe there, but he endeavours to perſuade the People, that from the Revolution to the preſent Time, there has been a continued Series of Contrivances to ruin and deſtroy the Church: At the Revolution, by open Violence; but *Now*, that is, under Her Majeſty's Adminiſtration, *by ſecret Treachery*; and ſince neither the late nor the preſent Reign can eſcape his Invectives, for what Perſon he reſerves his Panegyricks, is ſubmitted to your Lordſhips to determine.

My Lords, I would not take up any of your Lordſhips Time unneceſſarily; but I muſt not conclude, without expreſſing the Indignation the Commons have at his traducing and vilifying the laſt Parliament, by that odious Parallel in the 21ſt Page of his Sermon preach'd at St. *Paul's*.

My Lords, The Parliament he thus endeavours to blacken, was opened with ſo full an Appearance in both Houſes, that Her Majeſty obſerv'd it with Satisfaction from the Throne; and at the ſame time Her Majeſty with Grief obſerv'd the Malice of ſuch Perſons, who ſuggeſted the Church was in Danger; and deſired the Aſſiſtance of Her Parliament to diſcountenance and defeat ſuch Practices. And in Duty to Her Majeſty, to ſecure the Quiet and Peace of the Kingdom, and to diſappoint the Deſigns of the Enemies of our Church and Conſtitution, both Houſes of Parliament came to the Reſolution, ſet forth by the Commons in the Articles of the Impeachment which have been read to your Lordſhips. And the ſame Parliament proceeded in this and other Matters which were before them, with ſo much Vigor, as well as Prudence, that in leſs than ſix Weeks Her Majeſty graciouſly took Notice, that their Proceedings had had a good Effect all over *Europe*. And at the Concluſion of the Seſſion, Her Majeſty, with great Goodneſs, declares how much ſhe was pleaſed to obſerve their Unanimity and Zeal throughout the whole Seſſion, againſt every thing that tended to Sedition. It was this Parliament that ſo chearfully concurr'd with Her Majeſty in promoting and compleating the Union of the Two Kingdoms. And it was the Gentlemen that compoſed this Parliament, join'd by the Repreſentative of the other Part of the united Kingdom, who readily and unanimouſly aſſiſted Her Majeſty in diſappointing the Attempt of the Pretender to Her Crown, whoſe chief Dependance was in the reſtleſs and arbitrary Principles of ſome of Her Majeſty's Subjects, ill-affected to their Country.

And now, my Lords, is there any Ground to compare the dutiful Proceedings of ſuch a Parliament, with what was done in thoſe unhappy Times, with which he wou'd maliciouſly draw a Parallel? No, my Lords. And I may ſafely venture to ſay, that 'tis impoſſible to find the leaſt Reſemblance between Her Majeſty's Glorious Reign, and that unfortu-

fortunate Adminiſtration, except that there were then, as there are now, *Miniſters of the Church, who by their Function, being Meſſengers of Peace, ſet up to be the Trumpeters of Sedition, and Incendiaries to Rebellion,* But, my Lords, the Commons hope, That the happy Period is now come, when even this Reſemblance ſhall have its Determination; for they entirely rely on your Lordſhips Juſtice to inflict ſuch an Exemplary Puniſhment on this Offender, as may deter others from endeavouring to diſtract the Kingdom with ſuch groundleſs Diſtruſts and Jealouſies for the future.

Clar. Hiſt. of the Rebel. *Vol.* 2. *P.* 18.

Lord Coningsby. MY Lords, I am commanded by the Commons of *Great-Britain* to aſſiſt, and endeavour to make good, the important Charge they have Exhibited againſt the Criminal at the Bar: And becauſe I am leaſt able, amongſt all the Gentlemen that have that Honour, out of Indulgence to me I am aſſigned to the Third Article, that wants leaſt to be ſupported.

The Sermon Preached by the Doctor at St. *Paul*'s, and which has been read to your Lordſhips, from the firſt Word in the Title Page, to the laſt Line in the Concluſion, is one falſe, malicious, and ſeditious Aſſertion, That the Church of *England* was under the laſt Reign, and is under the preſent, in the utmoſt Peril and Danger.

The Proclamation which your Lordſhips have heard mentioned, and which was deſigned by our Glorious Queen, from whoſe Speech it took its Riſe, by your Lordſhips, and the Commons who concurr'd in it, to be a Warning to ſuch Incendiaries, as the Criminal, not to trumpet amongſt the People Suggeſtions ſo ſeditious, in order to cover Deſigns more dangerous, and which, God be praiſed, they are not yet ſtrong enough, nor never I hope will be, Publickly to own; ſhews this Malignant Offender committed this Offence in Defiance of Her Majeſty, your Lordſhips, and the Commons.

The Proofs, which almoſt every Gentleman has brought to the two preceding Articles; and thoſe particular Inſtances that have been ſo fully open'd by theſe Gentlemen who have ſpoke before me to the preſent, ſhews that it would be vain in me, and miſpending your Lordſhips Time, to pretend to enforce thoſe Points, already ſo fully made good.

I ſhall therefore very ſhortly, tho' I hope very plainly, lay before your Lordſhip what are thoſe pernicious Deſigns the Doctor intends to cover, and at laſt hopes to bring to paſs, by his Preaching, Printing, and Publiſhing, not only round this Kingdom, but amongſt his Friends on the other ſide of the Water, this ſeditious, I may ſay, rebellious Diſcourſe, for which he ſtands at preſent Impeached by the Commons.

And as it has been ſhewn your Lordſhips, by the Gentlemen that made good the firſt Article, that the Doctor, by reflecting on the Neceſſary Means to bring about the Revolution, the Foundation on which our preſent happy Eſtabliſhment is built; by aſſerting that Her Majeſty ought to depend upon no other Title to the Crown but Her Hereditary one; deſign'd, by ſuch deſtructive Poſitions, to bring back the Pretender, with Popery and *French* Tyranny attending him, to govern the State.

So it is as plain, from the whole Scope of his Sermon, that the Doctor, and all thoſe in Combination with him, having nothing more at Heart than to deſtroy the preſent Church, as Eſtabliſh'd by the wholſome Laws of this Land, and that becauſe it's moſt conſonant in its Doctrine and Diſcipline to that of the Primitive Chriſtians, of any ſince the Time of the Apoſtles; and conſequently leſs agreeable with the flaming Opinions of ſuch Firebrands, who know not of what Spirit they are of: And this in order to ſet up a Scheme of a Church, agreeable to the Tyrannical one they have projected for the State: A Church, the Doctor's I mean, though in Pretence Proteſtant, that would be ready ſoon to be turn'd into a Monſter, by adding to it ſelf a Popiſh Head.

A Church that will deſtroy all thoſe that brought about, and have ſince ſupported the Happy Revolution.

A Church, which upon Anti Chriſtian Principles profeſſes Burning for Conſcience-ſake; which the Doctor, like thoſe wicked Men whoſe Mercies are Cruel, calls wholſome Severities.

A Church that will turn all the Bleſſings we enjoy under the preſent Adminiſtration, into all thoſe Miſeries we got rid of by the late Glorious Revolution.

I cannot doubt therefore but your Lordſhips will out of Duty to the beſt of Queens, and in Juſtice to your Lordſhips and the Commons, deter others from ever being guilty of the like Heinous Offence.

Mr. Dolben. MY Lords, This Article of the Commons Impeachment contains one Criminal Poſition, That the Church of *England* is now in a Condition of great Peril and Danger under Her Majeſty's Adminiſtration, aggravated by an odious Parallel that affords a pregnant Proof of the true Spirit and Deſigns of this bold Offender.

The Accuſation has already been fully made out by plain and poſitive Words in his Sermon; from which, as well as from many other Paſſages, I ſhall beg leave to ſubmit to your Lordſhips Judgment, whether that wicked Parallel may not juſtly be turn'd upon him, Whether there is not more than Suſpicion that he, and all his Abettors, are conſpiring the Ruin and Deſtruction of the Church, when under the Diſguize of a Falſe Zeal they proſtitute her Sacred Name, to carry on dark and deep Deſigns, fatal both to Church and State.

I ſhall only briefly take Notice to your Lordſhips, that the Guilt of this Offence ariſes from a plain Contempt of Her Majeſty's Proclamation, and of the Reſolutions of both Houſes of Parliament; moved by no Inducement, but an Eagerneſs and Induſtry not to let any Shadow or Colour eſcape, that may contribute to his Part in the grand Deſign, to be only effected by fomenting Diviſions and Diſtractions amongſt us.

But, my Lords, in order to unveil the Doctor's Pretences, and to take away his trivial Excuſes, I beg leave to repreſent to your Lordſhips, that if the whole Legiſlature had not, from a full Conviction of the Church's Security and Safety, laid a ſevere Injunction againſt the publiſhing ſuch a falſe and pernicious Suggeſtion, yet evident Truth ought to have taught him not to have tranſgreſs'd in ſo notorious a Manner.

My Lords, When it appears that the Church has the Sanction of ſo many and ſo good Laws to eſtabliſh and defend it; when the Veneration and Devotion to it, of ſo great a Majority of the People, is ſo viſibly fixt in their Hearts, that the bad Examples and provoking Behaviour of this Falſe Brother, and of ſeveral others of the ſame Stamp, have

have not made the leaſt Abatement, or Impreſſion to its Diſadvantage; when the Parliament on all Occaſions appears ſo forward and unanimous in their Zeal and Affection for it; when 'tis recommended and illuſtrated by the Learning, Piety, Wiſdom, Charity and Chriſtian Moderation of ſo many of its chief Paſtors; but above all, when 'tis under the Protection and Government of a Supreme Head, a true and conſtant Defender of its Faith and Diſcipline, who having already expoſed Her Royal Perſon to Hardſhips and Dangers, to reſcue it in a Time of its utmoſt Peril, does continue daily to manifeſt the ſame Devotion, Piety and tender Concern for it: Under this powerful Alliance for its Support, can ought but Malice and Envy at its Proſperity, can any one but an Incendiary or diſguis'd Enemy inſinuate, that the Church of *England* is not fenced and fortified with an impregnable Barrier againſt all Danger, from open Attacks or Violations?

'Tis true indeed, my Lords, that no human Care or Policy can prevent the Attempts and ſecret Conſpiracies of inteſtine Traytors. Vipers in the Boſom may ſting, tho' the Body be covered with the ſtrongeſt Armour. All that can be done is, to be watchful to diſcover and expoſe the Hypocrite, to detect and puniſh his Crimes. The Commons, on this Occaſion, are here exerting their part of this Duty, fully aſſured of Succeſs from your Lordſhips equal Zeal and Juſtice.

My Lords, You have now brought to your Bar a Clergyman, bound, by the ſtrongeſt Tyes and Duty of his Function, to Inſtruct and Propagate the Neceſſary Means for the Peoples true Happineſs in this World, as well as the next; yet your Lordſhips will find him proved to be a Trumpeter Itinerant of Sedition and Rebellion, firſt at *Derby*, then in *London*; an Agent detached from that dark Cabal, whoſe Emiſſaries appear in all Shapes, and almoſt in all Places; an Aſſerter of ſuch peſtilential and unparallel'd Doctrines, as at once overthrow the whole Conſtitution both of Church and State. He may perhaps urge a Precedent, in which it has been pleaded, and from the Pulpit, that an urgent Neceſſity can juſtify the Breach of Laws; and from others, that in particular Caſes they may be diſpenſed with; but this Gentleman muſt be allowed the Infamy, to have ſtretch'd and improv'd thoſe pernicious Tenents to the exalted height of making all our Laws, Liberties, Religion, and Lives, held only at the precarious Pleaſure of any bold Invader; for nothing can be a plainer Expoſition or Conſequence, when 'tis taught, that no Oppreſſion, no Violation can juſtify an Oppoſition to it.

My Lords, The Commons have brought this Offender before you, with a View, not only to detect and puniſh his Offence, but to obtain an Occaſion in the moſt Publick and Authentick manner to avow the Principles, and juſtify the Means, upon which the preſent Government and the Proteſtant Succeſſion are founded and Eſtabliſhed; and this more out of a generous Concern for Poſterity, than for our own preſent Security. My Lords, we are ſo happy as to have a Sovereign on the Throne, whoſe Goodneſs, Juſtice and Piety leaves no room for the leaſt Fear or Jealouſy; but we hope the Record of this Proceeding will remain a laſting Monument, to deter a Succeſſor, that may inherit her Crowns, but not her Virtues, from attempting to invade the Laws, or the Peoples Rights; and if not, that it will be a noble Precedent to excite our Poſterity to wreſtle and tug for Liberty as we have done. My Lords, I doubt not but Her Majeſty will with the greateſt Satisfaction, ſee the Government thus put upon a right and equal Foot, ſince thereby thoſe Bleſſings will be ſecured to future Ages, which her happy Reign has Planted amongſt us, ſince thereby ſhe will entail a laſting Felicity on her People, and prevent thoſe real Dangers both to Church and State which at this Time are ſo falſly inſinuated. But my Lords, if this ſhould not now be effectually obtain'd, and by ſuch wholeſome Severities as the Doctor applauds and recommends, give me leave to conclude, with a juſter Complaint than that in his Anſwer, That hard is the Fate of that People who after having been twenty Years in War, in Conjunction with ſo many great Allies, with the Expence of ſo much Blood and Treaſure, contending only again Tyranny and Oppreſſion, and which we may juſtly hope is at laſt ſubdued, ſhall then ſee all *Europe* enjoy the Fruits and Benefits of our Labours; and at the ſame time, tho' Her Majeſty's well choſen General ſhall at laſt bring home Peace, as he has ſo often the Laurels of Victory, to lay with humble Duty at Her Royal Feet, yet we, only we, muſt be rendred uncapable of the common Bleſſing, *betrayed at home to a perpetual Condition of Bondage, by ſuch falſe Brethren as are at your Lordſhips Bar.*

Then the Lord *Haverſham* moved to Adjourn to their Houſe above; and being returned, and ſeated as before, Proclamation for Silence was made by the Serjeant at Arms.

Lord Chancellor. Mr. *Dolben*, the Lords have taken Notice that at the Concluſion of what you ſpoke, you us'd this Expreſſion, * *as are at your Lordſhips Bar*; which Words are ſo general, that their Lordſhips are of an Opinion that they want an Explanation.

Mr. Dolben. My Lords, thoſe Words had relation only to the Priſoner *at the Bar.*

Serjeant Parker. MY Lords, Your Lordſhips have heard the three firſt Articles of this Charge largely ſpoken to; it is my Duty, in Obedience to the Command I have been Honoured with by the Commons, to make good the Charges in the Fourth. I am ſenſible how unequal I am to ſuch a Work, both from my want of Capacity, and my preſent Indiſpoſition; but however, in ſuch Manner as I can, I ſhall endeavour it.

This Article ſets forth, That *He the ſaid* Henry Sacheverell, *in his ſaid Sermon and Books, does falſly and maliciouſly Suggeſt, that Her Majeſty's Adminiſtration, both in Eccleſiaſtical and Civil Affairs, tends to the Deſtruction of the Conſtitution; and that there are Men of Characters and Stations both in Church and State, who are falſe Brethren, and do themſelves weaken, undermine and betray, and do encourage and put it in the Power of others, who are profeſſed Enemies, to overturn and deſtroy the Conſtitution and Eſtabliſhment: And chargeth Her Majeſty, and thoſe in Authority under Her, with a general Male-Adminiſtration; and as a publick Incendiary, he perſwades Her Majeſty's Subjects to keep up a Diſtinction of Factions and Parties, inſtills*

* *Exception had been taken, that the Word* are *might carry the Reflection to the Council and Sollicitor aſſigned by the Lords to aſſiſt Dr.* Sacheverell, *who were alſo at the Bar.*

groundleſs Jealouſies, and foments Deſtructive Diviſions among 'em, and excites and ſtirs 'em up to Arms and Violence: And, that his ſaid Malicious and Seditious Suggeſtions may make the ſtronger Impreſſions upon the Minds of Her Majeſty's Subjects, he the ſaid Henry Sacheverell *does wickedly wreſt and pervert divers Texts and Paſſages of Holy Scripture.*

This Article in general, is a Charge of Sedition under ſeveral Aggravations, and made good by almoſt every part of the Sermon and Dedications, read before your Lordſhips in Evidence.

The avow'd Deſign of the Sermon, is to repreſent the extreme Perils and Diſtreſſes of the Church and Conſtitution from Falſe Brethren, that are *in* the Adminiſtration, and countenanc'd *by it.*

He repreſents the *Church* in the utmoſt Extremity, thoſe *Fences* broken down, without which ſhe is *naked* and *unguarded*, *her Altars and Sacraments proſtituted*, her ſelf *deſerted*, *betray'd*, *undermin'd*, and *perſecuted with open Violence*, *bleeding of her Wounds*, *her Enemies openly calling for her Deſtruction.*

The *Nation*, ſunk into the loweſt degree of Corruption, ſwarming and over-run with *Atheiſts*, *Deiſts*, *Socinians*, *Hypocrites*, *Villains*, *Rebels*, *Traytors*, *Correſpondents with the Devil*, nay, with Men that are themſelves *the worſt of Dæmons.*

The *Government*, ſo far from applying a Remedy, that all this is done *Openly*, *with Impunity*, *without Diſcouragement:* Nay, the Perſons from whom the Miſchiefs ariſe, are *ſuffer'd to form themſelves into Seminaries*, *to Propagate Atheiſm and other Helliſh Principles*; are let into the *Adminiſtration*, they are in *Places*, Places are given 'em as the *Reward of betraying their Parties*, they *engroſs all Places*, they are *Perſons of Characters and Stations*, nay, they are *Chief.*

Nor is this done in any Repreſentation to thoſe, that by making new Laws, or putting in Execution the old, might regularly cure theſe Miſchiefs; but in *a popular Harangue* from the *Pulpit*: Not in terms of Lamentation, not as grounds of Humiliation, or in a Language that might become one that thought the only *Arms* of the Church to be *Prayers and Tears*; but with all Malice, Bitterneſs, Reviling, Inſolence, endeavouring to raiſe in his Auditors the Paſſions himſelf puts on, and pointing out (as far as he dares) to *Arms* and *Violence* for a Cure, and not ſo much as *offering* any other.

Theſe are the Colours in which he Paints our Condition, and thus he chuſes to ſhew the Zeal and Duty he profeſſes to the Beſt of Queens.

But ſince he pretends in great Meaſure to deny or evade the Charge, it may not be amiſs to look a little more particularly into his Sermon, and take a view of the *Scheme* of it, and of ſeveral Paſſages therein.

The *Crime* he profeſſes to ſhow the Miſchiefs of in this Sermon, is *falſe Brotherhood*: The *Method* he propoſes to Treat it in is,

1. To deſcribe the *Crime*, and to ſhow who are *Falſe Brethren*, and *upon what Accounts*; and he conſiders it both with reſpect to the *Church* and to the *State.*

2. To ſhow the *Dangers*: And

3. The *Guilt* and *Folly* of this Sin. And

4. (That it may appear that all the Crimes and all the Treacheries he mentions are not mere Suppoſitions, but Realities, at this time,) He undertakes, as a *Conſequence of all*, *to ſhew what mighty Reaſon we have at all times, more eſpecially* AT PRESENT, *to ſtick to the Principles of our Church and Conſtitution, and to beware of and mark all thoſe falſe Brethren who deſert or betray 'em.*

I believe the firſt Clauſe of this Article will ſo clearly be prov'd from the Paſſages that more directly concern the ſecond and the third, that I deſire, for ſaving your Lordſhips Time, to begin with thoſe two Clauſes, and then to return to the firſt afterwards.

I begin therefore with the ſecond Clauſe, *That the ſaid* Henry Sacheverell, *in his Sermons and Books, doth falſly and maliciouſly Suggeſt, that there are Men of Characters and Stations in Church and State who are Falſe Brethren, and to themſelves weaken, undermine and betray, and do encourage and put it into the Power of others who are profeſſed Enemies, to overthrow and deſtroy the Conſtitution and Eſtabliſhment.*

To make this out, I beg leave to obſerve, that in entring upon his ſecond Head, that is, to ſhow the great Peril and Miſchiefs of theſe Falſe Brethren both in Church and State, he aſſerts, *pag.* 15. *That they weaken, undermine and betray in themſelves, and encourage and put it in the Power of our profeſs'd Enemies to overturn and deſtroy the Conſtitution and Eſtabliſhment of both.* This therefore runs thro' his *whole* Diſcourſe; and, being affirm'd of Falſe Brethren *in general*, muſt be applicable to *every ſort* of falſe Brother. If then there be any *Perſons of Characters and Stations* whom he repreſents as *Falſe Brothers*, then he has, in the place mentioned, affirm'd of THEM, and undertaken to prove, that THEY *weaken, undermine and betray, and put it into the Power of others to overturn and deſtroy the Conſtitution and Eſtabliſhment.*

And as to that, he comes under his third Head, *pag.* 21. to ſhow the Malignity and Guilt of this Sin, in reſpect of the World, and begins it thus, (*pag.* 21, 22.) "What a vaſt Scandal and Offence "muſt it be, to all Perſons of Piety and Integrity, "to ſee *Men of Characters and Stations* thus ſhift "and prevaricate with their Principles, and ſtart- "ing from their Religion, upon any occaſion of "Difficulty or Tryal, and like the Diſciples flying "from and forſaking our Saviour, when his Life "lay at ſtake; to ſee Mens Opinions ſit as looſe "almoſt as their Garments, to be put on or off for "Convenience; what can unwary Perſons conclude "from this Tergiverſation and Hypocriſy, but that "*all Religion is State-craft* and Impoſture? That "all *Godlineſs* is Gain, and that the *Doctrines of* "*the Church* lie not ſo much in her *Articles*, as her "*Honours* and *Revenues?*

This is a full Charge of *Falſe Brotherhood* upon thoſe *Perſons of Characters and Stations*, and *exemplifying* in them the Malignity of that Crime, which is the Subject of his Diſcourſe: The Conſequence is plain, that he here charges 'em with Falſe Brotherhood, and having before aſſerted, that *all ſuch Falſe Brothers weaken, undermine and betray, and put it into the Power of others to overturn and deſtroy the Conſtitution and Eſtabliſhment*; he has not only ſuggeſted but maintain'd, *that there are Perſons of Characters and Stations that weaken, undermine and betray, and put it into the Power of others to deſtroy the Conſtitution and Eſtabliſhment.*

In his Anſwer, put in before your Lordſhips to the Articles of Impeachment, he would divide the Charge in this Clauſe; and (1.) as to the ſuggeſting that there are ſuch *Perſons* who are *Falſe Brethren,*

thren: he ſays, That if he had ſaid *there are Perſons of Characters and Stations* that are Falſe Brethren, not reſtraining it to the *higheſt*, it would not be either falſe, malicious, or highly Criminal.

(2.) As to the weakening, undermining, and betraying in themſelves, and putting it into the Power of profeſſed Enemies to overturn and deſtroy the Conſtitution, he ſays, he has not ſuggeſted *that* of Perſons of Characters and Stations; but the mention of thoſe *Perſons*, and the Expreſſion of *weakening and betraying in themſelves, and enabling others to deſtroy the Conſtitution*, are twelve Pages aſunder.

(3.) He mentions ſome, which he thinks do weaken and betray the Conſtitution, but has not ſaid any of *them* are Men of *Characters and Stations*.

In anſwer to theſe Gloſſes, I might ſay, that if this were meant, *not* of the *higheſt* Characters and Stations, nay though it were *true* too, the affirming this of them would be Criminal, and in the manner he does it, *highly* ſo. All ſubordinate Magiſtrates, of whatever Station, may be regularly complained of, and call'd to account; but the Meaneſt are not to be traduced and libell'd, nor the Government upon their Accounts.

But this I offer. The Words, if not *reſtrained* to thoſe of *higheſt* Characters and Stations, neither are they *reſtrain'd* to the *loweſt*; and, in Truth, ſtrike *all*, and ſo were *intended*, as other Parts ſhow.

It is no Excuſe, if he ſcandalizes Perſons of the *higheſt* Characters and Stations, that he does not ſcandalize them *only*.

It is no Excuſe, when he ſpeaks opprobriouſly, in *general* Terms, of Men of Characters and Stations, without diſtinguiſhing *to his Auditory*, to diſtinguiſh *upon his Defence*, and pretend he meant only ſome few of the *meaner Sort*; that is, that when he was ſpeaking of the Miſchief and Malignity of this Crime, and ſhowing how *Great* it was, his Aſſertion concerning Men of Characters and Stations *in general*, was meant *only* of *thoſe*, in whom the Miſchief and Malignity is *leaſt*.

No, it is a general Arraignment of the Government throughout, and as ſuch he muſt Anſwer for it. And to put this out of Doubt, he has told us, *Page* 26. in Scripture Words, That *the Church's Adverſaries are chief*.

For what he talks of ſeveral *Senſes*, in which he ſays he takes Falſe Brethen in the Sermon, 'tis not at all material in *what Senſe* he charges thoſe Perſons with Falſe Brotherhood, if *in Conſequence thereof* he charges them with *betraying* the Church, and empowering its Enemies to deſtroy it. The charging them with being Falſe Brethren, had been a *Fault*, as *that* is a Term of Reproach, which, with him, carries juſt as much Malignity as he pleaſes, even to *ſomething analogous to the Sin againſt the Holy Ghoſt*, and rendring them the *worſt of Dæmons*. But the *Streſs* of this Accuſation, is the *Treachery* they are charged with *as Falſe Brethren*.

2. In the next Place, therefore, he denies that Part of the Charge; and for this *ſhrewd Reaſon*, that the Two Expreſſions are Twelve Pages aſunder: An Anſwer I admire to ſee put in upon ſo ſolemn an Occaſion! As though the Falſe Brotherhood he ſhows the *Danger of*, and the Falſe Brotherhood he ſhows the *Malignity of*, had no Relation to one another, becauſe Twelve Pages aſunder.

3. He mentions *ſome* that he affirms to be *Weakeners and Betrayers*, &c. but ſays he does not ſuggeſt *thoſe* to be *Men of Characters and Stations*. All the Inference to be drawn from that, is, either that there are, beſides *thoſe*, ſome *other* Weakners and Betrayers, that are Men of Characters and Stations; or that *ſome* of *thoſe* are Men of Characters and Stations, though he have not ſaid ſo; which is no Excuſe for him. For though he have not deſcrib'd *every Sort* of Weakner or Betrayer; and though he have not told us *which Sort* of Weakner or Betrayer he ranks the Men of Characters and Stations under; yet he has in general charg'd Men of Characters and Stations with Falſe Brotherhood, and as Falſe Brethren to be Weakners and Betrayers, *&c.*

IN the next Place, I would lay before your Lordſhips the Proof of the Third Clauſe of this Article, which ſays, *That Dr.* Sacheverell *charges Her Majeſty, and thoſe in Authority under Her, with a general Male-Adminiſtration.* Every Part of the Sermon makes out this, repreſenting the whole Nation in the utmoſt Diſorder and Confuſion, and the Magiſtrates, inſtead of *applying* a Remedy, rather *increaſing* the Diſtemper.

Page the 14th is a very home and a direct Charge upon the Government. It comes under that Part of the Sermon, where he is deſcribing Falſe Brethren with Relation to the State, And when he has declared very largely what they *do*, and what they *hold*; he goes then to what they are *ſuffer'd to do*: He ſays, "Theſe Falſe Brethren in our Government "do not ſingly, in private, ſpread their Poiſon; but "(what is lamentable to be ſpoken) are *ſuffer'd* to "combine into *Bodies and Seminaries*, wherein *A-*"*theiſm*, *Deiſm*, *Tritheiſm*, *Socinianiſm*, with all "the Helliſh Principles of *Fanaticiſm*, *Regicide* "and *Anarchy*, are *openly profeſs'd* and taught, to "corrupt and debauch the Youth of the Nation in "all Parts of it, down to Poſterity, to the preſent "*Reproach* and future *Extirpation* of our *Laws and* "*Religion*.

The *ſuffering* theſe Things is a direct Charge upon the *Adminiſtration*; and he in Effect *declares* it ſo, when he concludes, that this is to *the Reproach of our Laws and Religion*; that is, of thoſe that do not *mend*, or do not *execute* the Law: And he brings it home to the firſt Clauſe, when he declares the Conſequence to be the *Extirpation of our Laws and Religion*.

The Paſſage I before read, *Page* 22. concerning Perſons of Characters and Stations, likewiſe proves this: For, what can be a greater Charge upon the Adminiſtration, than to accuſe the Miniſtry of putting into *publick Stations Falſe Brethren*, that *betray* the Church, and *empower* others to *deſtroy* it? That the Expreſſion there is ſo general, as to reach *all* in publick Stations, I have before obſerv'd; and that it is ſo *meant*, may be thus made plain. In the ſame Paſſage he is apprehenſive that thoſe Perſons Behaviour ſhould give Occaſion for believing *Religion to be but State-Craft*; that is, a Stratagem us'd by the State to ſerve its own Ends: "*That the* "*Doctrines of the Church lie not ſo much in its Ar-*"*ticles, as its Honours and Revenues*"; which Honours and moſt tempting Revenues are in the Hands of the Crown, and thoſe that are byaſs'd by them, muſt be byaſs'd by the Crown and the Adminiſtration.

Page 23. "*A Falſe Brother is repreſented as re-*"*linquiſhing his old Friends and Principles, and be-*"*traying*

" *traying his own Party for the little ſordid Lucre of* " *Place or Preferment* ". Here is a plain Repreſentation of a Villain, ſelling his Conſcience; the Price is *Place* or *Preferment*, the Buyer that pays him that Price, muſt have the *Diſpoſal* of thoſe Places and Preferments; ſo that, *thoſe* Falſe Brethren are not only *ſuffer'd*, but *made* ſuch by the Adminiſtration.

That the Falſe Brethren, which he mentions, as put into Places, are put in by our Governors, he plainly ſuggeſts, *Page* 18. when he bids *the Governors conſider* whether they are fit to be *entruſted, eſpecially with the Guardianſhip of our Church and Crown:* For to what Purpoſe is that *qualified* Admonition, if the Governors put ſuch Perſons into no Places at all? Admonitions to Temporal Governors, with reſpect to meer Matters of Government, tend only to affront 'em, if preſent, but *can* have no other Effect, when they are abſent.

Let the Preface to the *Derby* Sermon, without any Obſervation or Comment upon it, conclude this Head: " Now when the Principles and Intereſts of " our Church and Conſtitution are ſo ſhamefully " betray'd and run down, it can be no little Com- " fort to all thoſe, who wiſh their Welfare and " Security, to ſee, that notwithſtanding the *ſecret* " *Malice* and *open Violence* they are Perſecuted " with, there are ſtill to be found ſuch worthy " Patrons of both, who dare own and defend them " as well againſt the rude and preſumptuous In- " ſults of the one Side, as the baſe undermining " Treachery of the other ". For I omit to repeat what has been obſerv'd upon the Third Article, or upon the former Clauſe ſpoke to by my ſelf.

I RETURN now to the firſt Clauſe of this Article, which runs thus: " That he *ſuggeſts that* " *Her Majeſty's Adminiſtration, both in Church and* " *State, tends to the Deſtruction of the Conſtitu-* " *tion.*

This is made out from what has been ſaid on the other Two; for, if Men of Characters and Stations in Church and State, that *betray* our Conſtitution, and *encourage and enable others to deſtroy it*, come into their *Places* through the *Adminiſtration*; if the general *Male-Adminiſtration of Her Majeſty and thoſe in Authority under Her*, conſiſt in Part, in *Preferring* and *Encouraging*, at leaſt *not Diſcouraging* thoſe Perſons that *betray* and *deſtroy* the Conſtitution; the neceſſary Conſequence is, that all thoſe fatal Miſchiefs complain'd of *ariſe from the Adminiſtration*, which therefore plainly *tends to the Deſtruction of the Conſtitution.*

Beſides, having involv'd all thoſe, in this Deſcription of Falſe Brotherhood, who defend Toleration; and having declar'd the *Church's Adverſaries Chief*: Conſidering *who is Chief*, and *what Promiſes* have been made for Continuance of the *Toleration*; his Inſolence ought to be treated rather with Indignation and Contempt, and a juſt Puniſhment, than vouchſaf'd an Anſwer.

As to the next Clauſe; " And as a *Publick Incen-* " *diary*, he perſuades Her Majeſty's Subjects to " keep up a *Diſtinction* of *Factions and Parties*, in- " ſtills groundleſs *Jealouſies*, and foments deſtru- " ctive *Diviſions* among them, and excites and ſtirs " them up to *Arms and Violence* "; 'tis ſufficient in ſhort to ſay this:

What he advances againſt the Foundation of the *preſent Eſtabliſhment*, and againſt the *Adminiſtration*, is as an *Incendiary.*

That he perſuades Men to keep up *Diſtinctions*, and inſtills groundleſs *Fears and Jealouſies* among them, is plain, from the Drift of all he ſays; from his Language of *Forſaking old Friends and Principles, Betraying their Party*, which he makes to be the great Crime of *thoſe in Places*, and goes to ſhew the Folly of it, *pag.* 23.

And though he pretends, in his Anſwer, that he invites Schiſmaticks into the Church, it is only on thoſe Terms, that they comply with his Notions to a Tittle: He makes no Allowance for Human Frailty, for Prejudice or Ignorance, and in ſome Inſtances expreſly diſallows 'em; and thoſe who are ſo weak as to fancy the Church in *any* Particular not to be in the right, though in all others they would ſincerely and *conſtantly* conform to it, even *they* muſt continue Schiſmaticks ſtill: If, with theſe miſtaken Opinions, they Communicate with the Church, they are *Falſe Brethren*, and as ſuch to be *abhorr'd*: And yet if they do not, they are not to be *Tolerated.*

Nay, whoever has ſo much Compaſſion for ſuch a Caſe, as to think it might be Tolerated, is a falſe Brother too, as defending Toleration, which is giving up *one Point of the Diſcipline of the Church*, and encouraging Schiſm.

For, though he ſeems *in Words* to approve of an Indulgence to *Conſciences truly ſcrupulous*, yet *in Reality* he approves none; ſince he admits not any one to have a Conſcience *truly ſcrupulous* that differs from him, but all ſuch are *Falſe Brethren, Villains*, and to be ſtigmatiz'd with all the other Names of Reproach he is ſo liberal of.

As to *Fears and Jealouſies*, thoſe are naturally produc'd by theſe Repreſentations of the Dangers the Church and Conſtitution are in; and as thoſe Dangers are meerly *imaginary*, thoſe Fears and Jealouſies are *groundleſs.*

As to his inciting Her Majeſty's Subjects to *Arms and Violence*, that he does it, is moſt manifeſt.

The ſpreading among the People ſuch hideous Repreſentations of an evil Government, ſuch Outcries *of the Church and true Religion being undermin'd, betray'd and expos'd by thoſe in the Adminiſtration, naturally* tend to Rebellion. And therefore at Common-Law, as we find it expreſs'd in our Law-Books, to * *bear the People in Hand* (I give the very Words) *that the King's Government was erroneous, heretical or unjuſt, whereby the manner of the Government was Arraign'd or Impeach'd, was High Treaſon.*

The Paſſion, Heat and Violence in this Sermon preach'd in publick, could be intended for nothing elſe but to raiſe the Paſſions of thoſe that heard it.

The People are call'd upon *to put on Reſolution and Courage*; they are aſſur'd the Cauſe *at preſent* requires the *braveſt Reſolutions*; he exhorts them to *contend earneſtly for the Faith*; having elſewhere ſhewn againſt whom, againſt *Falſe Brethren*, againſt the Enemies he had deſcrib'd, ſuch as have *Places and Preferments*, are *Men of Characters and Stations*; ſuch as are *Chief* and *at preſent proſper*, and denounces *Woe againſt the fearful Heart and faint Hands.*

The Expreſſion of *ſtanding by Her Majeſty with Lives and Fortunes*, and of *Sacrificing them in Her Service*, being now become a familiar Phraſe, for *aſſiſting Her in War*, thoſe Expreſſions are affected.

* *In* William's *Caſe in* 2 *Rolls Reports*, pag. 89, 90.

In

In the Dedication of the *Derby* Sermon he extols thoſe, who are for maintaining what he calls *forſaken Truth*, with their *Lives and Fortunes*.

And in the Sermon at St. *Paul*'s, pag. 9, 10. the Readineſs to *Sacrifice Lives and Eſtates* in Vindication of the Church, is repreſented as ſo *Noble* a Reſolution, that in Compariſon to that, Obedience to her Precepts, that is, *a good Life*, is but as the *one thing neceſſary* in the Goſpel, only an extraordinary pitch of Perfection, only as the ſelling all his Goods, and giving the Price to the Poor, was to an exact Obſervance of the whole Moral Law.

But in the Dedication of the St. *Paul*'s Sermon he ſeems to *avow* this Deſign; he pretends not his Sermon to be Chriſtianity, but *owns* it to be *Politicks*, not *preaching Peace*, but *ſounding a Trumpet*. For he ſtates the Objection, *that the Pulpit is not a Place for Politicks, and that 'tis the Buſineſs of a Clergyman to preach Peace, and not to ſound a Trumpet*, What's his Anſwer? Does he deny the Objection to extend to himſelf? No, he admits it, and juſtifies it by Pretence of a Divine Command, and treats the Maxim laid down in the Objection with Scorn, as contrary to the expreſs Word of God.

In his Anſwer to this laſt Part of this Clauſe, he ſeems firſt to repreſent it as *inconſiſtent* with his *Poſition* of the utter Illegallity of Reſiſtance to the Supreme Power on any Pretence whatſoever, and with his *Profeſſions* of Loyalty to Her Majeſty; and then attempts to *confute it* (as his Expreſſion is) by a Paſſage in the *Derby* Sermon.

As for the latter, I think it rather a Juſtification of the Charge; for the Paſſage aſſerts, *That every Man has, by God and Nature, a Commiſſion to ENGAGE the Enemies of the Conſtitution*; that is, (as he has painted 'em) the Queen and Her Miniſtry.

The other is founded on a Suppoſition that he is never inconſiſtent, a very civil Compliment to himſelf, but as it happens, very falſe.

But to conſider this Part of the Anſwer a little more particularly. As he has here manag'd the Matter, I own there is *in this Particular* no Inconſiſtency. We ſay, *he has ſtirr'd up Her Majeſty's Subjects to Arms and Violence*: He ſays, *he has declar'd all Reſiſtance unlawful*; yes —— all Reſiſtance to the Supreme Power; but he has never declar'd Reſiſtance to Her Majeſty unlawful. He maintains the utter Illegallity of Reſiſtance on any Pretence whatſoever to the *Supreme Power*, but no where ſays, that in the Supreme Power he *includes Her Majeſty*, or that it is *illegal to Reſiſt Her*. The utter *Illegality of Reſiſtance to the Supreme Power upon any Pretence whatſoever*, Her Majeſty's profeſſed Enemies will come into, and labour for; meaning only to condemn the Reſiſtance that *was* made againſt *King* James *the Second*, which brought about the Revolution, and any Reſiſtance that *ſhall be* made againſt the *Pretender*, whenever he comes; and Dr. *Sacheverell* goes no further.

Thoſe Enemies of Her Majeſty, have ever ſince the Revolution, made it their Buſineſs, to blacken it, to raiſe Scruples in People's Minds about it, and to make the Adminiſtration odious: The ſame Methods are advanc'd by Dr. *Sacheverell* into the Pulpit; and if thoſe Methods are to appear in the greateſt Aſſemblies, on the moſt ſolemn Occaſions; if the Revolution muſt be *attack'd* on a Day when Her Majeſty has appointed it to be *Commemorated*; if Her Majeſty's Reign is to be arraign'd in Publick, and an Appeal made to the Paſſions of the People; let it be attended with what *Profeſſions* it will, it equally ſtrikes at Her Majeſty and the Eſtabliſhment; and the Commons could not but think themſelves oblig'd, in Duty and Gratitude to Her Majeſty, and in Juſtice to the whole Nation, to call him that us'd 'em thus, to a publick Account; And let this Gentleman commend his own Loyalty, as much as he pleaſes, 'tis plain that in this Sermon he is doing the very ſame *Work*, and in the very ſame *Method*, with thoſe that *diſown Allegiance* to Her Majeſty.

My Lords, Permit me to obſerve a little his Management of this Text: Suppoſing the Doctor to be *right* as to his *Doctrine*, and that he believes himſelf to be ſo; and that he is *ſincere* in his *Profeſſions* of Loyalty to the Queen. For I am not now going to diſpute or limit the Doctrine of Non-Reſiſtance, which was the Buſineſs of thoſe Gentlemen that ſpoke to the firſt Article.

By *Falſe Brethren* in the Text of this Sermon were meant, thoſe who *pretended* to be Chriſtians, but really *were not*. Dr. *Sacheverell* ſeems ſo to underſtand it; and therefore to declare thoſe to be *Falſe Brethren in the CHURCH*, that pretend to be of the Communion of the Church of *England*, but are not; that live in its Communion, but own not its Doctrines and Authority. By like Analogy, *Falſe Brethren in the STATE* are ſuch, that perhaps ſwallow the Oaths to the Queen; or if they go not ſo far, yet take the Benefit of Her Laws, Her Courts, Her Protection, yet deny Her Allegiance, and are for another Prince. A juſt and well-managed Reproof of theſe had been a noble Topick for one that pretends all this Zeal for the Queen. But *they* are wholly paſs'd by, *they* are not to be blam'd, there's no Danger from *them* either to Church or State. Who then, according to the Doctor, are *Falſe Brethren in the State*? (He was hard put to it to ſubſtitute ſome others in their Place.) They muſt be only thoſe who *one Way or other* oppoſe the Doctrine of *Non Reſiſtance upon any Pretence whatſoever*, whom he deſcribes in ſeveral invidious Inſtances, and in all poſſible Terms of Reproach. This ſeems ſtrange.

1. This being, as he ſtates it, an Error in a Doctrine of the Church, the holding it is only one Branch, one Inſtance of *Falſe Brotherhood in the CHURCH*; and therefore not ſo proper to ſtand for a diſtinct Head of *Falſe Brethren in the STATE*.

2. The bare denying or not believing the Doctrine of Non-Reſiſtance, ſuppoſing it true, does not denominate a Man a *Falſe Brother in the STATE*.

Suppoſe then a Man own the Queen's Title, be ſatisfied with Her Adminiſtration, in Love with Her Reign, convinc'd that ſhe has principally at Heart his Intereſt, and the true Intereſt of all Her Subjects; believes that upon the Continuance and Quiet of Her Government depends the Preſervation of our Liberties, and thoſe of all *Europe*, and accordingly obeys and ſerves Her with Sincerity and Zeal, and thinks all Reſiſtance to Her utterly unlawful; is this Man a Falſe Brother in State, a Rebel, a Traitor, becauſe he thinks Reſiſtance *was* lawful at the Revolution, and *may* be ſo whenever the ſame Breaches of the Conſtitution are repeated?

Is he a Rebel to *THIS QUEEN*, becauſe there *poſſibly* may happen a Caſe, wherein he *may* reſiſt *another* Prince, if that Prince *ſhould* do what he's *ſure* SHE *never will*?

At moſt, that Miſtake only *expoſes* ſuch a Perſon more eaſily to be miſ-led: He *may* be in more

Danger

Danger of becoming a Rebel to a Prince, he ſhall be diſſatisfied with, but *is not* therefore a Rebel to a Queen he loves.

How then comes this ſingle Inſtance of Falſe Brotherhood in State to be inſiſted on, which at moſt ſhows, not that the Perſon *is*, but only that perhaps he *may become* a Falſe Brother; and thoſe Inſtances paſs'd over, where Perſons *plainly are* Falſe Brethren in State?

Further, This Doctrine being, as the Doctor ſays, a *fundamental Doctrine in State*, urg'd with *Warmth* and *Vehemence*, one would expect ſome *Inference* to be drawn from it: One would expect that he, who had ſo great a Zeal as the Doctor profeſſes for Her Majeſty, and had ſo triumphantly eſtabliſh'd abſolute Non-Reſiſtance, would have fallen in ſo far with the *Buſineſs of the Day*, and have made ſo much uſe of his *Favourite Doctrine*, as to *diſſuade* from Rebellion; and when he had taken Notice of theſe falſe Steps in the Adminiſtration, that he ſhould have perſuaded the People to make proper Applications for Redreſs, but to be careful not to let the *Faults of the Miniſtry* cauſe 'em to forget their *Duty to the Queen*. But there's not the leaſt Exhortation to that purpoſe.

All this ſeems ſtrange, taking it for granted that the Doctor is ſincerely zealous for the Queen.

Give me leave therefore to make another Suppoſition: Suppoſe this Zeal is but *pretended* to the Queen, but *really* for another, and that he thinks the other his rightful Prince; your Lordſhips will find, all conſiſtent, every Expreſſion, and the whole Procedure, exactly juſt.

In Conſequence of that *concealed* Sentiment, tho' he dare not directly commend thoſe who own the Pretender, yet neither will he reprove them as *Falſe Brethren in the State*; they being, according to this Opinion, the only Perſons who perform their Duty in it. Therefore the *true* Notion of Falſe Brotherhood muſt be dropt; and inſtead of it, they that hold Reſiſtance lawful in Caſes of *Extremity*, and particularly in that of the *Revolution*, are to be fallen upon; for they are really Rebels and Traytors in his Senſe, becauſe they directly overthrow all the Title which the Diſaffected here would fancy for the Pretender.

As long as the *Revolution* ſtands unimpeach'd, *that Perſon* can have no *Title*, let his Pretence be as favourable as he pleaſes: If the *Revolution* ſtand, the *Laws* which are founded upon it ſtand too, and thoſe Laws concerning the *Right and Succeſſion* of the Crown, are abſolutely binding; and therefore whatever *Right* he *could wiſh* People to believe him to have, all *that* Right, all *that Pretence* of Right, *is* as effectually barr'd, as all the Right which thoſe who ſtand in the Courſe of Deſcent before the Princeſs *Sophia* of *Hanover* would have had but for the Act of Settlement, *will be* bound, whenever God, for our Sins, ſhall take from us Her Majeſty, without Iſſue.

This Principle therefore *is fundamental* to the *Pretender*; and, taking the Matter thus, accounts for all that Rage againſt thoſe that diſpute this Doctrine, *as extended* to the Caſe of the *Revolution*, for his ſo often repeating this to be the *Baſis*, the *fundamental Principle* of the Conſtitution.

This ſhows clearly, why neither in the *Sermon*, nor *Defence*, he has once maintain'd the Illegality of *Reſiſtance* to *Her Majeſty*.

This ſhows, why this *fundamental Principle* is totally forgot to be *preſs'd* by him upon the People; no *Inference* from it, that thoſe Miſmanagements ought not to make them forget their Duty *to the Queen*; *not one Perſwaſive* to Obedience to *Her*; not *one Admonition* againſt the Conſequence of Falſe Brotherhood in the State, that it was apt to make People rebel; *no cooling* the People, with telling 'em That Prayers and Tears were the only Arms of the Church; that they ought to do their *own Duty*, ſubmit *wholly to the Queen*, and *thoſe in Authority* under Her, and leave the reſt *to God*. Theſe were the natural Conſequences of this Doctrine of Non-Reſiſtance, ſo violently contended for, but not one of them purſu'd or mention'd.

And perhaps *this* made him chuſe to deſcribe the Caſe of *our Church*, P. 26, in the Words of the Prophet in the *Lamentations*, which are in *ch.* 1. *ver.* 4, 5. (tho' not truly cited in his printed Sermons;) *The Ways of Sion mourn for a time, and her Gates are deſolate, her Prieſts ſigh, and ſhe in Bitterneſs*, becauſe *her Adverſaries are chief, and her Enemies AT PRESENT proſper.*

My Lords, That Book was wrote juſt after *Nebuchadnezzar*'s taking *Jeruſalem*; and the Condition of the *Jews then*, which is thought proper by him to give an Image of *ours now*, was this:

They were inſlav'd, their *King* in a *Foreign* Country, *ſtripp'd of his Crown*, and the *Prince then Reigning* was an *Oppreſſor*, that had no other *Title*, but *Poſſeſſion* and *Force*.

Thus has the Doctor, out of his *tender Concern for Her Majeſty's Perſon and Government*, thought fit to expreſs his Sentiments.

THE laſt Part of this Charge is that of *Wreſting and Perverting divers Texts and Paſſages of Holy Scripture*. This may not perhaps ſeem ſo proper for me to ſpeak to, but being part of my Province, I ſhall apply to it without any Apology.

My Lords, As wicked and corrupt as Doctor *Sacheverell* would repreſent this Nation, he very well knew, that the Holy Scriptures are had in that juſt Veneration and Regard, that whatever is cited thence has a particular Influence upon the Minds of the People; whatever *Story* can be brought thence as a Parallel, whatever *Expreſſions* taken thence are made uſe of, to paint the Beauty, the Deformity, the Dangers of the Preacher's Subject, give a ſtrong *Impreſſion*, fire the *Zeal* of the People, alarm their *Paſſions*, and make 'em fancy they hear the *Voice of God*, when they hear *His Words* repeated.

This the Doctor *knew*, and your Lordſhips will ſee what *uſe* he makes of it.

When he ſpeaks of the *Perils of the Church*, which *Her Majeſty*, your *Lordſhips*, and the *Commons*, could not ſee, the *Scripture* is to be ſearch'd for a *Story*, that may be brought to match the Caſe, and to give an opportunity, under other Names, to ſpeak a *bold* Falſhood concerning all *theſe*.

It happens, there is *one remarkable Story* in the Holy Scripture about a *Miſtake of Danger*, but unfortunately it *ſuits not* the Caſe, as told *there*, however it *gives a Handle*, and he can *make* from it a Story *to his Purpoſe*.

Accordingly he ſays, *pag.* 21. "When *Eliſha* the "*great Prophet* of God was ſurrounded with an "Hoſt of Enemies that fought for his Life, his "*Blind Servant* beheld not the Peril his Maſter "was in, 'till his Eyes were opened by a Miracle, "and he found himſelf in the midſt of Horſes and "Chariots of Fire.

This

This Story *thus* told is extremely happy for him; for hence the People are to underſtand *him* to be the *Inſpired Prophet*; and the *Queen*, *Lords*, and *Commons*, *blind* at leaſt, tho' not his Servants.

But the Story in Holy Writ is directly contrary; and it was only the *blind* Servant *fancied* they were in Danger, when *really* they were not.

The Story is in 2 *Kings*, Chap. vi. and, as told there, is thus: The King of *Syria*, at War with *Iſrael*, being inform'd, that what he ſaid in his Bed-Chamber was told to the King of *Iſrael* by *Eliſha* the Prophet, reſolved to ſeize *Eliſha*; and hearing he was at *Dothan*, Ver. 14. (I now give your Lordſhips the very Words) *He ſent thither Horſes and Chariots, and a great Hoſt, and they came by Night, and compaſs'd the City about.* Ver. 15. *And when the Servant of the Man of God was riſen early, and gone forth, behold an Hoſt compaſs'd the City both with Horſes and Chariots: And his Servant ſaid unto him, Alas, my Maſter, how ſhall we do?* [This is the *blind Servant*, that the Doctor ſays, ſaw no Danger.] Ver. 16. *And he anſwer'd, Fear not, for they that be with us are more than they that be with them.* Ver. 17. *And Eliſha pray'd, and ſaid, Lord, I pray thee open his Eyes, that he may ſee. And the Lord open'd the Eyes of the young Man, and he ſaw; and behold the Mountain was full of Horſes and Chariots of Fire.* The Doctor's Expoſition is, That this *Heavenly Guard*, theſe *Horſes and Chariots of Fire*, which were there only to *defend* the Prophet, were to *deſtroy* him; and from *them* ariſes the *Danger*, which the Doctor fancies the miraculous Opening the Servant's Eyes diſclos'd to him.

I think I may give the Doctor his *Choice*, what this proceeded from, whether from his *not knowing* this Paſſage, but taking it upon *Hearſay*, or his Reſolution *knowingly* to *pervert it*.

The next Paſſage is, *Pag.* 26. the Words of St. *Paul*, *Eph.* vi. with which, after a Diſcourſe where all the ſocial and good-natur'd Virtues are taught in the higheſt Perfection; where he had recommended, Chap. 4. Ver. 2. *Lowlineſs, Meekneſs, Long-ſuffering, forbearing one another in Love; endeavouring to keep the Unity of the Spirit in the Bond of Peace:* Where he had commanded, *v.* 31. that *all Bitterneſs, and Wrath, and Anger, and Clamour, and Evil-ſpeaking be put away, with all Malice:* And *Ver.* 32. that thoſe to whom he writes, ſhould be *tender-hearted, forgiving one another, even as God for Chriſt's Sake had forgiven them:* Ver. 37. That had forbidden *giving place to the Devil*, but not to any other. The Apoſtle concludes, that in this *Spiritual Warfare*, and that they *might be able to withſtand the Wiles of the Devil*, they ſhould *put on the whole Armour of God*; becauſe *they wreſtled not againſt Fleſh and Blood; but againſt Principalities, againſt Powers, againſt the Rulers of the Darkneſs of this World, againſt Spiritual Wickedneſs in High Places.*

This Gentleman, after a Diſcourſe full of *Bitterneſs, Reviling, Wrath, Clamour and Evil-ſpeaking, forbearing* no Man *in Love*, nor *forgiving* any that differs from him one Tittle; and having ſhown other *Devils* incarnate, (*Pag.* 23, 25.) the *worſt of Dæmons*, other *Powers*, others *in Places and Stations*, againſt whom *his Auditors* were to *contend earneſtly*; repeats thoſe Words, not in the *Spiritual Senſe* the Apoſtle us'd 'em, but (as the whole *Subject and Drift* of his Diſcourſe ſhows) as an *odious Deſcription* of the *Government*, in Scripture Words: And whether he meant the *Armour* in the Apoſtle's Spiritual Senſe, any more than any of the other Words there, or whether he intended it a *Literal Earthly Armour*, which the *Cauſe* would make the *Armour of God*, I leave to your Lordſhips to determine. However, 'tis no Defence for him, what he ſays, That the *Arms of Reſiſtance to Princes, is no Part of the Spiritual Armour recommended by St.* Paul; becauſe he has plainly departed from St. *Paul*'s Spiritual Meaning.

And that this is his *Meaning*, to *paint* here our *preſent Circumſtances* in Scripture Language, is further plain from what follows; That the *Church is bleeding of the Wounds which ſhe has received in the Houſe of her Friends*; borrow'd from *Zech.* 13. *Ver.* 6. That the *Ways of Sion may mourn for a Time, and her Gates be deſolate; tho' her Prieſts ſigh, and ſhe in Bitterneſs, becauſe her Adverſaries are Chief, and her Enemies* AT PRESENT *proſper.* I have before obſerv'd, from what Circumſtance of the *Jews* this Image is borrow'd; and your Lordſhips will take notice, what *Changes* in the Expreſſions he has made, to render them more *Emphatical.*

My Lords, There can be no greater Perverting of Scripture, than to make uſe of the Language of the Holy Ghoſt, to revile our *Neighbours*, to ſcandalize the *Government*, and to raiſe *Wrath, Sedition*, and *Rebellion* in the *People.*

The laſt I ſhall mention, is that in the Dedication of the St. *Paul*'s Sermon; where propoſing it as an Objection, that *it is the Buſineſs of a Clergyman to preach Peace, and not to ſound a Trumpet in Sion*; he affirms that to be *expreſly contrary to the Command of God*; and to *prove* that Command, cites thoſe Words, *Cry aloud, and ſpare not*, which are in *Iſa.* 58. 1.

My Lords, This I apprehend to be not only *Perverting*, but that to Men of Underſtanding it will ſeem *Ridiculing* Scripture. To infer, that becauſe they were to *ſpeak loud*, they were to *ſound a Trumpet*, ſeems ridiculous.

Or if he had cited the reſt of the Words, *Cry aloud, and ſpare not; lift up thy Voice like a Trumpet, and ſhew my People their Tranſgreſſion, and the Houſe of Jacob their Sins*; he had indeed found the Word Trumpet, but little to his Purpoſe: For becauſe the Prophet was to imitate a *Trumpet* in the *Loudneſs*, that the People might *hear*; was he to imitate it too, as it is an *Inſtrument of War*, that they might *prepare themſelves for Battel?* Becauſe he was *loudly to tell* 'em their *own Sins*, that they might *repent*; was he likewiſe to *trumpet* to 'em the Faults of the *Government*, that they might *take up Arms*, and *redreſs* 'em by *Rebellion?*

If he find any *other Place* in the Old Teſtament, to command the Prieſts to ſound a Trumpet, I ſhall refer him to the 10th of *Exodus*, where he'll find the Prieſts were *literally* to ſound the Silver Trumpets in the Army, *in the Field*; but he'll not find, they ever ſounded it from the *Pulpit.*

My Lords, I ſhall offer nothing further to your Lordſhips on this Head, tho' there is Room for it.

But there are *Two* Things in the *Anſwer to this Article*, I cannot omit taking Notice of.

The *firſt* is in his Anſwer to the *firſt Part* of this Article, that charges him with *Suggeſting, That Her Majeſty's Adminiſtration, in Church and State, tends to the Deſtruction of the Conſtitution*; where he takes *great Comfort*, that in this Article he is charg'd not with Suggeſting *and Maintaining*, but Suggeſt-

Suggeſting *only* ; and hopes that bare Suggeſtions, or Inſinuations, ſhall not involve an *Engliſh* Subject in the Guilt and Puniſhment of High Crimes and Miſdemeanors. I don't envy him his *Comfort*, nor ſhall labour to take it from him, tho' it ſeems *ſtrangely founded* : For tho' it is *expreſly* ſaid, that he charges *Her Majeſty with a General Male-Adminiſtration* ; tho' the Accuſation be *poſitive*, that *as a Publick Incendiary, he perſuades the Subjects to keep up Parties, foments Diviſions amongſt them, and ſtirs them up to Arms and Violence, and perverts divers Texts of Scripture* ; notwithſtanding *all theſe* poſitive Charges, yet the *firſt Expreſſion* happening to be *only, Suggeſt*, and *not, Maintain*, it ſeems, he is very *happy* in it.

But, my Lords, this is an *extraordinary Step* ; that let a Man caſt never ſo many *Scandals* and *Reproaches* on the *Government*, tho' in never ſo *publick a Manner*, yet if it be done by way of *Suggeſtion* and *Inſinuation*, and the Charges not expreſly *maintain'd* and *avow'd*, there is no Crime in it, or not any *high* one. That is, in ſhort, *Sedition*, and Expoſing the Government, is lawful ; only the *Manner* is to be taken care of. Don't do it *directly and avowedly*, for that would be *dangerous* ; but do it by *Suggeſtions* that every body will *underſtand*, and which will have their *full Effect*, and all's *ſafe* : For thoſe that come to judge you, are not to underſtand you, tho' every body elſe does.

My Lords, Here are Two Extraordinary *Claims of Right* before your Lordſhips, and of great Conſequence, if you allow 'em ; one, that the *Clergy* may ſound a Trumpet in *Sion*, in a *Military Senſe*, and are not to be reſtrain'd to the Preaching of Peace ; the other, that every *Engliſhman* is at Liberty to *aſperſe the Government* at Pleaſure, by whatever *Suggeſtions* and *Inſinuations* he pleaſes ; and theſe made by a *warm* Advocate for *Paſſive Obedience*, the moſt *peaceful* and *ſubmiſſive* Doctrine in the World.

My Lords, In the Caſe *de Libellis Famoſis*, in the Fifth Report, there was a Proſecution for a Libel, not indeed ſet forth at large in the printed Book, (as was not fit) but thus far particularly taken notice of, that it traduc'd and ſcandaliz'd one Perſon *dead*, and him an *Archbiſhop* too, by *Deſcriptions and Circumlocutions*, and not in *Expreſs Terms* ; and no body ever doubted but it was *Criminal*. But tho' there ſhould be a greater Strictneſs obſerved in reſpect of *private Perſons*, yet when the *Queen* and *Government* are concern'd, when *All* lies at Stake, a Man ought to *guard* himſelf, and his Expreſſions, not to touch in the leaſt there : And every Man that's *truly* Loyal, and deſires the *Peace* of his *Country, will do* it. And knaviſh Deſigners againſt the Publick Peace, are not to be ſuffer'd to go on in overthrowing it, becauſe they have contriv'd *crafty Ways* of doing it.

I mention this only to oppoſe the *preſent Claim* ; tho' in our Caſe, the Reflections are *plain* and *full*.

The other is his Lamentation at the Cloſe, which I cannot but take notice of, as an inſolent Reflection on the *Honour* and *Juſtice* of the *Houſe of Commons*. " Hard is the Lot of the Miniſters of the " Goſpel, if when they cite the Word of God in " their General Exhortations to Piety and Virtue, " or in the Reproofs of Mens Tranſgreſſions, or " when they are lamenting the Difficulties and " Conflicts, with which the Church of Chriſt, " while Militant here on Earth, muſt always ſtrug- " gle, the ſeveral Texts and Paſſages by them ci- " ted, ſhall be ſaid to have been by them meant of " particular Perſons and Things, and ſhall be con- " ſider'd in the moſt Criminal Senſe, and be made " (by ſuch Conſtruction) one Ground of an Im- " peachment for High Crimes and Miſdemea- " nors.

My Lords, This was put into the Anſwer, not by way of Defence, but to make that Uſe which has been made of it, to print it before it came to be conſider'd, and lay hold of that as an Handle, as has been done, to ſay Dr. *Sacheverell* has been proſecuted only for *doing his Duty as a Clergyman*, which is a ſcandalous Reflection.

Is the Story of *Eliſha*, *as told by him*, an *Honeſt* Citation of a Paſſage of Scripture ?

Are *Enemies* that are *Chief*, and the *Adverſaries* that at *preſent proſper*, no particular Perſons now in being ; tho' to the Scripture Expreſſion he has added the Words, *At Preſent*, for fear the Application ſhould not be cloſe enough ?

Is this Sermon an *Exhortation to Piety and Virtue ?* Or is it not manifeſtly a *Trumpet to Rebellion ?* Is it a ſhewing the Audience their *own Faults*, that they may *cure* 'em, and *amend their Lives ?* Or is it not plainly the *Expoſing* the Faults of others, the *Faults of their Governors*, that they may *hate the Perſons ?*

Even the Doctrine of *Paſſive Obedience*, is it here ſo warmly contended for, that People may be *dutiful* and *ſubmiſſive* ; or that they may be *enraged* againſt thoſe that deny it ? In ſhort, Is there *one Chriſtian Virtue* taught in it ? Except your Lordſhips will honour with that Name the ſticking, not to the *Church* and *Chriſtianity*, but (according to the Doctor's own Expreſſion in another Place) *to a Party* ; and *Courage*, not only a *Paſſive*, (which he no where recommends) but an *Active* againſt the *Government*, to which the whole Diſcourſe *incites*.

My Lords, The *Commons* have the greateſt and juſteſt *Veneration* for the *Clergy* of the Church of *England*, who are *Glorious* thro' the whole *Chriſtian World* for their *Preaching* and *Writing*, for their *Steadineſs* to the Proteſtant Religion, when it was in the utmoſt Danger. They look upon the *Order* as a *Body of Men*, that are the *Great Inſtruments*, thro' whoſe Aſſiſtance, the Divine Providence conveys *ineſtimable Advantages* to us. They look upon the *Church Eſtabliſh'd* here, as the beſt and ſureſt *Bulwark* againſt *Popery* ; and that therefore all *Reſpect* and *Encouragement* is due to the *Clergy* : And it is with *Regret* and *Trouble*, that they find themſelves oblig'd to bring before your Lordſhips in this manner *one of that Order*.

But when we conſider Dr. *Sacheverell, ſtripping* himſelf of all the becoming Qualities *proper* for his *Order*, nay, of all that *peaceful* and *charitable* Temper which the Chriſtian Religion requires of *all* its *Profeſſors*, *deſerting* the Example of our *Lord* and *Maſter*, and of his Holy *Apoſtles*, and with *Rancour* and *Uncharitableneſs* branding all that differ from him, (tho thro' *Ignorance*) with the Titles of *Hypocrites, Rebels, Traytors, Devils* ; *reviling* them, *expoſing* them, *conducting* 'em to Hell, and *leaving* em *there* ; *treating every Man* that falls in his way, worſe than *Michael* the Arch-Angel us'd the *Devil* ; coming himſelf more near the Character in St. *Jude*, (Part of which he wou'd apply to others) *deſpiſing Dominion, ſpeaking evil of Dignities* ; *like raging Waves of the Sea, foaming out* his *own Shame* ; *forgetting* (when his

Text and his *Doctrine* led to it) to recommend the *Peace of his Country*, in a Time when all *Europe* is in *War*, and nothing can preſerve us from falling into the Hands of the *Grand Enemy and Oppreſſor*, but our Unanimity under *Her Majeſty*: Then *labouring* to *ſap* the Eſtabliſhment, and *railing* and *declaiming* againſt the *Government*; crying, *To Arms*, and *blowing a Trumpet* in *Sion*, to engage his *Country* in Seditions and Tumults, and overthrow the *Beſt Conſtitution*, and betray the *Beſt Queen* that ever made a People happy; and this with *Scripture* in his Mouth!

The Commons look'd upon him by this Behaviour, to have *ſever'd* himſelf from *all the reſt* of the Clergy, and thought it their Duty to bring to Juſtice ſuch a Criminal; and are in no Fear of being thought *Diſcouragers* of thoſe who preach *Virtue* and *Piety*, becauſe they, in the Supreme Court of Juſtice, *proſecute* him that preaches *Sedition* and *Rebellion*; or to have any *Deſign* to leſſen the *Reſpect* and *Honour* that's due to the *Clergy*, by bringing him to Puniſhment that Diſgraces the *Order*.

Mr. Secretary Boyle. MY Lords, I am commanded by the Houſe of Commons to have a Share in Maintaining the Articles of Impeachment againſt Doctor *Sacheverell*; and it falls to my Lot to ſpeak to this Fourth Article, which contains no leſs a Charge than Endeavouring to Excite and Stir up Her Majeſty's Subjects to Arms and Violence.

The Ground of this Accuſation, is the Dedication of a Sermon Preach'd at *Derby* at the laſt Aſſizes; and another Sermon Preach'd at St. *Paul*'s the Fifth of *November* laſt, a Day ſet apart to commemorate the Preſervation of the King and Parliament from the Gunpowder-Treaſon; and to give Thanks to Almighty God for the Deliverance wrought by his late Majeſty, in reſcuing theſe Kingdoms from Popery and Arbitrary Power.

The whole Nation doth now enjoy the Benefit of that Happy Revolution, and all the good Subjects of Her Majeſty are thankful for it. One would have thought, that on ſuch a Day, that Matter ſhould not have been ſo handled as only to be expos'd; and I am perſuaded, that whoever goes about to aſperſe and vilify the late Revolution, would rejoice to ſee another.

I ſhall not treſpaſs upon your Lordſhip's Patience ſo far, as to repeat the many Paſſages in the Sermon that make good our Accuſation, they having been ſo fully laid before your Lordſhips already by a Gentleman that ſpoke before: And indeed there is the leſs Reaſon to deſcend into Particulars, ſince the whole Scope and Deſign of the Sermon is to inſtill groundleſs Jealouſies into the Minds of People, and to caſt the moſt virulent Reflections imaginable upon Her Majeſty's Adminiſtration.

One might ſuppoſe, from the Doctor's Diſcourſe, that the Church of *England* was now ſuffering under the moſt ſevere Perſecution; that the Laws were no longer in Force; and that the whole Government was unhinged. Aſperſions more violent could not be uſed, if we lived in the Reign of the worſt of Heathen Emperors, while we are Partakers of ſo many Bleſſings under the Government of the beſt of Queens.

The Priſoner at the Bar lays ſome Streſs upon the Word *Suggeſt*, as expreſſed in the Fourth Article, which has already receiv'd an Anſwer; and would inſinuate that there are no plain Words in the Sermon to ſupport the Charge. But if that Objection were true, which we are far from admitting, and the Conſequences drawn from it were allowed, I muſt ſay, Hard would be the Caſe of the Government, if Men might make the moſt odious Suggeſtions againſt it, and caſt Reflections with Impunity, under the Shelter of ſome doubtful Expreſſions, and equivocal Sentences, at the ſame time that the Senſe and Malice of the Reflections are plain to be underſtood, and can hardly be miſtaken.

He doth indeed affect in his Anſwer, and in one Part of his Sermon, to profeſs great Duty to Her Majeſty; but let thoſe Expreſſions be compared with the Calumnies that are heaped upon her Adminiſtration, and I conceive they will not mitigate his Crime, and will avail him no more than the Pretence that he makes to be for Liberty of Conſcience, when he condemns the Toleration. I believe theſe Excuſes will equally weigh with your Lordſhips, and his Sincerity in both will equally appear.

My Lords, It is no new Thing among thoſe who deſign to ſtir up Sedition, to beſtow great Encomiums on the Perſon of the Prince; it has been a common Practice, and the ſame Method was purſu'd in the late unhappy Times. The Incendiaries of thoſe Days pretended that the Proteſtant Religion was in Danger under that Government, as the Enemies of our Conſtitution cry the Church is in Danger under this.

But, my Lords, every thing is in Danger from ſuch ſeditious Diſcourſes. What a Scene of Diſtraction and Wickedneſs is here diſplay'd to the Underſtandings of the People, to excite and inflame them to Sedition and Rebellion? Who can ſit ſtill, if they are perſuaded that *the Altars and Sacraments of our Church are proſtituted to Hypocrites, Deiſts, Socinians and Atheiſts; and this done with Impunity, and without Diſcouragement?* What can be more provoking to all good Chriſtians and good Subjects, than to be told that *People are ſuffer'd to combine into Bodies and Seminaries, wherein Atheiſm, Deiſm, Tritheiſm, Socinianiſm, with all the Helliſh Principles of Fanaticiſm, Regicide, and Anarchy, are openly profeſſed and taught.*

No Man can think he is long to enjoy his Religion, Liberties or Property, if he can be made to believe that *the Foundations of the Church are undermin'd, and the Government endanger'd, by filling it with its profeſs'd Enemies.* What is the Meaning of all this, but only to make out, that Her Majeſty's Adminiſtration, both in Eccleſiaſtical and Civil Affairs, tends to the Deſtruction of the Conſtitution? And what muſt be the Conſequence of ſuch an Opinion inſtill'd into the Minds of the People, but black and melancholy Thoughts, ſeditious Practices, and at laſt open Force and Violence?

The Prieſts muſt *cry aloud and ſpare not*, they muſt *blow the Trumpet in Sion*; and we are told there are thoſe that have Lives and Fortunes to maintain ſuch Truths as Doctor *Sacheverell* has laid down. What thoſe Truths are, may be ſeen thro' the whole Courſe of the Sermon; they are ſuch, my Lords, as we apprehend do not at all tend to the ſtrengthning the preſent Government, tho' they may be ſerviceable towards ſetting up another.

This is not the Spirit of the Goſpel, nor agreeable to the Principles of the Church of *England*; and we ſubmit it to your Lordſhips Judgment, whether this Sermon is not Seditious, and whether the Priſoner at the Bar is not guilty of High Crimes and Miſdemeanors.

Mr. Chancellor of the Exchequer. MY Lords, I am commanded by the Commons of *Great-Britain* to bear my Part in the Management of the Impeachment againſt Doctor *Henry Sacheverell*, and particularly on this Article. My Lords, I believe, after what you have heard already, you will think there is little Need for me to ſay any thing on this Head; yet I ſhall take the Liberty to mention a few Particulars.

I cannot but take Notice, that in a Sermon Preach'd on a Day appointed to commemorate the Bleſſings we enjoy by the late happy Revolution, there is not one particular Clauſe to ſhow forth thoſe Bleſſings, or the Miſchiefs that were then likely to come upon us. There is a little, indeed, upon the Gunpowder-Treaſon; but upon the Revolution there is nothing, nor doth he take Notice of the Dangers we were in before it, in order to raiſe the Devotion of the People, and their Thanks to God for their Deliverance. But all the Tenor of his Diſcourſe is to ſhow the Male-Adminiſtration of the Government, and the Dangers that have been coming upon the Church ever ſince the Revolution; ſo that it is plain, that he had no Thoughts of the Bleſſings of that Deliverance, nor any Diſlike to the Conduct of thoſe Times.

My Lords, This Sermon was Preach'd in a Place well choſen to attempt Miſchief in. He well knew that if he could raiſe an evil Spirit in this great City, it would do more Miſchief than in another Place where he had often attempted it: But, God be thanked, he was diſappointed; and he own'd himſelf in another Place, that he did not expect the Thanks of the Court of Aldermen for it.

I ſhall take Notice of his Dedication, where he carries on the ſame Deſign, and owns it on Second Thoughts. He's not only warm in Preaching the Sermon; but in his Dedication he ſhows with what Spirit he compoſed it: He ſays, That *if honeſt Gentlemen will ſit ſtill, and give up their Cauſe for want of Courage, or a juſt Senſe of the dangerous Attempts of our Enemies, without the Spirit of Prophecy we may foretell what will become of our Conſtitution, when it is ſo vigorouſly attack'd from without, and ſo lazily defended from within.*

My Lords, I ſhall not explain the Meaning of thoſe Words, *Sitting ſtill, and Want of Courage*; but I cannot but take Notice of theſe Words, *The vigorous Attack from without, and the lazy Defence from within.* I would deſire to know who the Doctor takes to be the Defender of the Faith; and who under that Defender is to protect the Church? It muſt neceſſarily be meant as a Reflection on Her Majeſty, and upon thoſe that under Her Authority are to take Care of the Church. The next Paſſage is a plain Confeſſion of his Seditious Intentions. He tells us his Buſineſs was not to preach Peace, but to ſound the Trumpet. If a Miniſter will declare it, not to be his Duty to preach Peace, your Lordſhips will eaſily judge what his Intentions were.

I know it is the Buſineſs of thoſe that are Proſelites to this Gentleman, to give out that we deſign to narrow our Obedience to Her Majeſty. But, my Lords, we are far from it; and own the greateſt Duty and Submiſſion to our Sovereign: But we cannot bear, that a Reflection ſhould be caſt upon the Reſiſtance that was us'd at the Revolution; and we hope your Lordſhips will never admit a Queſtion to be rais'd of the Legality of it.

My Lords, The Acts of Settlement of the Crown depend upon that Legality: If that be illegal, the others in Conſequence are void; and tho' Her Majeſty has an Hereditary Right to the Crown, yet I take thoſe Acts to be Her great Security; and I can make no Queſtion, but that if the Foundations of thoſe Acts were ſhaken, the Doctor would ſoon find another Hereditary Right to reſort to.

My Lords, The Toleration is certainly grounded upon the beſt Principles, upon a Principle of Religion and a Principle of Policy. I think every Body will allow, that nothing can eſtabliſh Peace in a Kingdom ſo well, as the granting Eaſe and Quiet to Mens Conſciences. If they pay due Submiſſion to the Government, they ought not to be perſecuted for their Religion: It is for Her Majeſty's Intereſt and Honour. For how can Her Majeſty be the Head of the Proteſtant Intereſt abroad, if Proteſtants are not protected at home?

It was the Obſervation of the Lord *Clarendon*, in his Hiſtory, that ſome Eminent Clergymen preſs'd King *Charles* the Firſt to make Diſtinctions among Perſons; and that by their Advice, his Ambaſſador in *France* was order'd not to go to the *Hugonot* Churches there, as he us'd to do. He lays it as an Imputation on thoſe that gave the Advice; and makes this Remark, That it was with a Deſign of an Union with the Church of *Rome*; which prov'd of very ill Conſequence to his Affairs at that Time.

My Lords, We take it, that it is contrary to the Duty of any private Man to find Fault with a Law in Being, or to declaim againſt the Reaſonableneſs of the ſame; it is raiſing in the People an ill Opinion of the Lawgivers, and the Adminiſtration.

My Lords, There are ſome People, and I wiſh their Numbers do not increaſe, who will not allow the Church to be out of Danger, whilſt the Civil Magiſtrate has the Government of the Church. Theſe appear publickly, and in Print; they cancel the Queen's Supremacy, deny the Authority of the Laws, and erect a Church Independent on the Civil Government. Of this Church I take the Doctor to be, and very properly for his Purpoſe; for here he may thunder out his Bulls and Anathema's without Controul: Here is a Field for him to open his Commiſſion in, where he may ſound his Trumpet, and not preach Peace.

But, my Lords, the Commons can never admit the Church, as Eſtabliſhed by Law, to be in any Danger during Her Majeſty's Adminiſtration; it being guarded by Her Majeſty's Piety and Care of it; by the Reverend Biſhops, who are ſo diligent and watchful in their Functions; and which will always have the utmoſt Aſſiſtance of the Commons and your Lordſhips, to ſupport and maintain. As for their Independent Church, I hope it will ever be in Danger; and cannot but think that wholeſome Severities were very proper to be apply'd to the Broachers of ſuch Seditious Doctrines; they are Popiſh Principles, and if they ſhould obtain here, would certainly bring in Popery along with them.

My Lords, I cannot conclude, without taking Notice of a very unjuſt Reflection made upon the Commons in the Doctor's Anſwer, wherein he charges them with Deſigning to reſtrain the Miniſters of the Goſpel from doing their Duty, in recommending Piety and Vertue to their Auditors. Theſe are Doctrines ſo proper to come from the Pulpit, that thoſe that recommend them, will always meet with the Countenance and Encouragement of the Houſe of Commons. But when a Clergyman acts contrary to his Function, and inſtead of reproving Vice and Immorality, takes upon him to reproach the Government; when inſtead

of Preaching Peace, and Charity, and other Moral Vertues, he takes upon him to raiſe Jealouſies, foment Diviſions, and ſtir up Sedition, 'tis high time for the Juſtice of the Nation to put a Stop to it: As ſuch a Perſon, we charge Doctor *Sacheverell*, and think we have made good our Charge, and cannot doubt your Lordſhips Juſtice upon the Offender.

And then the Lords Adjourned to their Houſe above.

Thurſday, March 2. The Fourth Day.

THE Lords coming down into *Weſtminſter-Hall*, and being ſeated in the manner beforemention'd, Proclamation was made by the Serjeant at Arms as follows:

Our Sovereign Lady the Queen doth ſtrictly Charge and Command all manner of Perſons to keep Silence, upon Pain of Impriſonment.

Then another Proclamation was made: *Henry Sacheverell*, Doctor in Divinity, come forth, ſave thee and thy Bail, elſe thou forfeiteſt thy Recognizance.

The Doctor appearing at the Bar accordingly, with his Council, as before:

Lord Chancellor. Gentlemen of the Houſe of Commons, you may proceed in your Evidence.

Mr. Lechmere. MY Lords, Your Lordſhips adjourned Yeſterday, when the Commons were proceeding on their Fourth Article, a Share of which Service was appointed to me: The Proofs, we inſiſt on, in Maintenance of this Part of our Charge, have been laid before you with great Exactneſs; and all the Enforcements they can well receive, have been already offer'd to you, by thoſe Gentlemen, that have gone before me; ſo that I find my ſelf acquitted from giving your Lordſhips much Trouble upon it.

The Charges contain'd in the precedent Articles, are particular and diſtinct; Of ſo high a Nature in themſelves, and of ſuch eminent Conſequence to Her Majeſty and Her Government, that we have held our ſelves obliged, to treat each of them, with all imaginable Clearneſs and Solemnity; and this, my Lords, from that true Zeal and neceſſary Concern, with which the Commons, upon this great Occaſion, are ſo juſtly inſpired, for the Honour of Her Majeſty, and the Proſperity of Her Kingdoms.

The Subject of this Article is laid down in General Poſitions, ſome of which are the Reſult and Conſequence of the former Articles; and this will make it neceſſary to remind your Lordſhips of the Paſſages produced in ſupport of them: The Application of them, to the ſeveral Branches of this Charge, is eaſy and obvious: The further Paſſages, that were Yeſterday pointed out to you, are many in number, and the Aſſertions poſitive, ſcarce liable to any Conſtructions more innocent in themſelves, or more favourable for the Priſoner, than what hath been put upon them: But tho' the more flagrant Parts of the Priſoner's Diſcourſes have been diſtinguiſh'd to you, your Lordſhips can't fail of diſcerning that implacable Enmity that runs through the whole: How little will your Lordſhips find in it of the Spirit of the Goſpel, of the Temper of a Chriſtian, or a good Subject, much leſs of a Meſſenger of Peace? No, my Lords, when the Heart is poiſoned, the Corruption will be diffuſed throughout; when Principles are delivered from the Pulpit, that ſtrike at the Root of the preſent Government, and our future Eſtabliſhment, and are taught as Fundamental Rules both of Law and Conſcience; what kind of Proofs, what Exhortations are to be expected from ſuch a Preacher? Surely, ſuch only, as you have heard from this Man, ſuch only, as may create univerſal Diſſatisfaction, will diſquiet the Minds, and tend to pervert the Obedience of the Subjects; ſuch only, as ſhall be moſt likely to cheriſh and cultivate thoſe Seeds of Sedition, which, when ſufficiently Propagated, and brought up to their full Growth, can terminate in nothing leſs than a Total Deſtruction.

My Lords,

I am now to acquaint you, That the Commons have gone through their Charge, wherein they have been heard by you with great Candour and Patience: And that imperfect View, which was the beſt I was able to give you, in opening the Charge, has been amply ſupply'd by the great Sufficiency of what has followed: And from thence, I think, I have good Grounds to ſay to your Lordſhips, that this Impeachment of the Commons in every part of it, is ſubſtantially and effectually maintain'd.

And now, my Lords, craving leave of the Doctor to borrow a Phraſe which ſtands at the Head of the laſt Paragraph of his Sermon, *What is the Reſult* of this Proceeding hitherto? In opening the Charge, we conſidered him in the Condition of a Perſon accus'd; but the Proofs having been produced, and the Evidence being unqueſtionable, even from his own Mouth, and by the Endeavours of other Gentlemen, to whoſe Provinces the ſeveral Tasks have fallen, the falſe Colours of his Diſcourſe being taken off, and his Scheme reduced to its true Conſiſtency, give me leave to repreſent him to your Lordſhip in a true Light, and in his proper Colours.

Your Lordſhips now ſee this Gentleman, under the Reign of the greateſt and beſt of Princes, that ever wore a Crown, whoſe Title to the Throne ſtands upon a more ſolid and indiſputable Foundation than that of any Prince upon Earth, guarded and defended by the beſt Laws in the World, and the entire Affection of all Her true Subjects, and which none can draw in queſtion with any other Deſign than to weaken its Support:

You ſee him, under an Eſtabliſhment and Conſtitution, excellently contrived and adapted to anſwer all the good Ends of Government, and which has withſtood the open Aſſaults of Arbitrary Princes, and the more crafty Attempts of Papal Encroachments; and which, ſince the true Religion was Eſtabliſhed among us, has been preſerved in deſpight of the dangerous Endeavours of Papiſts, by dividing Proteſtants, to make way for its Deſtruction: A Conſtitution, which happily recovered its ſelf at the Reſtoration, from the Confuſions and Diſorders which the horrid and deteſtable Proceedings of Faction and Uſurpation had thrown it into, and which after many Convulſions and Struggles, was providentially ſaved at the late happy Revolution; and by the many good Laws paſs'd ſince that time, ſtands now upon a firmer Foundation; Together with the moſt comfortable proſpect of Security to all Poſterity, by the Settlement of the Crown in the Proteſtant Line:

Your Lordſhips have found this Perſon, at a Time when the Church of *England* as by Law Eſtabliſhed is in perfect Proſperity and Safety at Home, and in higher Reputation abroad, than in any Age that has gone before it; At a time when the Nation enjoys Peace and Tranquillity, and all the good Effects of a prudent and ſucceſsful Adminiſtration, demonſtrated by the Harmony and Unanimous Endeavours of all Her Majeſty's true Subjects to ſupport it,

In the moſt ſolemn and publick Manner, levelling the moſt virulent Diſcourſe againſt Her Majeſty's Title to the Crown, and againſt our preſent Eſtabliſhment, and calculated to favour the Pretenſion of another.

Your Lordſhips find in it the ſame Principles reviv'd and avow'd in the ſame dangerous Extent by him, as in a late Reign by the profeſs'd Inſtruments of Popery and Arbitrary Power, and apply'd in Condemnation of the Glorious Work of the late Happy Revolution, which delivered us from them.

Your Lordſhips have found him Arraigning the Honour of Her Majeſty and Her Parliament, aſperſing Her Adminiſtration both in Church and State, and with all imaginable Ardour and Vehemence ſtirring up Sedition, and exhorting to Rebellion; and that in the Name of Almighty God, as a Perſon commiſſioned from Heaven to that End, and in the moſt prophane and proſtitute Manner abuſing and wreſting Scripture to thoſe Impious Purpoſes.

'Tis on thoſe Grounds, that the Commons have charg'd the Crimes to have been committed by him with an Intent to undermine Her Majeſty's Government, and to ſtir up Arms and Violence: And do your Lordſhips want further Evidence of this? Let us remind you of the Rebellion that has been rais'd, and that High-Treaſon that was commited, the laſt Night, by thoſe Perſons who abet the Priſoner!

I can't aggravate the Offence; your Lordſhips will duly conſider the Heighth and Quality of it, you will think of a Satisfaction ſuitable to that, and to the juſt Expectation of the Commons.

My Lords,

The Nature and Length of this Proceeding having occaſion'd many Interruptions, we are yet aſſur'd, that no Miſconſtruction will be permitted by your Lordſhips, of what may have fall'n from any of us. We likewiſe take Notice to your Lordſhips, that the Commons have very readily acquieſc'd in your Appointment of Council to aſſiſt the Priſoner. Your Lordſhips informed us in the beginning of the Cauſe, that you did this in great Benignity to him, in aſſigning him thoſe Council which he himſelf had ask'd, and doubtleſs ſuch as are according to his own Heart's Deſire: And the Commons are aſſur'd, that thoſe Gentlemen will underſtand that Regard which is due to the Nature of this Cauſe, and to the Dignity of a Proceeding wherein the Commons of *Great Britain* appear as Proſecutors.

The Commons conceive, they have Reaſon to take great Satisfaction from this Proceeding, whereby they have the Opportunity, in the moſt ſolemn Manner, before the moſt Auguſt Judicature in the World, to aſſert the Freedom and Excellency of our Government, and the Juſtice of the preſent Eſtabliſhment: This ſingle Conſideration ſhews your Lordſhips of what Malignity the Priſoner is capable, who has thus ſet himſelf to diſorder and deſtroy ſo happy and ſo beautiful a Conſtitution.

We deſire to put your Lordſhips in mind of thoſe Felicities, which in our Opinions, accompany this Proſecution; when we ſee ſo many of your Lordſhips the Judges of this Great Cauſe, who had ſo great a Share in that Deliverance which we are now called upon to vindicate; ſo many others of your Lordſhips, the Sons of thoſe Fathers, who joined in it; and who have the ſame Blood ſtill running in your Lordſhips Veins. And when we conſider that firm and ſteady Zeal which every one of your Lordſhips have ſhewn in Support of the preſent Settlement, what Doubt can we entertain of your moſt impartial Juſtice?

We further obſerve it, as the great Security of our Impeachment, That no Endeavours can prevail to prevent your Judgment upon it, nor any Means ſucceed to defeat its Effects.

And on t'other Hand, we have before our Eyes the many good Conſequences, which that Part which the Commons have taken on themſelves, will certainly produce; that Strength and Vigor 'twill add to the great Affairs of the Kingdom, and of all *Europe*, at this Critical Juncture, when the World ſhall ſee that the Commons of *Great Britain*, who have been ſo unanimous in Defence and Support of the Common Cauſe of Peace and Liberty Abroad, are thus zealous to find out and extirpate that Malignant Humour, which alone can endanger it at Home; that whilſt the Common Oppreſſor feels the Effects of Her Majeſty's Arms, the inteſtine Enemies of the Nation, and of Her Government, (in the Inſtance of the Priſoner) may ſee and conſider the Force and Weight of the higheſt Reſentment of the Commons.

Thoſe good Effects will receive yet greater Enforcements from your Lordſhips Judgment; which, when it becomes Publick, will be an effectual Confutation, or an unanſwerable Treatiſe againſt the peſtilent Doctrines advanced by the Priſoner.

The Firmneſs of your Proceedings will give the ſame Steadineſs and Vigor to all other Parts of the Adminiſtration, which will henceforward ſtrive to imitate your Lordſhips in ſo great an Example; and 'twill ſtrike due Terror on thoſe Minds, in which the ſame deſtructive Errors have taken Root.

And, my Lords, What Comfort and Peace muſt it bring to all Her Majeſty's faithful Subjects, to ſee Her Majeſty's undoubted Title, the Wiſdom of Her Adminiſtration, and the Proteſtant Succeſſion, ſo effectually ſupported by your Lordſhips Judgment?

My Lords, We have thought it neceſſary, in Diſcharge of the great Truſt repoſed in us by the Commons, to go thorough the whole Charge together, that your Lordſhips might have it entire. I am now only to add, That they do reſerve to themſelves the Liberty of replying to what ſhall be offered on behalf of the Priſoner, and of every other Legal Advantage that ſhall ariſe to them in the Progreſs of their Impeachment.

Lord Chancellor. Gentlemen of the Houſe of Commons, Have you gone through the Charge?

Mr. *Lechmere*. My Lord, we have.

Lord Chancellor. Then you that are appointed Council for Doctor *Sacheverell*, may proceed to his Defence.

Sir *Simon Harcourt*. My Lords, There having been already three whole Days ſpent by the Gentlemen of the Houſe of Commons in Maintenance of their

their Charge; and this Day being ſo far ſpent, I am bound in Duty humbly to repreſent to your Lordſhips, that it will be impoſſible for us to go through the very firſt Article, ſo as to finiſh in any reaſonable Time. My Lords, We humbly expect your Lordſhips Commands.

Lords. Go on, go on.

Sir *Simon Harcourt.* My Lords, We muſt receive your Lordſhips Commands. We think it of great Importance to go through the firſt Article at once, if your Lordſhips pleaſe to give us Leave.

Then the Lords Adjourned to their Houſe above.

Friday, March 3. The Fifth Day.

THE Lords coming down into *Weſtminſter-Hall*, and being ſeated in the manner beforemention'd, Proclamation was made by the Serjeant at Arms as follows:

Our Sovereign Lady the Queen doth ſtrictly Charge and Command all manner of Perſons to keep Silence, upon Pain of Impriſonment.

Then another Proclamation was made: *Henry Sacheverell,* Doctor in Divinity, come forth, ſave Thee and thy Bail, elſe thou forfeiteſt thy Recognizance.

The Doctor appearing at the Bar accordingly, with his Council, as before:

Lord Chancellor. Gentlemen, you that are Council for the Priſoner, may proceed to his Defence.

Sir *Simon Harcourt.* MAY it pleaſe your Lordſhips, I am Council for Doctor *Sacheverell,* who ſtands Impeached in the Name of all the Commons of *Great-Britain* of High Crimes and Miſdemeanors. The Crimes ſuppoſed to have been committed by him are contain'd in Four Articles. I beg Leave to poſtpone the Three laſt, without mentioning any thing of them, 'till we have all concluded what we have to offer and lay before your Lordſhips, as to the ſeveral Charges contain'd in the Firſt; and endeavour'd to ſatisfy your Lordſhips, That notwithſtanding what has been objected by the Gentlemen of the Houſe of Commons againſt the Doctor, in Maintenance of that Article, he is an innocent Man. The Firſt Article contains Three diſtinct Charges; we ſhall proceed on them as they lie in Order. The Firſt of them is, "That he ſuggeſts and maintains, that "the Neceſſary Means uſed to bring about the late "Happy Revolution were odious and unjuſtifiable." Your Lordſhips have been inform'd, that by this Expreſſion of, *The Neceſſary Means*, mention'd in the Firſt Article, the Gentlemen of the Houſe of Commons intend his late Majeſty's Glorious Enterprize for Delivering this Kingdom from Popery and Arbitrary Power, and the Subjects of this Realm well affected to their Country, joining with, and aſſiſting him in that Enterprize. In a ſhorter Deſcription, it has been explain'd, that theſe *Neceſſary Means* were the Subjects Reſiſtance to their Unfortunate Prince then upon the Throne. Of this Reſiſtance the Doctor has made no Mention in his Sermon. He has, indeed, affirm'd the utter Illegality of Reſiſtance on any Pretence whatſoever to the Supreme Power; but it can't be pretended, there was any ſuch Reſiſtance uſed at the Revolution. The Supreme Power in this Kingdom is the Legiſlative Power; and the Revolution took effect by the Lords and Commons concurring and aſſiſting in it. Whatever therefore the Doctor has aſſerted of the utter Illegality of Reſiſtance, his Aſſertion being applied to the Supreme Power, can't relate to any Reſiſtance uſed at the Revolution; and conſequently can't be an Affirmance, that ſuch Reſiſtance, or ſuch Neceſſary Means, were Odious and Unjuſtifiable. One of the Learned Gentlemen who ſpoke the Third Day of this Trial, in Maintenance of the laſt Article, concurr'd with me in this; and objected it to the Doctor, That he had guarded himſelf, by confining his Aſſertion to the Supreme Power; and that he had not avert'd the utter Illegality of Reſiſtance to the Queen: But had he in expreſs Terms affirm'd the Unlawfulneſs of ſuch Reſiſtance, yet by the ſame Arguments which have been uſed, the Doctor would have been told, he had been preaching a ſlaviſh Doctrine. My Lords, another Gentleman of the Houſe of Commons (I think there were but two of them who took Notice of this Expreſſion of the Doctor's of *the Supreme Power*) obſerv'd, that the Doctor had aſſerted the Illegality of Reſiſtance to the Supreme Power on any Pretence whatſoever; which Power he admitted was the Legiſlative; and declar'd, if the Doctor had really meant that Power, he ſhould not have differ'd from him; and without doubt, your Lordſhips and all Perſons will concur with him in this, that 'tis utterly unlawful to reſiſt the Supreme Power. But that Gentleman being ſatisfy'd, that tho' the Doctor expreſly mention'd the Supreme Power, which is the Legiſlative, yet he certainly intended the Supreme Executive Power, concluded he was guilty of this Charge in the Firſt Article; and mention'd it as an Inſtance of the great Mercy and Lenity of the Houſe of Commons, that they had not proceeded againſt him for High-Treaſon, as a *Parſon* in one of the late Reigns was proſecuted for Words which he thought leſs offenſive and dangerous than this Aſſertion preached by Dr. *Sacheverell.* And yet that Gentleman was pleas'd to ſay, That had a Diſſenter, whoſe Affection to the Government was unſuſpected, expreſs'd himſelf as the Doctor did, the Gentlemen of the Houſe of Commons would not have thought fit to have proſecuted him. That Caſe which was alluded to, I take to be the Caſe of Mr. *Roſwell,* a Nonconformiſt Miniſter. He was indicted in the 36 *Car.* II. for Words ſpoke by him in a Sermon preach'd at a Meeting-Houſe. 'Twas a Proſecution carried on through the Violence of thoſe Times, and generally deteſted. He was convicted; but on cooler Thoughts, and Conſideration of the Uncertainty in his Expreſſions, that they could not amount to ſuch a Crime as he ſtood charged with, Judgment was Arreſted, and Mr. *Roſwell* was diſcharg'd. Another Learned Gentleman who open'd the Charge, was of Opinion, that the Doctor, in his Aſſertion of the Illegality of Reſiſtance to the Supreme Power, does really neither mean the Legiſlative nor Executive Power, but that he had the Pretender in his View. This is diving into the Secrets of his Heart, and ſearching into his Thoughts, which God only knows. This was urg'd, to avoid the ſtrange Inconſiſtency, in concluding, that the Doctor was endeavouring to undermine the Government, by Preaching up the utter Illegality of Reſiſting it.

My Lords, If there be a double Senſe, in either of which thoſe Words are equally capable of being underſtood; if in one Senſe the Doctor's Aſſertion be undeniably clear, but in the other ſome Doubt might

might ariſe, whether his Words be Criminal or not, the Law of *England* is more merciful than to make any Man a Criminal, by conſtruing his Words againſt the natural Import of them, in the worſt Senſe. This is the great Juſtice and Clemency of our Law, in every Man's Caſe. But ſome Perſons are intitled to have a more favourable Conſtruction put on all their Words and Actions, than others are; ſuch as Perſons acting in the Execution of their Offices, in Obedience to Authority, or by a Commiſſion from the Crown; ſuch Perſons are look'd upon as under the immediate Protection and Care of the Law: How much more reaſonable is it, that Miniſters of the Goſpel, who have their Commiſſion from God, and ſpeak in the Name of God, ſhould have the moſt candid Interpretation made of whatever they ſay? This, I am perſuaded, was one of the chiefeſt Reaſons which in the Caſe of Mr. *Roſwell* allay'd the Rage of that Reign; and at that Time obtained Mercy for him, tho' a Nonconformiſt Miniſter under a Conviction of High-Treaſon. 'Tis a hard Fate attends this unhappy Gentleman, if he muſt inevitably lie under the Imputation of being thought an Enemy to the Revolution, and to our preſent happy Eſtabliſhment on that Foundation. What Evidence will your Lordſhips expect he ſhould produce to clear himſelf? He has ſhown his Submiſſion to the Revolution, from the firſt Moment his Years made him capable of doing ſo. He has given all the publick Teſtimonies of his Fidelity and Affection to the laſt Reign, as well as the preſent, which the Government has at any time required from the moſt ſuſpected Perſons. He has taken the Oath of Allegiance, ſigned the Aſſociation, and took the Abjuration. 'Tis a miſerable Caſe any Man is in, if after he has taken the Abjuration, the utmoſt which is required, he ſhall ſtill be told, he has indeed abjur'd the Pretender, but hath not yet forgot him. If neither the Inoffenſiveneſs of the Doctor's Behaviour, neither his Words, nor Oaths can ſatisfy; if after all theſe Demonſtrations the Doctor has given of his Fidelity, he is ſtill liable to be cenſured, What Satisfaction is it poſſible for him to give?

My Lords, If the Manner of this ſolemn Proſecution has not alter'd the Nature of Things, I hope I may inſiſt, without putting in a Claim of Right in behalf of all the factious and ſeditious People in the Kingdom to revile the Government at Pleaſure, That by the happy Conſtitution under which we live, a Subject of *England* is not to be made Criminal by a labour'd Conſtruction of doubtful Words; or when that can't ſerve, by departing from his Words, and reſorting to his Meaning. Too many Inſtances there were of this Nature before the late happy Revolution; but that put an End to ſuch Arbitrary Conſtructions.

I might trouble your Lordſhips on this Head with Multitudes of Authorities; but I ſhall mention only one: 'Tis an Authority of your Lordſhips, upon a Writ of Error, immediately after the Revolution; Sir *Samuel Barnardiſton*'s Caſe; and I beg Leave to refer to your Lordſhips Journal, *May* 14, 1689. 'Twas that Gentleman's Misfortune to be called in Queſtion in the Reign of King *Charles* the Second (*Hill. Term*, 1683.) for writing ſome Letters ſuppoſed to be Seditious, and highly reflecting on the Government, and the publick Juſtice of the Nation at that Time. Upon his Tryal he was repreſented as a Seditious Man, and one of a turbulent Spirit; and being ſo painted by the Chief Juſtice who try'd him, tho' his Actions were inoffenſive; notwithſtanding his Innocence, a Verdict was obtain'd againſt him; and when he came to receive Judgment, not being look'd upon as an inconſiderable Man, not as a Tool of his Party, but as one of the Heads of it, a Fine of Ten Thouſand Pounds was ſet on him. I beg Leave to lay before your Lordſhips what you did in that Caſe. Your Lordſhips reverſed that Judgment; and as a Glorious Inſtance of your Juſtice, not contenting your ſelves with the Right you had done in the Caſe then before you, at the ſame time provided, as far as was poſſible, that no innocent Perſon, in After-Ages, might ſuffer Wrong. Your Lordſhips therefore, in an extraordinary Manner, order'd the Reaſons of your Judgment to be enter'd in your Journal, and they are enter'd in the following Words: "Firſt, "The Information in this Caſe being grounded up- "on Letters, which in themſelves were not Crimi- "nal, but made ſo by Innuendo's, your Lordſhips "declar'd, that Innuendo's, or ſuppos'd or forc'd "Conſtructions, ought not to be allow'd; for all "Accuſations ſhould be plain, and the Crimes aſ- "certain'd.". My Lords, I hope it's unneceſſary to my preſent Purpoſe, to read to you the Second Reaſon; but as it was another Inſtance of your Lordſhips Juſtice, which ought never to be forgot, I ſhall take the Liberty of doing it: It relates to the Fine of Ten thouſand Pounds. Tho' Sir *Samuel Barnardiſton* was a Gentleman of a very conſiderable Eſtate, your Lordſhips declar'd, "Secondly, That "this Fine of Ten thouſand Pounds is exorbitant, "and exceſſive, and not warranted by Legal Prece- "dent in former Ages; for all Fines ought to be "with a *Salvo contenemento ſuo*, and not to the "Party's Ruin." Theſe were your Lordſhips Declarations in that Caſe. If there be any Uncertainty or Doubt in the Doctor's Expreſſions, your Lordſhips, I hope, will put the moſt favourable Conſtruction on them. What I have hitherto offer'd is, with *Relation* to theſe Words, *The Supreme Power*; but that which I take to be the main *Objection* in this Caſe, is, that the Doctor's Aſſertion of the Illegality of Reſiſtance muſt be neceſſarily underſtood with Reference to the Executive Power. And if it be utterly illegal, in any Caſe, upon any Pretence whatſoever, then 'twas unlawful at the Revolution; and from thence the Conſequence is drawn, That the Doctor is guilty of this firſt Charge, *of maintaining, That the neceſſary Means uſed to bring about the happy Revolution were odious and unjuſtifiable.* This I take to be the Force of the Objection.

My Lords, I admit the Doctor has in General Terms aſſerted this Propoſition of the Illegality of Reſiſtance to the Supreme Power on any Pretence whatſoever; and yet I am not altogether without Hopes, but that I ſhall be able to ſatisfy even the Gentlemen of the Houſe of Commons, whether that Expreſſion be underſtood of the Legiſlative, or Executive Power, that he is an innocent Man, notwithſtanding that Aſſertion.

My Lords, There is nothing further from our Hearts, nor is any thing leſs neceſſary to the Doctor's Defence, than for us to diſpute or to call in Queſtion the Juſtice of the Revolution. We are ſo far from it, that we look on our ſelves to be arguing for it, whilſt we are endeavouring to ſhow your Lordſhips, that the Reſiſtance uſed at the Revolution is not inconſiſtent with the Doctrine of the Church of *England*, and with the Law of *England*; and that the Doctor uſes no other Language than what they both ſpeak. When your Lordſhips have laid aſide what was urg'd the Second Day, to ſhow

the Juſtice of the Revolution, and to aggravate the Doctor's Offence, ſuppoſing him guilty, this Matter will lie in a very narrow Compaſs; and I am in Hopes there will not appear to be ſo great a Difference as hath been repreſented, between the Doctor, in his Aſſertion concerning the Illegality of Reſiſtance, and ſome of the Gentlemen of the Houſe of Commons. I can't ſay, that I differ from many of them in their Notions of Allegiance, as ſtated the Second Day of this Tryal.

My Lords, The firſt thing on which I humbly inſiſt, ſuppoſing this general Aſſertion to relate to the Supreme Executive Power, is, that the Doctor has not in any Part of his Sermon apply'd it to the particular Caſe of the Revolution.

'Twas inſiſted on the firſt Day, That he had not only aſſerted the utter Illegality of Reſiſtance to the Supreme Power, on any Pretence whatſoever; but alſo that he had expreſly affirm'd, that the Revolution was not ſuch a Caſe, as ought to be excepted out of his General Rule. This I deny: If ſuch an Expreſſion can be found in the Doctor's Sermon, I ſhall think no Puniſhment too great for him. 'Tis one Thing, expreſly to affirm the Revolution is ſuch a Caſe as ought not to be excepted out of the General Rule; and another Thing, not to make the Exception. The Apoſtle, who in general Terms enjoins the Duties of Obedience and Non-Reſiſtance to the Higher Powers, makes no Exception when he lays down thoſe Precepts; nor (on the other ſide) does he ſay, no ſuch Caſe can ever happen, wherein Obedience is not to be paid, or Reſiſtance not to be made. He is ſilent in that Matter; and the Doctor's Expreſſion, in this Caſe, is agreeable with that of the Apoſtle. To prove the Doctor guilty of this firſt Charge, and that he had directly applied his General Rule of the Illegality of Reſiſtance to the Supreme Power, to the particular Caſe of the Revolution, a Learned Gentleman, (whoſe Province 'twas to maintain the firſt Article) on the Second Day of this Tryal, firſt ſtated to your Lordſhips the Page wherein the Doctor mentions the utter Illegality of Reſiſtance, and read that Paſſage in the following Words: "The Grand Security of our Government, and the "very Pillar upon which it ſtands, is founded up-"on the ſteady Belief of the Subjects Obligation "to an Abſolute and Unconditional Obedience to "the Supreme Power, in all Things lawful, and "the utter Illegality of Reſiſtance upon any Pre-"tence whatſoever." And then, ſays he, the Doctor goes on, and ſays, "Our Adverſaries think "they effectually ſtop our Mouths, and have us "ſure and unanſwerable on this Point, when they "urge the Revolution of this Day in their De-"fence." This might very reaſonably make an Impreſſion upon your Lordſhips, not comparing thoſe ſeveral Paſſages in the Doctor's Sermon, at the ſame Time that Objection was made. But I beg your Lordſhips will obſerve the Diſtance of theſe Two Paſſages from each other, between Twenty and Thirty Lines, in which ſeveral diſtinct and entire Sentences are contain'd, to which that laſt Paſſage of *Our Adverſaries*, &c. plainly relates. The next Method us'd to prove the Doctor guilty, was, by taking the Paſſage in it ſelf, independently, from any other; and this I own to be the true way of conſidering it: And taking it thus, 'tis objected, If in no Caſe whatſoever 'tis lawful to reſiſt, 'twas then unlawful at the Revolution. Such a Doctrine muſt be a ſlaviſh Doctrine. An unlimited Paſſive Obedience and Non-Reſiſtance is a ſlaviſh Notion.

My Lords, Dr. *Sacheverell* does not contend for it; nor is there any Thing mentioned in his Sermon, of ſuch an Obedience or Non-Reſiſtance. There is but this ſmall Difference between the Gentlemen of the Houſe of Commons, who think this Expreſſion ſo highly Criminal, and the Doctor, who ſtill conceives it to be otherwiſe; whether, when the General Rule of Obedience is taught, the particular Exceptions, which may be made out of that Rule, are always to be expreſs'd; or whether, when the General Rule is laid down, the particular Exceptions, which might be made out of that Rule, are not more properly to be underſtood or implied.

I humbly apprehend, my Lords, that Extraordinary Caſes, Caſes of Neceſſity, are always implied, tho' not expreſs'd, in the General Rule. Such a Caſe undoubtedly the Revolution was, when our late Unhappy Sovereign, then upon the Throne, miſled by Evil Counſellors, endeavour'd to ſubvert and extirpate the Proteſtant Religion, and the Laws and Liberties of the Kingdom. The General Rule ought always to be preſſed; but the Exceptions of Extraordinary Caſes, of Caſes of Neceſſity, are never particularly to be ſtated. To point out every ſuch Caſe before-hand is as impoſſible, as it is for a Man in his Senſes not to perceive plainly when ſuch a Caſe happens.

Every Miniſter of the Goſpel is ſufficiently inſtructed from the Doctrine of his Church, from the written Laws of the Land, and the Law of God, to preſs the General Duty of Obedience; but ſuch Extraordinary Caſes, wherein Reſiſtance is lawful, wherein it becomes an indiſpenſible Duty, are no where laid down. The ſame Apoſtle, who enjoins Obedience and Non-Reſiſtance to the Higher Powers, commands alſo Servants to obey their Maſters, and Children their Parents, in all Things: Notwithſtanding which General Precepts, many Caſes may happen, wherein it may be not only unfit, but ſinful for Servants to obey their Maſters, or Children their Parents. And yet the Apoſtle never thought it proper to ſtate, or mention thoſe Caſes, but contented himſelf to preſs the Duty of Subjection in general, leaving ſuch Caſes (when they happen'd) to juſtify themſelves.

Such Caſes, my Lords, with reſpect to Reſiſtance againſt the Supreme Power, are no way fit to be conſider'd, but in Parliament; and even the Parliament it ſelf hath never yet thought fit otherways to conſider them, than by way of Retroſpect, to juſtify what had of Neceſſity been done in thoſe Caſes; but never went ſo far as to enumerate the Caſes of that kind, which might happen for the future, wherein it might be lawful for the Subject to reſiſt; nothing being more evident, than that the Subjects would be, ſome time or other, thereby tempted to exceed their juſt Liberty.

I beg Leave to cloſe what I have humbly offer'd to your Lordſhips on this Head, with an Obſervation I borrow from Mr. *Pym*, at his delivering the Charge againſt Dr. *Manwaring*. Mr. *Pym*, ſpeaking of the Dutchy of *Normandy*, obſerves, that that Dutchy having been oppreſſed with ſome Grievances, contrary to their Franchiſes, made their Complaint to *Lewis* the Tenth; who by his Charter, acknowledging the Right and Cuſtom of the Country, and that they had been unjuſtly griev'd, did grant and provide, That from thenceforward they ſhould be free from all Subſidies and Exactions to be impos'd by him, and his Succeſſors, yet with this Clauſe, *Unleſs when great Neceſſity required*:

Which

Which ſmall Exception, Mr. *Pym* obſerved, had devoured all their Immunities granted by that Charter. I think I may as reaſonably conclude, That if Clergymen, or others, in their Sermons, Writings, or publick Diſcourſes, inſtead of Preaching up the General Rule of Obedience, are permitted to ſtate the ſeveral extraordinary Caſes, which may ariſe, the ſeveral excepted Caſes which, notwithſtanding the General Rule, are implied; ſuch Exceptions will in Time devour all Allegiance.

Having thus ſtated to your Lordſhips the Queſtion between us, Whether ſuch excepted Caſes as the Revolution was, are not more proper to be left as implied, than to be expreſs'd, when the General Duty of Obedience is taught; I ſhall endeavour to ſatisfy your Lordſhips, Firſt, That the Doctor's Aſſertion, of *the Illegality of Reſiſtance to the Supreme Power on any Pretence whatſoever*, in general Terms, without expreſſing any Exception, or that any Exception is to be made, is warranted by the Authority of the Church of *England*: And, Secondly, That this Manner of Expreſſion is agreeable to the Law of *England*.

Firſt, That 'tis warranted by the Authority of the Church. Your Lordſhips were informed, on the firſt Day of this Tryal, with how much Bravery even our Popiſh Anceſtors aſſerted the Legality and indiſpenſible Duty of Reſiſtance, whenever they thought the Liberty of their Country requir'd it; but that at the Reformation, when Truth began to ſhine out, then it became evident, that this Notion of the Illegality of Reſiſtance was a ſlaviſh Doctrine. The Learned Gentleman undoubtedly pitch'd on a very proper Time to begin his Search after Truth; and from thence I ſhall endeavour to trace it.

One very early Authority I find; 'twas indeed in the Dawn of the Reformation, in a Book entitled, *A Neceſſary Doctrine and Erudition for any Chriſtian Man*; publiſh'd by the King's Command, 34 *H.* VIII. 'Twas a Treatiſe compos'd by the Direction of *Cranmer*, by *Ridley*, *Redmayn*, and other very Great and Learned Men. I find it highly commended in the *Hiſtory of the Reformation*, *Part* 1. *Book* 3. *Pag.* 286. The Reverend Author of that Hiſtory gives an Account how well the Reformers were employed, (*Anno* 1540.) tho' not in the way of Convocation: That a ſelect Number of them ſat, by Virtue of a Commiſſion from the King, confirm'd in Parliament; and that their firſt Work was to draw up a Declaration of the Chriſtian Doctrine, for the neceſſary Erudition of a Chriſtian Man; and (*Pag.* 293.) that 'twas finiſh'd and ſet forth, with a Preface, written by thoſe of the Clergy who had been employ'd in it, declaring with what Care they had examin'd the Scriptures, and the Ancient Doctors, out of whom they had faithfully gather'd that Expoſition of the Chriſtian Faith. In this Treatiſe I find theſe Paſſages. In the Expoſition of the Fifth Commandment: "And "by this Commandment alſo, Subjects be bound "not to withdraw their Fealty, Truth, Love, and "Obedience towards their Prince, for any Cauſe "whatſoever it be; nor for any Cauſe they may "conſpire againſt his Perſon, nor do any Thing "towards the Hindrance or Hurt thereof, nor of "his Eſtate." In the Expoſition of the Sixth Commandment: "Moreover, no Subjects may "draw their Swords againſt their Prince, for any "Cauſe whatſoever it be." The Reverend Father of our Church, to whom the Publick is ſo much indebted for that Excellent Hiſtory of the Reformation, and who has received the juſt Thanks of both Houſes of Parliament for it, (*Pag.* 291.) declares thoſe Expoſitions of the Commandments to be very profitable.

My Lords, Tho' the Treatiſe, in which I find theſe Expoſitions, was publiſh'd in a Popiſh Reign, yet (as an undeniable Evidence that the Doctrine of Non-Reſiſtance, there taught, is a Proteſtant Doctrine) I ſhall ſhow your Lordſhips, the Reverend Author of the Hiſtory of the Reformation has himſelf aſſerted it, in much ſtronger Terms, than Doctor *Sacheverell* has done. In *Edward* the Sixth's Time, the Glorious Light of the Goſpel ſhone out. The firſt Book of the Homilies, prepar'd by the Clergy, was then publiſh'd by the Royal Authority; in which were Three Parts of a Homily, or rather Three diſtinct Homilies of Obedience: In one of which is the Paſſage mentioned in the Doctor's Anſwer. "Here, good People, mark "diligently: It is not lawful for Inferiors, and "Subjects, in any Caſe, to reſiſt and ſtand againſt "the Superior Powers; for St. *Paul*'s Words be "plain, that whoſoever withſtandeth, ſhall get to "themſelves Damnation; for whoſoever withſtand-"eth, withſtandeth the Ordinance of God." In Queen *Mary*'s Reign, the Light of the Goſpel was eclips'd, and the Darkneſs of Popery again overſpread the Nation. Reſiſtance to Princes being a Doctrine of the Church of *Rome*, your Lordſhips will not expect any Authentick Evidence to be produced out of that Reign, in Maintenance of the Doctrine of Non-Reſiſtance.

When Queen *Elizabeth* came to the Crown, the Truth of the Goſpel ſhone forth in its full Luſtre, and then Six Homilies were added to the other Three againſt Diſobedience and wilful Rebellion; in which your Lordſhips will find many Paſſages, wherein the Duty of Non-Reſiſtance is preſſed and inculcated, in much ſtronger Terms than it hath been aſſerted by Dr. *Sacheverell*. In that Glorious Reign, the Thirty Nine Articles of our Religion were agreed upon by the Archbiſhops and Biſhops of both Provinces, and the Clergy in Convocation; by the 35th of which, the Homilies are declared to contain *a Godly and Wholeſome Doctrine*, and are order'd to be read in Churches, by the Miniſters, diligently and diſtinctly, that they may be underſtood of the People. In the Thirteenth Year of that Reign, a further Sanction was given to the Homilies; the Thirty Nine Articles were then confirm'd, and every Perſon in Holy Orders, to be admitted to any Benefice with Cure, was requir'd (by Act of Parliament made in that Year) to Subſcribe and Read them in the Church, and declare his unfeigned Aſſent thereto.

My Lords, We have now a moſt Gracious Sovereign on the Throne, as far ſurpaſſing Her Renowned Predeceſſor Queen *Elizabeth*, in the effectual Support She gives to the Proteſtant Intereſt, and in Her Pious Care for the perpetual Security of the Church of *England*, as in all the other Succeſſes and Glories of Her Reign. In this Reign, a perpetual Sanction is given to the Books of the Homilies, by inſerting in the Act of *Union* the Act made the 13th *Eliz.* which confirms the 39 Articles; by the 35th of which, the Doctrine of the Church (taught in the Homilies) is approv'd; and declaring that Act, 13 *Eliz.* to be *an Eſſential and Fundamental Part of the Act of Union*: So that I may now conclude, the Doctrine of the Church of *England*, taught in her Homilies, muſt continue as long as the Union of the Two Kingdoms, which I heartily

tily pray may be to the World's End. On theſe Authorities do the Homilies of our Church ſubſiſt: And as they are thus ratified by the Articles and Acts of Parliament, the Doctor has the concurrent Authority of the Church and State, for what he has ſaid concerning the Illegality of Reſiſtance.

My Lords, Is this Doctrine of Non-Reſiſtance taught in the Homilies in general Terms, in the ſame manner as Doctor *Sacheverell* has aſſerted it, without expreſſing any Exception? Do the Articles of our Religion declare the Doctrine taught in the Homilies to be a Godly and Wholſome Doctrine; and will your Lordſhips permit this Gentleman to ſuffer for Preaching it? Is it Criminal in any Man to preach that Doctrine, which 'tis his Duty to read? The Doctor is not only required by the 35th Article to read this Doctrine diligently, and diſtinctly, that it may be underſtood by the People; but to ſhow your Lordſhips, the Doctrine taught in the Homilies did not die, nor was alter'd at the Revolution. I muſt obſerve to your Lordſhips, that the Rubrick of the Office appointed for the Fifth of *November*, by the late Queen of Bleſſed Memory, directs the Clergy on that Day, if there be no Sermon, to read one of theſe Homilies againſt Rebellion. Since the Doctor choſe rather to preach, than to read a Homily on that Day; how could he better comply with the Command of Her late Majeſty, than by preaching the ſame Doctrine as was contain'd in thoſe Homilies he was commanded to read on that Day, if he did not preach? Does an Act of Parliament, inſerted in the Act of Union, enjoin him to Subſcribe to this Doctrine before the Ordinary, and declare his unfeigned Aſſent to it in his Pariſh-Church? And ſhall he be condemn'd in Parliament, for aſſerting the Truth of it? I muſt admit, this 35th Article of our Religion is not by the *Toleration-Act* (I will give no Offence, by calling it by its true Name) required to be Subſcribed by any Perſons Diſſenting from the Church of *England*, to entitle them to their Exemption from the Penalties mentioned in that Act. But that Act of Parliament no way varies the Caſe with reſpect to the Clergy; ſo that whatever Duty was incumbent on them before, is ſo ſtill; and therefore I hope, your Lordſhips will not think this Gentleman has ſo highly offended.

As a further Proof that this Doctrine of Non-Reſiſtance, as laid down by the Doctor in general Terms, without making any Exception, is the Doctrine of the Church of *England*, I ſhall ſhew your Lordſhips, that it has been ſo preach'd, maintain'd and avow'd, and in much ſtronger Terms than the Doctor has expreſs'd himſelf, by our moſt Orthodox and Able Divines from the Time of the Reformation. 'Twould be endleſs to offer to your Lordſhips all the Authorities I might produce on this Occaſion; but we ſhall beg your Lordſhips Patience to lay before you ſome Paſſages out of the Learned Writings of ſeveral Reverend Fathers of our Church, of Nine Archbiſhops, above Twenty Biſhops, and of ſeveral other very Eminent and Learned Men.

That your Lordſhips may not think this Doctrine died at the Revolution, I ſhall humbly lay before your Lordſhips the Opinions of Three Archbiſhops, and Eleven Biſhops, made ſince the Revolution, which will fully ſhew the Doctrine of Non-Reſiſtance is ſtill the Doctrine of our Church; I would not willingly give Offence in naming them, I am ſure I mean no Reflection, nor can it, as I think, be any Reproach to them: I find no other Doctrine in this Caſe taught by them, as far as I am able to judge, than what the Apoſtles taught before them. With your Lordſhips leave, I will therefore preſume to name them; Archbiſhop *Tillotſon*, the Two preſent Archbiſhops, Biſhop *Stillingfleet*, late Biſhop of *Worceſter*, the preſent Biſhops of *Worceſter*, *Rocheſter*, *Salisbury*, *Ely*, *Bath and Wells*, *Lincoln*, *Exeter*, *St. Aſaph*, *Carliſle*, and *Chicheſter*. If I am able to ſhew your Lordſhips that all theſe Right Reverend Fathers of our Church have preached the ſame Doctrine the Doctor has, Are the ſame Words coming out of Their Mouths to be received as Oracles of Truth, but ſpoke by the Doctor fit for Articles of Impeachment? I am ſure it's impoſſible to enter into the Heart of Man to conceive, that what theſe Reverend Prelates have aſſerted, that any general Poſition they have laid down concerning Non-Reſiſtance, is an Affirmance that Neceſſary Means uſed to bring about the Revolution were *Odious* and *Unjuſtifiable*: Why then is Doctor *Sacheverell*, by having taught the ſame Doctrine, in the ſame Manner as they did, to be charg'd for having Suggeſted or Maintain'd any ſuch Thing?

My Lords, I dare not ſuppoſe this Doctrine, thus Eſtabliſh'd by ſo many Reverend Fathers of our Church, to be Erroneous. If an intemperate Expreſſion of one ſingle Archbiſhop above a Hundred Years ſince dead, is fit to be inſerted in an Article of Impeachment of High Crimes and Miſdemeanors, what Puniſhment ſhould I deſerve, could I ſuppoſe the Doctrine taught by ſo many Archbiſhops and Biſhops to be erroneous. But if I might hope to be excus'd, if I made the Suppoſition, that the Homilies of our Church contain falſe Doctrine, and that ſo many of the Right Reverend Fathers of our Church are capable of erring, or being ignorant in the Doctrine of their Church, I humbly propoſe it to your Lordſhips, whether a Clergyman who errs after ſuch great Exrmples, might not reaſonably have hop'd for a more moderate Correction, than an Impeachment! Had this ſlaviſh Doctrine of Non-Reſiſtance been firſt branded with its indelible Mark of Infamy, and the Right and indiſpenſible Duty of Reſiſtance to Princes plainly ſhewn; had all the ſlaviſh Notions of the Common Law which we find diſpers'd throughout our Law-Books, which give Countenance to this Doctrine of Non-Reſiſtance, been firſt weeded out of them, and ſome few Acts of Parliament, entirely agreeable with this ſlaviſh Doctrine, been firſt repealed; had the People been ſet right in the Notions of their Obedience, and the Miniſters of the Goſpel been inſtructed by Act of Parliament what Doctrine they ought to Preach, and what not; had all theſe Things been firſt done, and the Doctor had afterwards err'd, your Lordſhips might have then look'd upon him, as an obſtinate Offender.

The next Thing I beg leave to conſider is, the Law of *England*; whether the Doctor's Aſſertion of *the utter Illegality of Reſiſtance to the Supreme Power on any Pretence whatſoever*, in general Terms, is agreeable to the Law of *England*. I hope I need not again explain my ſelf as to this Particular, I mean, that as the General Rule is always taught and inculcated by the Church, ſo has it always been declar'd by the Legiſlature, without making any particular Exception; and if this Rule holds both in Church and State, this Gentleman is ſtrangely unfortunate, if he can't be comprehended under one or other of them.

My Lords, Whatever may at any Time heretofore have been thought proper to be done by Parliament; whatever Meaſures, in Caſes of the laſt Neceſſity, may at any Time have been taken by the People in general, for preſerving their Liberty, or aſſerting the Rights of their Country, and keeping themſelves from Slavery; yet in no Age can any Inſtance be ſhew'd, not in the Reigns of thoſe Princes who have been Depos'd, that this Doctrine, of the Right of Reſiſtance, as it has been term'd, was ever permitted to be aſſerted by any particular Perſon. A memorable Caſe to this Purpoſe happened in the Reign of King *Edward* the Second: An Act of Parliament paſs'd in the Fifteenth Year of that Reign, Entituled, *Exilium Hugonis de Spencer Patris, & Filii.* The Two *Spencers* were baniſhed by that Act; and the firſt Article in that Act againſt them is, "That they had affirm'd and publiſh'd in Writing, that Homage and Oath of Allegiance were due more by reaſon of the Crown, than by reaſon of the Perſon of the King; and that if the King did not demean himſelf according to Reaſon, in the Exerciſe of his Government, his Subjects might remove him; And that ſince that Removal could not be by Courſe of Law, they might therefore remove him by Force". The Time when this Act paſs'd, and what afterwards happened, is remarkable. The Act, very ſoon after the making it, was repeal'd, and 'twas thought neceſſary in that Reign the People ſhould aſſert that Right, and thereupon the King was Depos'd. But your Lordſhips will find in his Succeſſor's Reign, they were ſo far from caſting any Blot on the Act of Exile, that in the 1. *Edward* 3. by one of their firſt Acts, the Repeal of the Exile was annulled, and the Act of Exile confirm'd. It is true, that in the 21ſt Year of *Rich.* 2. the Act made the 1ſt *Edw.* 3. for annulling the Repeal of the Exile, was repeal'd, and the Reverſal of the Act of Exile confirm'd; but in the 1ſt of *Hen.* 4. the whole Parliament held the 21ſt *Rich.* 2. and all the Proceedings in it, for their Extravagance, were annulled, and from thence the Act of Exile of the Two *Spencers* continued untouch'd. I muſt humbly obſerve to your Lordſhips, that though there were Two Repeals of the Act of Exile, yet neither of them mentioned the Matter contain'd in the Articles as inſufficient, but the Reaſons aſſign'd in the Acts of Reverſal are, that "in the Proceedings againſt the *Spencers*, the great Charter was not obſerv'd, that the Prelates were not preſent, and did not aſſent thereto; and ſome other Defects in Form". What Opinion our greateſt Lawyers have ſince had of this Act of Exile, ſufficiently appears, *Co.* 7. 11. *Calvin*'s Caſe, the Words are theſe: "In the Reign of *Edw.* 2. the *Spencers*, the Father and the Son, to cover the Treaſon hatched in their Hearts, invented this damnable and damn'd Opinion, That Homage and Oath of Leigance was more by Reaſon of the King's Crown (that is, of his Politick Capacity) than by reaſon of the Perſon of the King; upon which Opinion, ſays the Lord Chief Juſtice *Coke*, they inferr'd moſt execrable and deteſtable Conſequences. Firſt, If the King do not demean himſelf by Reaſon in the Right of his Crown, his Lieges are bound by Oath to remove the King. Secondly, Seeing that the King could not be reformed by Suit of Law, that ought to be done by Force: All which were condemned by Two Parliaments, one in the Reign of *Edw.* 2. called, *Exilium Hugonis Le Spencer*; and the other 1. *Edw.* 3. *Cap.* 1." I barely mention theſe Acts to ſhow, that however applicable the Caſe of the Revolution might be to that of King *Edw.* 2. yet that thoſe very Perſons by whom the King was depos'd, thought it ſo high a Crime in the Two *Spencers* to take on them to publiſh ſuch Poſitions, as to deſerve Baniſhment. The next Law I beg leave to mention, is the 25. *Edw.* 3. *Cap.* 2. By which, *the levying War againſt the King in his Realm* is declar'd, in general Terms, to be *High Treaſon*, without any Exception whatſoever: This is an Inſtance of what I am contending for, that the Law, in all Caſes concerning our Allegiance, lays down the general Rule, without making any Exception. So the Oath of Obedience (as enjoin'd 3. *Ja.* 1. 4.) all Perſons are to Swear *to defend the King to the utmoſt of their Power, againſt all Conſpiracies and Attempts whatſoever, which ſhall or may be made againſt his Perſon, Crown or Dignity.* The Oath is in General, without any Exception expreſs'd in it; and no Man will preſume to ſay, that Oath, which was taken from the 3. *Ja.* 1. 'till after the Revolution, was not true. But the Anſwer to be given is, what I give in this Caſe, that Caſes of Neceſſity, ſuch as the Revolution, were implied, they are improper to be expreſs'd; and why ought not the like Implication equally to be allow'd in the General Aſſertion made by Dr. *Sacheverell*? By the Act made 12. *Car.* 2. *C.* 30. for Attainder of the Regicides, it is declar'd, that *by the Undoubted and Fundamental Laws of this Kingdom, neither the Peers of this Realm nor the Commons, nor both together, in Parliament, or out of Parliament, nor the People, collectively, or repreſentatively, nor any other Perſons whatſoever, ever had, have, hath, or ought to have, any coercive Power over the Kings of this Realm.*

My Lords, I can't apprehend this Act to be repeal'd: If it be not, I beſeech your Lordſhips, let Dr. *Sacheverell* be tried by it; and that you will be pleaſed to conſider, whether the Doctor's Aſſertion concerning Reſiſtance, hath out-gone the Declaration in this Law.

Your Lordſhips hear, how fully the Fundamental Law of the Kingdom is declared by this Act: The Doctor has only ſaid, *'Tis Illegal to reſiſt the Supreme Power on any Pretence whatſoever.* The Expreſſion at the End of that Declaration may poſſibly be obſerv'd, that it extends only to a Coercive Power over the Perſon of the King; I know not what Inference may be drawn from thence, but certainly there is nothing in the Doctor's Sermon but what may be abundantly juſtified by the Declaration in that Act.

The Militia Act, the 13th and 14th *Car.* 2. *Cap.* 3. for ordering the Forces in the ſeveral Counties of this Kingdom, contains a Declaration as ſtrong as the former: By that Act 'tis declared, That *neither both or either of the Houſes of Parliament can, or lawfully may, raiſe or levy any War, offenſive or defenſive, againſt his Majeſty, his Heirs, or lawful Succeſſors.* When I peruſed this laſt Declaration in the recital of the Acts, I read carefully to the End of it, to look for the Exception, but could find none. If there be no Exception in that Act, but that it ſtands as a general Declaration of the Law; if neither, nor both the Houſes of Parliament can or may raiſe or levy War, offenſive or defenſive, againſt the King, is it a high Crime and Miſdemeanor to aſſert in general Terms that Reſiſtance to our Prince is unlawful? Pray, my Lords, compare the Doctor's Aſſertion in his Sermon with the Declaration in this laſt Act of Parliament.

By the Corporation Act, 13. *Car.* 2. *Seſſ.* 2. *Cap.* 1. all Mayors, Aldermen, Common-Council-Men, and other corporate Officers there enumerated, are required to take an Oath, That *it is not lawful upon any Pretence whatſoever to take Arms againſt the King.* By the Militia Act, which I have already mentioned, the ſame Oath, That *it is not lawful on any Pretence whatſoever to take Arms againſt the King*, is required to be taken by every Peer of the Realm, before he is capable of acting as a Lieutenant or Deputy-Lieutenant; and by every Commoner of *England*, before he can be capable of acting as a Lieutenant, Deputy-Lieutenant, Officer or Soldier in the Militia. By the Act of Uniformity, 13. & 14. *Car.* 2. *Cap.* 4. all Eccleſiaſtical Perſons, and many others under the ſeveral Denominations in that Act, are required to ſubſcribe to the Truth of that Aſſertion, That *it is not lawful on any Pretence whatſoever to take Arms againſt the King.* This is the Language of our Laws, and the like do the Apoſtles uſe in their Precepts touching Obedience and Non-Reſiſtance to the Supreme Power.

But here I ought to obſerve, an Objection has been made to theſe ſeveral Acts, that by an Act made in the Second Year of the late King and Queen, 'tis Enacted, "That from thenceforth the Oath en-"join'd to be taken or ſubſcribed, by the ſeveral "Acts I have mention'd, ſhould not be required to "be taken by any Perſon whatſoever; and that the "former Acts of Parliament, as to that Oath, are "thereby repealed". 'Tis a very tender Repeal, my Lords, if it be one; but admit it to be one, it ſeems to have been argued from thence by a Learned Gentleman, with whom in many Things he ſaid I no Way differ, that this Doctrine of Non-Reſiſtance was become the more Unlawful, becauſe that Oath was not to be taken from thenceforward.

My Lords, As the Corporation Act required the Swearing 'twas not Lawful to take up Arms againſt the King, ſo does it direct the Subſcribing to the Unlawfulneſs of the Solemn League and Covenant; Now by the ſame Argument, the Solemn League and Covenant may be proved to have been a Lawful Oath.

I beſeech your Lordſhips to conſider, whether the Repeal of this Oath can have any Weight with your Lordſhips. 'Twas a general Aſſertion, to which all the Peers and Commoners, in the Employments I have mention'd, were to ſwear; there is no Exception in the Oath, but what is implied in it. Was not the Propoſition as true before it was ſworn, as after? Was it therefore true becauſe 'twas ſworn; or was it ſworn becauſe it was true? Did the Swearing it make it true; or the Truth make it fit to be ſworn? If it was true when it was ſworn, the Propoſition was equally true before, and ſince. I believe, ſince the Oath was taken by ſo many Peers and Commoners, no Man will pretend to queſtion the Truth of the Propoſition.

My Lords, I have gone thro' the ſeveral Laws I ſhall lay before your Lordſhips on this Occaſion; and let me once more humbly beg your Lordſhips, that you will be pleaſed to compare the Doctor's Aſſertion in his Sermon, concerning the Illegality of Reſiſtance, with them; Whether it be ſtronger than the Declaration of the Undoubted and Fundamental Law of the Kingdom, in the Act againſt the Regicides; than the Declaration in the *Militia* Act; than the Oath required to be taken by ſo many Acts of Parliament; than the Declaration in the 25th of *Edward* III. All the Doctor has ſaid, is, That *Reſiſtance to the Supreme Power is Illegal, on any Pretence whatſoever.* All the Peers and Commoners of *England*, under the Characters and Employments I have mention'd, have ſworn to the Truth of it; the 25th of *Edward* III. declares it to be High-Treaſon; and your Lordſhips have heard what St. *Paul* ſays.

My Lords, I began this Diſcourſe, relating to the Doctrine of our Church and the Laws of the Land, with the moſt ſincere Proteſtation, That it was far from my Intention to offer any Thing inconſiſtent with the Juſtice of the Revolution: I think the Juſtice of it conſiſtent with our Laws, the Exceptions to be made being always implied. And ſurely none can ſhew themſelves truer Friends to the Revolution, than thoſe who prove that the Revolution may ſtand without Impeaching the Doctrines of our Church, or any Fundamental Law of the Kingdom. Doctor *Sacheverell* being impeach'd for not making the Exception, when he laid down the General Rule; I beg Leave to turn the Caſe, and ſuppoſe he had made it. Had he been ſtating the Caſe of a Revolution, on a Day when he preſs'd the Illegality of Reſiſtance, on a Day when, if he did not Preach, he was obliged to read one of the Homilies againſt Rebellion, in which there is no Exception; Had he been picking Holes for the Subject to creep out of his Allegiance, and had he been cited before his Dioceſan; might he not have been queſtion'd, on what Authority he preſumed to preach in that manner? Whether he found ſuch Doctrine taught by the Apoſtles, by the Homilies, or by any of the Reverend Fathers of our Church? Might he not have been told, it was his Duty, in Imitation of thoſe Great Examples, to preſs the General Duty of Obedience, and the Illegality of Reſiſtance, without making any Exception whatſoever? Had he been queſtion'd before the Temporal Power, for Preaching in the manner he has done; had an Indictment been fram'd againſt him on his General Aſſertion, and brought before the Twelve Judges; I humbly apprehend, not one of them would have declar'd he went too far. But had he been making Exceptions out of the General Rule of Obedience, eſpecially if he had been tried by ſuch Judges as were before the Revolution; might he not have been told, 'Twas eaſy to diſcern what Spirit he was of, of what Party he was, and what he aim'd at, what he intended; That he had not been Preaching in Defence of the late Revolution, to ſhew the Juſtice of it; but that he was covering the Treaſon of his Heart, and under Pretence of juſtifying one Revolution, he was labouring to bring about another. He, who knew how far the Deſign had gone of Landing the Pretender but Two Years ſince; what elſe could he mean, by picking Holes in the Rules for our Obedience?

I have but a Word or two to add to the other Charges of this Article. The Gentlemen of the Houſe of Commons were pleas'd to obſerve, That tho' there were Four Articles, the Subſtance of them all center'd in the firſt. The Second Charge in this Article is, *That His Late Majeſty, in his Declaration, diſclaim'd the leaſt Imputation of Reſiſtance.* It is not, I hope, a ſufficient Ground for an Article of Impeachment, if the Doctor has expreſſed himſelf in an obſcure manner. I muſt confeſs, I can't eaſily comprehend him my ſelf; but it may be any Man's Misfortune to expreſs himſelf in ſuch a manner, as to make it decent and fit for him to explain himſelf: And I hope the Doctor has explain'd himſelf, ſo as to ſhow, that tho' he may

have ſpoken improperly, he has yet ſpoken innocently. The Gentlemen of the Houſe of Commons declare, by Reſiſtance they mean the Reſiſtance of the Subject to their Sovereign: But Reſiſtance, where the Doctor mentions His Late Majeſty to have diſclaim'd it, cannot have that Meaning. He was a Sovereign Prince, and might reſiſt whom he pleaſed. Perhaps the Paſſage in the Doctor's Sermon may be capable of different Conſtructions, but the Doctor has taken care to prevent all manner of Miſtakes that might poſſibly ariſe from thence: He has not only (as was obſerved by one of the Gentlemen of the Houſe of Commons) made a Marginal Reference, to ſhow what he meant; which might have been done when he apprehended that Expreſſion would be found Fault with; but he has in the Sermon it ſelf quoted what the Parliament did, in burning a Treatiſe which related to the King's having conquer'd the Kingdom.

My Lords, it was ask'd, What had he to do to take notice of that Matter? What led him to juſtify the late King? Was there ever any body living that imputed any ſuch Thing as Conqueſt to him? My Lords, If there never was but that one Imputation endeavour'd to be caſt on his Memory, as I never heard of any other, ſurely then he did well to wipe off that Imputation; and that this has been laid to his Charge, I muſt refer to the Journals of both Houſes of Parliament. Your Lordſhips reſolv'd the Aſſertion of King *William*'s and Queen *Mary*'s being King and Queen by Conqueſt, was injurious to their Majeſties Rightful Title to the Crown, inconſiſtent with the Principles on which this Government is founded, and tending to the Subverſion of the Rights of the People: And on the 25th of *January*, 1692. your Reſolution being communicated to the Commons, was unanimouſly agreed to.

The laſt Part of this Article is, *That to impute Reſiſtance to the Revolution, is to caſt Black and Odious Colours on His Late Majeſty and the ſaid Revolution.* My Lords, There are theſe Words in the Doctor's Sermon, of *caſting Black and Odious Colours on His Late Majeſty and the Revolution:* They are in the Cloſe of a Sentence, which immediately precedes the Expreſſion of His Late Majeſty's diſclaiming the leaſt Imputation of Reſiſtance. It is impoſſible to miſtake the Place; your Lordſhips will examine it; and from thence let him take his Fate, Whether that Paſſage is applicable to what went before it, or to what follows after. Thoſe Words of *caſting Black and Odious Colours*, are ſo far from referring to *His Late Majeſty's diſclaiming the Imputation of Reſiſtance*, that they conclude the Sentence which went before it; in which the Doctor mentions *New Preachers, and New Teachers, that broach'd abominable Poſitions, That the People have a Right to cancel their Allegiance at Pleaſure, to call their Sovereign to Account; and who pretend to juſtify the horrid Murder of the Royal Martyr King* Charles *the Firſt, and endeavour to ſkreen themſelves, and their vile Notions, under the Revolution.* The Doctor having mention'd theſe New Preachers and their Doctrine, goes on: *Our Adverſaries think they effectually ſtop our Mouths, and have us ſure and unanſwerable on this Point, when they urge the Revolution of this Day in their Defence. But certainly they are the greateſt Enemies of that, and His Late Majeſty, and the moſt ungrateful for the Deliverance, who endeavour to caſt ſuch Black and Odious Colours upon both.* I pray, my Lords, what does this refer to? Don't it clear the Revolution againſt the Venom of thoſe Miſcreants, who publiſh ſuch villanous Aſſertions as theſe? But 'twas objected by a Learned Gentleman, What has a Miniſter to do to meddle with theſe Things? If any Man offend againſt the Temporal, or Eccleſiaſtical Laws, the Courts are open; the Magiſtrates are to puniſh.

My Lords, I don't find, if this Doctrine holds, that he muſt preach againſt any Thing: If he muſt not preach againſt any Thing which may be proſecuted, either in the Temporal or Eccleſiaſtical Courts, he muſt not preach againſt any Offence that is forbid by the Ten Commandments. Perhaps it will be urg'd, that there are no ſuch People as theſe New Preachers, and New Teachers; that he is raiſing a Phantom, and then throwing it down; He is only imagining Caſes, of which there are no Inſtances; That there are no ſuch Men, who endeavour to juſtify the Murder of King *Charles*, or defend it by the Revolution. We will ſhow there are too many Inſtances of ſuch Perſons, who make no Scruple to publiſh theſe Poſitions, and caſt Reflections on the Queen and Her Government, whom the Doctor has been defending. He is not the Perſon he has been repreſented; he hath no diſloyal Thoughts about him: Sure I am, he would rather die in Her Majeſty's Defence. We ſhall ſhow your Lordſhips, that there are ſuch as run moſt vile Compariſons between the Revolution and the moſt Execrable Murder of King *Charles* the Firſt, and can find no better Difference between them, than this abominable Diſtinction of a *Wet Martyrdom* and a *Dry One*.

Mr. *Dodd.* MY Lords, I am likewiſe a Council for Dr. *Sacheverell*; and I cannot but think, by the ſame Arguments that have been uſed to maintain theſe Articles, any Book or Sermon, be it never ſo innocent, may be repreſented to be a Libel.

The Gentlemen Managers of the Houſe of Commons, with Submiſſion, have ſcarce any Three of them agreed in any one Principal Point; only in this moſt of them have agreed, That the Doctor is a Criminal before he is condemned. He has been in the whole Debate (generally ſpeaking) ſo called; the uſual Expreſſion having been, The Criminal at the Bar: This (as it is not uſual in other Places) would have been a great Diſcouragement to us that are his Council, and great Diſcouragement in his Defence, but that we conſider that the Judgment is your Lordſhips, and that by your Juſtice he muſt ſtand or fall. It has been repreſented, as if this Sermon had been peruſed and approved by Lawyers; but this is only ſuggeſted, (as other Matters have been) yet there is not the leaſt Proof thereof. We have had different Facts charged upon us; ſometimes we are taxed for having ſaid too much, and ſometimes for having ſaid too little, and not mentioning Things that were the proper Subject of the Day.

My Lords, We apprehend theſe Matters are objected for want of obſerving the Sermon it ſelf; for as it was preach'd on the Fifth of *November*, ſo your Lordſhips will find an Account given for a Leaf together, ſetting forth the horrible Deſign of the Powder-Plot. Your Lordſhips will alſo find, both in the Body and Concluſion of the Sermon, Notice taken of our Deliverance on this Day.

There

There have been ſome Acts of Parliament cited by the Gentlemen Managers for the Houſe of Commons; that of the 25th *Henry* 8. about the Supremacy, which we apprehend is not to the preſent Purpoſe. It only aſſerts the Supremacy, that is, the Independency of the Crown, which was uſurp'd by the Papal Authority; for ſurely King *Henry* the Eighth was a Prince that would as little bear the Doctrine of Reſiſtance, as any Sovereign that ever wore the Crowns of theſe Kingdoms.

There have been many things ſaid by the Gentlemen of the Houſe of Commons that we heartily agree with them in. The Revolution was a Caſe we all agree out of the general Rule; and ſo in every thing we ſay, we hope your Lordſhips will underſtand it. We neither do nor can underſtand it; it is againſt our Judgment and Intereſt to think otherwiſe. We are hearty Well-wiſhers to the Revolution, and to the Happineſs of *England*, that is in a great meaſure built upon it. We agree the Law of the Land is the Meaſure of the Prince's Authority, and the People Rights; that in the Caſe of the Revolution, when the Laws were overturn'd, Popery was coming in upon us, and Property ſignified nothing: The People of *England* being invited by his late Majeſty, did reſort to the laſt Remedy, even that of Neceſſity; and that Neceſſity did induce Reſiſtance, and juſtify 'em in it; and upon that Foot the Revolution ſucceeded. We totally deny that the Doctrine of Non-Reſiſtance, as laid down by the Doctor, and as aſſerted by him, was intended for the Pretender, or any other but Her Majeſty and Her Government; or can be conſtru'd a thwarting the Revolution: His Aſſertions are General; thoſe General Aſſertions will have their particular Exceptions.

Sure it has not, nor can be made out, that we had an Eye in favour of the Pretender in any Part of this Diſcourſe. Now it has been by ſome of the Gentlemen admitted to us, that the Doctrine in the main is Right; but, ſay they, you had your Thoughts, your Eyes on the Pretender. Now this is ſo very contrary to what the Doctor has aſſerted in his whole Sermon, that I hope there is no Ground for it: For the Doctor (as a Dutiful Subject) takes Notice that Her Majeſty is the laſt of the Lineal Deſcent, as the Relict of the Royal Family; which quite diſowns the Pretender and his Right. And can any one imagine, that in ſuch Expreſſions he could have an Eye to the Pretender? For if there be any Pretence of Title in the Pretender, it muſt be as a Deſcendant of that Family. But he takes Notice, that Her Majeſty is the only one left of that Family in a Lineal Deſcent; and I think that is enough to acquit the Doctor of having any Eye to Him beyond the Water.

Having, my Lords, made theſe Remarks, I ſhall now conſider the Articles as they lye before your Lordſhips. In the Preamble to the Articles, there is Notice taken of Three Acts of Parliament. The firſt is the *Act declaring the Rights and Liberties of the Subject, and ſettling the Succeſſion of the Crown.* The Second is the *Act for preventing Vexatious Suits againſt ſuch as acted in order to bring in their Majeſties, and for their Services.* The Third is the *Act for paying the States-General of the United Provinces their Charges for his Majeſty's Expedition into this Kingdom, and for other Uſes.* Theſe are the Three only Acts that are cited in the Preamble of theſe Articles: I ſhall ſay but a Word to each of them. As to the Act called *The Bill of Rights*, I don't find that that Act meddles with the Points of Reſiſtance or Non-Reſiſtance; the whole Ground and Tenor of that Act is upon the Abdication. It ſettles the Crown upon the Vacancy of the Throne. It is ſaid, *Whereas the late King* James *the Second having abdicated the Government, and the Throne being thereby Vacant*, &c. There is no other Fact ſtated; there is no mention of Reſiſtance. But the Throne being Vacant, the next Head in that Act ſays, That *King* James *having abdicated the Government, and their Majeſties having accepted the Crown, did become Lawful King and Queen*, &c. Theſe are the only Paſſages in that Act as to this Matter: It has preſerved the Liberties of the Subject; eſtabliſh'd ſeveral Rights which are their Ancient Inheritance; told the People that the Throne was Vacant; and being ſo, that their late Majeſties were Lawful and Rightful King and Queen, as undoubtedly we all agree they were.

My Lords, The next Act mention'd, is the *Act for preventing Vexatious Suits againſt ſuch as acted in order to the bringing in their Majeſties, or for their Service.* This goes further than the Bill of Rights; but whoever reads it, will find, it is but the ſame Act in effect, that was Enacted in the Reign of *Edward* III. after *Edward* II. was depos'd. It is a meer Act of Indemnity, an Act of Pardon for Officers Civil and Military. It only exempts them from Proſecution, that having been Tranſgreſſors againſt the ſtrict Rules of the Law, were ſubject to private Actions; and no leſs could be done than to exempt them from ſuch Proſecutions; and therefore that Law pardons all Actions of Treſpaſs that were committed upon that Occaſion.

My Lords, The next Act taken Notice of is, That *for paying the States General.* That, I don't ſee, takes any other Notice; but is only for paying the *Dutch* 600000 *l.* for their Aſſiſtance to his Majeſty at his coming into this Nation, for our Deliverance from Popery and Arbitrary Power.

Then the Preamble charges the Doctor with *Preaching and Publiſhing the Sermon and Dedications*; and that is ſaid to be done *with a wicked, malicious and ſeditious Intention, to undermine and ſubvert Her Majeſty's Government, and the Proteſtant Succeſſion as by Law Eſtabliſhed; to defame Her Majeſty's Adminiſtration; to aſperſe the Memory of his late Majeſty; to traduce and condemn the late Happy Revolution; to contradict and arraign the Reſolutions of both Houſes of Parliament; to create Jealouſies and Diviſions among Her Majeſty's Subjects; and to incite them to Sedition and Rebellion.* Theſe are the Corollaries that are drawn from the Preamble of the Articles of Impeachment; and theſe are the Facts which muſt make theſe Articles Criminal, or they can't be ſo at all. Theſe Facts we utterly abhor and deny, and ſay we are not guilty of them; and hope it will ſo appear to your Lordſhips.

My Lords, I ſhall now come to the Firſt Article it ſelf, and ſhall ſhortly ſpeak to the Three Diviſions of this Article: It conſiſts of Three Heads. The firſt is, That *the Doctor Suggeſts and Maintains, that the Neceſſary Means uſed to bring about the Happy Revolution were Odious and Unjuſtifiable.* The ſecond is, *That his late Majeſty, in his Declaration diſclaim'd the leaſt Imputation of Reſiſtance.* And the third is, *That to impute Reſiſtance to the Revolution, is to caſt black and odious Colours upon his late Majeſty and the Revolution.*

As to the firſt, That *he Suggeſts, that the Neceſſary Means uſed to bring about the Revolution were Odious and Unjuſtifiable*; My Lords, we can't have a better

better Anſwer to this, than utterly to deny that we have made any ſuch Aſſertion: We have not done it in Words, nor in any Words that will bear that Conſtruction. We inſiſt, that as it can't be proved out of the Sermon, ſo neither out of any other Action of his Life, or any other Sermon by him Preach'd. We ſay, that in no Part of his Sermon he has affirmed any thing of the *Neceſſary Means uſed to bring about the Revolution*; that was a Point not fit for the Doctor to meddle with, the Legiſlature had taken Care of that. On the contrary, we have all along endeavoured in that Sermon to clear the Revolution and his late Majeſty (and we hope we have done it effectually) from the black and odious Colours which their greateſt Enemies had endeavour'd to caſt upon them. To this Part of the Article we have pleaded Not Guilty. We have denied the Fact; it has not been proved upon us; the Sermon don't prove it, nor does the Dedication prove it; but they prove quite the contrary, as by ſeveral Paragraphs of the Sermon compared together will appear.

The ſecond Diviſion of this Article is, *That his late Majeſty, in his Declaration, diſclaim'd the leaſt Imputation of Reſiſtance.* This Fact we do acknowledge, if it be underſtood as the Doctor explains it, and proves it by the Declaration it ſelf. We take it to be very juſt and true; the Reſiſtance the Doctor mentions, being ſuch a Reſiſtance as tends to Conqueſt only, as by the Words plainly appear, which are Printed, and referred to in the Sermon. It can have no other Conſideration, or Meaning, as will appear to any that read that Part of the Sermon with any Candor, or any Ingenuity. The Doctor has taken Care to expreſs it in Words, that there might be no room for Exception. *His Highneſs declares, in Oppoſition to thoſe who give out, that we intend to Conquer and Inſlave theſe Nations, that we have thought fit to add a few Words to our Declaration. It is not to be imagined that either thoſe who have invited us, or thoſe who are already come to aſſiſt us, can join in a wicked Attempt of Conqueſt, to make void their own lawful Titles to their Honours, Eſtates and Intereſts.* And undoubtedly it is ſo. He did not come to Conquer and Enſlave us, but to make us a Free People; to preſerve and reſtore our Religion, Laws and Liberties; which, my Lords, with humble Submiſſion, has been the Senſe of the Nation; and Notions of a different kind, and ſuch Aſſertions in Printed Sermons, have been Animadverted upon.

Now if the Doctor, having his Eye in that Expreſſion on the Matter of Conqueſt that others had inſinuated, and that the late King did diſclaim any ſuch Pretence, did expreſs the ſame by Reſiſtance, the Expreſſion, we hope, is applicable to the Subject-Matter that was before him, and ought not to be wreſted or turn'd to any other Purpoſe. Nothing can ſhew more his Meaning than his own Quotation: He refers to King *William*'s Declaration, to juſtify him in that Matter.

The next Head is, That *to impute Reſiſtance to the ſaid Revolution, is to caſt black and odious Colours upon his late Majeſty, and the ſaid Revolution.* This we likewiſe utterly deny to have Maintained; we have ſaid no ſuch Thing quite thro' the Sermon; we have not taken upon us to meddle with that Point: It was an improper Subject for him to meddle with. The Doctor neither affirms, nor ſays any thing of thoſe that impute Reſiſtance to the Revolution; but thoſe which the Doctor intended, and which are plainly meant, if the preceding Words muſt be the Words to which the Subſequent and Concluſion of the Sentence relates, then they are Perſons of dangerous Diſpoſitions, that place the Power in the People; that pretend to a Power to call their Sovereign to an Account at their Will and Pleaſure; Poſitions that are condemned by the Laws of the Church and State, and then vouch the Revolution in Defence of theſe Principles. Theſe are the Perſons mentioned and intended by the Doctor, whoſe Principles and Practices caſt black and odious Colours upon the Revolution.

My Lords, The Doctor, we own, in his Sermon, has aſſerted this general Propoſition, *viz. Abſolute Obedience in all things Lawful to the Supreme Power; and the utter Illegality of Reſiſtance of the Supreme Power upon any Pretence whatſoever.* And this being the Article, if we underſtand ſome of the Gentlemen of the Houſe of Commons aright, on which the whole Impeachment turns; and that if we were clear of this Article, there would be no Reaſon to follow us upon the others; it gives us an Occaſion to enlarge a little further upon this Point.

My Lords, Non-Reſiſtance in general we do aſſert as a Rule; yet we agree there is an Exception implied in that Rule, and that Exception, we ſay, was the Caſe of the Revolution. When this general Rule has an Exception in it, it muſt be in a Caſe of the utmoſt Neceſſity implied, and is not expreſſed, ſtated, or determined in any Law or Act of Parliament that I know of, except in the Particular herein after-mentioned.

My Lords, This Doctrine is agreeable to the Scriptures; is Taught by the Church of *England* in her Homilies, Articles and Injunctions; by Her Biſhops and Fathers; and in all Admonitions we have had from the Biſhops and Paſtors of the Church, from time to time. I ſhall not name them, ſome of them have been named. We ſhall produce Sermons Preach'd before Her Majeſty, your Lordſhips, and the Houſe of Commons, on the moſt ſolemn Occaſions, where this Doctrine has been fully aſſerted, even beyond what the Doctor has laid down. Both your Lordſhips and the Commons have returned Thanks to the Biſhops and Clergy that have Preach'd them; and therefore we can't apprehend our ſelves to be worthy of this Reprehenſion. We ſhall produce them in Evidence, and vouch Authorities before the Reformation, and in the Infancy of it: The Homilies which are allowed by the Church, and Eſtabliſh'd by ſeveral Acts of Parliament.

This we take to be agreeable to the Laws and Statutes of the Realm. The Law makes it High Treaſon, for particular Perſons to Reſiſt the Supreme Power.

The *Spencers* in *Edward* the Second's time aſſerted, That if the King did not Govern well, the People might remove him, and that by Force; but that was condemned by two Acts of Parliament, in *E.* II. and E. III.'s Reign. The Act of 25 *E.* III. that famous Act that has been the Standard for Treaſon for many Ages, is agreeable to the Doctor's Aſſertion; and when there were Breaches made in that Law in Queen *Mary*'s Time, thoſe Acts were again repeal'd: Now I need not repeat, that to reſiſt the Executive Power, and the Perſon of the King by that Act, is compaſſing his Death, and levying War againſt him. They have always look'd upon it, that Reſiſting the King is levying War, it is a compaſſing and imagining the Death of the King; I ſhall therefore ſay no more on that particular Act of Parliament, but come to later Times.

In

In the Act of 12 *Car.* II. *Cap* 30. it is declared, That *it is the Undoubted and Fundamental Law of this Kingdom, that neither the Peers of this Realm, nor the Commons, nor both together, in Parliament or out of Parliament, nor the People collectively or representatively, nor any other Perſons whatſoever, ever had, have, or ought to have any Coercive Power over the Perſons of the Kings of this Realm.* Here is a Declaration as full as can be, I am ſure as full as the Doctor's Sermon; and yet this Declaration, I do agree, muſt have an Exception in a Caſe of the utmoſt Neceſſity: And I hope there is as much Reaſon to allow the Doctor an Exception, as in this Act of Parliament.

The next Act is the Corporation Act, 13 *Car.* II. in which all the Officers of Corporations are directed to Swear, *That they do believe, That it is not lawful, upon any Pretence whatſoever, to take Arms againſt the King.* Here is as full a Declaration to be made by all the Magiſtrates of Corporations, as general Words can carry, and yet I would be underſtood in every one of theſe, that there is an Exception of Neceſſity; but whether the Doctor was a proper Judge of that Neceſſity, I ſhall take Notice by and by.

The next is the Militia Act, 13 and 14 *Car.* II. and there is the ſame Declaration to be made by every Lord-Lieutenant, Deputy-Leiutenant, Officer and Soldier, *That it is not lawful, upon any Pretence whatſoever, to take Arms againſt the King.* And the Preamble of that Act is ſtronger, for in the Preamble of that Act it is declared, *That both or either of the Houſes of Parliament, cannot nor lawfully may raiſe or levy any War, offenſive or defenſive, againſt his Majeſty, his Heirs, or lawful Succeſſors.*

The next Act is the Act of Uniformity 13 and 14 *Car.* II.

The next is the Act for Select Veſtries, which enjoins all Deans, Parſons, *&c.* to make this Declaration, *That it is not lawful, upon any Pretence whatſoever, to take Arms againſt the King.*

The next Act is the Act of Aſſociation, whereby *all Perſons are engaged to ſtand by and aſſiſt one another, againſt all his Majeſty's Enemies*, without any Limitation.

The next is the Act which eſtabliſhes the Abjuration Oath, 13 and 14 *W.* III. which was taken in the late Reign, and the Acts of 1 and 6 of Her Majeſty's Reign, whereby *all Perſons in Office are to ſwear to defend the King and Queen, to the uttermoſt of their Power, againſt all Traiterous Conſpiracies and Attempts whatſoever, which ſhall be made againſt Her Perſon, Crown or Dignity.* And that theſe Words may have the plain Senſe put upon them, *They are to declare that they make that Recognition, Acknowledgment, Abjuration, Renunciation, and Promiſe, heartily, willingly, and truly, upon the true Faith of a Chriſtian.* Now this Reſiſtance can't be agreeable to this Abjuration, for to reſiſt is not the way to Defend.

My Lords, We think that the Doctrine of Non-Reſiſtance, as a general Propoſition, is warranted by the Laws of the Land; and when there is an Exception implied therein, muſt only be determined by the Wiſdom of the Nation, and not by any one Doctor or private Perſon whatſoever. The Doctor's Propoſition is about Non-Reſiſtance of the Supreme Power, and we have no Reaſon to take a greater Weight upon us than the Words of our Sermon; and whatever Conſtruction may be put upon it, in Relation to the Executive Power, yet the Propoſition holds as to the Supreme Power, which is all the Doctor has aſſerted. The Supreme Power is the Queen and Parliament, and to this Supreme Power the Doctor has preſs'd the utter Unlawfulneſs of Reſiſtance; and I have not heard it ſaid by any that it is lawful to reſiſt the Queen in Parliament. Here is the Strength of the Nation, and here there ought to be a Standing Obedience, otherwiſe it is ſetting up the People to be Judges, and not the Collective Body of the People aſſembled in Parliament.

My Lords, In a particular Caſe of the utmoſt Neceſſity, what Conſtruction muſt be made as an Exception out of the General Rule, muſt be left to Time and Circumſtances (when ſuch a Caſe ſhall happen) to determine, and muſt be determined by the Wiſdom and Strength of the Nation, if ever ſuch a Caſe ſhould happen, which I hope never will more.

There is indeed one Exception made in one particular Caſe in the Bill of Rights, where it is Enacted, That *if the King or Queen ſhall be reconciled to the See of* Rome, *or profeſs the Popiſh Religion, or marry a Papiſt, then ſuch Perſon ſhall be excluded to inherit the Crown, or have Regal Power in the Realm, and that the People ſhall be abſolved of their Allegiance.* And this I take to be the firſt ſtated and determined Exception to this general Rule that ever was made in any Act of Parliament.

My Lords, We think the Government can ſcarce be juſt to it ſelf, that don't encourage and command this Obedience, this Non-Reſiſtance. This is a Rule profitable to all Governments, let the Nature of them be what they will; it is for the Peace and Quiet both of Church and State. It would be wiſe Work to have the Exception to this Rule ſtated by every one that comes into a Pulpit. I know not whether it would not be High Treaſon in them to do it, ſure I am, it would be a high Crime: And if theſe Points are doubtful or diſputable (as at leaſt muſt be agreed) ſure they are no Grounds for an Impeachment.

What Doctrines ſhould a Miniſter of the Church of *England* preach, if not thoſe that are delivered in the Scriptures, and in the Doctrines of the Church? Muſt he ſearch another Rule than the Scriptures, the Laws and the Fathers of the Church, have laid down? Muſt he tell the People, that the Doctrine of Non-Reſiſtance of the Supreme Power is the Doctrine of the Church of *England?* Or muſt he limit this Rule, and ſtate the Exceptions to it? Sure this would be very ſtrange for the Doctor to do: He muſt tell them Reſiſtance is unlawful, but there is an Exception to that Rule; but what that Exception is, I muſt not tell you, but you muſt find it out as you can. Is not this to pick Holes in the Duty and Allegiance of the Subject, and would look like the Blind leading the Blind.

My Lords, We think it would be a very ſtrange thing for a Miniſter of the Goſpel to diſtinguiſh in this Caſe: It would not be allowed him, it would be an Offence for any Preacher to do it. He muſt preach the general Propoſition, he muſt inculcate the General Rule, and he muſt preach in the Words that the Laws of God, and of this Land, have delivered it in; he muſt not vary it, to find Meanings to help the People, like a good Caſuiſt, to diſtinguiſh themſelves out of their Allegiance.

Now ſo far we apprehend is the whole Sermon of the Doctor's to be underſtood, as not razing the Foundations of the Government, not inciting to Rebellion, but preaching Obedience to the Laws of God and Man. It is a great Misfortune for the Doctor

to

to be repreſented as preaching this Doctrine for the ſake of the Pretender. We think at leaſt it may be a Comfort to him, that there is not a Syllable of Proof or Truth in it; and that on the contrary, the Doctor diſclaims all Right in the Pretender, by aſſerting and acknowledging Her Majeſty's Right, and expreſſing a paſſionate Concern, that Her Majeſty is the Relict of the Royal Family.

We have given all the Aſſurance of our Fidelity the Law demands, we have taken the Oath of Abjuration, and been always ſubmiſſive to her Majeſty, and the Laws of the Nation, given all the Security of our Allegiance and Loyalty that the Government required.

The Doctor fully declares his Meaning in this Sermon: Does he not all along ſubmit to the Government, and pray for the Queen and Government? He has done it in ſeveral Places of his Sermon, particularly in one Place, which will carry a great Weight in it. *What* (ſays he) *I have thus freely ſpoken, I hope is as much without Offence, as it proceeds from a tender Concern for Her Majeſty's Perſon, and a hearty Zeal for the Safety of our Church and Conſtitution.* Surely after this Declaration, in Common Juſtice, there ought to be no Conſtruction of a Man's Meaning made by Inference. Here is a full Declaration, that what he has done he has done in Service and Zeal to Her Majeſty and the Conſtitution in Church and State.

When there is not through the whole Sermon any plain Words to ground ſuch a Conſtruction, when there is not the leaſt Proof offered, but only by ſuch forc'd Conſtructions, when different Words are pick'd out from different Places, and Words ſo diſtant are joined together to make up Sentences; and then Arguments framed, and Concluſions drawn from thoſe Sentences to make good the Impeachment, we think it is much too hard, and hope it never will be endured, to pick Part of a Line here, and ſix or eight Lines after to pick part of another, and to join the Concluſions of one Sentence, and the Beginning of another; this would be to confound all Reaſon and Underſtanding whatſoever. This we take not to be a right way of Reaſoning, nor a proper Evidence to maintain an Impeachment, and we hope your Lordſhips will therefore acquit the Doctor of this Article.

Mr. Phipps. MY Lords, I am alſo aſſign'd by your Lordſhips to be one of the Council for Doctor *Sacheverell*, who, I beg leave to ſay, I cannot yet think to be a Criminal; and, when we have been heard, I hope your Lordſhips will not think him ſuch.

I do admit, as the Caſe is ſtated by the Gentlemen who are the Managers for the Commons, that it is a Cauſe of very great Moment, and is worthy of your Lordſhips Determination, becauſe it deſerves the greateſt Deliberation; it being a Cauſe as conſiderable in its Conſequences to Her Majeſty, the Church, and theſe Kingdoms, as ever came before your Lordſhips. And therefore, ſince it has been the Doctor's Misfortune to incur the Diſpleaſure of the Houſe of Commons, and to lye under the Weight of an Impeachment by that Great and Honourable Body, it is his greateſt Comfort (next to his being Innocent) that he has the Honour to have your Lordſhips for his Judges, and the Opportunity of ſo publick a Vindication of his Innocence; for he does not doubt to give your Lordſhips, and all by whom we have the Honour to be heard, full Satisfaction, that he is not Guilty of any of the Crimes charged upon him in any or either of the Articles.

My Lords, We agree with the Managers, that his late Majeſty, when Prince of *Orange*, did, with an armed Force, undertake a glorious Enterprize for delivering the Kingdom from Popery and Slavery. We admit, that divers Subjects well affected to their Country joined with and aſſiſted him in that Enterprize; and that the Enterprize being crown'd with Succeſs, the late happy Revolution took Effect, and was Eſtabliſh'd. We alſo admit, that the bleſſed Conſequences of the Revolution are, the Enjoyment of our Religion and Laws, the Preſervation of Her Majeſty's Perſon, the many Advantages ariſing by Her Majeſty's wiſe and glorious Adminiſtration, the Proſpect of Happineſs to future Ages by the Settlement of the Succeſſion, and the Union of the two Kingdoms.

But there are other Matters ſuggeſted in the Preamble, in which we differ with the Gentlemen of the Houſe of Commons; for it is therein alledg'd, *That Doctor* Sacheverell *Preach'd and Publiſh'd his two Sermons with a malicious and ſeditious Intention, to Undermine the Government and Proteſtant Succeſſion, to Defame Her Majeſty's Adminiſtration, to Aſperſe the Memory of His late Majeſty, and Traduce and Condemn the Revolution, to Arraign the Reſolution of both Houſes of Parliament, to create Jealouſies and Diviſions among Her Majeſty's Subjects, and to Incite them to Sedition and Rebellion.* And all this we totally deny.

The Offences charged upon the Doctor are of a very high and heinous Nature, and the greater the Crimes are with which a Man is charged, the clearer and plainer ought the Evidence to be to maintain and make good that Charge. And to make the Doctor a Criminal within theſe Articles, every Branch of the Articles muſt be prov'd as they are laid. It muſt be prov'd that he Preach'd and Publiſh'd theſe Sermons with ſuch wicked, malicious and ſeditious Intention, as is alledg'd in the Preamble; and the Proof ought to be plain and poſitive; for the Laws of *England* have ſo guarded the Perſons and Properties of the Subjects, that their Lives, Liberties, or Eſtates, cannot be ſubject to Forfeiture, or Reſtraint, by uncertain or conjectural Evidence, by ſtrain'd or unnatural Inferences, Inſinuations, or Inuendo's. And altho' I could cite many Authorities and Determinations in the Courts of *Weſtminſter-Hall*, wherein the Judges have expreſs'd their Diſlike and Deteſtation of Convicting Men of Offences, either Capital or Criminal, by Inuendo's or Inferences; yet I forbear to trouble your Lordſhips with any of them, becauſe I have an Authority Superior to them all to warrant what I have ſaid, and that is the Determination and Reſolution of your Lordſhips in Sir *Samuel Barnardiſton*'s Caſe, which having been read by Sir *Simon Harcourt*, I forbear to trouble your Lordſhips with a Repetition of it.

The next thing therefore to be conſidered is, Whether the Sermons were Preach'd with ſuch malicious and ſeditious Intention as is aſſerted in the Preamble, and if there be ſuch plain, direct and poſitive Proof, as is by your Lordſhips Determination, in Sir *Samuel Barnardiſton*'s Caſe, declared to be neceſſary.

But before I come to ſpeak to any particular Article, I beg leave to obſerve ſomething, which though it hath not been made a particular Charge againſt the Doctor in any one Article, yet it has been urged and inſinuated almoſt by every one of the Managers of the Houſe of Commons to enforce every

every Article, and that is, That *notwithſtanding the Doctor's Expreſſion of Loyalty to the Queen, yet his Intention is to bring in the Pretender.*

It has been Objected, as I apprehended (and I beg Pardon if I am miſtaken) " that the Doctor " confines his Doctrine of Paſſive Obedience and " Non-Reſiſtance to a *Jure Divino* King or Queen, " and that from thence it was eaſy to underſtand " againſt what Queen the Doctor excites the Peo- " ple to take up Arms". If the Queen, who has an Hereditary Right, and alſo a Right confirm'd and eſtabliſh'd by Act of Parliament, cannot be ſaid to be a *Jure Divino* Queen, I do not know who can. I did not think that the Doctor, who Aſſerts the Hereditary Right of the Queen, could be charg'd with an Intention to bring in the Pretender. I am in your Lordſhips Judgment, whether the denying Her Majeſty's Hereditary Right be not the moſt likely way to bring him in: For I ſubmit to your Lordſhips, whether the denying the Hereditary Right of the Queen, be not to ſuppoſe an Hereditary Right in ſomebody elſe; and whether that does not leave a Way open (when the Queen's Enemies are ſtrong enough) to bring in that Perſon in whom the Hereditary Right is ſuppos'd.

It is Aſſerted, " That the Doctor's pretended " Zeal is for Her Majeſty, but his real Zeal is for " the Pretender: It is hard to ſay a Man means " contrary to what he ſpeaks, and that, though he " declares that the Safety, Rights and Eſtabliſh- " ment of Her Majeſty's Government, with thoſe " of the Church, are the things which he ſo earneſt- " ly contends for, and are his only Aim and Intenti- " on; and though he prays that God will Preſerve " Her Majeſty, for the Comfort and Support of the " Church and Nation, yet it is ſuggeſted that his " chief Aim and Deſign is to Dethrone Her Majeſty, " to ſet the Crown upon the Head of the Pretender, " and to eſtabliſh Popery, or at leaſt a Church in- " dependent on the State. And altho' he Preaches " up Paſſive Obedience and Non-Reſiſtance under Her " Majeſty's happy Adminiſtration, yet it is object- " ed he ſtirs up the People to Rebellion, and " means Non-Reſiſtance and Paſſive Obedience " to the Gentleman on the other ſide the " Water.

I do agree theſe Things have been urg'd with great Ingenuity, but what Proof, what Evidence is there of any of theſe Matters thus ſuggeſted?

My Lords, By the Law of *England* Men are not to be Harangu'd out of their Lives, Liberties or Eſtates, but, as I have obſerv'd, it muſt be plain and poſitive Proof alone that can ſubject them to a Forfeiture: And I ſubmit to your Lordſhips, where a Man affirms a Thing in his Sermon, if an Averment by any Body elſe that he means quite the contrary, be a ſufficient Evidence to Convict a Man of High Crimes and Miſdemeanors.

There is another Matter which I confeſs puts me under a great Difficulty, to determine which way to apply our Defence to the firſt Article, and that is the different Conſtruction which the Gentlemen of the Houſe of Commons have made of that Part of the Doctor's Sermon, on which the firſt Article is founded. The Gentlemen that ſpoke to the firſt Article (if I apprehend them right) affirm, " That " the Doctor aſſerts an unlimited Obedience, and " the utter Illegality of Reſiſtance to the Queen, as " the Supreme Executive Power, and that ſuch an " Aſſertion was a Reflection upon the Revolution, " which was brought about by the Reſiſtance that " was given to the late King *James*". And all their Arguments on the firſt Article were grounded on this Aſſertion. But a very Learned Gentleman, who ſpoke Yeſterday to the fourth Article, was pleas'd to object, " That tho' the Doctor Aſſerted " the utter Illegality of Reſiſtance to the Supreme " Power, yet he had no where Aſſerted the utter " Illegality of Reſiſtance to the Queen, thereby " leaving himſelf at liberty to reſiſt the Queen, " and bring in the Pretender.

Now the Queſtion is, which of theſe Conſtructions we muſt believe; if the Conſtruction made by the Gentlemen who ſpoke to the firſt Article be true, then the Doctor has taken that Care of Her Majeſty's Perſon which he ought, by aſſerting the utter Illegality of Reſiſting Her, and hath not left himſelf at liberty to take up Arms againſt Her Majeſty to bring in the Pretender; and ſo the great Objection made againſt the Doctor by the Learned Gentleman who ſpoke to the fourth Article falls. But if his Conſtruction prevails, there is no Reflection on the Revolution, and the firſt Article falls to the Ground; for the Reflecting on the Revolution can be only by aſſerting the Illegality of Reſiſtance to the Queen, as the Supreme Executive Power; becauſe the Reſiſtance which brought about the Revolution was made to the late King *James* only, and not againſt the Legiſlature: But whichſoever of theſe Gentlemen your Lordſhips ſhall be of Opinion is in the Right, I beg leave to ſay, that this may certainly be concluded and inferr'd, That the Conſtruction of that Sentence muſt be very doubtful, in which ſuch Learned Men differ, and conſequently cannot be a Charge ſufficient and certain enough to ground a Conviction for High Crimes and Miſdemeanors. Theſe Matters being ſubmitted to your Lordſhips Judgment, I come next to conſider the Articles themſelves, and ſhall humbly propoſe to your Lordſhips Conſideration what I have to offer in Anſwer to them, and ſhall take Notice of the ſeveral Branches of the reſpective Articles, which the Doctor mentions in his Anſwer to them.

As to the firſt Branch of the firſt Article, which charges, the Doctor does *Suggeſt and Maintain, that the neceſſary Means uſed to bring about the happy Revolution were Odious and Unjuſtifiable*; the Doctor denies there are any ſuch Expreſſions in his Sermon at St. *Paul's*: And I beg leave to ſay, that there is not one Paragraph or Sentence in his Sermon that can ſupport this Charge; the Neceſſary Means uſed to bring about the Revolution not being once mentioned in his Sermon; and therefore I at firſt doubted whether I had the right Sermon; for I could no more find that Sentence in the Doctor's Sermon at St. *Paul's*, than one of the Learned Managers could find a Text of Scripture, quoted by the Doctor, in his Bible.

One of the Gentlemen who ſpoke to this Article, was pleas'd to admit, that the Words charged in this Part of the Article are not in the Doctor's Sermon, but ſaid there are Words that are *tantamount*; ſo that this Branch is to be proved by Inuendo's, and yet they have not been pleaſed to let us know what thoſe Words are which do amount to the ſame Signification, and we deny there are any ſuch Words.

The laſt Part of the firſt Article (for I ſhall conſider that next, becauſe it relates to the Revolution) charges, that the Doctor *does Suggeſt and Maintain, that to impute Reſiſtance to the Revolution, is to caſt Black and Odious Colours upon his Majeſty and the Revolution.* In anſwer to which I muſt

must beg leave to take notice, that the Words of the Sermon are here tranſpos'd and miſplac'd; for the Doctor does not ſay, that *to impute Reſiſtance to the Revolution is to caſt Black and Odious Colours upon his Majeſty and the Revolution*; but he ſays, that *to urge the Revolution to juſtify the Doctrine of Dethroning and Murdering of Princes, is to caſt Black and Odious Colours on his Majeſty and the Revolution*; for the Doctor in Page 11th, ſays, that " the New Preachers and New Politicians pre- " tend to have a Power to cancel their Allegiance " at Pleaſure, to call their Sovereign to an Account " for High-Treaſon, to Dethrone and Murder him " for a Criminal, as they did the Royal Martyr by " a Judiciary Sentence, and that to juſtify this " Doctrine, they urge the Revolution of this Day: *But*, ſays he, *they are the greateſt Enemies of that, and his late Majeſty, and the moſt ungrateful for the Deliverance, who endeavour to caſt ſuch Black and Odious Colours upon both*; ſo that what he ſays is no more than that to juſtify the calling the Sovereign to an Account for High-Treaſon, and the Dethroning and Murdering of him, by the Revolution, is to caſt Black and Odious Colours upon both. And is there any Body that has any Reſpect for the glorious and happy Revolution, that has any Regard for the Preſervation of our Conſtitution, can ſay leſs? Can there be a greater Reflection on the Revolution, than to urge That in Vindication of the Rebellion in Forty One, as if the Caſes were alike?

I humbly ſubmit it to your Lordſhips, if there be any Thing in his Sermon that can be conſtru'd to reflect on the Revolution, if the Words be taken according to the Natural and Genuine Senſe of them; nor can it be thought the Doctor would caſt the leaſt Reflection upon it: Can it be imagined, that he who is a Member of *Magdalen* College in *Oxford*, ſhould ſo ſoon forget the Attempts that were made on their Liberties, and would reflect on the Revolution, by which not only he and the reſt of the Fellows of that College, but all the Colleges in both the Univerſities, nay, all Her Majeſty's Proteſtant Subjects, now enjoy their Religion, Rights and Liberties? That he who is a Church-of-*England*-Man ſhould calumniate the Revolution, by which the beſt Eſtabliſh'd Church in the World is preſerv'd from Popiſh Superſtition and Idolatry? That he who contends ſo earneſtly for the Preſervation of our Conſtitution, ſhould caſt Black and Odious Colours on that, by which alone the Succeſſion is ſettled and ſecur'd in the Proteſtant Line, and Her Majeſty is now Lawfully and Rightfully ſeated on the Throne of Her Royal Anceſtors, on which the Doctor prays, and I hope we all join with him, *that ſhe may long continue for the Support and Comfort of this Church and Nation?* No, my Lords, it is not the Revolution in 1688, but the Revolution in 1648, that he endeavours to blacken, and the Principles by which that was brought to paſs, thoſe Principles which made Rebellious Subjects take up Arms againſt one of the beſt Princes that ever Sway'd the Sceptres of theſe Kingdoms; thoſe Principles which brought that Pious Martyr to the Block, Baniſh'd the Royal Family, and ſet an Uſurper upon the Throne; this is the Dethroning, this is the Murthering which he means: And can any Colours be too Black, any Colours too Odious for ſuch Crimes? No doubt, my Lords, they cannot; and therefore inſtead of charging the Doctor with reflecting on the late happy Revolution, I hope your Lordſhips will be of Opinion he vindicates it in the higheſt degree, when he diſtinguiſheth it from that in 1648, and ſhews what a wide Difference there is between them.

As to that Part of the firſt Article which ſays, *That his late Majeſty, in his Declaration, diſclaim'd the leaſt Imputation of Reſiſtance*; If the Doctor had not Explain'd himſelf, it is humbly ſubmitted how far he is juſtified by his Majeſty's Declaration. The Declaration ſays, *We have thought fit to go over to* England, *and to carry with us a Force ſufficient, by the Bleſſing of God, to defend us from the Violence of evil Counſellors; and that his Expedition is intended for no other Deſign but to have a free and lawful Parliament*: So that this Expedition was to have a Free Parliament, and his Forces were to defend him from the Violence of Evil Counſellors, in carrying on that glorious Deſign; and when the late King *James* Abdicated the Government, what Reſiſtance was it to ſupply the Vacancy, by ſettling his late Majeſty on the Throne?

In Conſtruction of Words and Sentences, if any part be ambiguous, and may be taken in a double Senſe, it ought in favour of Life and Liberty to be taken in the beſt Senſe. But when the Author declares what his Senſe is, what he means by it, there it cannot be taken in any other Senſe than that: And this is the Doctor's Caſe; for he ſhews, both in his Sermon, and by a Note printed at the Bottom of the Page, that by Reſiſtance he means ſuch Reſiſtance as tended to a Conqueſt: And is he not juſtified in that by his Majeſty's Declaration, wherein he diſowns the wicked Attempt of Conqueſt? And by the Vote of both Houſes of Parliament, who ſo highly reſented the Deſign of making that Expedition a Conqueſt, that they ordered a Pamphlet which attempt- to prove it ſuch, to be Burnt by the Common Hangman?

And therefore, if the general Words would have carried ſuch a Reflection, yet the Clauſe which explains it, being Printed with it, prevents ſuch a Conſtruction; for there is no Reaſon to apprehend any Danger from the Poyſon, when the Antidote is adminiſtred at the ſame Time. Thus, my Lords, I take it, I have anſwered every Branch of this Article, and ſhewn, that there are not any Expreſſions in the Sermon, that can Warrant or Support any Part of it: But, from what I obſerv'd from the Gentlemen who are the Managers, and ſpoke to this Article, the great Foundation and Streſs upon which this Article depends, is in the Sentence in *Pag.* 11. of the Doctor's Sermon, where he ſays, *The Grand Security of our Government, and the very Pillar upon which it ſtands, is founded upon the ſteady Belief of the Subjects Obligation to an abſolute and unconditional Obedience to the Supreme Power in all things lawful, and the utter Illegality of Reſiſtance upon any Pretence whatſoever.* But I take it, the Charge in this Article can never be ſupported by any Words in this Sentence; for it is Evident, that the abſolute and unconditional Obedience, which he ſays Subjects are obliged to, is to the Supreme Power in all things lawful; and the utter Illegality of Reſiſtance upon any Pretence whatſoever, (being in one and the ſame Sentence) muſt be intended to be of the Supreme Power in all Things lawful; ſo that it is no more than if he had ſaid, 'Tis utterly Illegal, upon any Account whatſoever, to reſiſt the Supreme Power in Things lawful. Can any Aphoriſm be truer than this, viz. *That where the Thing commanded by the Supreme Power is lawful, the Reſiſtance given to it muſt be unlawful?* And this is all the Doctor hath aſſerted in this Paragraph.

If I may have Leave to cite a Foreign Author, *Puffendorf* ſays, The Supreme Power is that in which the Legiſlature is veſted; for he ſays, *Human Laws are the Decrees of the Supreme Power, concerning Matters to be obſerv'd by the Subjects for the Good of the State.* And one of the Learned Managers, who ſpoke to this Article, admits it to be ſo. And then the Doctor's Aſſertion is, That the Security of our Government, and the very Pillar on which it ſtands, is founded upon the ſteady Belief of the Subjects Obligation to an Abſolute and Unconditional Obedience to the Laws made by the Queen, Lords and Commons, in Parliament aſſembled, and the utter Illegality of Reſiſting ſuch Laws on any Pretence whatſoever. And if this be not ſo univerſal a Truth, as not to admit any Exception, is humbly ſubmitted to your Lordſhips: And this is an Anſwer to all that hath been ſaid againſt us on the firſt Article. For all the Gentlemen have founded their Diſcourſe on a Suppoſition, that the Doctor preach'd up an Abſolute Unconditional Obedience to, and the utter Illegality of Reſiſtance of the Queen; whereas he preaches up the Illegality of Reſiſting the Supreme Power, and that in all Things lawful.

Suppoſe it could be collected, that by the Supreme Power the Doctor meant the Supreme Executive Power, which is the Queen; yet the Doctor cannot be thought by this to reflect on the Revolution, or to condemn that Oppoſition given to King *James*.

For can it be imagin'd, that he condemns the Oppoſition given to that Prince in the Diſpenſing Power, in committing the Biſhops, depriving Men of their Freeholds and Liberties, by Eccleſiaſtical and other unlawful Commiſſions, and endeavouring to eſtabliſh Popery, by introducing a Foreign Power? I ſay, Can it be imagin'd the Doctor condemns that Oppoſition, when he urges the Illegality of Reſiſtance to the Supreme Power in all Things lawful? If thoſe Proceedings of King *James* were lawful, then the Doctor condemns the Oppoſition given to 'em; but thoſe Proceedings being Illegal, the Oppoſition given to them is no where condemn'd by the Doctor, nor hath this Paragraph in his Sermon any Relation to it.

To carry this yet further; Suppoſe that the urging the Illegality of Reſiſtance on any Pretence whatſoever had been a Subſtantive Clauſe, and had no Relation to, or Dependance upon any other Clauſe or Sentence; or ſuppoſe ſuch a General Aſſertion can be collected from any Part of the Doctor's Sermon, yet it muſt be taken only for a General Propoſition: And if ſuch General Propoſitions are true in the general, and to a common Intent, tho' they are ſubject to particular Exceptions, yet it is ſubmitted, whether the Doctor is not well warranted in aſſerting ſuch a General Propoſition, without mentioning the particular Exception? For all General Rules have Exceptions; and yet the Perſon that cites them, ſeldom or never mentions the Exceptions; for whenever ſuch General Propoſitions are urged, the Exceptions are always underſtood and implied. And there was leſs Reaſon to mention the Exception in this Caſe, becauſe it is ſo univerſally known: It had the Concurrence of the whole Nation, and was ſo often eſtabliſh'd and approv'd by the Legiſlature.

And the Doctor entirely concurs with the Gentlemen of the Houſe of Commons, that the Revolution is an Exception; and is not Adverſary to one of the Learned Managers, who was pleas'd to admit, it was the only Exception from this General Rule. And I ſubmit to your Lordſhips, if the naming that Exception, would not be a greater Reflection on the Revolution, than the Preaching that Doctrine in general Terms, without naming it; for to name it now, ſince the Revolution, would be to ſuppoſe, that it was not implied and underſtood as an Exception out of that General Propoſition, before the Revolution; and then the Exception is to be warranted by the Revolution; which is to infer, that no Reſiſtance was lawful till the Revolution: Whereas we ſay, That ſuch an Extraordinary Caſe as that of the Revolution, was always implied as an Exception out of that General Doctrine, and ſo the Doctrine juſtifies the Revolution.

And therefore, the Doctor urging this Doctrine of Non-Reſiſtance in ſuch general Terms, as all other General Propoſitions are uſually urged, it is humbly ſubmitted, Whether he can for this be eſteem'd guilty of High Crimes and Miſdemeanors; eſpecially ſince this very Doctrine hath been affirmed in ſuch general Terms, by Learned Men in all Ages, by our Church, and by the Legiſlature; of which I'll beg Leave to give ſome few Inſtances.

When the Duke of *Monmouth* was to be executed, his preſent Grace the Archbiſhop of *Canterbury*, the preſent Lord Biſhop of *Bath* and *Wells*, the then Biſhops of *Ely* and *Bath* and *Wells*, were appointed by the King to attend his Grace. They preſs'd him to make a particular Confeſſion of his Crime, and to acknowledge himſelf guilty of Rebellion: His Anſwer was, *He died a Proteſtant of the Church of* England. They replied, *My Lord, If you be of the Church of* England, *you muſt acknowledge the Doctrine of Non Reſiſtance to be true.*

Archbiſhop *Tillotſon*, in his Letter writ to my Lord *Ruſſel*, *July* 20. 1683. offers theſe Conſiderations concerning the Point of Reſiſtance. "(1.) "That the Chriſtian Religion doth plainly forbid "the Reſiſting of Authority. (2.) That in the "ſame Law which eſtabliſhes our Religion, it is "declared, It is not lawful upon any Pretence what-"ſoever to take up Arms againſt the King.

Biſhop *Sanderſon*, in his Works, *Pag.* 522. ſays, *No Conjuncture of Circumſtances whatſoever, can make that expedient to be done at any time, that is of it ſelf, and in the kind, unlawful. For a Man to take up Arms (Offenſive or Defenſive) againſt a Lawful Sovereign, being a Thing in its Nature ſimply, and* de toto genere. *unlawful; may not be done by any Man, at any Time, in any Caſes, upon any Colour or Pretence whatſoever.*

Thus your Lordſhips obſerve, how much higher theſe Great and Learned Men carried this Doctrine, than Doctor *Sacheverell* hath done in his Sermon: And Multitudes of Inſtances there are, which ſhew, That it hath been the Concurrent and Univerſal Opinion of all the Learned Men of our Church, in all Ages, that Reſiſtance of the Sovereign Power is not lawful upon any Pretence whatſoever. And what Puniſhment, what Cenſures have been inflicted upon, nay, what Fault has been found with any of them to this Day? One of the Learned Gentlemen, to enforce the Legality of Reſiſtance, was pleas'd to urge the Original Contract, as the Foundation of the Prerogative of the Crown, and the Liberties of the People; and to aſſert, That if the Supreme Executive Power invaded the Rights of the People, the Contract was diſſolv'd, and the People diſcharg'd from their Allegiance. I will not

be poſitive as to the very Words, but I take this to be the Purport of them.

When the Original Contract was made, that Learned Gentleman did not think fit to inform us. Was it before *Magna Charta*? If ſo, why not compriz'd in it? All the Liberties the Subjects then laid Claim to, being included in that Act; and 'tis much, a Thing of that Moment, and which was the Source and Spring of all their Liberties, ſhould not be ſo much as mentioned in it. I never met with it in any of our Law-Books, in my little Experience. - - - - I never heard it urg'd in any Court before. Was it before the Statute of 25 *Edw.* III.? I never knew it pleaded to any Indictment for High Treaſon, nor objected, to enervate or take off the Force of that Statute: And our Law-Books being ſilent in it, I think it is too tender a Point for us, who are no Members of any Part of the Legiſlature, to meddle with. And therefore, till the Legiſlature have declar'd what the Original Contract is, and determin'd what Act of the Supreme Executive Power ſhall amount to a Diſſolution of that Original Contract, and diſcharge the Subjects from their Allegiance; I muſt beg Pardon, if I think, that as to Reſiſtance in general, the Law ſtands ſtill upon the Foot of the 25th of *Edward* III. and that all Reſiſtance, except in the Caſe of the Revolution, is ſtill Treaſon within that Act.

But to give ſome further Inſtances, in Vindication of the Doctrine of Paſſive Obedience and Non-Reſiſtance. Archbiſhop *Tillotſon*, in his Letter to the Lord *Ruſſel*, ſays, *The Doctrine of Non-Reſiſtance is the Doctrine of all Proteſtant Churches:* I may add, it was the Doctrine of Chriſt and his Apoſtles: It was the Doctrine in *David*'s Time; for it was this Doctrine that reſtrained *David* from offering Violence to King *Saul*, tho' that King ſought to take away his Life. It was that Holy Man's Opinion, that he could not *lift up his Hand againſt the Lord's Anointed, and be guiltleſs.* Can it be done now with greater Innocence than it could then? Is the Perſon of the Lord's Anointed now leſs Sacred than it was then? Or have the People now a greater Liberty to reſiſt, than *David* had then? My Lords, One of the Learned Gentlemen ſaid, That in reſpect of the Patriarchal Right, it is a Doctrine as old as *Adam*, and I will not pretend to carry it further.

The next Thing therefore to be conſider'd, is, Whether this Doctrine, that is of ſo great Antiquity, has had any Alteration; whether it hath been preach'd, or urg'd in any other Terms ſince the Revolution, than it was before. Biſhop *Beveridge*, in a Book call'd *Private Thoughts upon Religion*, Pag. 247, 249, 250. ſays, *Upon any ſeeming real Default or Defect of our Sovereign, we are to be more earneſt in our Prayers and Interceſſion for him; but upon no Account to fight or rebel againſt him.* This Book had Her Majeſty's Royal Licenſe, and was counterſign'd by a Noble Lord, eminent for Learning, and Her Majeſty's Principal Secretary of State; I mean, the Right Honourable the Earl of *Sunderland*.

I beg Leave to cite next a Learned Gentleman, whoſe Affection to the Government, and Underſtanding in Antiquity, no body can doubt: 'Tis Dr. *Kennet*, who in his Sermon preach'd before the Houſe of Commons, *January* 30. 1705. ſays, *This is the true Foundation of that common Axiom, The King can do no Wrong; becauſe there is no Right nor Remedy againſt his Royal Perſon.* And in the ſame Sermon he ſays, *It was declarative of our Original Conſtitution*, (which one would think ſhould be the Original Contract, unleſs the Original Contract and the Original Conſtitution differ) *that our Legiſlature, upon Occaſion of this Day, would have it expreſs'd, That by the Undoubted and Fundamental Laws of this Kingdom, neither the Peers of this Realm, nor the Commons, nor Both together, in Parliament, or out of Parliament, nor the People, collectively or repreſentatively, nor any other Perſons whatſoever, ever had, have, or ought to have, any Coercive Power over the Perſons of the Kings of this Realm.* And I think it is evident, where there can be no Coercive Power, there cannot be any Reſiſtance. This was but in the Year 1705. And was the Original Contract found out ſince? If not, then it is plain, the Commons did not think this Doctrine to derogate from that Contract, or to reflect upon the Revolution; for the Doctor had the Thanks of the Commons for his Sermon, and their Order to Print it.

I do moſt readily concur with the Learned Gentlemen of the Houſe of Commons, That that Reverend Bench is fill'd with Fathers of the Church, who are as great an Ornament to it for Learning and Piety as any of their Predeceſſors, *and are moſt juſtly famed for their Religious Moderation*; and therefore Inſtances of their aſſerting this Doctrine ſince the Revolution, will have the greateſt Weight with your Lordſhips, and tend the moſt to the Satisfaction of that Honourable Houſe, upon whoſe Impeachment the Doctor is brought hither.

The Biſhop of St. *Aſaph*, in his Sermon on the 30th of *January*, 1699. preach'd before the Lord-Mayor, *Pag.* 18. ſays, *It is plain, that a Government can't poſſibly ſubſiſt for any Time, where any kind of Violence is allowed againſt the Magiſtrate: Government is at an End, where Rulers are expos'd to Popular Aſſaults.*

The Biſhop of *Lincoln*, in his Sermon Preach'd before your Lordſhips the 30th of *January*, 1708. *pag.* 15, 16, 17, ſays, *Where-ever that Supreme Power and Authority is Lodg'd, or in whomſoever it reſides, we are bound to pay either an Active or Paſſive Obedience, muſt either do what it requires, or ſuffer what it inflicts. This is, without Controverſy, the ſtanding Doctrine of Chriſtianity, and has been confirm'd by the Practice of the beſt Chriſtians in all Ages of the Church.* My Lord Biſhop likewiſe cites the Words of the Statute of the 12th of *Charles* II. which were mention'd by Dr. *Kennet*; your Lordſhips were pleas'd to thank my Lord Biſhop for this Sermon, and deſir'd him to Print it.

My Lord Archbiſhop of *York*, in his Sermon Preach'd before your Lordſhips in 1700, has ſtated this Doctrine ſo fully and clearly, that it is not capable of the leaſt Contradiction or Doubt: His Grace expreſſes himſelf thus, *That there is ſuch a Submiſſion due from all Subjects to the Supreme Authority of the Place where they Live, as ſhall Tie up their Hands from oppoſing or reſiſting it by Force, is evident from the very Nature and Ends of Political Society; and I dare ſay, there is not that Country upon Earth, let the Form of their Government be what it will, (Abſolute Monarchy, Ariſtocracy, or Commonwealth) where this is not a Part of the Conſtitution. Subjects muſt obey Paſſively, where they cannot obey Actively, otherwiſe the Government would be precarious, and the Publick Peace at the Mercy of every Malecontent; and a Door would be ſet open to all the Inſurrections, Rebellions and Treaſons in the World. Nor is this only a State-Doctrine, but the Doctrine alſo of Jeſus Chriſt; and*

that a Neceſſary and Indiſpenſible one too, as ſufficiently appears from theſe famous Words of St. Paul's, Rom. 13. 1, 2. *which are ſo plain that they need no Comment: So that ſo long as this Text ſtands in our Bibles, the Doctrine of Non-Reſiſtance or Paſſive Obedience muſt be of Obligation to all Chriſtians.*

Is not this Doctrine confirm'd by our Church in her Homilies, and enjoin'd to be read on certain Days in the Church? Are not theſe Homilies allow'd by the Articles? Are not theſe Articles eſtabliſh'd by the 13th of *Eliz.* Chap. 14.? And is not that very Act confirm'd and made Perpetual by the Act of Union made in the Fifth Year of Her Majeſty? Is it not likewiſe ratify'd and eſtabliſh'd by the Legiſlature, by the Act of the 12th of *Charles* the Second, cited in the Sermons of the Biſhop of *Lincoln* and Dr. *Kennet*; by the Act of the 13th of *Charles* the Second? For that Act of the 13th of *Charles* the Second, *Chap.* 4. obliges all Miniſters, *&c.* to ſubſcribe a Declaration: The firſt Part whereof was this, *I A. B. Do declare that it is not Lawful upon any Pretence whatſoever to take up Arms againſt the King.* Was not that Declaration to be Swore to by all Officers of Corporations, by the Corporation-Act; by all Lieutenants, Deputy-Lieutenants, and all Officers and Soldiers of the Militia, by the Militia-Act? And can any Man doubt the Truth of that Doctrine, which the Legiſlature has obliged the greateſt Part of the Nation ſo ſolemnly to ſubſcribe and ſwear to? We have collected many more Inſtances of this kind, which we will offer to your Lordſhips in the Courſe of our Evidence.

Thus your Lordſhips obſerve how this Doctrine hath been Preach'd and Maintain'd by Archbiſhops, Biſhops, and Eminent Divines, confirm'd and eſtabliſh'd by the Church, and by the Legiſlature: And is this Doctrine alter'd; or hath it receiv'd any Diminution or Reſtriction by the Revolution? I will not preſume to ſay, but are in your Lordſhips Judgment, on the Conſideration of the ſeveral Sermons before-mention'd, Preach'd and Publiſh'd with the reſpective Approbation of both Houſes of Parliament ſince the Revolution. I beſeech your Lordſhips, How many Revolutions have there been in this Kingdom, and yet this Doctrine always continued the ſame; and I ſubmit, whether we have not the Authority of your Lordſhips on this very Point; for in a Sermon Preach'd before your Lordſhips on the 30th of *January* 1702, by my Lord Biſhop of *Carliſle*, his Lordſhip expreſſes himſelf thus. *Our Foundations, 'tis to be hoped, are not ſhaken by the Weight of thoſe many Great and Extraordinary Revolutions that have paſs'd upon us. The All-wiſe Providence of God has frequently of late (and, as ſome of us always thought, very graciouſly) exchang'd our Governors; but if we ungratefully alter our Notions of the Divine Right of Government, and throw off our Ancient and Primitive Rules of Obedience, we ſhall make an unworthy Return for the Mercies we have received.* I hope I may have your Lordſhips Leave to conclude your Lordſhips are of the ſame Opinion, ſince my Lord Biſhop had your Lordſhips Thanks for his Sermon, and your Deſire to Print it. I alſo preſume to offer it to your Lordſhips Conſideration, whether this very Doctrine be not eſtabliſh'd and enjoin'd under the Obligation of an Oath, by the Legiſlature, in the Reign of his late Majeſty, and of her preſent Majeſty; I mean in the Abjuration-Oath, in which Oath there is this Clauſe, *viz. And I do Swear that I will bear Faith and True Allegiance to Her Majeſty, and Her will defend to the utmoſt of my Power againſt all Traiterous Conſpiracies whatſoever, which ſhall be made againſt Her Perſon, Crown and Dignity.* I believe it will not be deny'd by any Lawyer, that taking up Arms againſt Her Majeſty is High-Treaſon, by the Statute of the 25th of *Edward* the Third; and therefore the Parliament having enjoin'd all Perſons in Office, *&c.* to defend Her Majeſty againſt all Traiterous Conſpiracies and Attempts, ſhew, that it was their Opinion, that the taking up Arms and Reſiſting Her Majeſty, upon any Pretence whatſoever, is unlawful; becauſe whereſoever Reſiſtance is Lawful, the Defence muſt be Unlawful.

I would only beg Leave to add, that the Puniſhment inflicted by our Law in this World for Reſiſtance, and the Judgment denounc'd againſt it in the Next, ſufficiently evinces the Illegality of it. Taking up Arms and Reſiſting againſt the Queen, by the Statute of the 25th of *Edward* the Third, is High-Treaſon; the Puniſhment of which is to be Drawn, Hang'd and Quarter'd. And in what Condition they are to be in a future State, St. *Paul* informs us: For he ſays, *They that Reſiſt ſhall receive to themſelves Damnation.* And ſurely no Body will conteſt the Truth of that Doctrine, the Breach of which is attended with ſuch diſmal Conſequences. I hope, therefore, ſince this Doctrine has been ſo univerſally preach'd and approv'd, the Preaching of it now ſhall not be thought to reflect on the Revolution, more than it has done hitherto, ſince Her Majeſty's Happy Acceſſion to the Throne; and more than it did in the Reign of his late Majeſty, who was the Glorious Inſtrument of that Happy Revolution. Was not his Majeſty appriz'd of the Neceſſary Means by which the Revolution was brought about? Had not His late Majeſty as tender a Regard for the Honour of the Revolution, as any Body elſe can be ſuppoſed to have? No body can doubt it: And yet this Doctrine was preach'd in his Time, in as general Terms as the Doctor has preach'd it; and not only without Objection, but with the Approbation of his Majeſty, and both Houſes of Parliament. And if all this will not vindicate the Doctrine; yet, I hope, it will at leaſt excuſe the Doctor from being a Criminal.

Can he be a Criminal for Preaching that Doctrine which has been aſſerted by ſo many Archbiſhops, Biſhops, and other Eminent Divines, not only with Impunity, but even with the Approbation of both Houſes of Parliament? That Doctrine which is enjoin'd by our Church, ratify'd, confirm'd and eſtabliſh'd by the Legiſlature, and which is the Doctrine of all the Proteſtant Churches in the World, which was the Doctrine of our Saviour himſelf, and which hath been the Doctrine ever ſince *Adam*, and will continue ſo as long as there is a Bible upon Earth?

Can a Man be a Criminal for Preaching the Doctrine of Paſſive-Obedience and Non-Reſiſtance, tho' without Reſtriction and Limitation, while we are ſo happy as to have her Majeſty to Reign over us, upon whoſe Life the Welfare and Happineſs of theſe Nations depend, as much (I hope I may be excus'd if I ſay more) than the Welfare of any Nation ever did upon the Life of any Prince whatſoever ſince the Foundation of the World? And therefore we are ſure your Lordſhips will not leſſen Her Security; and the rather, becauſe it is impoſſible, during her Majeſty's Life, any Invaſion or the leaſt Attempt ſhould be made upon that Religion, that Liberty and Property, for the Preſervation of which ſhe run ſo great a Hazard.

This

This is what I humbly offer to your Lordſhips, on behalf of my Client, on this Head. And tho' I have mention'd theſe Inſtances, to ſhow in what general Senſe the Doctrine of Paſſive-Obedience has been Preach'd, and that if the Doctor had aſſerted it in ſuch general Terms, he could be no more a Criminal than others; yet it muſt be always underſtood that he does not aſſert it in ſuch general Terms, but only aſſerts the utter Illegality of Reſiſtance to the Supreme Power in all Things lawful.

Before I quit this Article, I would take notice, it has been objected, that it is highly improper and unſeaſonable for Divines in their Pulpits to meddle with Matters of this Nature: In anſwer to which, I would (beſides the Injunction that the Apoſtles have laid on their Succeſſors, to put People in Mind of being ſubject to Principalities and Powers) humbly offer to your Lordſhips Conſideration, a Bold and Seditious Paragraph in a Pamphlet Printed in 1705, call'd, *The Review*; which hath this Paragraph, *If the next Parliament ſhould purſue the Steps of the laſt, the Nation, in my Opinion, will be ſo much nearer that Criſis of Time, when* Engliſh *Liberty being brought to the laſt Extremity, muſt open the Magazine of Original Power.* The ſame Author, ſpeaking of the Family of the *Stuarts*, calls it *the Line of all the World, fam'd for Blood, and that had Ravaged the beſt Families of the Kingdom.* And in another Paragraph he ſays, *In ſhort, if* Jure Divino *comes upon the Stage, the Queen has no more Title to the Crown than my Lord Mayor's Horſe: All the People are bound by the Laws of God to depoſe Her as an Uſurper, and reſtore their Rightful and Lawful King*, James *the Third.* If therefore to defame the whole Line of Her Majeſty; to aſſert that the Pretender has an Hereditary Right to the Crown; if telling the People, if they do not like the Parliament, they muſt have Recourſe to the Magazine of Original Power, be not ſounding a Trumpet to Rebellion, and does not make this Doctrine ſeaſonable and neceſſary to be preach'd at this Time, we ſubmit it to your Lordſhips. And therefore, I humbly hope, that inſtead of laying a Brand of indelible Infamy on this Doctrine, your Lordſhips, for the Preſervation of Her Majeſty, and Her Succeſſors, and for the ſecuring the Peace of the Kingdom, will convey this Doctrine as entire, and in as full Force, down to Poſterity, as it was tranſmitted to your Lordſhips by your Noble Progenitors.

And as to what one of the Honourable Gentlemen concluded with, *viz.* That your Lordſhips would direct what Doctrine the Miniſters ſhould Preach:

If there be any Doctrine in the Bible not proper to be preach'd; if there be any Doctrine, except that of the Deity, of greater Antiquity than this, which commences from *Adam*, or is more uſeful or neceſſary for the Preſervation of the Government, then we ſubmit this Doctrine ſhould be let alone. Upon the whole Matter, I am in your Lordſhips Judgment, if upon Conſideration of what hath been ſaid, your Lordſhips can be of Opinion, that the Doctor is guilty of the High Crimes and Miſdemeanors contain'd in the Firſt Article.

Mr. Dee. MAY it pleaſe your Lordſhips, After ſo much has been ſaid, and ſo well preſſed by the Gentlemen that have gone before me, of the Doctrine of Non-Reſiſtance (which is ſo well eſtabliſh'd by the Opinion of the Fathers of the Church, and founded on the Laws of the Land) I ſhould think my ſelf very unmannerly to ſpend your Lordſhips Time, in repeating it in worſe Words. I beg Leave only to make a few Remarks: Firſt on ſome Generals, and then to add a few Words, and draw an Inference or two from one Law that has not yet been taken Notice of.

My Lords, We readily join with the Gentlemen who managed on behalf of the Houſe of Commons, in deſiring your Lordſhips to aſſert Fundamentals; and deſire your Lordſhips to conſider the Ancient Legal Conſtitution of the Kingdom. This we readily comply with them in, and doubt not but your Lordſhips will do it.

My Lords, There was ſome Notice taken of the Time and Place where this Sermon preach'd; and it was ſaid by one of the Gentlemen, that it was an improper Time, becauſe it was a Doctrine fit only to be preach'd in the Reign of a bad Prince, but not of a good one. My Lords, indeed I am at a Loſs to underſtand that: I think, if at any Time, it is ſeaſonable when we have ſo gracious a Princeſs upon the Throne, much rather than in the Reign of a Tyrant or Uſurper.

My Lords, This Doctrine has been made appear to your Lordſhips to be conſonant to the Laws of God, and the Laws of the Land; and when we have laid before your Lordſhips our Proofs that have been opened, I hope your Lordſhips will allow we have proved our Caſe.

The Gentlemen of the other Side ſaid they had proved their Articles: But how? In no other way than by reading the Sermon, which we hope ſhall be permitted to ſpeak for it ſelf.

My Lords, It was ſaid, that the Municipal Laws of the Land ſignify nothing only in Times of Peace. What the Meaning of that is, I know not, unleſs that the Laws muſt be ſilent in the Time of War; but the way to maintain Peace, and to prevent Blood and Wars at Home, is to preſerve our Laws.

My Lords, It has been likewiſe urg'd as a Maxim, *Thre there can be no Right, but there muſt be a Remedy to preſerve it.* And thereupon it was hinted, as if there were ſome ſecret Right veſted in the People to do ſomething they did not think fit to name. That Saying, my Lords, I take to be a Maxim in the Law, and to relate only to Legal Matters, and the Meaning of it to be, That when any Man has a Property, the ſame Law that gives Property, gives him a Remedy, if the ſame be invaded. But I never underſtood that Maxim to be meant of a Remedy by Force; and I am ſure, in moſt Caſes, ſuch a Remedy is worſe than the Diſeaſe.

My Lords, We would not be thought (I am ſure no Gentleman of our Side would be thought) in the leaſt to reflect on the Revolution mention'd in the Impeachment; nor does any thing, as we think, that the Doctor has ſaid in his Sermon, in the leaſt look that way. The general Poſition of the utter Illegality of Reſiſting the Supreme Power, does (as it has been obſerv'd already) imply in it a Condition, (which perhaps may extend to ſome other Caſes); and, as we ſay, extends to that of the Revolution.

One of the Managers inſtanced in the Fourth Command, which in general forbids any Work to be done on the Lord's Day; and yet, ſays he, Works of Neceſſity and Mercy are allowed to be done on that Day, and are an implied Exception. The like we ſay of the implied Exception to the general

general Doctrine laid down by the Doctor of the Illegality of Reſiſtance.

My Lords, Certainly there is no room to ſuppoſe any Reflection to be made on his late Majeſty; for ſurely his Majeſty wanted no Excuſe for his coming hither; nor could he be guilty of any thing that we properly call Reſiſtance. He was a Sovereign Prince, and might do what he thought fit. He owed no Allegiance to any one, ſo could not be ſaid to reſiſt, in the Senſe Reſiſtance bears in the Doctor's Sermon, which is the Reſiſtance by Subjects to the Supreme Power.

My Lords, I now beg Leave to mention the Act of the Second Year of King *William* and Queen *Mary*, entituled, *An Act for a general Pardon*; by the laſt Clauſe whereof it is provided, *That nothing in that Act ſhall extend to Pardon, or diſcharge any one for counſelling or procuring the raiſing War againſt their Majeſties, after the* 13*th Day of* February, 1688, *unleſs ſuch Perſon ſhall before the* 26*th of* July *take the following Oath.* Then follows the Oath of Allegiance. From hence I beg Leave to make an Inference or two: Firſt, That it was the Senſe of the Legiſlature at that Time, that thoſe Perſons that contrived or abetted the raiſing War againſt their Majeſties after they came to the Crown, were guilty of a High Crime, and ſtood in need of a Pardon. So that if any thing had ſhaken the Doctrine of the Illegality of Reſiſtance, here Reſiſtance is made as Criminal as it was before. Secondly, It appears by that Clauſe to be the Opinion of the Legiſlature, that by the Oath of Allegiance, as it is now framed, this Doctrine of the utter Illegality of Reſiſtance is firmly eſtabliſh'd. For, my Lords, To what Purpoſe ſhould that Oath be made the Condition of a Pardon for having reſiſted, unleſs they thought that Oath laid an Obligation on the Perſons taking it not to do ſo again?

My Lords, That Conſtruction which ſome of the Managers for the Commons put on the Doctor's Sermon, that this Notion of Non-Reſiſtance could only be applied to ſomebody beyond Sea, we think to be very hard and ſtrained: I am ſure it don't appear from any thing the Doctor has ſaid in his Sermon; but the contrary plainly appears; for the Doctor doth aſſert Her Majeſty's Hereditary Right, and yet doth not reflect on the Revolution; for though he ſpeaks of Her Majeſty's Hereditary Right, he does not any where ſay, that ſhe has no other than an Hereditary Right in Her. And it was owned by one of the Gentlemen that managed for the Houſe of Commons, that his late Majeſty had a ſingle Right by the Act of Settlement; but that Her Majeſty has a twofold Right, a Right according to the Act of Settlement, and an Hereditary Right too.

My Lords, There has been a great deal of Time ſpent, therefore I ſhall only make this one Remark further, that is, That the Learned Managers for the Houſe of Commons have drawn very many Inferences, by their Skill and Ingenuity, from Paſſages in the Doctor's Sermon, which I believe none of your Lordſhips can think the Doctor ever thought of, when he was compoſing his Sermon, or delivering it in the Pulpit.

Doctor Henchman. MY Lords, I am likewiſe aſſign'd Council for Doctor *Sacheverell*; but if he has been repreſented by the learned Managers in his proper Colours, if he has been ſet before your Lordſhips in a true Light, and with his Maſk off, I muſt beg leave to ſay, that nothing leſs than the Commands of this Honourable Houſe could prevail with any one to appear in his Defence. If he is a Mover of Sedition, and an Underminer of the Proteſtant Succeſſion and preſent Eſtabliſhment; if he has fomented deſtructive Diviſions, and excited his Fellow-Subjects to Arms and Violence, and has taken all Advantages to vent his ſeditious Notions in the moſt publick manner, I muſt humbly think that no Body would dare to open his Mouth in his Behalf in the Face of the Government, and before the united Legiſlature of the whole Kingdom. I proteſt for my ſelf I would not do it, and I believe I may ſay the ſame for all the Gentlemen that have ſpoke before me.

My Lords, the general Part of theſe Articles has been already largely ſpoken to, and I ſhall therefore apply my ſelf directly to the Firſt Article, and the firſt Branch of that Article, which has been made the Ground of this whole Accuſation, *viz. That he does ſuggeſt and maintain that the neceſſary Means uſed to bring about the late happy Revolution were Odious and Unjuſtifiable.* I muſt own this is a Charge of a very high Nature, and has been aggravated to the utmoſt by the great Pains that the Gentlemen of the Honourable Houſe of Commons have taken, and the elaborate Speeches that have been made on this Head.

My Lords, The Juſtice of the Revolution is too plain to need any Vindication, every one of us is ſenſible of the happy Effects of it; and therefore for any one to caſt black and odious Colours on it, would be, as has been truly ſaid by the Honourable Managers, *a Reflection on his late Majeſty, and muſt bring a foul Imputation on Her preſent Majeſty and Government*; which, if the Revolution be Unjuſtifiable, muſt be an Uſurpation, and all Her Subjects Rebels.

My Lords, The Clauſe made uſe of to prove this Part of the Article, is in the 11th Page of the Sermon at St. *Paul's*, and has been often read; *The grand Security of our Government, and the very Pillar on which it ſtands, is founded upon the ſteady Belief of the Subjects Obligation to an abſolute and unconditional Obedience to the Supreme Power in all things Lawful, and the utter Illegality of Reſiſtance upon any Pretence whatſoever.* This, my Lords, is the Ground of the Commons Impeachment, becauſe here they ſay the Doctor condemns all Reſiſtance, and in that the Reſiſtance which was neceſſary to be made uſe of at the Revolution.

Whether what is here laid down be agreeable to the Doctrine of the Church of *England* is not my Province to determine, neither ſhall I now miſſpend your Lordſhips time in eſtabliſhing this Doctrine; that has been already ſufficiently done, and the Doctor himſelf abundantly vindicated, from the Doctrine of St. *Paul* himſelf, from the expreſs Doctrine of the Church of *England* ſet forth in her Homilies, from the Writings of Biſhops and Divines dead and living, from the known and unrepeal'd Laws of the Land, and from the Reaſonableneſs of laying down a general Rule without any Exception. What farther Vindication can be neceſſary? Or how can a good Subject of the Realm, and a true Son of the Church, better make his Defence, than from the Laws of the one, and the Doctrines of the other? But becauſe the great Objection has been, That this Doctrine is here laid down without any Limitation or Exception at all; and being my ſelf of a different Profeſſion from the Gentlemen that have ſpoken before me, I ſhall take a different Way in Vindication of this Paſſage, and beg leave

leave to follow the Method preſcrib'd by one of the Learned Managers of the Houſe of Commons. It was ſaid by one of them, *Ex ore ſuo judicabitur.* My Lords, let him ſpeak for himſelf, and then it will be ſeen if this Paſſage may not be juſtified by the very ſame Methods that have been made uſe of to accuſe him. If nothing will ſatisfy the Gentlemen of the Houſe of Commons but an Exception, an Exception they ſhall have, and that out of his own Mouth. It is in the 10th Page, and the beginning of that very Paragraph, where the whole Foundation of this Accuſation is laid. But I don't well know whether I may venture to mention it, leſt it ſhould ſubject him to a Proſecution in the Spiritual Court, or the Cenſure of his Dioceſan; but if it may help to acquit him from this Impeachment, I will adviſe him to run the Riſque of any Proſecution elſewhere.

The Clauſe is this, *But, Secondly, Men may be denominated Falſe Brethren, with relation to the State, Government, or Society of which they are Members. The Conſtitutions of moſt Governments differing according to their ſeveral Frames and Laws upon which they are Built and Founded, it is impoſſible to lay down any one univerſal Rule, as the Scheme and Meaſure of Obedience, that may ſquare to every one of them.*

My Lords, This is an obſervable Inſtance of this Gentleman's good Temper and Moderation; nothing can be ſaid more like a good Chriſtian, and a good Subject, and a Man of Temper: He is not here for bringing all Things to his own Rule, but every Government muſt ſtand upon its own Foundation, and be govern'd according to its own Rules. But he goes on; *Only this Maxim in general, I preſume, may be Eſtabliſh'd, for the Safety, Tranquility, and Support of all Governments, That no Innovation whatſoever ſhould be allow'd in the Fundamental Conſtitution of any State, without a very preſſing, nay unavoidable Neceſſity for it.*

My Lords, In theſe Words there is a plain Exception made, whenever the Caſe of an unavoidable Neceſſity ſhall happen. No Body will deny but that the Revolution was ſuch an unavoidable Caſe, and of Neceſſity, and what can't be reflected on, but with great Satisfaction, and Thanks to God for bringing it about. But it ſeems very ſtrange that this Exception ſhould ſtand ſo very full and plain in the very Front of that Paragraph from which the Learned Managers have chiefly drawn this Accuſation, and yet never be ſo much as once taken notice of by them. Paſſages at a much greater Diſtance have been Connected in order to Accuſe him; and there can be no Reaſon given why the ſubſequent Paſſage in the ſame Paragraph ſhould not be explain'd by this; why what in the beginning is ſaid of all Governments in general, ſhould not be extended to that Part where he ſpeaks particularly of our own Conſtitution. This, no doubt of it, he had in his Thoughts, and will, I hope, ſufficiently Vindicate him from this Charge.

I ſhall trouble your Lordſhips no longer on this Head, but only obſerve, that the Doctor in his Anſwer has put himſelf upon his Defence, That this Doctrine is agreeable to the Doctrine of the Church of *England* and the Laws of the Land, and we are ready to produce his Vouchers, and make it Evident to your Lordſhips.

Sir Simon Harcourt. My Lords, If we have not already tired your Lordſhips, there is this wide Difference between the Managers for the Houſe of Commons and us; they deſire your Lordſhips to truſt them, and to take their Words in every thing; we humbly beg your Lordſhips to take our Words in nothing, but that you will give us leave to lay before you the Teſtimonies for every thing we have open'd; but they being very long, we humbly ſubmit it to your Lordſhips, whether it will be proper for us now to produce them. The firſt Evidence we deſire to read is, Some godly and wholſome Doctrine contained in the Homilies; we have, my Lords, for your Lordſhips Eaſe, collected them by a Perſon that is ready to ſwear to them. We humbly ſubmit it to your Lordſhips, whether it ſhall be read out of the Writing, or whether the Books themſelves ſhall be produced; we ſhall obſerve your Lordſhips Commands, and proceed which way your Lordſhips pleaſe.

Mr. *Dodd.* My Lords, We are ready to obſerve your Lordſhips Directions in this Matter: We have collected the Paſſages out of the Homilies, the Articles, the Sermons, and Acts of Parliament; and have a Perſon ready to make Oath that they are truly collected. But if there be any Objection, we are ready to refer to the Books themſelves, and have them all here ready to produce.

Mr. *Phipps.* If your Lordſhips pleaſe, the Witneſs may be ſworn.

Then Mr. Trapp *was ſworn.*

Lord Chancellor. If you offer any Thing in Evidence, you muſt take the ſame Method that the Gentlemen of the Houſe of Commons did; it muſt be proved, and then deliver'd in at the Table, and there read.

Sir *Joſeph Jekyll.* My Lords, We have given the Gentlemen that are Council for the Priſoner no Diſturbance in any Thing they have ſaid during their Defence, that ſo we might come to a Determination as ſpeedily as poſſible in this Tryal; otherwiſe every body muſt think, we had Reaſon to object to ſome Things that have been ſaid by the Council. That which they are now going to do, is what we think proper to deliberate upon; and, according to former Precedents, we deſire to withdraw, and we will attend your Lordſhips again preſently.

Mr. *Smith.* My Lords, I beg Leave to ſpeak one Word. We have endeavour'd to behave our ſelves before your Lordſhips, according to the Duty we owe to the Houſe of Commons, and to your Lordſhips: We think there is ſomething offer'd, that is fit for us to conſider of. We don't propoſe more, than for the Managers to withdraw for a few Minutes; for we think we have ſomething to offer to your Lordſhips.

Accordingly the Managers withdrew; and then the Lords adjourned to their Houſe above: And in a ſhort time their Lordſhips being returned, and ſeated as before, and the Managers being returned to the Place appointed for them at their Lordſhips Bar; Proclamation for Silence was made by the Serjeant at Arms.

Sir *Joſeph Jekyll.* My Lords, The Managers withdrew for Two Reaſons; the one, to conſider of ſeveral Expreſſions that fell from the Council at the Bar, which we had Reaſon to take Exceptions to; the other was, to conſider of the Evidence they offer to your Lordſhips. For the firſt; The Managers are ſo deſirous that no Interruption ſhould be given to the Doctor's Council in his Defence, that they at preſent take no notice of it, but reſerve

that Matter to be taken notice of at ſuch other Time as they ſhall think proper. As to the Second, The Managers being unwilling the Doctor ſhould be deprived of any Thing that his Council can fancy is Material for his Defence, they are contented to let them go on in the Way they propoſed; but, to ſave your Lordſhips Time, we admit the Books, Sermons and Pamphlets, to be as they have open'd them.

Sir *Simon Harcourt*. My Lords, We humbly pray they may be read, becauſe we have not open'd the Tenth Part of them.

Mr. *Dodd*. We have collected them, to ſave your Lordſhips Time; but we have not open'd them, becauſe we reſerved them to be read.

Mr. *Phipps*. My Lords, The Witneſs is ſworn. Is that a True Copy of what it refers to?

Mr. *Trapp*. I did compare them with the Originals: It is a Tranſcript from the Original.

Mr. *Phipps*. Are they entire Paragraphs?

Mr. *Trapp*. They are moſt of them entire Paſſages.

Lord Chancellor. Gentlemen of the Houſe of Commons, do you object to the Evidence?

Sir *Joſeph Jekyll*. No, my Lords.

Then the LORDS *Adjourned to their Houſe Above.*

Saturday, March 4. The Sixth Day.

THE Lords being ſeated as uſual, and the Commons in a Committee of the whole Houſe, and the Managers at their Lordſhips Bar; the uſual Proclamations being alſo made;

And Dr. *Sacheverell* appearing at the Bar:

Lord Chancellor. Gentlemen, You who are Council for Doctor *Sacheverell* were proceeding to your Evidence, and had offered ſome Papers which you deſired to be read in Evidence; and the Gentlemen of the Houſe of Commons did agree to let them be read, as you deſired.

Mr. *Dodd*. My Lords, We pray thoſe Papers may be read.

Mr. *Phipps*. My Lords, The Defendant does in his Anſwer aſſert, "That the Doctrine of the Illegality of Reſiſtance to the Supreme Power, is "contained in the Homilies, and approved by many of the Divines of the Church of *England*: We deſire now to have thoſe Homilies, and the Sermons of thoſe Divines, read.

Sir *Joſeph Jekyll*. My Lords, The Gentlemen that open'd for the Doctor, were pleaſed to mention ſome Homilies, and other Books; one entitled, *A Neceſſary Doctrine and Erudition for any Chriſtian Man*; which they deſired might be read; and ſaid, They had collected the Paſſages out of them, in a Paper which they offer'd to your Lordſhips. We have look'd into that Paper, and find Extracts out of *Gazettes*, and other Papers. We are willing to let them read the Homilies, and that other Book called, *The Erudition for any Chriſtian Man*; but when they come to the others, we pray they may produce the Books or Papers themſelves.

Mr. *Dodd*. My Lords, We ſhall obſerve it accordingly.

Mr. *Phipps*. We pray we may begin with the Book entitled, *The Erudition for any Chriſtian Man*.

Clerk reads the Paper-Abſtract.

'A Neceſſary Doctrine and Erudition for any 'Chriſtian Man; ſet furthe by the King's Majeſty 'of *England*, &c. *Anno* 34 *H.* VIII.

In the Expoſition of the Fyfthe Commandment.

'And by this Commandment alſo, 'Subjects be bounde not to withdrawe *Fol.* 113. 'their ſaid Fealtie, Trouth, Love, and 'Obedience towards their Prince, for any Cauſe 'whatſoever it be; ne for any Cauſe they may conſpire againſt his Perſon, ne do any Thing towards the Hindrance or Hurt thereof, nor of his 'Eſtate.

In the Expoſition of the Syxte Commandment.

'Moreover, no Subjects may draw 'their Swords againſt their Prince, for *Fol.* 187. 9. 'any Cauſe, whatſoever it be.

Mr. *Dodd*. If your Lordſhips pleaſe, that we may now read ſeveral Paſſages in the Homilies.

Clerk reads.] *The Second Part of the Sermon of Obedience*, Pag. 110.

'Whereby Chriſt taught us plainly, that even 'the wicked Rulers have their Power and Authority from God; and therefore it is not lawful for 'their Subjects to withſtand them, altho' they abuſe 'their Power.

Ibid. p. 113. 'But nevertheleſs, in that Caſe 'we may not in any wiſe withſtand violently, or rebel againſt Rulers, or make any Inſurrection, Sedition or Tumults, either by Force of Arms, or 'otherwiſe, againſt the Anointed of the Lord, or 'any of his Officers; but we muſt in ſuch Caſe 'patiently ſuffer all Wrongs and Injuries, referring 'the Judgment of our Cauſe only to God.

The Third Part of the Sermon of Obedience, Pag. 114.

'Yee have heard before, in this Sermon of good 'Order and Obedience, manifeſtly proved, both by 'the Scriptures and Examples, that all Subjects are 'bounden to obey their Magiſtrates, and for no 'Cauſe to reſiſt, or withſtand, or rebel, or make 'any Sedition againſt them, yea altho' they be 'wicked Men.

Firſt Part of the Sermon againſt wilful Rebellion, Pag. 589.

'What ſhall Subjects do then? Shall they obey 'valiant, ſtout, wiſe and good Princes; and contemn, diſobey, and rebel againſt Children being 'their Princes; or againſt undiſcreet and evil Governors? God forbid! For, firſt, What a perilous Thing were it to commit unto the Subjects 'the Judgment which Prince is wiſe and godly, and 'his Government good, and which is otherwiſe? 'As tho' the Foot muſt judge of the Head! An 'Enterprize very heinous, and muſt needs breed 'Rebellion.

Ibid. p. 590. 'And whereas indeed a Rebel is 'worſe than the worſt Prince, and Rebellion worſe 'than the worſt Government of the worſt Prince 'that hitherto hath been.

Second Part of the Sermon againſt wilful Rebellion, Pag. 600.

'Now let *David* anſwer to ſuch Demands, as 'Men deſirous of Rebellion do uſe to make: Shall 'not we, eſpecially being ſo good Men as we are, 'riſe and rebel againſt a Prince hated of God, and 'God's Enemy; and therefore like not to proſper 'either in War or Peace, but to be hurtful and pernicious to the Commonwealth? No, ſaith good and 'godly *David*. *Ibid.*

Ibid. p. 601. 'But, ſay they, ſhall we not riſe 'and rebel againſt ſo unkind a Prince, nothing con- 'ſidering or regarding our true, faithful and painful 'Service, or the Safeguard of our Poſterity? No, 'ſaith good *David*.

Ibid. 'Shall we not riſe and rebel againſt our 'known, mortal, and deadly Enemy, that ſeeketh 'our Lives? No, ſaith godly *David*.

Ibid. 'Shall we not aſſemble an Army of ſuch 'good Fellows as we are, and by hazarding of our 'Lives, and the Lives of ſuch as ſhall withſtand us, 'and withal hazarding the whole Eſtate of our 'Country, remove ſo naughty a Prince? No, ſaith 'godly *David*.

Ibid. 'What ſhall we then do to an evil, to an 'unkind Prince, an Enemy to us, hated of God, 'hurtful to the Commonwealth, *&c.*? Lay no vio- 'lent Hand upon him, ſaith good *David*; but let 'him live, until God appoint and work his End, 'either by natural Death, or in War, by lawful 'Enemies, not by traiterous Subjects.

Ibid. p. 602. 'If King *David* would make theſe 'Anſwers, as by his Deeds and Words recorded in 'the Holy Scriptures indeed he doth make, unto 'all ſuch Demands concerning Rebelling againſt 'evil Princes, unkind Princes, cruel Princes, Prin- 'ces that be to their good Subjects mortal Enemies, 'Princes that are out of God's Favour, and ſo 'hurtful, or like to be hurtful to the Common- 'wealth.

Mr. *Dodd.* If your Lordſhips pleaſe now, that we may read the Thirty Fifth Article of the Church of *England*, which approves theſe Homilies.

Mr. *Phipps.* We open'd, that theſe Homilies were approv'd of by the Articles of the Church of *England*, as containing ſound and wholſome Doctrine: We pray the Thirty Fifth Article may be read.

Clerk reads.] *Article the Thirty Fifth. Of Homilies.*

'The Second Book of Homilies, the ſeveral Ti- 'tles whereof we have joined under this Article, 'doth contain a godly and wholſome Doctrine, and 'neceſſary for theſe Times; as doth the former 'Book of Homilies, which were ſet forth in the 'Time of *Edward* the Sixth. And therefore we 'judge them to be read in Churches by the Mini- 'ſters, diligently and diſtinctly, that they may 'be underſtanded of the People. The Names of 'the Homilies. 1. Of the Right Uſe of the 'Church. 2. Againſt Peril of Idolatry. 3. Of 'repairing and keeping clean of Churches. 4. Of 'good Works; Firſt, of Faſting. 5. Againſt Glut- 'tony and Drunkenneſs. 6. Againſt Exceſs of Ap- 'parel. 7. Of Prayer. 8. Of the Place and Time 'of Prayer. 9. That Common Prayers and Sacra- 'ments ought to be miniſtred in a known Tongue. '10. Of the Reverend Eſtimation of God's Word. '11. Of Alms-doing. 12. Of the Nativity of 'Chriſt. 13. Of the Paſſion of Chriſt. 14. Of 'the Reſurrection of Chriſt. 15. Of the worthy 'Receiving of the Sacrament of the Body and Blood 'of Chriſt. 16. Of the Gifts of the Holy Ghoſt. '17. For the Rogation-Days. 18. Of the State of 'Matrimony. 19. Of Repentance. 20. Againſt 'Idleneſs. 21. Againſt Rebellion.

Mr. *Phipps.* By the Statute of 13 *Eliz.* theſe Articles are confirmed: I believe the Gentlemen of the Houſe of Commons will allow of it.

Mr. *Dodd.* They are confirmed by the Act of Uniformity; and we think we need not ſpend your Lordſhips Time in reading it.

Sir *Joſ. Jekyll.* My Lords, We told them, that we were willing to admit all they open'd; and then we admit this.

Mr. *Dodd.* If your Lordſhips pleaſe, we will go on with the Abſtract.

Mr. *Phipps.* The Gentlemen ſay, that they admit us to read what we open'd. Now what we are going to read next, we did not open; and therefore we ſubmit it to your Lordſhips, whether we ſhall read out of the Abſtract, or produce the Book it ſelf?

Sir *Joſ. Jekyll.* My Lords, We deſire to know what it is they would read?

Mr. *Phipps.* It is Biſhop *Overall*'s Convocation-Book.

Mr. *Dee.* If your Lordſhips pleaſe, we ſhall produce the Book; becauſe there are ſome broken Paſſages collected, and there may be ſome Objection, if the Book be not produced.

Mr. *Phipps.* My Lords, We hope the whole Canon which is mention'd in this Book, tho' it is recited by Parcels, ſhall be read.

Clerk reads.] 'And therefore - - - -

Sir *Joſ. Jekyll.* My Lords, They are reading a Paſſage out of this Book. We might object, That a Printed Book is no Proof of a Canon; and that they ought to make a Legal Proof of it. But that which we object, is, That they begin in the Middle of a Sentence: Your Lordſhips obſerve, the Clerk begins with the Words, *And therefore.* I pray, he may read at the Beginning of a Sentence.

Mr. *Phipps.* My Lords, Where the Clerk began, was the Beginning of that Canon; but it being at the End of another Canon, is the Reaſon that it begins *And therefore.*

Clerk reads.] 'And therefore, if 'any Man ſhall affirm, under Colour 'of any thing that is in the Scriptures, 'either that the Doctrine of Grace in 'the *New Teſtament* doth more abo- 'liſh the Rules of Nature, or Moral Law of God, 'than it did in the *Old*; or, that thro' Faith the 'ſaid Law was not rather eſtabliſh'd, than in any 'ſort impeach'd; or, that becauſe as many as be- 'lieve are redeemed, and made free from the 'Curſe of the Law, they are therefore exempted, 'and free from the Obedience of the Law; or, 'that by the Incarnation of our Saviour Chriſt, 'Obedience to the Fifth Commandment, touching 'Honours due to Parents and Princes, was in any 'ſort impeach'd, the reſt of the Law being eſta- 'bliſh'd; or, that our Saviour Chriſt having un- 'dertaken the Fulfilling of the whole Law, (as far 'forth, at the leaſt, as ever Mankind was bound to 'have fulfilled it) came ſhort in this one Law, by 'exempting himſelf from any Obedience due to 'the Civil Magiſtrate; or, that he, having tied 'himſelf according to the ſaid Commandment, as 'well to the Obedience of the Civil Magiſtrate, as 'the Obedience which was due to his Parents, did 'not, whilſt he liv'd in the World, fulfil the Law 'wholly concerning them both; or, that he did any 'way, or at any Time, encourage the *Jews*, or any 'other, directly or indirectly, to Rebel, for any 'Cauſe whatſoever, againſt the *Roman* Emperor, or 'any of his Subordinate Magiſtrates; or, that he 'did not very willingly, both himſelf pay Tribute 'to *Cæſar*, and alſo adviſe the *Jews* ſo to do; or, 'that when he willed the *Jews* to pay Tribute to '*Cæſar*, including therein their Duty of Obedience 'unto him, he did not therein deal plainly and ſin- 'cerely,

Biſhop Overall, *p.* 107. *Can.* 1.

'cerely, but meant ſecretly that they ſhould be 'bound no longer to be obedient unto him, but 'until by Force they ſhould be able to reſiſt him; 'or, that he did not utterly and truly condemn all 'Devices, Conferences, and Reſolutions whatſoever, 'either in his own Apoſtles, or in any other Per'ſons, for the uſing of Force againſt Civil Autho'rity; or, that it is, or can be more lawful for any 'private Perſons, either of St. *Peter*'s Calling, or 'of any other Profeſſion, to draw their Swords 'againſt Authority, tho' in their raſh Zeal they 'ſhould hold it lawful ſo to do, for the Preſervati'on of Religion, than it was for St. *Peter* for 'the Preſervation of his Maſter's Life; or, that 'by Chriſt's Words above mention'd, all Subjects '(of what Sort ſoever) without Exception, ought 'not, by the Law of God, to periſh with the 'Sword, that take and uſe the Sword, for any 'Cauſe, againſt Kings and Sovereign Princes, un'der whom they were born, or under whoſe Juriſ'diction they do inhabit; or, that ſeeing our Sa'viour Chriſt would not have the *Samaritans* to be 'deſtroyed with Fire from Heaven, altho' they 'were at that Time divided in Religion from the '*Jews*, and refuſed to receive him in Perſon, it is 'not to be aſcribed to the Spirit of Satan for any 'private Men to attempt by Gunpowder, and Fire 'from Hell, to blow up and deſtroy their Sove'reigns, and the whole State of the Country where 'they were born and bred, becauſe in their Con'ceits they refuſed ſome part of Chriſt's Doctrine 'and Government; or, that Chriſt did not well; 'and as the ſaid Fifth Commandment did require, 'in ſubmitting himſelf as he did to Authority, al'tho' he was firſt ſent for with
Matt. 26. 55. 'Swords and Staves, as if he had 'been a Thief, and then afterward 'carried to *Pilate*, and by him (albeit he found no 'Evil in him) condemn'd to Death; or, that by any 'Doctrine or Example which Chriſt ever taught, or 'hath left upon good Record, it can be proved Law'ful to any Subjects, for any Cauſe of what Nature 'ſoever, to decline either the Authority and Juriſ'diction of their Sovereign Princes, or of any their 'lawful Deputies and inferior Magiſtrates ruling un'der them: He doth greatly Err.

Mr. *Phipps*. My Lords, We opened, that from the Time of the Reformation this had been the Doctrine of the Church. We deſire to begin, and ſhew it was Archbiſhop *Cranmer*'s Opinion: In *Strype*'s Memorial of Archbiſhop *Cranmer*.

Clerk Reads.] 'The ſecond Ex'hortation is, That next unto God
London *Edition, p.* 387. *Folio.* 'you obey your King and Queen 'willingly and gladly, without Mur'mur or Grudging, and not for Fear 'of them only, but much more for the Fear of 'God. Knowing that they be God's Miniſters, ap'pointed by God to Rule and Govern you; and 'therefore whoſo reſiſteth them, reſiſteth God's 'Ordinance.

Mr. *Phipps*. My Lords, We now offer a Declaration of Biſhop *Ferrar*, Biſhop *Hooper*, Biſhop *Coverdale*, and about Nine other Biſhops, which is in *Fox*'s Hiſtory.

Clerk reads.] 'Humbly requiring,
Vol. III. *p.* 101. 'and in the Bowels of our Saviour 'Jeſus Chriſt, beſeeching all that 'fear God, to behave themſelves as obedient Subjects 'to the Queen's Highneſs, and the Superior Powers 'which are ordained of God, under her; rather, 'after our Example, to give their Heads to the 'Block, than in any Point to Rebel, or once to 'Mutter againſt the Lord's Anointed.

Mr. *Dodd*. If your Lordſhips pleaſe, he may read the Names of thoſe Perſons that have ſubſcribed it at the End of it.

Clerk reads] *The 8th Day of* May, Anno Dom. 1554.

'The Names of the priſon'd Preachers ſubſcribing 'to this Declaration, *Robert Menaven*, alias *Robert* '*Ferrar*, *Rowland Taylor*, *John Philpott*, *John Brad*'*ford*, *John Wigorne*, and *Glouc. Epiſcopus*, alias *John* '*Hooper*, *Edward Crome*, *John Rogers*, *Laurence Saun*'*ders*, *Edmund Lawrence*, J. P. T M.---- To theſe 'things aboveſaid do I *Miles Coverdale*, late of *Exon*, 'conſent and agree with theſe mine afflicted Bre'thren, being Priſoners, mine own Hand.

Mr. *Phipps*. My Lords, The next we offer is the Opinion of Biſhop *Jewell*, in his Defence of the Apology for the Church of *England*, in Anſwer to Mr. *Harding*.

'*Clerk Reads.*] We teach the Peo'ple as St. *Paul* doth, to be ſubject Printed *Ann.*
'to the higher Powers, not only 1568. *Fol.* 19.
'for Fear, but alſo for Conſcience.
'We teach them, that whoſo ſtriketh with the 'Swerde by private Authority, ſhall periſh with 'the Swerde. If the Prince happen to be Wicked, 'or Cruel, or Burthenous, We teach them to ſay 'with St. *Ambroſe*, *Arma noſtra ſunt Preces &* '*Lachrymæ*, *Tears and Prayers be our Weapons.*

Mr. *Dodd*. My Lords, The next is Mr. *Hooker*, in his Eccleſiaſtical Polity.

'*Clerk Reads.*] That Subjection
'which we owe to lawful Powers, Fol. 470.
'doth not only import, that we *Lond.* Edit.
'ſhould be under them by Order of 1705.
'our State, but that we ſhew all
'Submiſſion towards them, both by Honour and 'Obedience. He that reſiſteth them reſiſteth God. 'And reſiſted they be, if either the Authority it 'ſelf, which they exerciſe, be denied; as by Ana'baptiſts all Secular Juriſdictions; or if Reſiſtance 'be made but only ſo far forth as doth touch their 'Perſons, which are inveſted with Power; (for they 'which ſaid *Nolumus hunc regnare*, did not utterly 'exclude Regiment; nor did they wiſh all kind of 'Government clearly removed, which would not at 'the firſt have *David* to Govern;) or if that which 'they do by virtue of their Power, namely, their 'Laws, Edicts, Services, or other Acts of Juriſ'diction, contrary to the bleſſed Apoſtles moſt Holy 'Rule, *Obey them who have the Overſight of you*, 'Heb. 13. 17. be not ſuffered to take Effect; or if 'they do take Effect, yet is not the Will of God 'thereby ſatisfy'd neither, as long as that which we 'do is contemptuouſly or repiningly done, becauſe 'we can do no otherwiſe. In ſuch ſort the *Iſraelites* 'in the Deſart obey'd *Moſes*; and were, notwith'ſtanding, deſervedly plagued for Diſobedience. 'The Apoſtle's Precept therefore is, *Be ſubject even* '*for God's ſake*; *be ſubject not for Fear, but of* '*mere Conſcience, knowing, that he which reſiſteth* '*them, purchaſeth to himſelf Condemnation.*

M. Gen. Stanhope. My Lords, Since *Hooker*'s *Eccleſiaſtical Polity* is before your Lordſhips, and they have read that Part, I pray that from *pag.* 444,

to the latter End of *pag.* 446, may likewiſe be read.

Mr. *Dodd.* We ſubmit it to your Lordſhips, Whether it is proper to break into our Defence? Or whether the Gentlemen of the Houſe of Commons will read what they think proper when they come to Reply? Your Lordſhips know the Courſe in other Courts is to give our Evidence entire.

Sir *J. Jekyll.* My Lords, The Indulgence of the Managers, to let the Doctor's Council go into this Evidence, is very great; (for I believe ſuch ſort of Evidence was never known before in any Court of Juſtice whatſoever); but ſurely, as they have called this Witneſs, for ſo I may term the Book they were reading, we may be at Liberty to croſs-examine that Witneſs; perhaps the Place we deſire to have read may explain the Paſſages read by them.

Mr. Phipps. My Lords, We ſubmit to it.

M. Gen. Stanhope. Pray what Edition is that Book?

Clerk. It is Printed in 1705.

M. Gen. Stanhope. My Lords, If we ſhould be miſtaken in the Edition, I hope we ſhall not be hindred in our Reply from reading thoſe Paſſages in the Edition which I have conſulted.

' *Clerk Reads.*] Again, on whom the
Fol. 444. ' ſame is beſtowed at Mens Diſcretions,
' they likewiſe do hold it by Divine
' Right. If God in his revealed Word hath ap-
' pointed ſuch Power to be, altho' himſelf extra-
' ordinarily beſtow it not, but leave the Appoint-
' ment of Perſons to Men; yea, albeit God do nei-
' ther appoint nor aſſign the Perſon; nevertheleſs,
' when Men have aſſigned and eſtabliſhed both,
' who doth doubt but that ſundry Duties and Affairs
' depending thereupon, are preſcribed by the Word
' of God, and conſequently by that very Right to
' be exerted? For Example ſake, the Power which
' *Roman* Emperors had over Foreign Provinces,
' was not a thing which the Law of God did ever
' inſtitute; neither was *Tiberius Ceſar* by eſpecial
' Commiſſion from Heaven therewith inveſted; and
' yet Payment of Tribute unto *Ceſar*, being now
' made Emperor, is the plain Law of Jeſus Chriſt
' unto Kings by Human Right; Honour by very Di-
' vine Right is due. Man's Ordinances are many
' times propoſed as Grounds in the Statutes of God.
' And therefore, of what kind ſoever the Means be
' whereby Governors are lawfully advanced to their
' States, as we by the Laws of God ſtand bound
' meekly to acknowledge them for God's Lieute-
' nants, and do confeſs their Power His; ſo by the
' ſame Law they are both authoriz'd and requir'd to
' uſe that Power, as far as it may be in any State
' available to his Honour. The Law appointeth no
' Man to be a Huſband; but if a Man hath betaken
' himſelf unto that Condition, it giveth him Power
' and Authority over his own Wife. That the Chri-
' ſtian World ſhould be ordered by the Kingly Re-
' giment, the Law of God doth not any where
' Command; and yet the Law of God doth give
' them, which once are exalted unto that Place of
' Eſtate, Right to exact at the Hands of their Sub-
' jects general Obedience in whatſoever Affairs their
' Power may ſerve to Command; and God doth
' ratify Works of that Sovereign Authority, which
' Kings have received by Men. This is therefore
' the Right whereby Kings do hold their Power;
' but yet in what ſort the ſame doth reſt and abide
' in them, it ſomewhat behoveth farther to Search;
' where, that we be not enforced to make over
' large Diſcourſes about the different Conditions of
' Sovereign or Supreme Power, that which we ſpeak
' of Kings ſhall be in reſpect of the State, and ac-
' cording to the Nature of this Kingdom, where
' the People are in no Subjection, but ſuch as wil-
' lingly themſelves have condeſcended unto for their
' own moſt Behoof and Security. In Kingdoms
' therefore of this Quality, the higheſt Governor
' hath indeed univerſal Dominion, but with Depen-
' dency upon that whole entire Body, over the ſeve-
' ral Parts whereof he hath Dominion; ſo that it
' ſtandeth for an Axiom in this Caſe, The King is
' *Major ſingulis, univerſis Minor.* The King's De-
' pendency we do not conſtrue as ſome have done,
' who are of Opinion, that no Man's Birth can
' make him a King; but every particular Perſon
' advanced to ſuch Authority hath, at his Entrance
' into his Reign, the ſame beſtowed on him as an
' Eſtate, in Condition, by the voluntary Deed of
' the People in whom it doth lye, to put by any
' one, and to prefer ſome other before him better
' liked of, or judged fitter for the Place; and that
' the Party ſo rejected hath no Injury done unto
' him; no, altho' the ſame be done in a Place where
' the Crown doth go *Sic* ℔℞, by Succeſſion, and to
' a Perſon which is Capital, and hath apparently, if
' Blood be reſpected, the neareſt Right. They
' plainly affirm, in all well appointed Kingdoms,
' the Cuſtom evermore hath been, and is, that
' Children ſucceed not their Parents 'till the Peo-
' ple, after a ſort, have created them anew;
' neither that they grow to their Fathers as
' natural and proper Heirs, but are then to be
' reckon'd for Kings, when at the Hands of ſuch
' as repreſent the King's Majeſty, they have by
' Sceptre and a Diadem received as it were the
' Inveſtiture of a Kingly Power: Their very Words
' are, " That where ſuch Power is ſettled into a
" Family or Kindred, the Stock it ſelf is thereby
" choſen, but not the Twig that ſpringeth of it.
" The next of the Stock unto him that reigneth,
" are not through Nearneſs of Blood made Kings;
" but rather ſet forth to ſtand for the Kingdom:
" Where Regal Dominion is Hereditary, it is not-
" withſtanding (if we look to the Perſons which
" have it) altogether Elective." To this Purpoſe
' are ſelected Heaps of Scriptures concerning the ſo-
' lemn Coronation or Inauguration of *Saul, David,*
' of *Solomon*, and others, by the Nobles, Ancients,
' and People of the Commonweal of *Iſrael*: As if
' theſe Solemnities were a kind of Deed, whereby
' the Right of Dominion is given; which ſtrange,
' untrue, and unnatural Conceits, ſet abroad by
' Seedſmen of Rebellion, only to animate unquiet
' Spirits, and to feed them with Poſſibility of
' aſpiring to Thrones, if they can win the Hearts of
' the People, what Hereditary Title ſoever any other
' before them may have; I ſay, unjuſt and inſolent
' Poſitions, I would not mention, were it not there-
' by to make the Countenance of Truth more Orient;
' for unleſs we will openly proclaim Defiance unto
' all Law, Equity and Reaſon, we muſt (there is
' no Remedy) acknowledge, that in Kingdoms, He-
' reditary Birth gives Right unto Sovereign Domini-
' on; and the Death of the Predeceſſor puts the
' Succeſſor by Blood in Seiſin. Thoſe publick So-
' lemnities before ſpecified, do but ſerve for an open
' Teſtification of the Inheritor's Right, or belong-
' ing unto the Form of inducting him into Poſſeſſion
' of that Thing he hath Right unto. Therefore, in
' caſe it doth happen, that without Right of Blood,
' a Man in ſuch wiſe be poſſeſſed, all theſe new
' Elections and Inveſtings are utterly void; they

'make him no indefeasible Estate, the Inheritor by 'Blood may dispossess him as an Usurper. The 'Case thus standing, albeit we judge it a thing most 'true, that Kings, even Inheritors, do hold their 'Right in the Power of Dominion, with Dependen- 'cy upon the whole Body Politick, over which they 'have Rule as Kings; yet so it may not be under- 'stood, as if such Dependency did grow; for that 'every Supreme Governor doth Personally take 'from thence his Power, by way of Gift, bestowed 'of their own free Accord upon him at the Time of 'his Entrance into the said Place of his Sovereign 'Government. But the Case of Dependency is that 'first Original Conveyance when Power was derived 'from the whole into one; to pass from him unto 'them, whom out of him, Nature, by Lawful 'Births, should produce, and no Natural or Legal 'Inability make uncapable. "Neither can any "Man with Reason think, but that the first Institu- "tion of Kings a sufficient Consideration; where- "fore their Power should always depend on that "from which it always flows: By Original Influence "of Power from the Body unto the King, is the "Cause of Kings Dependency in Power upon the "Body." By Dependency we mean Subordination 'and Subjection; a manifest Token of which De- 'pendency may be this: As there is no more certain 'Argument that Lands are held under any as Lords, 'than if we see that such Lands, in Defect of Heirs, 'fall unto them by Escheat: In like manner, it 'doth follow rightly, that seeing Dominion, when 'there is none to inherit it, it returneth into the 'Body; therefore they which before were Inheri- 'tors thereof, did hold it with Dependency upon 'the Body: So that by comparing the Body with 'the Head, as touching Power, it seemeth always 'to reside in both; fundamentally and radically in 'the one, in the other derivatively; in one the Ha- 'bit, in the other the Art of Power. May a Body 'Politick then at all Times, withdraw in whole or 'in part, the Influence of Dominion, which passeth 'from it, if Inconveniencies do grow thereby? It 'must be presumed, that Supreme Governors will 'not in such Case oppose themselves, and be stiff 'in detaining that, the Use whereof is with pub- 'lick Detriment. But surely without their Consent, 'I see not how the Body by any just Means should 'be able to help it self, saving when Dominion doth 'Escheat; such Things therefore must be thought 'upon beforehand, that Power may be limited e'er 'it be granted; which is the next Thing we are to 'consider.

Mr Dodd. We now produce Bishop *Andrews*'s Sermons.

London *Edition, Fol.* 1632. *p.* 939.

Clerk reads.] 'To deprive or de- 'pose them? Sure where the worst is 'reckoned that can be of them, *Cla- 'mabunt ad Dominum* is all I find, '1 *Sam.* 8. 18. No *Per* to do it but 'he. By him, and by none but by him, they be; 'by him, and by none but by him, they cease to be.

Mr. Phipps. We desire to read another Passage out of Mr. *Hooker*, in a Treatise of Church Government.

Clerk Reads.] 'A Treatise of Church Govern- 'ment: To which is added a Treatise of the Re- 'gal Power, and of the Novelty of the Doctrine of 'Resistance, Published by Dr. *Bernard* in his *Calvi 'Trabales.*

Lord Chancellor. This is a Collection of the Works of several Persons; so that it don't appear whose Works these are that you are reading.

Mr. Phipps. That which we offer to be read is Mr. *Hooker*'s, and is left out of the Book which was printed before.

Lon. *Edit.* 1601. 4*to.* *pag.* 49, 50.

Clerk reads.] 'There is a Supreme 'Head of Justice whereunto All are 'Subject, but it self in Subjection 'to None; which kind of Pre-emi- 'nence, if some ought to have in a 'Kingdom, who but the King shall have it? Kings 'therefore no Man can have Lawful Power and Au- 'thority to judge; if private Men offend, there is 'the Magistrate over them, which Judgeth; if Ma- 'gistrates, They have Their Prince; if Princes, 'there is Heaven, a Tribunal before which they shall 'appear; On Earth they are not accountable to any.

Mr. Phipps. My Lords, We offer Doctor *Jack- son*'s, and Bishop *Usher*'s Opinion in this Matter. And first Doctor *Jackson.*

Tom. 3. *p.* 965.

Clerk Reads.] 'He that is a King 'or Supreme Magistrate, by just and 'lawful Title, may not be thus resist- 'ed, albeit he exercise his Power Ty- 'rannically.

Mr. Phipps. The next is Archbishop *Usher*, in a Treatise called, *The Power communicated by God to the Prince, and the Obedience required of the Sub- ject*, &c.

Pag. 157. *Lond.* 1683. 8*vo.*

Clerk Reads.] 'But if Mens 'Hands be thus tied (will some say) 'no Man's State can be secure: Nay, 'the whole Frame of the Common- 'wealth would be in Danger to be sub- 'verted and utterly ruined by the unbridled Lust of 'a distemper'd Governor.

'I answer, God's Word is clear in the Point, '*Whosoever resisteth the Power, resisteth the Ordi- 'nance of God, and they that resist, shall receive 'to themselves Damnation*; and thereby a Necessi- 'ty is imposed upon us, of being subject even for 'Conscience sake, which may not be avoided by 'the Pretext of any ensuing Mischief whatsoever.

Mr. Phipps. My Lords, We offer next the Authority of Mr. *Chillingworth*, and we need say no more of him than to mention that it is Mr. *Chilling- worth*; and his Character is so established by the Lord *Clarendon*, that we need say no more of it.

Fol. 330. *Lond.* 1704. *Folio.*

Clerk Reads.] 'They that make no 'Scruple at all of fighting with his 'Sacred Majesty, and Shooting Mus- 'kets and Ordnance at him (which 'sure have not the Skill to chuse a 'Subject from a King) to the extreme Hazard of 'his Sacred Person, whom by all possible Obliga- 'tions they are bound to defend, do they know, 'think you, the General Rule without Exception 'or Limitation left by the Holy Ghost for our Di- 'rection in all such Cases, *Who can lift up his 'Hand against the Lord's Anointed, and be innocent?* '1 Sam. 26. 9. Or do they consider his Command 'in the *Proverbs of Solomon, My Son, fear God and 'the King, and meddle not with them that desire 'Change?* Prov. 24. 21. Or his Counsel in the 'Book of *Ecclesiastes, I counsel thee to keep the 'King's Commandment, and that in Regard of the 'Oath of God?* Eccles. 8. 2. Or because they possibly 'may pretend that they are exempted from, or un- 'concerned in the Commands of Obedience deli- 'vered in the Old Testament; Do they know and 'remember the Precept given to all Christians by

'St.

'St. *Peter*, *Submit your ſelves to every Ordinance* 'of Man for the Lord's ſake, *whether it be to the* 'King as *Supreme*, *or unto Governors*, *as unto* 'them that are ſent by him? Or that terrible Sanction of the ſame Command, *They that reſiſt ſhall* 'receive to themſelves *Damnation*, left us by St. 'Paul in his *Epiſtle* to the *Romans*, who then were 'the miſerable Subjects of the worſt King, the 'worſt Man, nay, I think, I may add truly, the 'worſt Beaſt in the World; that ſo all Rebels 'Mouths might be ſtopt for ever, and left without all Colour or Pretence whatſoever to juſtify 'the Reſiſtance of Sovereign Power?

Mr Phipps. My Lords, The next we offer is Archbiſhop *Bramhall*, ſometime Biſhop of *Armagh*.

Clerk reads.] 'The ſame Oath
Pag. 531. 'binds us to defend him againſt all
Dubl. 1678. 'Conſpiracies and Attempts whatſo-
Folio. 'ever, which ſhall be made againſt 'his Perſon or Crown; to defend him, 'much more therefore not to offend him, againſt 'all Conſpiracies and Attempts whatſoever. That 'Oath which binds us to defend him againſt all 'Attempts whatſoever, preſuppoſeth that no Attempt againſt him can be juſtified by Law, whether 'theſe Attempts be againſt his Perſon or his 'Crown.

Clerk reads.] 'If a Sovereign ſhall
Ibid. fol. 'perſecute his Subjects for not doing
542. 'his unjuſt Commands, yet it is not 'lawful to reſiſt by raiſing Arms 'againſt him, *They that reſiſt ſhall receive to themſelves Damnation.* But they ask, Is there no Limitation? I anſwer, *ubi Lex non diſtinguit*, *nec* 'nos *diſtinguere debemus*. How ſhall we limit 'where God had not limited, or diſtinguiſh where 'he hath not diſtinguiſh'd?

Mr. Dodd. My Lords, The next is Biſhop *Sanderſon*.

Clerk reads.] 'No Conjuncture of
Fol. 522. 'Circumſtances whatſoever, can make 'that *Expedient* to be done at any 'time, that is, of it ſelf and in the kind *unlawful*. 'For a Man to *blaſpheme* the holy Name of God, 'to *ſacrifice* to Idols, to give *wrong Sentence* in 'Judgment, by his Power to *oppreſs* thoſe that are 'not able to withſtand him, by Subtilty to *over-reach* others in bargaining, to *take up Arms* (offenſive or defenſive) againſt a *lawful Sovereign*: 'None of theſe, and ſundry other things of the 'like Nature, being all of them ſimply, and *de toto genere* unlawful, may be done by any *Man*, at 'any *Time*, in any *Caſe*, upon any *Colour* or Pretenſion whatſoever; the Expreſs *Command of God* 'himſelf only excepted, as in the Caſe of *Abraham* 'for ſacrificing his Son. Not for the avoiding of 'Scandal, not at the Inſtance of any *Friend*, or 'Command of any *Power* upon *Earth*; not for 'the Maintenance of the *Lives* or *Liberties* either 'of our ſelves or others; nor for the Defence of 'Religion; not for the Preſervation of a *Church* or 'State; no nor yet, if that could be imagin'd poſſible, for the Salvation of *a Soul*; no, not for the 'Redemption of the *whole World*.

Mr. Phipps. My Lords, Doctor *Sacheverell* being educated in the Univerſity of *Oxford*, we offer the Decrees of that Univerſity touching this Matter. They were publiſhed in the *Gazette* the 26th of *July*, 1683, by Authority.

Clerk reads.] *Numb.* 1845.

The London Gazette. Publiſhed by Authority. From *Monday July* 23. to *Thurſday July* 26. 1683.

'*Whitehall*, *July* 24. This Day was preſented 'to his Majeſty the following Judgment and Decree of the Univerſity of *Oxford*, paſs'd in their 'Convocation, on *Saturday* the 21*ſt* Inſtant.

'The Judgment and Decree of the Univerſity of '*Oxford*, paſs'd in their Convocation, *July* 21. '1683. againſt certain pernicious Books, and damnable Doctrines, deſtructive to the Sacred Perſons 'of Princes, their State and Government, and of 'all Human Society.

'ALTHO' the barbarous Aſſaſſination lately enterprized againſt the Perſon of his Sacred Majeſty, 'and his Royal Brother, engage all our Thoughts to 'reflect with utmoſt Deteſtation and Abhorrence on 'that execrable Villany, hateful to God and Man; 'and pay our due Acknowledgments to the Divine 'Providence, which by extraordinary Methods 'brought it to paſs, That *the Breath of our Noſtrils*, *the Anointed of the Lord*, *is not taken in* 'the Pit *which was prepared for him*; and that 'under his Shadow we continue to live, and enjoy 'the Bleſſings of his Government; yet notwithſtanding we find it to be a neceſſary Duty at this 'Time, to ſearch into, and lay open thoſe impious 'Doctrines, which having of late been ſtudiouſly 'diſſeminated, gave Riſe and Growth to theſe Nefarious Attempts, and paſs upon them our ſolemn 'publick Cenſure and Decree of Condemnation.

'Therefore, to the Honour of the Holy and undivided Trinity, the Preſervation of Catholick Truth 'in the Church, and that the King's Majeſty may 'be ſecured both from the Attempts of open bloody 'Enemies, and Machinations of Treacherous Hereticks and Schiſmaticks; We the Vice-Chancellor, 'Doctors, Proctors, and Maſters, Regent and not 'Regent, met in Convocation, in the accuſtomed 'Manner, Time and Place, on *Saturday* the one 'and twentieth Day of *July*, in the Year One 'thouſand ſix hundred and eighty three, concerning 'certain Propoſitions contain'd in divers Books and 'Writings, publiſh'd in the *Engliſh* and alſo the *Latin* Tongue, repugnant to the Holy Scriptures, Decrees of Councils, Writings of the Fathers, the 'Faith and Profeſſion of the Primitive Church; 'and alſo deſtructive of the Kingly Government, 'the Safety of his Majeſty's Perſon, the publick 'Peace, the Laws of Nature, and Bonds of Human 'Society, by our unanimous Aſſent and Conſent, 'have decreed and determined in Manner and Form 'following:

The Firſt Propoſition.

'All Civil Authority is derived Originally from 'the People.

The Second.

'There is a mutual Compact, Tacit or Expreſs, 'between a Prince and his Subjects; and that if 'he perform not his Duty, they are diſcharged 'from theirs.

The Third.

'Thrt if lawful Governors become Tyrants, or 'govern otherwiſe than by the Laws of God and 'Man they ought to do, they forfeit the Right they 'had unto their Government. *Lex Rex. Buchanan* 'de *Jure Regni. Vindiciæ contra Tyrannos Bellarmine de Conciliis. De Pontificie Milton. Goodwin. Baxter. H. C.*

The Fourth.

'The Sovereignty of *England* is in the three Eſtates

'Eſtates, *viz.* King, Lords and Commons. The 'King has but a Co-ordinate Power, and may be 'over-rul'd by the other Two. *Lex Rex. Hunton* of a Limited and Mixed Monarchy. *Baxter H. C. Polit. Catechiſ.*

The Fifth.

'Birth-right and Proximity of Blood give no Ti-'tle to Rule or Government; and it is lawful to 'preclude the next Heir from his Right and Succeſ-'ſion to the Crown. *Lex Rex. Hunt*'s Poſtſcript. *Doleman*'s Hiſtory of Succeſſion. *Julian* the Apoſtate. *Mene Tekel.*

The Sixth.

'It is Lawful for Subjects, without the Conſent, 'and againſt the Command of the Supreme Magi-'ſtrate, to enter into Leagues, Covenants and Aſſo-'ciations, for Defence of themſelves and their Re-'ligion. *Solemn League and Covenant. Late Aſſo-ciations.*

The Seventh.

'Self-Preſervation is the Fundamental Law of 'Nature, and ſuperſedes the Obligation of all o-'thers, whenſoever they ſtand in Competition with 'it. *Hobbs de Cive Leviathan.*

The Eighth.

'The Doctrine of the Goſpel concerning patient 'Suffering of Injuries, is not inconſiſtent with vio-'lent Reſiſting of the Higher Powers, in caſe of 'Perſecution for Religion. *Lex Rex. Julian* Apoſtate. *Apolog. Relat.*

The Ninth.

'There lies no Obligation upon Chriſtians to 'Paſſive Obedience, when the Prince commands 'any Thing againſt the Laws of our Country; 'and the Primitive Chriſtians choſe rather to die 'than reſiſt, becauſe Chriſtianity was not ſettled 'by the Laws of the Empire. *Julian* Apoſtate.

The Tenth.

'Poſſeſſion and Strength give a Right to Go-'vern; and Succeſs in a Cauſe or Enterprize, pro-'claims it to be Lawful and Juſt. To purſue it, is 'to comply with the Will of God; becauſe it is 'to follow the Conduct of his Providence. *Hobbs. Owen*'s Sermon before the Regicides, *Jan.* 31. 1648. *Baxter. Jenkins*'s Petition, *Octob.* 1651.

The Eleventh.

'In the State of Nature there is no Difference 'between Good and Evil, Right and Wrong. The 'State of Nature is a State of War, in which eve-'ry Man hath a Right to all Things.

The Twelfth.

'The Foundation of Civil Authority is this Na-'tural Right, which is not given, but left to the 'Supreme Magiſtrate upon Mens entring into So-'cieties; and not only a Foreign Invader, but a 'Domeſtick Rebel, puts himſelf again into a State 'of Nature, to be proceeded againſt, not as a Sub-'ject, but an Enemy; and conſequently, acquires 'by his Rebellion the ſame Right over the Life of 'his Prince, as the Prince (for the moſt heinous 'Crimes) has over the Life of his own Subjects.

The Thirteenth.

'Every Man, after his entring into a Society, re-'tains a Right of defending himſelf againſt Force, 'and cannot transfer that Right to the Common-'wealth, when he conſents to that Union whereby 'a Commonwealth is made: And in caſe a great 'many Men together have already reſiſted the Com-'monwealth, for which every one of them expect-'eth Death; they have Liberty then to join toge-'ther, to aſſiſt and defend one another. Their bear-'ing of Arms, ſubſequent to the firſt Breach of their 'Duty, tho' it be to maintain what they have done, 'is no new unjuſt Act; and if it be only to defend 'their Perſons, is not unjuſt at all.

The Fourteenth.

'An Oath ſuperadds no Obligation to Pact, and 'a Pact obliges no farther than it is credited; and 'conſequently, if a Prince gives any Indication that 'he does not believe the Promiſes of Fealty and 'Allegiance made by any of his Subjects, they are 'thereby freed from their Subjection; and notwith-'ſtanding their Pacts and Oaths, may lawfully re-'bel againſt, and deſtroy their Sovereign. *Hobbs de Cive Leviathan.*

The Fifteenth.

'If a People, that by Oath and Duty are obliged 'to a Sovereign, ſhall ſinfully diſpoſſeſs him, and '(contrary to their Covenants) chuſe and covenant 'with another; they may be obliged by their later 'Covenants, notwithſtanding their former. *Bax-ter H. C.*

The Sixteenth.

'All Oaths are unlawful, and contrary to the 'Word of God. *Quakers.*

The Seventeenth.

'An Oath obligeth not in the Senſe of the Impo-'ſer, but the Takers. *Sheriff's Caſe.*

The Eighteenth.

'Dominion is founded in Grace.

The Nineteenth.

'The Powers of this World are Uſurpations up-'on the Prerogative of Jeſus Chriſt; and it is the 'Duty of God's People to deſtroy them, in order 'to the ſetting Chriſt upon his Throne. *Fifth-Mo-narchy-Men.*

The Twentieth.

'The Presbyterian Government is the Scepire 'of Chriſt's Kingdom, to which Kings as well as 'others are bound to ſubmit; and the King's Su-'premacy in Eccleſiaſtical Affairs, aſſerted by the 'Church of *England*, is injurious to Chriſt, the 'ſole King and Head of his Church. *Altare Da-maſcenum. Apolog. Relat. Hiſt. Indulg. Cartwright. Travers.*

The Twenty firſt.

'It is not Lawful for Superiors to impoſe any 'Thing in the Worſhip of God, that is not ante-'cedently neceſſary.

The Twenty ſecond.

'The Duty of not offending a weak Brother, is 'inconſiſtent with all Human Authority of making 'Laws concerning indifferent Things. *Proteſtant Reconciler.*

The Twenty third.

'Wicked Kings and Tyrants ought to be put to 'Death; and if the Judges and Inferior Magiſtrates 'will not do their Office, the Power of the Sword 'devolves to the People: If the major Part of the 'People refuſe to exerciſe this Power, then the 'Miniſters may Excommunicate ſuch a King; af-'ter which it is Lawful for any of the Subjects to 'kill him, as the People did *Athaliah*, and *Jehu* 'Jezebel. *Buchanan. Knox. Goodman. Gilby. Jeſuits.*

The Twenty fourth.

'After the Sealing of the Scripture Canon, the 'People of God in all Ages are to expect New Re-'velations for a Rule of their Actions; and it is

'Lawful for a Private Man, having an inward Motion from God, to kill a Tyrant. *Quakers, and other Enthuſiaſts. Goodman.*

The Twenty fifth.

'The Example of *Phineas* is to us inſtead of a Command; for what God hath commanded or approved in one Age, muſt needs oblige in all. *Goodman. Knox. Naphali.*

The Twenty ſixth.

'King *Charles* the Firſt was lawfully put to Death, and his Murderers were the bleſſed Inſtruments of God's Glory in their Generation. *Milton. Goodwin. Owen.*

The Twenty ſeventh.

'King *Charles* the Firſt made War upon his Parliament; and in ſuch a Caſe the King may not only be reſiſted, but he ceaſeth to be King. *Baxter.*

'We Decree, Judge, and Declare all and every of theſe Propoſitions to be Falſe, Seditious, and Impious, and moſt of them to be alſo Heretical and Blaſphemous, Infamous to Chriſtian Religion, and Deſtructive of all Government in Church and State.

'We farther Decree, That the Books which contain the aforeſaid Propoſitions and impious Doctrines, are fitted to deprave good Manners, corrupt the Minds of unwary Men, ſtir up Seditions and Tumults, overthrow States and Kingdoms, and lead to Rebellion, Murther of Princes, and Atheiſm it ſelf: And therefore We interdict all Members of the Univerſity from the Reading of the ſaid Books, under the Penalties in the Statutes expreſs'd. We alſo order the ſaid recited Books to be publickly burnt by the Hand of our Marſhal, in the Court of our Schools.

'Likewiſe we Order, That in perpetual Memory hereof, theſe our Decrees ſhall be entred in the Regiſtry of our Convocation; and that Copies of them being communicated to the ſeveral Colleges and Halls within this Univerſity, they be there publickly affix'd in the Libraries, Refectories, or other fit Places, where they may be ſeen and read of all.

'Laſtly, We command and ſtrictly enjoin all and ſingular the Readers, Tutors, Catechiſts, and others to whom the Care and Truſt of Inſtitution of Youth is committed, that they diligently inſtruct and ground their Scholars in that moſt neceſſary Doctrine, which in a manner is the Badge and Character of the Church of *England*; Of *Submitting to every Ordinance of Man for the Lord's Sake; whether it be to the King as Supreme, or unto Governors as unto them that are ſent by him, for the Puniſhment of evil Doers, and for the Praiſe of them that do well.* Teaching that this Submiſſion and Obedience is to be clear, abſolute, and without Exception of any State or Order of Men. Alſo that they, according to the Apoſtle's Precept, exhort, That *firſt of all, Supplications, Prayers, Interceſſions, and giving of Thanks be made for all Men, for the King, and all that are in Authority; that we may lead a quiet and peaceable Life, in all Godlineſs and Honeſty; for this is good and acceptable in the ſight of God our Saviour.* And in eſpecial manner, that they preſs and oblige them humbly to offer their moſt ardent and daily Prayers at the Throne of Grace, for the Preſervation of our Sovereign Lord King *Charles*, from the Attempts of open Violence, and ſecret Machinations of perfidious Traytors; that the Defender of the Faith, being ſafe under the Defence of the Moſt High, may continue his Reign on Earth, till he exchange it for that of a late and happy Immortality.

Mr. *Phipps.* My Lords, To ſhew that this was likewiſe at the ſame time Archbiſhop *Tillotſon*'s Opinion, we deſire to read his Letter which he wrote to my Lord *Ruſſel*, when he was under his Condemnation in *Newgate*, *July* 20. 1683.

Clerk reads.] 'My Lord, I was heartily glad to ſee your Lordſhip this Morning in that calm and devout Temper at Receiving of the Bleſſed Sacrament; but Peace of Mind, unleſs it be well grounded, will avail little: And becauſe tranſient Diſcourſe many times hath little Effect, for want of Time to weigh and conſider it; therefore, in tender Compaſſion of your Lordſhip's Caſe, and from all the good Will that one Man can bear to another, I do humbly offer to your Lordſhip's deliberate Thoughts theſe following Conſiderations concerning the Points of Reſiſtance, if our Religion and Rights ſhould be invaded, as your Lordſhip puts the Caſe; concerning which, I underſtand by Dr. *B.* that your Lordſhip had once receiv'd Satisfaction, and am ſorry to find a Change.

'*Firſt*, That the Chriſtian Religion doth plainly forbid the Reſiſtance of Authority.

'*Secondly*, That tho' our Religion be eſtabliſh'd by Law, (which your Lordſhip urges as a Difference between our Caſe and that of the Primitive Chriſtians) yet in the ſame Law which eſtabliſhes our Religion, it is declar'd, That it is not lawful upon any Pretence whatſoever to take up Arms, *&c.* Beſides, that there is a particular Law, declaring the Power of the Militia to be ſolely in the King; and that ties the Hands of Subjects, tho' the Law of Nature, and the general Rules of Scripture had left us at Liberty, which I believe they do not, becauſe the Government and Peace of Human Society could not well ſubſiſt upon theſe Terms.

'*Thirdly*, Your Lordſhip's Opinion is contrary to the declar'd Doctrine of all Proteſtant Churches; and tho' ſome particular Perſons have taught otherwiſe, yet they have been contradicted herein, and condemn'd for it, by the Generality of Proteſtants. I beg your Lordſhip to conſider, how it will agree with an avow'd aſſerting of the Proteſtant Religion, to go contrary to the General Doctrine of Proteſtants. My End in this is, to convince your Lordſhip that you are in a very great and dangerous Miſtake; and being ſo convinc'd, that which was before a Sin of Ignorance, will appear of much more heinous Nature, as in truth it is, and call for a very particular and deep Repentance; which if your Lordſhip ſincerely exerciſe upon the ſight of your Error, by a penitent Acknowledgment of it to God and Men, you will not only obtain Forgiveneſs of God, but prevent a mighty Scandal to the Reform'd Religion. I am very loth to give your Lordſhip any Diſquiet in the Diſtreſs you are in, which I commiſerate from my Heart, but am much more concern'd that you do not leave the World in a Deluſion and falſe Peace, to the Hindrance of your Eternal Happineſs. I heartily pray for you; and beſeech your Lordſhip to

'believe

'believe that I am, with the greateſt Sincerity and 'Compaſſion in the World,

My Lord,
Your Lordſhip's moſt Faithful
and Afflicted Servant,

J. TILLOTSON.

Mr. *Phipps.* My Lords, We next offer the Opinion of Biſhop *Stillingfleet.*

Clerk reads.] 'A Vindication of the Anſwer to 'ſome late Papers, concerning the Unity and Au-'thority of the Catholick Church, and the Refor-'mation of the Church of *England.*

Pag. 89. Lond. 1687. 'But it hath been ſaid by ſome-'body, *That we had our Govern-'ment and Ceremonies from his 'Church, our Doctrine from* Luther '*and* Calvin; *and that we had nothing peculiar to 'our Church, but our Doctrine of Non-Reſiſtance, 'and much good may it do us*; and we hope we 'ſhall never fare the worſe for it. This might 'give Occaſion to enquire, Whether the Church, 'which pretends to be infallible, doth teach it ſo 'orthodoxly, or not? Or whether thoſe who do 'think themſelves oblig'd to believe what ſhe 'teaches, are thereby oblig'd to the ſtricteſt Princi-'ples of Loyalty? But I forbear. It is ſufficient to 'my Purpoſe, to ſhew that our Church doth not 'only teach them, as her own Doctrine, but (which 'is far more effectual) as the Doctrine of Chriſt 'and his Apoſtles, and of the Primitive Church.

Mr. *Phipps.* My Lords, The ſame Biſhop, in a *Diſcourſe of the Unreaſonableneſs of a new Separation*, takes Notice of ſome Objections made by thoſe who are Friends to the Government, as if Non-Reſiſtance were not conſiſtent with the Revolution.

Lord Chancellor. There is no Name of an Author to theſe Books which you now produce.

Mr. *Dodd.* The Book is generally known by all Learned Men to be Biſhop *Stillingfleet*'s. Mr. *Chiſwell*, who printed it, attended here three Days to prove it, but is ill now; but he has left a Certificate that he printed it, and all Learned Men know it to be his.

Page 8. Lond. 1689. *Clerk reads.*] 'I come to the par-'ticular Examination of the Difficul-'ties which relate to the preſent 'Oaths [to King *William* and Queen '*Mary*;] and becauſe we are charg'd with Apoſtacy 'from the Principles of the Church of *England*, 'and that is made the main Ground of the deſign'd 'Separation, I would fain know what this Charge 'is built upon, with reſpect to the Oaths, for that 'is all we are concern'd in. If any particular Per-'ſons have advanc'd new Hypotheſes of Govern-'ment, contrary to the Senſe of our Church, let 'them anſwer for themſelves. The Caſe of the 'Oaths is quite of another Nature; here is no Re-'nouncing the Doctrine of Paſſive Obedience, or 'aſſerting the Lawfulneſs of Reſiſtance.

Mr. *Phipps.* Your Lordſhips obſerve that ſince the Revolution that general Doctrine of Obedience is aſſerted by him.

Mr. *Dodd.* My Lords, The next we offer is Dr. *Sherlock* in his *Caſe of Allegiance ſtated.*

Page 37. Lond. 1691. *Quarto.* *Clerk reads.*] 'And Biſhop *Overall*'s 'Convocation-Book, which is lately 'publiſh'd, the principal Deſign of 'which is to aſſert the irreſiſtible 'Authority of Sovereign Princes, does 'as plainly aſſert this too, That all ſettled Govern-'ments, whatever their Beginnings were, have 'God's Authority, and muſt be obey'd; of which 'more above: For thoſe wiſe Men who ſat in that 'Convocation, plainly ſaw the neceſſary Connexion 'between Non-Reſiſtance, and Obedience to the pre-'ſent Powers; both which were equally reſolv'd 'into the Authority of God, in removing Kings 'and ſetting up Kings: So that Obedience and Al-'legiance to the preſent Powers, when they are 'once well ſettled among us, is ſo far from being a 'renouncing of the Doctrine of Non-Reſiſtance 'and Paſſive Obedience, that thoſe who refuſe to 'comply, muſt renounce the only Principle whereon 'that Doctrine is reaſonably founded, and conſe-'quently renounce the Doctrine it ſelf.

Mr. *Phipps.* My Lords, We now offer a Book publiſh'd by the late Biſhop *Beveridge*, which was publiſh'd by Her Majeſty's Licenſe, counterſign'd by the Earl of *Sunderland.*

Clerk reads.] *ANNE* R.

'Whereas our Truſty and Well-beloved *Richard 'Smith*, of our City of *London*, Bookſeller, hath 'humbly repreſented unto us, that he has with 'great Labour and Expence, prepar'd for the Preſs, a 'new Edition of the Sermons and other Works, 'written in *Engliſh* by the Right Reverend Father 'in God, Dr. *William Beveridge*, Biſhop of St. '*Aſaph*, deceas'd: And has therefore humbly be-'ſought us to grant him our Royal Privilege and 'Licenſe for the ſole Printing and Publiſhing there-'of, for the Term of Fourteen Years. We being 'willing to give all due Encouragement to Works 'of this Nature, tending to the Advancement of 'Piety and Learning, are graciouſly pleas'd to con-'deſcend to his Requeſt; and do therefore, by 'theſe Preſents, grant to him the ſaid *Richard 'Smith*, his Executors, Adminiſtrators, and Aſſigns, 'Our Royal Licence for the ſole Printing and Pub-'liſhing the *Engliſh* Works of the ſaid late Biſhop 'of St. *Aſaph* for the Term of Fourteen Years, 'from the Date hereof; ſtrictly forbidding all our 'Subjects, within our Kingdoms and Dominions, 'to Reprint the ſame, either in whole or in part, or 'to import, buy, vend, utter or diſtribute any Copies 'thereof Reprinted beyond Seas, during the aforeſaid 'Term of Fourteen Years, without the Conſent 'and Approbation of the ſaid *Richard Smith*, his 'Heirs, Executors and Aſſigns, under his, or their 'Hands and Seals, firſt had and obtained, as they 'will anſwer the contrary at their Peril; whereof 'the Maſter, Wardens and Company of Stationers 'are to take Notice, that the ſame may be enter'd 'in their Regiſter, and that due Obedience be ren-'der'd thereunto. Given at our Court at *Kenſing-'ton*, the Fifth Day of *June* 1708. in the Seventh 'Year of Our Reign.

By Her Majeſty's Command, SUNDERLAND.

Private Thoughts upon Religion, digeſted into Twelve Articles, with Practical Reſolutions form'd thereupon. By the Right Reverend Father in God, William Beveridge, *D. D. late Lord Biſhop of St.* Aſaph.

RESOLUTION I.

Pag. 251, 252, 253, 254. *Lond.* 1709. 8*vo.*

'I am reſolv'd, by the Grace 'of God, to Honour and Obey 'the King, or Prince, whom God 'is pleas'd to ſet over me; as 'well as to expect he ſhould ſafe-'guard and protect me, whom God is pleas'd to 'ſet under him.

'The King of Kings, and Lord of Lords, the 'great and glorious Monarch of all the World, ha-'ving enacted many gracious Laws, is pleas'd to 'ſet over every Kingdom and Nation, ſuch Perſons 'as may put them in Execution: So that I cannot 'but look upon a lawful King as truly a Repreſen-'tative of the moſt high God, as a Parliament is of 'the People. And am therefore perſuaded that 'whoſoever rebels againſt him, rebels againſt God 'himſelf; not only in that he rebels againſt the Or-'dinance of God, and ſo againſt the God of that 'Ordinance; but becauſe he rebels againſt him 'whom God hath ſet up as his Vicegerent, to 'repreſent his Perſon and execute his Laws, in ſuch 'a Part of his Dominions.

'Hence it is, that theſe two Precepts, *Fear God, 'and Honour the King*, are ſo often join'd together 'in Holy Writ; for he that fears God's Power, can-'not but honour his Authority; and he that ho-'nours not the King that repreſents God, cannot be 'ſaid to fear God, who is repreſented by him. And 'hence likewiſe it is, that God hath been as ſtrict 'and expreſs in enjoining us Obedience to our Go-'vernors, as to himſelf: For, thus ſaith the Lord 'of Hoſts, *Rom.* 13. 1. *Let every Soul be ſubject 'to the Higher Powers.* Why? Becauſe *there is 'no Power but of God; the Powers that be, are or-'dain'd of God.*

'And he hath denounc'd as great a Judgment 'againſt ſuch as rebel againſt the Magiſtrate he 'hath ordain'd, as againſt thoſe that rebel againſt 'himſelf: For, *Whoever reſiſteth the Power, re-'ſiſteth the Ordinance of God; and they that reſiſt 'ſhall receive to themſelves Damnation*, ver. 2. So 'that the Wrath of *God* ſhall as certainly fall upon 'thoſe that riſe up againſt the King, as upon thoſe 'that fight againſt God. And no wonder, that the 'Puniſhment ſhould be the ſame, when the Fault 'is the ſame. For he that fights againſt his King, 'fights againſt God himſelf, who hath inveſted him 'with that Power and Authority to govern his 'People, repreſenting his own glorious Majeſty be-'fore them.

'Upon this Ground it is, that I believe the 'Wickedneſs of a Prince cannot be a ſufficient Plea 'for the Diſobedience of his Subjects; for it is not 'the Holineſs, but the Authority of God that he re-'preſents, which the moſt Wicked, as well as the 'moſt Holy Perſon may be endow'd with. And 'therefore, when the Goſpel firſt began to ſpread it 'ſelf over the Earth, tho' there was no Chriſtian 'King, or Supreme Magiſtrate, of what Title 'ſoever, to cheriſh and protect it; nay, tho' the 'Civil Powers were then the greateſt Enemies to it, 'yet, even then, were the Diſciples of Chriſt en-'join'd *to ſubmit themſelves to every Ordinance of 'Man, for the Lord's ſake.*

'Inſomuch, that did I live among the *Turks*, I 'ſhould look upon it as my Duty to obey the '*Grand Signior*, in all his Lawful Edicts, as well 'as the moſt Chriſtian and Pious King in the World. 'For, ſuppoſe a Prince be never ſo wicked, and ne-'ver ſo negligent in his Duty of Protecting me, 'it doth not follow, that I muſt neglect mine of 'Obeying him. In ſuch a Caſe, I have another 'Duty added to this, and that is, to pray for him, 'and to intercede with God for his Converſion: 'For, thus hath the King of Kings commanded, 'that *Prayers, Supplications, Interceſſions, and giving 'of Thanks be made*, as *for all Men*, ſo more eſpe-'cially *for Kings, and thoſe that are in Authority, 'that we may live a quiet and peaceable Life, in all 'Godlineſs and Honeſty*, 1 Tim. 2. 1, 2. So that 'whenſoever I addreſs to the Court of Heaven, I 'muſt be ſure to remember my Sovereign on 'Earth, as himſelf doth in Heaven, in Righteouſ-'neſs and Mercy. But eſpecially, in caſe of any 'ſeeming or real Default or Defect; tho' I do not 'think it a Subject's Duty to judge or cenſure his 'Sovereign's Actions: I am to be the more earneſt 'in my Prayers and Interceſſions for him; but up-'on no Account to fight and rebel againſt him.

Mr. *Dodd*, My Lord, the next Book we offer is his Grace the Archbiſhop of *Canterbury*'s Treatiſe, intituled, *The Creed of Mr.* Hobbs *Examined.*

Clerk reads.] 'There is no Tye ſo 'ſtrong as that of Religion, which 'eternally bindeth a Conſcientious 'Subject in Allegiance to his Sove-'reign. *Pag.* 158. *Lond.* 1670.

'Wo to all the Princes upon 'Earth, if this Doctrine be true, 'and becometh popular. If the 'Multitude believe this, the Prince not arm'd with 'the Scales of the *Leviathan*, that is, with irre-'ſiſtible Power, can never be ſafe from the Spears, 'and barbed Irons, which their Ambition and pre-'ſumed Intereſt will provide, and their Malice will 'ſharpen, and their paſſionate Violence throw a-'gainſt him. If the Beaſt we ſpoke of come but 'to know its own Strength, it will never be manag'd. 'Wherefore ſuch as own theſe pernicious Doctrines, 'deſtructive to all Societies of Men, may be ſaid 'to have Wolves Heads, as the Laws of old were 'wont to ſpeak concerning Excommunicated Per-'ſons; and are like thoſe Ravenous Beaſts, ſo far 'from deſerving our Love and Care, that they 'ought to be deſtroy'd at the common Charge. *Ibid. p.* 160, 161.

Mr. *Phipps.* My Lords, There is a further Ac-count of the Opinion of the ſame Archbiſhop of *Canterbury*, in a Printed Paper, entituled, *An Ac-count of what paſſed at the Execution of the late Duke of* Monmouth, *on* Wedneſday *the* 15*th of July*, 1685. on *Tower-Hill.*

Clerk reads.] 'The late Duke of *Monmouth* 'came from the *Tower* to the Scaffold, attended 'by the Biſhop of *Ely*, the Biſhop of *Bath* and '*Wells*, Doctor *Teniſon*, and Doctor *Hooper*; which 'four the King was graciouſly pleas'd to ſend him, 'as his Aſſiſtants to prepare him for Death; and 'the late Duke himſelf intreated all four of them 'to accompany him to the Place of Execution, and 'to continue with him to the laſt. The two Biſhops 'going in the Lieutenant's Coach with him to the 'Bars, made ſeaſonable and devout Applications to 'him all the way; and one of them deſir'd him 'not to be ſurpriz'd, if they to the very laſt upon 'the Scaffold renew'd thoſe Exhortations to a par-'ticular Repentance, which they had ſo often re-'peated before.

'At his firſt coming upon the Scaffold, he look'd 'for the Executioner; and ſeeing him, ſaid, *Is this 'the Man to do the Buſineſs? Do your Work 'well.*

'Then the late Duke of *Monmouth* began to 'ſpeak, ſome one or other of the Aſſiſtants, during 'the whole time, applying themſelves to him.

Mon. 'I ſhall ſay but very little; I come to die; 'I die a Proteſtant of the Church of *England*.

'*Aſſiſt.* My Lord, if you be of the Church of '*England*, you muſt acknowledge the Doctrine of 'Non-Reſiſtance to be true.

'*Mon.* If I acknowledge the Doctrine of the 'Church of *England* in general, that includes all.

''*Aſſiſt.* Sir, it is fit to own that Doctrine par-'ticularly, with reſpect to your Caſe. Here he was 'much urg'd about that Doctrine of Non-Reſiſtance; 'but he repeated in effect his firſt Anſwer.

'*Aſſiſt.* My Lord, it is fit to be particular; and 'conſidering the publick Evil you have done, you 'ought to do as much Good now as poſſibly you 'can, by a publick Acknowledgment.

'*Mon.* What I have thought fit to ſay of pub-'lick Affairs, is in a Paper which I have ſign'd; I 'refer to my Paper.

'*Aſſiſt.* My Lord, there is nothing in that Paper 'about Reſiſtance, and you ought to be particular 'in your Repentance, and to have it well-grounded. 'God give you true Repentance.

'*Mon.* I die very penitent, and die with great 'Chearfulneſs, for I know I ſhall go to God.

'*Aſſiſt.* My Lord, you muſt go to God in his 'own way: Sir, be ſure you be truly penitent, and 'aſk Forgiveneſs of God for the many you have 'wronged.

'*Mon.* I am ſorry for every one I have wronged; 'I forgive every body; I have had many Enemies, 'I forgive them all.

'*Aſſiſt.* Sir, your Acknowledgment ought be 'publick and particular.

'*Mon.* I am to die; pray, my Lord---- I refer 'to my Paper.

'*Aſſiſt.* They are but a few Words that we deſire: 'We only deſire an Anſwer to this Point.

'*Mon.* I can bleſs God that he hath given me ſo 'much Grace, that for theſe two Years laſt paſt I 'have led a Life unlike to my former Courſe, and 'in which I have been happy.

'*Aſſiſt.* Sir, Was there no Ill in theſe two Years? 'In theſe Years theſe great Evils have happen'd; 'and the giving publick Satisfaction is a neceſſary 'Part of Repentance; be pleaſed to own a Deteſta-'tion of your Rebellion.

'*Mon.* I beg your Lordſhips that you will ſtick 'to my Paper.

'*Aſſiſt.* My Lord, as I ſaid before, there is no-'thing in your Paper about the Doctrine of Non-'Reſiſtance.

'*Mon.* I repent of all things that a true Chriſtian 'ought to repent of. I am to die; pray, my 'Lord.------

'*Aſſiſt.* Then, my Lord, we can only recom-'mend you to the Mercy of God; but we cannot 'pray with that Chearfulneſs and Encouragement as 'we ſhould, if you had made a particular Acknow-'ledgment.

This is a true Account, Witneſs our Hands,

Francis Ely, *Thomas Teniſon*,
Thomas Bath and *Wells*. *George Hooper*.
William Goſtlin, } Sheriffs.
Peter Vandeput, }

Mr. *Phipps*. My Lords, We pray we may read the Sermon of his Grace the preſent Archbiſhop of *York*, preached before your Lordſhips on the 30th of *January*, 1700.

Clerk reads.] And in caſe it ever hap-'pen that we cannot with a ſafe Conſci- *Page* 13. 'ence obey, there we are patiently to 'ſuffer the Penalties of our Diſobedience; but by 'no means either to affront their Perſons, or to di-'ſturb their Government, by raiſing or partaking in 'any Tumult, or Inſurrection, or Rebellion.

'That there is ſuch a Submiſſion 'due from all Subjects to the Su- *Ibid.* p. 19, 20. 'preme Authority of the Place 'where they live, as ſhall tie up their Hands from 'oppoſing or reſiſting it by Force, is evident from 'the very Nature and Ends of Political Society. 'And I dare ſay, there is not that Country upon 'Earth, let the Form of their Government be what 'it will (Abſolute Monarchy, Legal Monarchy, Ari-'ſtocracy, or Commonwealth) where this is not a 'Part of the Conſtitution. Subjects muſt obey 'Paſſively, where they cannot obey Actively: Other-'wiſe the Government would be precarious, and the 'Publick Peace at the Mercy of every Malecontent, 'and a Door would be ſet open to all the Inſur-'rections, Rebellions and Treaſons in the World. 'Nor is this only a State-Doctrine, but the Do-'ctrine alſo of Jeſus Chriſt, and that a neceſſary, 'indiſpenſible one too; as ſufficiently appears from 'thoſe famous Words of St. *Paul*, *Rom.* 13. 1, 2. 'which are ſo plain, that they need no Comment: '*Let every Soul* (ſaith he) *be ſubject to the higher 'Powers, for there is no Power but of God, and the 'Powers that be are ordained of God; whoſoever 'therefore reſiſteth the Power, reſiſteth the Ordinance 'of God; and they that reſiſt ſhall receive to them-'ſelves Damnation.* So that ſo long as this Text 'ſtands in our Bibles, the Doctrine of Non-Re-'ſiſtance and Paſſive-Obedience muſt be of Obliga-'tion to all Chriſtians.

Mr. *Dodd.* Pray ſee whether there is any thing purporting the Thanks of the Houſe to be given to the Archbiſhop for his Sermon.

'*Clerk Reads.*] *Die Jovis*, 1 *Februarii*, 1699. 'It is ordered by the Lords Spiritual and Temporal 'in Parliament Aſſembled, That the Thanks of this 'Houſe be and are hereby given to his Grace the 'Lord Archbiſhop of *York*, for his Sermon preached 'before this Houſe the Thirtieth of *January* laſt; 'and he is hereby deſired to Print and Publiſh the 'ſame. *Matth. Johnſon*, Cl' Parliamentor'.

Mr. *Walpole*. My Lords, I preſume the Council have offered all they think proper to offer out of this Sermon: But that your Lordſhips may have a Specimen of the Candor of the Doctor's Quotations, I pray the Clerk may read the two next Paragraphs of that Sermon, and that he may read them as diſtinctly as he did the others.

'*Clerk Reads.*] But then, after I have 'ſaid this, Care muſt be taken, that this *Fol.* 20. 'general Doctrine be not miſapplied in 'particular Countries. Tho' Non-Reſiſtance, or 'Paſſive-Obedience, be a Duty to all Subjects, and 'under all Governments; yet it is not expreſſed the 'ſame way in all Places, but both the Objects and 'the Inſtances of it do vary in different Nations, 'according to the different Models of their Govern-'ment.

'To ſpeak this as plainly as I can: As the Laws 'of the Land are the Meaſures of our active Obe-'dience, ſo are alſo the ſame Laws the Meaſures of 'our Submiſſion; and as we are not bound to obey, 'but where the Laws and Conſtitution require our

'Obedience, ſo neither are we bound to ſubmit, 'but as the Laws and Conſtitution do require our 'Submiſſion.

Mr. *Walpole.* Before we part with that Sermon, I deſire one Paragraph more may be read; it begins with theſe Words, *If indeed a Preacher.*

Clerk reads.] 'If indeed a Preacher ſhould in the Pulpit preſume to 'give his Judgment about the Management of publick Affairs, or to lay down Doctrines 'as from Chriſt about the Forms and Models of 'Kingdoms or Commonwealths, or to adjuſt the 'Limits of the Prerogative of the Prince, or of the 'Liberties of the Subject in our preſent Government; I ſay, if a Divine ſhould meddle with 'ſuch matters as theſe in his Sermons, I do not 'know how he can be excuſed from the juſt Cenſure of meddling with things that nothing concern 'him: This is indeed a *practiſing* in *State Matters*, 'and is uſurping an Office that belongs to another '*Profeſſion*, and to Men of another *Character*; and 'I ſhould account it every whit as undecent in a 'Clergyman to take upon him to deal in theſe 'Points, as it would be for him to determine *Titles* 'of *Land* in the *Pulpit*, which are in diſpute in '*Weſtminſter-Hall.*

Fol. 6.

Mr. *Phipps.* My Lords, If your Lordſhips pleaſe, as to the two Paragraphs read next after what we read, we entirely concur in what is laid down in them; and if we ſhew that this Doctrine is agreeable to the Laws of the Land, then it is agreeable to what is there laid down: As to the other part, if he has taken upon him to treat of the Model of Government, he will be under the Cenſure of the Archbiſhop; but we deſire to read a little before the beginning of that Paragraph.

Clerk reads.] 'Titus 3. 1. *Put them in mind to 'be ſubject to Principalities and Powers, to obey 'Magiſtrates.*

'You all know what kind of Argument this *Day* 'calls for: For by the deſign of keeping it, the buſineſs that the *Preacher* hath to do, is to preſs '*Obedience* and *Subjection* to the Government we 'live under; and to preach againſt *Faction*, and *Rebellion*; and accordingly it is preſcrib'd, in the '*Rubrick* of this *Day's Service*, that if there be a '*Sermon* at all, and not a *Homily*, it ſhall be upon 'this Argument.

'It is very well that *Authority* hath taken care 'that at ſome ſolemn Times we ſhould *preach* upon 'this Subject in a more ſolemn manner; becauſe, 'tho' it be as needful as any, yet there are ſome 'among us think it a very improper *Theme* for the '*Pulpit*. I muſt confeſs I had an Eye to this Sug'geſtion when I pitch'd upon theſe Words which 'I have now read to you: Becauſe I think there 'is ſomething to be obſerved in them which will 'effectually confute it.

'St. *Paul* here lays his Charge upon *Titus*, that 'he ſhould put the People that were under his 'Care *in mind, to be ſubject to Principalities and 'Powers, and to obey Magiſtrates.*

'Two things I would here conſider, *Firſt*, the *Per'ſon* that is order'd thus to *put* the People *in mind:* 'And *Secondly*, the *Thing* that he is to put them 'in mind of, which is *Subjection* and *Obedience* to '*Principalities*, and *Powers*, and *Magiſtrates.*

'I begin with the firſt thing, the *Perſon* to 'whom St. *Paul* writes this *Epiſtle*, and to whom 'he gives it in charge, that he ſhould *put the People in mind to be ſubject.*

'Who was this *Perſon?* Why, it was *Titus*, an 'Eccleſiaſtick, Biſhop, a Preacher of the Goſpel, 'not a *Layman*, not a *Magiſtrate*, but a pure '*Churchman.* What can be more plainly gather'd 'from hence than this, That it is not Foreign to 'a Clergyman's Office to preach *Obedience* and *Sub'jection* to the Government; but on the contrary 'a part of his Function, a neceſſary Duty incum'bent upon him to do it? If any Man affirm otherwiſe, he muſt either ſay that St. *Paul* did not 'rightly inſtruct *Titus* in his Office, but enjoin'd 'him to do that which he had nothing to do 'with; or he muſt ſhew that the Caſe of *Titus* 'was different from that of the Miniſters of the 'Goſpel at this Day: Neither of which things can, 'I believe, be eaſily made out.

'And yet into ſuch Times are we fallen, that it is 'taken ill by many, that Miniſters ſhould in their 'Pulpit-Diſcourſes meddle with theſe Matters: I 'muſt confeſs, I think, that of all Men it moſt 'concerns a Miniſter of Religion not to be a *Buſy-Body*, or a Meddler in other Men's matters; for, 'in Truth, he hath Work enough to do of his own, 'and ſuch kind of Work too, as, let him behave 'himſelf as inoffenſively as he can, will create him 'Difficulties and Enemies enow. And therefore 'it would be very imprudent in him to uſurp other 'Mens Provinces, and to *burn* his *Finger* where he 'needs not, eſpecially conſidering that the Succeſs 'of his Labours and Endeavours among the People 'doth in a great Meaſure depend upon the good 'liking they have of him.

'But what is it that gives Offence? Or what is 'it that renders this Argument we are ſpeaking of 'ſo improper a Subjects for a Clergyman to treat 'of? Why, ſeveral things are pretended, and I ſhall 'name ſome of them.

Firſt, It is ſaid, That the Work of a Clergyman 'is to inſtruct Men in Chriſt's Religion, to preach 'againſt *Vice* and *Sin*, and to preach up *Holineſs* 'and *Good Life*, and mutual *Love* and *Charity*; 'but what hath he to do with *State-Affairs*, as 'Matters of Government are?

'I anſwer, He hath nothing indeed to do with 'them: But his only Work is to make Men good 'Chriſtians, by endeavouring to poſſeſs them with 'a hearty Belief of our Saviour's Doctrines and Promiſes, and perſuading them to a Conformity in 'their Lives to his Precepts. This is our proper 'Work, and this is that we ought to attend to all 'the days of our Life; and with *Government* and '*State-Affairs* we ought not to meddle, in our *Ser'mons* eſpecially.

'But then, after all this, it doth not follow but 'that we are all bound, as we have Occaſion, to 'preach up *Loyalty*, and *Obedience* to our *Gover'nors*; for this is no *State-Affair*, but an *Affair* of 'the *Goſpel.* We cannot inſtruct Men in Chriſt's 'Religion, without inſtructing them in this.

'If, indeed, it was an indifferent thing to a 'Man's Chriſtianity, or to his Salvation, whether 'he was a *good* or a *bad* Subject, then indeed it 'would be as indifferent to a Preacher, whether 'he inſiſted on theſe things to the People; but it 'is not ſo.

'One great Branch of Chriſtian Holineſs, as it 'is declar'd in the *New Teſtament*, is, That every 'Man demean himſelf quietly, and peaceably, and 'obediently to the Government he lives under; and 'that not only for *Wrath*, or Fear of Puniſhment, 'but alſo for *Conſcience-ſake*: And this is made as

'neceſſary

'neceſſary a Condition of going to Heaven, as any 'other particular Virtue is. And therefore, if we 'will inſtruct Men in Chriſt's Religion, and in the 'indiſpenſable Points of Holineſs requir'd thereby, 'we muſt inſtruct them in this alſo.

'One great *Vice* and *damnable Sin* that the Reli-'gion of our Lord has caution'd againſt, is the Sin 'of *Factiouſneſs* and *Rebellion*; and therefore if it 'be our Duty to declare againſt the Sins and Vices 'that are contrary to Chriſtianity, it is our Duty to 'declare and caution againſt this alſo.

'*Laſtly*, We do readily grant that a great Part of 'our Office conſiſts in moſt affectionately recom-'mending and preſſing the Neceſſity of *mutual* 'Love and *Charity*; but if this be neceſſary, is it 'not more ſo to recommend and preſs *Obedience* to '*Authority*, without which, *mutual Love* and *Cha-'rity* cannot poſſibly ſubſiſt? That being the com-'mon Ligament of them; and take away that, we 'ſhould be no better than *Bears* and *Tygers* one to 'another.

'But it is ſaid in the *Second* place, That Preach-'ers ought not to meddle with theſe Points, be-'cauſe they are not competent Judges of them: 'They do not know the Meaſures and Limits of 'Loyalty and *Diſloyalty*, of being a *good* and a *bad* '*Subject*; theſe depending altogether upon the 'Conſtitution of the Government we live under, 'and the determining of them belongs to the Ci-'vil Courts, and not to their Profeſſion.

'To this I anſwer, That in all thoſe Inſtances 'wherein this Argument falls under the Cogni-'zance and Determination of *Parliaments*, or *Judges*, 'or *Lawyers*, we do not pretend to meddle with 'it; and if any Man do, let him anſwer for him-'ſelf: All that we pretend to, is to preſs the plain, 'general, indiſpenſible Duties of *Obedience* to *Laws*, 'and of *Peaceableneſs* and *Subjection* to the *Higher* '*Powers*, which Chriſt and his Apoſtes have every 'where taught in the Bible.

Mr. *Phipps*. My Lords, We don't deſire to read any more; we think we have juſtified our Quotations, and ſhew'd that it is the Opinion of that Great and Learned Archbiſhop, That the Doctrine of Paſſive Obedience and Non-Reſiſtance is the Doctrine of our Church; and that it is a Duty incumbent upon the Clergy to preach it to the People.

Mr. *Dodd*. The next we offer to your Lordſhips, is the Opinion of the preſent Biſhop of *Worceſter*, in a Sermon preach'd before the late Queen the 29th of *May* 1692. when he was Biſhop of *St. Aſaph*.

Clerk reads.] 'They had brought
Pag. 18,19. 'Things to that paſs, that our Laws 'ſignify'd nothing but what they 'pleas'd; our Religion was held at the Courteſy of 'them that were the bloody Enemies of it. Our 'Obedience was made uſe of as a perfect Snare to 'us; we muſt not reſiſt; that our Religion would 'not allow. —— It was God that infatuated our 'Oppreſſors, to join the Injuries of a People that 'could not lawfully Reſiſt, with thoſe of a Prince 'that could not lawfully paſs them by without Re-'ſiſtance.

Mr. *Phipps*. We ſhall now offer to your Lordſhips a Sermon preach'd by the Biſhop of *Rocheſter* before the *Artillery-Company*, upon the 29th of *May*, 1692.

Clerk Reads.] '*Put up thy Sword*,
Pag. 5. 'ſays he; O *Peter*, ſubmit with Pa-'tience. Oppoſe not Authority. Do 'not then break the Laws of thy Country, tho' for 'Kindneſs and Love of me. *Put up thy Sword.* He 'that uſes the Sword unlawfully, tho' on a Pretence 'never ſo pious, *ſhall periſh by the Sword*; ſhall 'either be deſtroy'd by it here, or puniſh'd here-'after by God himſelf for having ſo us'd it.

'Wherefore we are not to conclude, that our 'Bleſſed Lord by this Check given to St. *Peter* 'did abſolutely prohibit all manner of uſing the 'Sword among Chriſtians, but only that he taught 'us the great Duty of Chriſtian Submiſſion. For if 'St. *Peter* was, then certainly all other Chriſtian 'Subjects are forbidden to unſheath the Sword 'againſt their Lawful Sovereign, or his Miniſters, 'as they are commiſſion'd by him, tho' they do it 'on a Pretext ſo Spiritual, as the Cauſe of Chriſt 'himſelf.

'Tho' they could not be induc'd
'by Fear or Favour to rank their Prin- *Ib.* 25, 26.
'ces equal with their God, yet 'they preſerved them in the next Place: Tho' they 'would never worſhip them as Gods upon Earth, 'yet they religiouſly obey'd them as God's Depu-'ties and Repreſentatives. They judg'd thoſe who 'rebell'd againſt them worthy of Death, as if they 'had actually rebell'd againſt God himſelf. What 'elſe means St. *Paul*, when in ſo many Words he 'declares, *That whoſoever reſiſteth the Power, reſiſt-'eth the Ordinance of God*; *and they that reſiſt ſhall 'receive to themſelves Damnation?* Rom. 13. 2. 'Out of all doubt he there ſpeaks of the Tempo-'ral Power, and of Eternal Damnation to enſue up-'on reſiſting it; than which, what more grievous 'Puniſhment could have been inflicted, had they 'immediately reſiſted God himſelf?

'And recollect, I intreat you, the Time when 'this was ſo poſitively pronounc'd by St. *Paul*. It 'muſt have been writ under the Reign of *Claudius* 'or *Nero*. So that 'tis evident, all that reſiſted 'them were, without Repentance, in a damnable 'State. Can there be then any Colour ſo ſpecious, 'any Cauſe ſo juſt, in which, inſtead of Damnati-'on, a Chriſtian Subject may juſtly expect to re-'ceive to himſelf Salvation, on the Account of 'Reſiſting?

Mr. *Phipps*. We ſhall next offer to your Lordſhips Conſideration the Authority of the Lord Biſhop of *Sarum*; where he ſhews, that this is not only the Doctrine of the Church of *England*, but of the Church of *Scotland*, and of all Chriſtian Churches.

Clerk Reads.] *A Vindication of the Authority, Conſtitution, and Laws of the Church and State of* Scotland, *&c. By* Gilbert Burnet.

'But theſe Words of St. *Paul*, be- *Printed at*
'ing as at firſt addreſs'd to the Ro- Glaſgow,
'*mans*, ſo alſo deſign'd by the Holy 1673. *Pag.*
'Ghoſt to be a part of the Rule of 41, 42.
'all Chriſtians, do prove, that who-'ever hath the Supreme Power, is to be ſubmitted 'to, and never reſiſted.

'*Iſot.* If you were not in too great a haſte, you 'would not be ſo forward; conſider therefore the 'Reaſon St. *Paul* gives for Submiſſion to Superior 'Rulers, is, *becauſe they are the Miniſters of God for 'good*. If then they ſwerve from this, they forſake 'the End for which they are raiſed up, and ſo fall 'from their Power and Right to our Obedience.

'*Bazil.* Truly what you have ſaid makes me 'not repent of any haſte I ſeemed to make; for 'what you have alledged proves indeed that the

'So-

'Sovereign is a Minister of God for good, so that 'he corrupts his Power grosly when he pursues not 'that Design: But in that he is only accountable to 'God, whose Minister he is. And this must hold 'good, except you give us good ground to believe, 'that God hath given Authority to the Subjects 'to call him to account for his Trust; but if that 'be not made appear, then he must be left to God, 'who did impower him, and therefore can only co-'erce him. As one having his Power from a 'King, is countable to none for the Administration 'of it, but to the King, or to those on whom the 'King shall devolve it: So except it be proved, 'that God hath warranted Subjects to call their So-'vereigns to account, they being his Ministers, must 'only be answerable to him. And according to 'these Principles of yours, the Magistrates Autho-'rity shall be so enervated, that he shall no more 'be able to serve these Designs, for which God hath 'vested him with Power: Every one being thus 'taught to shake off his Yoke when they think he 'acts in Prejudice of Religion. And here I shall 'add one thing, which all *Casuists* hold a safe Rule 'in matters that are doubtful, That we ought to 'follow that side of the Doubt which is freest of 'hazard. Here then Damnation is at least the seem-'ing hazard of Resistance; therefore except upon 'as clear Evidence you prove the danger of absolute 'Submission to be of the same Nature that it may 'balance the other, then absolute Submission, as 'being the securest, is to be followed.

Mr. *Phipps*. There is another Sermon, Preach'd by the Bishop of *Salisbury*, entitled, *Subjection for Conscience Sake asserted, in a Sermon preach'd at* Guildhall, 1689.

Clerk reads.] 'Blessed be God, our
Printed at London, *Pag.* 30. 'Church hates and condemns this Do-'ctrine from what Hand soever it 'comes, and hath establish'd the 'Rights and Authority of Princes, 'on sure and unalterable Foundations; enjoining an 'entire Obedience to all the lawful Commands of 'Authority, and an absolute Submission to that Su-'preme Power God hath put into our Sovereign's 'Hands. This Doctrine we justly glory in; and 'if any that had their Baptism, and Education in 'our Church, have turn'd Renegades from this, 'they prov'd no less Enemies to the Church her self, 'than to the Civil Authority: So that their Apo-'stacy leaves no Blame on our Church, which 'glories in nothing more than in a well-temper'd 'Reformation, from the later Corruption which 'the dark Ages brought into the Pure and Primi-'tive Doctrines which our Saviour and his Apo-'stles taught, and the first Christians retain'd, and 'practis'd for many Ages.

Mr. *Phipps*. My Lords, I only observe, That the absolute Submission to the Supreme Power, are the Words in the Doctor's Sermon.

Sir *Peter King*. My Lords, Before your Lord-ships go on to any other, I pray the 17th Page of the Book which they read, entitled, *The Vindicati-on of the Authority, Constitution and Laws of the Church and State of* Scotland, may be read.

'The Case varies very much when
Pag. 17. 'the Abuse is such that it tends to a 'total Subversion, which may be cal-'led justly *a Phrensy*, since no Man is capable of 'it 'till he be under some Lesion of his Mind; in 'which case, the Power is to be administred by 'others, for the Prince and his People's Safety: 'But this will never prove that a Magistrate go-'verning by Law, though there be great Errors in 'his Government, ought to be coerced: Other-'wise you must open a Door to perpetual Broils, 'since every one by these Maxims becomes Judge; 'and where he is both Judge and Party, is not 'like to be cast in his Pretensions; And even few 'Malefactors die, but they think hard measure is 'given them. If then forcible Self-defence be to be 'followed, none of these should yield up their 'Lives without using all Attempts for rescuing 'them.

Mr. *Dee*. My Lords, The next we offer is a Sermon preach'd by the Bishop of *Ely* before the Lord-Mayor and Aldermen at *Guildhall*, the 26th of *January* 1684.

Clerk reads.] 'The patient Chri-
Pag. 19. 'stian cannot but condemn those, who 'under the Pretence of defending their 'Rights or Religion, resist lawful Authority. It 'being a Blasphemy against the Divine Wisdom 'and Power, to suppose God can ever stand in need 'of our Sins to bring to pass his most glorious 'Designs. He then in whom this Virtue of Pati-'ence dwells, keeps a due Regard to the Commands 'laid upon him, to submit himself to the Supreme 'Powers; and he dares not lift up his Hand against 'the Lord's Anointed, or levy War upon the most 'plausible Account whatsoever; nay, to him it can-'not but seem a Wonder that the Doctrine of Re-'sistance should have gone down so glibly with any 'who have read the New Testament, and are baptiz'd 'into the Christian Faith.

'There is an universal absolute
Ib. P. 20, 21. 'Command in the Holy Scripture 'laid upon all Christians, to be sub-'ject to the Supreme Powers in all Cases. Now 'nothing is plainer, than than that if we be requi-'red to be subject in all Cases, Resistance in any 'will be sinful. *Let every Soul be subject to the* 'Higher Power; to which Christian Precept there 'is no Exception to be found for any Person, in any 'Instance, from one End of the Christian Instituti-'on to the other. —— Subjection is a Duty, than 'which there is hardly any other repeated in the 'Christian Law, so as we cannot plead Ignorance of it; 'it is press'd with such Evidence of Reason, that 'cuts off all Pretences of evading it; it is set down 'in such plain, easy, and full Expressions, as that 'there can be no Colour to doubt about the right 'Understanding of it. The Holy Scripture gives Per-'mission no more to the People collected into one 'Body to rebel, than it does to each of them, by 'himself singly considered. Every Christian, in all 'Circumstances, is requir'd to conform to the Laws 'of the Supreme Authority, if they have no 'Repugnancy to God's Laws, and to suffer patient-'ly where Obedience would be a Sin.

Mr. *Dee*. My Lords, The next we beg leave to offer, is a Sermon of the Bishop of *Bath* and *Wells*, preach'd before the King at *Whitehall* the 5th of *November* 1681.

Clerk reads.] 'Is he not the Vice-
Pag. 11. 'gerent of God? Whereever therefore 'his Sovereign the Almighty has not 'prevented him by any precedent Commands, there 'he has a Right and Liberty to put forth his; in 'these Cases to expect an active chearful Obedience, 'and that we should in no Case, and for no Reason 'resist.

'The

Ib. Pag. 19. ‘ The Church, of which we have ‘ the Bleſſing to be Members, where ſhe can't obey, ‘ is ready to endure, expecting her Reward in Hea- ‘ ven. Not ignorant how much ſhe ſuffers now ‘ from the Contradiction of diſloyal Men, for the ‘ Truth of this Doctrine, and how much (for its ‘ Meekneſs) ſhe ſtands expoſed to future Perſecu- ‘ tion.

Mr. *Dee.* The next we offer to your Lordſhips, is a Sermon preach'd by the Biſhop of *Lincoln* before your Lordſhips, on the 30th of *January*, 1708. which was publiſh'd by your Lordſhips Commands.

Clerk reads.] ‘ *Die Sabbati*, 31 *Januarii*, 1708. ‘ Ordered by the Lords Spiritual and Tempo- ‘ ral in Parliament aſſembled, That the Thanks ‘ of this Houſe be, and are hereby given to ‘ the Lord Biſhop of *Lincoln*, for his Sermon ‘ preach'd before this Houſe yeſterday, in the ‘ Abby-Church in *Weſtminſter*; and that he ‘ be deſired to Print and Publiſh the ſame.

Matth. Johnſon, Cler' Parliamentor'.

Pag. 15, 16, 17, 18. ‘ And if neither the *Ma- ‘ lice* of the *Jews*, nor the *Innocence* of our *Lord*; ‘ if neither the *Truth* of our *Religion* perſecuted in ‘ its *Founder*, nor the apparent Marks of *Malice* ‘ and *Envy*, of *Violence* and *Oppreſſion*, which ap- ‘ peared in the whole Courſe of their Proſecution ‘ of Him; were ſufficient to warrant St. *Peter* to ‘ *draw the Sword* in his *Defence*, againſt that *Legal* ‘ *Authority* by which they acted; We muſt con- ‘ clude, that neither will any of theſe Pretences ‘ ſuffice to juſtify any other Chriſtians, in the like ‘ Circumſtances, now. But if it ſhall pleaſe God ‘ at any time to permit the *Lawful Powers* to be ‘ againſt Us, and make them that hate us, to rule ‘ over us; We muſt follow the Example of our ‘ Bleſſed *Maſter*, and ſubmit patiently to their *Au- ‘ thority*; and not, with this warm *Apoſtle*, *take ‘ the Sword againſt thoſe, to whom God has commit- ‘ ted the Power of the Sword.*

‘ Let this then ſuffice to ſhew, what the true ‘ Chriſtian Doctrine, of *Submiſſion* to the *Civil Ma- ‘ giſtrate*, is. I ſhall not here enquire, whether ‘ ſome may not poſſibly have miſapplied theſe ‘ *Principles*, or have ſtretched them further than ‘ they ought to have done, and by that means have ‘ led both themſelves and others into great Mi- ‘ ſtakes, and no leſs Inconveniencies. What that ‘ *Authority* in every *State* or *Country* is, to which ‘ ſuch a *Subjection* (as I have now been ſpeaking ‘ of) is due, and againſt which no *Reſiſtance* (no ‘ not to defend the *Beſt Cauſe*, or the moſt *Inno- ‘ cent Perſon* in the World) may be uſed by *any* ‘ of *the Community*, is a Point which the Munici- ‘ pal Laws and Conſtitution of every *State* and ‘ *Country* muſt determine: But that whereever that ‘ *Supreme Power* and *Authority* is lodged, or in ‘ whomſoever it reſides, to which God has com- ‘ manded us to be *ſubject*, *not only for Wrath*, ‘ *but* alſo *for Conſcience ſake*; concerning which ‘ St. *Paul* has laid down this Rule, *Let every Soul ‘ be ſubject to the Higher Powers*; and St. *Peter* ‘ himſelf declar'd, that we muſt *ſubmit to it for ‘ the Lord's Sake*: We are bound to pay either an ‘ Active, or Paſſive Obedience to it; muſt either ‘ do what it requires, or ſuffer what it inflicts: ‘ This is without Controverſy the ſtanding *Doctrine ‘ of Chriſtianity*, and has been confirm'd by the ‘ *Practice* of the *beſt Chriſtians* in all Ages of the ‘ *Church*.

‘ Which being ſo, let us go on finally (upon ‘ theſe Principles) to conſider,

‘ III. What we are to judge of Thoſe, who, ‘ notwithſtanding ſo plain an Admonition, not on- ‘ ly *took the Sword*, (tho' that had been too much) ‘ but *cut off* with it that *Royal Perſon*, who alone ‘ had the *Rightful Power* of it.

‘ And here I cannot follow either a plainer or ‘ ſurer Guide, than our *Laws* themſelves, which ‘ ſpeak not only with *Authority*, but *Approbation* ‘ too; and tell us, in effect, what the *Senſe* of the ‘ whole *Nation* is, or at leaſt ought to be, both of ‘ *Them* and their *Proceedings*. The *Fact* it ſelf ‘ they call a *Horrid*, *Execrable*, *Deteſtable Mur- ‘ der*; an *impious Fact*, an *unparallel'd Treaſon*: ‘ The *Court*, which decreed it, a *Traiterous Aſ- ‘ ſembly*, a *prodigious* and *unheard-of Tribunal*. ‘ The *Perſons* who thus unwarrantably drew the ‘ *Sword* againſt their own Sovereign, they brand as ‘ a Parcel of *wretched Men*, *deſperately wicked*, ‘ *hardned in their Impiety*. And laſtly, As to the ‘ Principles upon which they proceeded, the ſame ‘ *Laws* declare, " That *by the Undoubted and Fun- " damental Laws of this Kingdom, neither the* Peers " *of this Realm, nor the* Commons, *nor* both *toge- " ther, in* Parliament, *or out of* Parliament, Colle- " ctively *or* Repreſentatively, *nor any* other Perſons " *whatſoever, ever had, have, hath, or ought to* " *have*, any Coercive Power *over the* Perſons *of the* " Kings *of this Realm.*

Clerk reads on by Direction of the Managers.

‘ Such is the Cenſure which our Laws have paſ- ‘ ſed upon the Murder of our Royal Sovereign, and ‘ the Perſons who committed it: And the ſame is ‘ the Senſe which both the Word of God, and the ‘ Laws of all other Nations, teach us to have of ‘ both.

‘ For to allow that ſome Things had been done ‘ under the Authority of that Unfortunate Prince ‘ leſs regularly than were to have been wiſhed; That ‘ the Prerogative had been ſtrained to an Exorbi- ‘ tant Height, and the Subject too much provoked ‘ to complain, if not of the King himſelf, yet of ‘ thoſe who were about him, and ſhould have ad- ‘ viſed, and acted more moderately than they did. ‘ To grant that when the Parliament met, with ‘ which our Troubles began, it was excuſable, or ‘ even fitting for it to have redreſſed thoſe Grie- ‘ vances, and reduced the Prerogative within its ‘ juſt Bounds; and that thoſe therefore who en- ‘ tred upon the proper Methods of doing this in a ‘ Parliamentary way, without any ill Deſigns, ei- ‘ ther againſt the Perſon or Government of the ‘ King, were not to be blamed. Yet certainly, when ‘ this was done, and thereupon ſuch Acts were paſ- ‘ ſed, as not only abundantly repaired whatever the ‘ Subject had ſuffered before, but ſufficiently ſecu- ‘ red him againſt any more Invaſions, either of his ‘ Liberty or Property, for the Time to come; for ‘ Men to proceed farther ſtill, and without any ‘ lawful Authority, or evident Neceſſity, enter into ‘ a War againſt their Sovereign, who had ſo far ‘ condeſcended to all their juſt Deſires, muſt needs ‘ have been as illegal as it was unreaſonable, and be- ‘ ſpeak thoſe who did it, to have taken the Sword ‘ in that Senſe which our Saviour here forbad, and ‘ all good Men have ever condemned.

‘ Had that Excellent Prince indeed never called ‘ his laſt Parliament at all, nor given any Opportu- ‘ nity to his People to redreſs their Grievances by

‘ the

'the proper Methods of it; had he not only continued to inſiſt upon thoſe Pretenſions which ſome 'had ſet up under the Shelter of his Authority, but 'ſo far improved them as utterly to ſet aſide the 'Laws of the Realm, and to act arbitrarily, not 'only without Law, but againſt it; and when no-'thing elſe would do, had he choſen rather to de-'ſert the Government, than to rule according to 'his own Oath, and the Fundamental Laws and 'Limitations of it; this might have warranted an 'oppreſſed People to take the Sword for the neceſ-'ſary Defence of their Laws and Conſtitution, and 'their Religion and Liberties founded thereupon. 'But to take up Arms againſt a King, whoſe Ex-'ceſſes had been moderate, and whoſe Neceſſities 'preſſed him, contrary to his own Inclinations, to 'run into the moſt of them; but eſpecially, who had 'already, without Force, not only freely redreſſed 'the Grievances of his People, but abundantly re-'paired them, and ſecured them againſt the like 'Attempts for the future: This muſt needs have 'been an unwarrantable Enterprize; a War as un-'juſtifiable in its Riſe, as it proved fatal in its Con-'ſequences.

Mr. *Dodd.* The next we ſhall offer to your Lordſhips, is the Biſhop of *Exeter*'s Sermon preach'd before Her Majeſty, on Her Majeſty's Acceſſion to the Throne.

Clerk reads.] *Pag.* 13, 14. 'Nay, tho' the 'Laws of our Earthly Governors ſhould in ſome 'Inſtances be contrary to the Divine Laws, (upon 'which Suppoſition the Magiſtrate does certainly 'exceed the Bounds of his Commiſſion) yet this 'does not void their Authority, they are the Mini-'ſters of God for all this; or elſe there were none 'that were ſo, there were none that could be call'd 'ſo, when the Apoſtle wrote this Epiſtle: And 'there is a Duty lying on Subjects even in this 'Caſe, *viz.* not to oppoſe, nor reſiſt the Power, 'but quietly and patiently to ſuffer the Penalty of 'thoſe Laws, which they can't, without ſinning 'againſt God, yield an active Obedience to.

Mr. *Dodd.* The next we ſhall offer to your Lordſhips, is the Biſhop of St. *Aſaph*'s Sermon, preach'd before the Lord-Mayor, on the Thirtieth of *January*, 1699.

Clerk reads.]

CHILD MAYOR.

Jovis nono Die Februarii, 1698. *Annoque Reg. Regis Willielmi Tertii, Angliæ, &c. decimo.*

'This Court doth deſire Mr. *Fleetwood* to Print 'his Sermon, preach'd at the Cathedral-'Church of St. *Paul*, the Thirtieth of *Janu-'ary* laſt, before the Lord-Mayor, Aldermen, 'and Citizens of this City.

Goodfellow.

Pag. 18. 'It is plain, that a Government can't 'poſſibly ſubſiſt for any Time, where any kind of 'Violence is allowed againſt the Magiſtrate. We 'ſee what wicked Work is made in ſome unhappy 'States, where private Executions of Revenge be-'twixt Particulars are indulg'd, or frequently con-'nived at. But Government is at an end, where '*Rulers* are expoſed to Popular Aſſaults.

Mr. *Phipps.* My Lords, We ſhall now produce a Sermon, preach'd by the Biſhop of *Carliſle* before your Lordſhips, upon the Thirtieth of *January*, 1702.

Clerk reads.] 'Die *Lunæ*, 1 *Februarii*, 1702. 'It is ordered by the Lords Spiritual and Tem-'poral, in Parliament aſſembled, That the 'Thanks of this Houſe ſhall be (and are here-'by) given to the Lord Biſhop of *Carliſle*, for 'his Sermon preach'd before this Houſe on 'the Thirtieth of *January* laſt, in the Abby-'Church at *Weſtminſter*: And he is hereby 'deſired to Print and Publiſh the ſame.

Matth. Johnſon, Cler' Parliamentor'.

Pag. 31. 'Our Foundations, 'tis to be hoped, 'are not ſhaken by the Weight of thoſe many 'great and extraordinary Revolutions that have 'paſs'd upon us. The All-wiſe Providence of God 'has frequently of late (and as ſome of us always 'thought, very graciouſly) exchanged our Gover-'nors: But if we ungratefully alter our Notions of 'the Divine Right of Government, and throw off 'our Ancient and Primitive Rules of Obedience, 'we ſhall make an unworthy Return for the Mer-'cies we have received.

Mr. *Phipps.* We beg Leave to offer to your Lordſhips Three Sermons, preach'd before the Houſe of Commons; one preach'd before them by Doctor *Eyre*, upon *January* 30. 1707.

Clerk reads.] 'Sabbat. 31 *Die Jan.* 1707. *Or-'dered*, That the Thanks of this Houſe be gi-'ven to Dr. *Eyre*, for the Excellent Sermon 'by him preach'd before this Houſe, at St. '*Margaret*'s *Weſtminſter*, Yeſterday, being 'the Day appointed for a Solemn Faſt and 'Humiliation, for the Murder of King *Charles* 'the Firſt: And that he be deſired to Print 'the ſame; and that Mr. *Bridges*, Mr. '*Chandler*, the Lord *William Powlett*, and 'Mr. *Eyre*, do acquaint him therewith.

Paul Joddrell, Cl. Dom. Com.

'Let no Seditious and Antimonarchical Princi-'ples be ſo much as once named among us, as be-'cometh good Subjects, and good Chriſtians: Let 'no ſly Inſinuations of Male-Adminiſtration be 'ſuggeſted, no new Doctrines advanced, nor any 'old ones revived, whereby to leſſen the Security 'of the Crown, under the ſpecious Pretence of 'maintaining the Rights and Liberties of the Peo-'ple.

Mr. *Dee.* The next is Dr. *Kennet*'s Sermon, preach'd before the Commons the 30th of *January*, 1705.

Clerk reads.] 'Jovis 31 *Die Januarii*, 1705. '*Ordered*, That the Thanks of this Houſe be 'given to Dr. *Kennet*, Archdeacon of *Hun-'tingdon*, for the Sermon by him preached 'before this Houſe yeſterday, at St. *Marga-'ret*'s *Weſtminſter*: And that he be deſired to 'Print the ſame. And that Sir *Thomas Little-'ton*, Mr. *Worſley*, and Mr. *King*, do acquaint 'him therewith.

Paul Joddrell, Cl. Dom. Com.

'This is the true Foundation of that common 'Axiom, *The King can do no wrong*; becauſe 'there is no Right nor Remedy againſt his Royal 'Perſon.

'It was declarative of our Original Conſtitution, 'that our Legiſlature, upon Occaſion of this Day, 'would have it expreſs'd, "That by the Undoubt-"ed and Fundamental Laws of this Kingdom, nei-"ther the Peers of this Realm, nor the Commons,

"nor

" nor both together, in Parliament, or out of Par-
" liament, nor the People Collectively, or Repre-
" ſentatively, nor any other Perſons whatſoever,
" ever had, have, or ought to have, any Coercive
" Power over the Perſons of the Kings of this
" Realm.

Mr. *Dee.* My Lords, The next is Dr. *Delaune*'s Sermon, preach'd before the Houſe of Commons, upon the 30th of *January*, 1702.

Clerk reads.] ' *Lunæ* 1 *die Feb.* 1702. *Order-*
' *ed*, That the Thanks of this Houſe be given
' to Dr. *Delaune*, Vice-Chancellor of the Uni-
' verſity of *Oxford*, for the Sermon by him
' preach'd before this Houſe on *Saturday* laſt,
' at St. *Margaret*'s *Weſtminſter* : And that he
' be deſired to Print the ſame. And that Mr.
' *Bridges*, Mr. *Bromley*, and Mr. *Rowney*, do
' acquaint him therewith.

Paul Jodrell, Cl. Dom. Com.

Pag. 10. ' The Civil Laws of a Country are in
' the Nature of Articles of Agreement between the
' Rulers and their Subjects; Duty and Obedi-
' ence are ſecur'd on one Hand, and on the other,
' Protection in Civil Rights. If the Subject breaks
' his Part of the Covenant, (as I may call it) his
' Puniſhment is at Hand; and if the Supreme Pow-
' er breaks his, his Puniſhment is no leſs certain,
' tho' more remote; for he is guilty before God,
' who is his Ruler, tho' it is impoſſible he ſhould
' be accountable for it in his own Dominions, for
' that would infer a Power Superior to the Supreme,
' which is a flat Contradiction.

Mr. *Dodd.* Your Lordſhips obſerve by all theſe Sermons, how generally this Point is laid down, without making any Exception; and yet I don't doubt, but that there is an Exception included in every one of theſe; yet it is always laid down in general Terms: And we deſire that the ſame Exception may be allowed to the Doctor, as is to all theſe: And if he has erred, he can only be ſaid, *Errare cum Patribus.*

Mr. *Phipps.* My Lords, We have thus far made good our Defence, That this is the Doctrine of the Church of *England*; That the Fathers of the Church have always avow'd it; That it has been preach'd in the ſame Terms in which the Doctor has preach'd it, ever ſince Her Majeſty's Acceſſion to the Throne, and no Objection has been made to it till now; and that it has been approv'd by both Houſes of Parliament, and by Her Majeſty. We will now proceed to ſhew, that it is confirm'd by ſeveral Acts of Parliament: The firſt is in the 12th of *Charles* II. C. 30.

Clerk reads.] ' And be it hereby declared, That
' by the Undoubted and Fundamental Laws of this
' Kingdom, neither the Peers of this Realm, nor
' the Commons, nor both together, in Parliament,
' or out of Parliament, nor the People Collectively
' or Repreſentatively, nor any other Perſons what-
' ſoever, ever had, have, hath, or ought to have,
' any Coercive Power over the Perſons of the Kings
' of this Realm.

Mr. *Dodd.* The next Act of Parliament we ſhall read to your Lordſhips, is the Corporation-Act, 13 *Car.* II. *Stat.* 2. §. 5.

Clerk reads.] ' *I* A. B. *do declare and believe,*
' *That it is not Lawful, upon any Pretence whatſo-*
' *ever, to take up Arms againſt the King; and that*
' *I do abhor that Traiterous Poſition, of taking Arms*
' *by his Authority againſt his Perſon, or againſt thoſe*
' *that are commiſſioned by him. So help me God.*

Mr. *Dodd.* This is a General Oath, to be taken by all the Officers of Corporations.

Sir *Joſ. Jekyll.* I can't but obſerve, my Lords, that it is a little extraordinary, the Doctor's Council ſhould open this Act of Parliament, and offer it to be read, and not inform your Lordſhips that it is repeal'd.

Mr. *Dodd.* My Lords, We did open it that it is repeal'd; but we did inſiſt, That as this Oath had been taken by all Officers of Corporations ſo many Years, ſo it was then a true Propoſition, and ſtill remains ſo, altho' it be repealed: That Repeal don't make the Propoſition falſe.

Mr. *Phipps.* We admit, my Lords, that in the Act for abrogating the Oaths, and appointing others, this Paragraph is omitted. But what we offer it for, is, to ſhew that this Doctrine has been ſworn to by moſt of the Great Men, and all the Great Officers of *England*, for ſo many Years together.

Mr. *Dodd.* My Lords, The next is the *Militia* Act, 13 & 14 *Car.* II. *Cap.* 3. We deſire to read the Preamble of that Act, and then the Oath appointed to be taken.

Clerk reads.] ' Foraſmuch as within all His
' Majeſty's Realms and Dominions, the Sole and
' Supreme Power, Government, Command and
' Diſpoſition of the *Militia*, and of all Forces
' by Sea and Land, and of all Forts and Places
' of Strength, is, and (by the Laws of *England*)
' ever was the undoubted Right of His Majeſty,
' and his Royal Predeceſſors, Kings and Queen of
' *England*; And that both, or either of the Houſes
' of Parliament, cannot, nor ought to pretend to
' the ſame; nor can, nor lawfully may, raiſe or
' levy any War, Offenſive or Defenſive, againſt His
' Majeſty, his Heirs, or Lawful Succeſſors: And
' yet the contrary thereof hath of late Years been
' practiſed, almoſt to the Ruin and Deſtruction of
' this Kingdom: And during the late Uſurped Go-
' vernments, many evil and rebellious Principles
' have been inſtilled into the Minds of the People
' of this Kingdom, which may break forth, unleſs
' prevented, to the Diſturbance of the Peace and
' Quiet thereof.

' §. 18. *I* A. B. *do declare and believe, That it*
' *is not lawful, upon any Pretence whatſoever, to*
' *take up Arms againſt the King: And that I do ab-*
' *hor that Traiterous Poſition, That Arms may be*
' *taken by his Authority againſt his Perſon, or againſt*
' *thoſe that are commiſſioned by him, in Purſuance*
' *of ſuch Military Commiſſions. So help me God.*

Mr. *Dee.* My Lords, The next is the Act of Uniformity, 13 & 14 *Car.* II. *Cap.* 4.

Clerk reads.] ' And be it further enacted by the
' Authority aforeſaid, That every Dean, Canon,
' and Prebendary of every Cathedral or Collegiate
' Church, and all Maſters and other Heads, Fel-
' lows, Chaplains, and Tutors of or in any College,
' Hall, Houſe of Learning, Hoſpital, and every
' Publick Profeſſor and Reader in either of the Uni-
' verſities, and in every College elſewhere, and eve-
' ry Parſon, Vicar, Curate, Lecturer, and every
' other Perſon in Holy Orders, and every School-
' maſter keeping any publick or private School, and
' every Perſon inſtructing or teaching any Youth in
' any Houſe or private Family as a Schoolmaſter,
' who upon the firſt Day of *May*, which ſhall be
' in the Year of our Lord God, 1662. or at any

'Time thereafter, ſhall be incumbent, or have Poſſeſſion of any Deanery, Canonry, Prebend, Maſterſhip, Headſhip, Fellowſhip, Profeſſor's Place, or Reader's Place, Parſonage, Vicarage, or any other Eccleſiaſtical Dignity or Promotion, or any Curate's Place, Lecture or School, or ſhall inſtruct or teach any Youth as Tutor or Schoolmaſter, ſhall before the Feaſt-Day of St. *Bartholomew*, which ſhall be in the Year of our Lord, 1662. or at or before his or their reſpective Admiſſion to be Incumbent, or have Poſſeſſion aforeſaid, ſubſcribe the Declaration or Acknowledgment following; (*ſcilicet*,)

'I A. B. *do declare, That it is not lawful, upon any Pretence whatſoever, to take Arms againſt the King; and that I do abhor that Traiterous Poſition, of taking Arms by his Authority againſt his Perſon, or againſt thoſe that are commiſſioned by him: And that I will Conform to the Liturgy of the Church of* England, *as it is now by Law Eſtabliſhed. And I do declare, That I hold there lies no Obligation upon me, or any other Perſon, from the Oath commonly call'd* The Solemn League and Covenant, *to endeavour any Change or Alteration of Government either in Church or State; and that the ſame was in it ſelf an unlawful Oath, and impoſed upon the Subjects of this Realm, againſt the known Laws and Liberties of this Kingdom.*

Mr. *Phipps*. The Reaſon of our Reading this, is to let your Lordſhips ſee, what Obligations were on all Clergymen to Subſcribe this Declaration; and then we ſubmit it to your Lordſhips Judgment, whether the Doctor is Criminal for Preaching that which all Parſons were (before that Act was repealed) obliged to Subſcribe, in order to qualify themſelves for Preaching. And I beg Leave juſt to obſerve to your Lordſhips, That by 16 *Car.* II. the Act for Select Veſtries, all Veſtrymen were obliged to Subſcribe the ſame Declaration.

Mr. *Dodd*. My Lords, There are Two other Acts, but I think we need not read them, becauſe they were ſo lately made: The one is for the Aſſociation, the other for the Abjuration, which is taken almoſt every Day in *Weſtminſter-Hall*.

Mr. *Phipps*. If your Lordſhips pleaſe, we ſhall offer nothing more on this Article, but only ſome Part of his late Majeſty's Declaration, to ſhew that there was ſome Reaſon for what the Doctor ſaid of his late Majeſty's diſclaiming all manner of Reſiſtance.

Sir *Joſeph Jekyll*. My Lords, I perceive they are going to read ſome Part of his late Majeſty's Declaration: We ſhould have offer'd ſome Part of that Declaration, as a Material Proof againſt the Doctor; but we would not produce any Papers as Evidence, which are not ſo; tho' we allow that to the Doctor. But ſince it is produced as Evidence for the Doctor, I deſire it may be read quite through.

Clerk reads.] '*The Declaration of his Highneſs, William Henry, by the Grace of God, Prince of* Orange, &c. *of the Reaſons inducing him to appear in Arms in the Kingdom of* England, *for preſerving of the Proteſtant Religion, and for reſtoring the Laws and Liberties of* England, Scotland, *and* Ireland.

1. 'IT is both certain and evident to all Men, That the Publick Peace and Happineſs of any State or Kingdom cannot be preſerved, where the Laws, Liberties, and Cuſtoms Eſtabliſh'd by the Lawful Authority in it, are openly tranſgreſſed and annulled: More eſpecially, where the Alteration of *Religion* is endeavoured, and that a *Religion* which is contrary to Law, is endeavoured to be introduced: Upon which thoſe who are moſt immediately concerned in it, are indiſpenſibly bound to endeavour to preſerve and maintain the Eſtabliſhed Laws, Liberties and Cuſtoms, and above all, the Religion and Worſhip of God that is eſtabliſhed among them; and to take ſuch an effectual Care, that the Inhabitants of the ſaid State or Kingdom, may neither be deprived of their Religion, nor of their Civil Rights. Which is ſo much the more neceſſary, becauſe the Greatneſs and Security, both of Kings, Royal Families, and of all ſuch as are in Authority, as well as the Happineſs of their Subjects and People, depend in a moſt eſpecial manner upon the exact Obſervation and Maintenance of theſe their Laws, Liberties and Cuſtoms.

'2. Upon theſe Grounds it is, that we cannot any longer forbear to declare, That to our great Regret, we ſee that thoſe Counſellors, who have now the Chief Credit with the King, have overturned the Religion, Laws and Liberties of thoſe Realms, and ſubjected them in all Things relating to their Conſciences, Liberties and Properties, to Arbitrary Government; and that not only by ſecret and indirect Ways, but in an open and undiſguized Manner.

'3. Thoſe Evil Counſellors, for the advancing and colouring this with ſome plauſible Pretexts, did invent and ſet on foot the King's *Diſpenſing Power*; by virtue of which, they pretend, that, according to Law, he can *ſuſpend* and *diſpenſe* with the Execution of the Laws that have been enacted by the Authority of the King and Parliament, for the Security and Happineſs of the Subject, and ſo have render'd thoſe Laws of no Effect: Tho' there is nothing more certain, than that as no Laws can be made, but by the joint Concurrence of King and Parliament; ſo likewiſe Laws ſo enacted, which ſecure the Publick Peace and Safety of the Nation, and the Lives and Liberties of every Subject in it, cannot be repealed or ſuſpended but by the ſame Authority.

'4. For tho' the King may pardon the Puniſhment that a Tranſgreſſor has incurred, and to which he is condemned, (as in the Caſes of *Treaſon* or *Felony*) yet it cannot be with any Colour of Reaſon inferred from thence, that the King can entirely ſuſpend the Execution of thoſe Laws relating to Treaſon or Felony; unleſs it is pretended, that he is cloathed with a Deſpotick and Arbitrary Power; and that the Lives, Liberties, Honours and Eſtates of the Subjects, depend wholly on his good Will and Pleaſure, and are entirely ſubject to him; which muſt infallibly follow, on the King's having a Power to *ſuſpend* the Execution of the Laws, and to *diſpenſe* with them.

'5. Thoſe Evil Counſellors, in order to the giving ſome Credit to this ſtrange and execrable Maxim, have ſo conducted the Matter, that they have obtained a Sentence from the Judges, declaring, That this *Diſpenſing Power* is a Right belonging to the *Crown*: As if it were in the Power of the Twelve Judges to offer up the Laws, Rights, and Liberties of the whole Nation to the King, to be diſpoſed of by him arbitrarily, and at his Pleaſure; and expreſly contrary to Laws enacted

'for

'for the Security of the Subjects. In order to the 'obtaining this Judgment, thoſe evil Counſellors 'did before-hand examine ſecretly the Opinion of 'the Judges, and procured ſuch of them as could not 'in Conſcience concur in ſo pernicious a Sentence, 'to be turned out, and others to be ſubſtituted in 'their rooms, 'till by the Changes which were made 'in the Courts of Judicature, they at laſt obtained 'that Judgment. And they have raiſed ſome to 'thoſe Truſts, who make open Profeſſion of the 'Popiſh Religion, tho' thoſe are by Law rendred 'incapable of all ſuch Employments.

'6. It is alſo manifeſt and notorious, That as his 'Majeſty was, upon his coming to the Crown, re-'ceiv'd and acknowledg'd by all the Subjects of '*England*, *Scotland*, and *Ireland*, as their *King*, 'without the leaſt Oppoſition, tho' he made then 'open Profeſſion of the *Popiſh Religion*; ſo he did 'then promiſe, and ſolemnly ſwear at his Corona-'tion, That he would maintain his Subjects in the 'free Enjoyment of their Laws and Liberties; and 'in particular, that he would maintain the *Church 'of England as it was eſtabliſhed by Law*. It is like-'wiſe certain, that there have been at divers and 'ſundry times ſeveral Laws enacted for the Preſer-'vation of thoſe Rights and Liberties, and of the 'Proteſtant Religion; and among other Securities, 'it has been enacted, That all Perſons whatſoever, 'that are advanced to any Eccleſiaſtical Dignity, or 'to bear Office in either Univerſity, as likewiſe all 'other that ſhould be put in any Employment, Civil 'or Military, ſhould declare that they were not 'Papiſts, but were of the Proteſtant Religion, and 'that by their taking of the Oaths of *Allegiance* and '*Supremacy*, and the *Teſt*; yet theſe Evil Coun-'ſellors have in effect annulled and aboliſhed all 'thoſe Laws, both with relation to Eccleſiaſtical 'and Civil Employments.

'7. In order to Eccleſiaſtical Dignities and Offices, 'they have not only without any Colour of Law, 'but againſt moſt expreſs Laws to the contrary, ſet 'up a Commiſſion, of a certain Number of Perſons, 'to whom they have committed the Cognizance 'and Direction of all Eccleſiaſtical Matters; in the 'which Commiſſion there has been, and ſtill is 'one of his Majeſty's Miniſters of State, who 'makes now publick Profeſſion of the Popiſh Reli-'gion, and who at the time of his firſt profeſſing 'it, declared that for a great while before he had 'believed that to be the only true Religion. By all 'this, the deplorable State to which the Proteſtant 'Religion is reduced, is apparent, ſince the Affairs 'of the Church of *England* are now put into the 'Hands of Perſons who have accepted of a Com-'miſſion that is manifeſtly illegal, and who have 'executed it contrary to all Law; and that now one 'of their chief Members has abjured the *Proteſtant 'Religion*, and declared himſelf a *Papiſt*; by which 'he is become uncapable of holding any publick 'Employment. The ſaid Commiſſioners have hi-'therto given ſuch Proof of their Submiſſion to the 'Directions given them, that there is no Reaſon to 'doubt, but they will ſtill continue to promote all 'ſuch Deſigns as will be moſt agreeable to them. 'And thoſe Evil Counſellors take Care to raiſe none 'to any Eccleſiaſtical Dignities, but Perſons that 'have no Zeal for the *Proteſtant Religion*, and that 'now hide their Unconcernedneſs for it, under the ſpe-'cious Pretence of *Moderation*. The ſaid Commiſſi-'oners have ſuſpended the Biſhop of *London*, only 'becauſe he refuſed to obey an Order that was ſent 'him to ſuſpend a worthy Divine, without ſo 'much as citing him before him to make his own 'Defence, or obſerving the common Forms of Pro-'ceſs. They have turned out a Preſident choſen by 'the Fellows of *Magdalen* College, and afterwards 'all the Fellows of that College, without ſo much 'as citing them before any Court that could take 'legal Cognizance of that Affair, or obtaining any 'Sentence againſt them by a competent Judge. 'And the only Reaſon that was given for turning 'them out, was their refuſing to chuſe for their 'Preſident, a Perſon that was recommended to them 'by the Inſtigation of thoſe Evil Counſellors; tho' 'the Right of a Free Election belonged undoubtedly 'to them. But they were turned out of their Free-'holds contrary to Law, and to that expreſs Provi-'ſion in the *Magna Charta*, *That no Man ſhall loſe 'Life or Goods, but by the Law of the Land*. And 'now theſe Evil Counſellors have put the ſaid Col-'lege wholly into the Hands of Papiſts, tho' as is 'aboveſaid, they are incapable of all ſuch Employ-'ments, both by the Law of the Land, and the 'Statutes of the College. Theſe Commiſſioners 'have alſo cited before them all the Chancellors and 'Arch-deacons of *England*, requiring them to certi-'fy to them the Names of all ſuch Clergymen as 'have read the King's Declaration for *Liberty of 'Conſcience*, and of ſuch as have not read it; with-'out conſidering that the reading of it was not en-'joined the Clergy by the Biſhops, who are their 'Ordinaries. The Illegality and Incompetency of 'the ſaid Court of the Eccleſiaſtical Commiſſio-'ners was ſo notoriouſly known, and it did ſo evi-'dently appear that it tended to the Subverſion of 'the *Proteſtant Religion*, that the moſt Reverend 'Father in God, *William* Archbiſhop of *Canterbury*, 'Primate and Metropolitan of all *England*, ſeeing 'that it was raiſed for no other End but to oppreſs 'ſuch Perſons as were of eminent Virtue, Learning 'and Piety, refuſed to ſit, or to concur in it.

'8. And tho' there are many expreſs Laws a-'gainſt all Churches or Chapels for the Exerciſe of 'the Popiſh Religion, and alſo againſt all Monaſte-'ries and Convents, and more particularly againſt 'the Order of the *Jeſuits*; yet thoſe Evil Coun-'ſellors have procured Orders for the building of 'ſeveral Churches and Chapels for the Exerciſe of 'that Religion. They have alſo procured divers 'Monaſteries to be erected; and in Contempt of 'the Law, they have not only ſet up ſeveral Colleges 'of *Jeſuits* in divers Places for the corrupting of 'the Youth, but have raiſed up one of the *Order* to 'be a Privy-Counſellor, and a Miniſter of State. 'By all which they do evidently ſhew, that they 'are reſtrained by no Rules of Law whatſoever; 'but that they have ſubjected the Honours and 'Eſtates of the Subjects, and the eſtabliſh'd Religion 'to a Deſpotick Power, and to Arbitrary Govern-'ment. In all which they are ſerved and ſeconded 'by thoſe Eccleſiaſtical Commiſſioners.

'9. They have alſo followed the ſame Methods 'with relation to Civil Affairs; for they have pro-'cured Orders to examine all Lords-Lieutenants, 'Deputy-Lieutenants, Sheriffs, Juſtices of Peace, 'and all others that were in any Publick Employ-'ment, if they would concur with the King in the 'Repeal of the *Teſt* and *Penal Laws*; and all ſuch 'whoſe Conſciences did not ſuffer them to comply 'with their Deſigns, were turned out, and others 'were put in their Places, who they believed would 'be more compliant to them in their Deſigns of de-'feating the Intent and Execution of thoſe Laws 'which had been made with ſo much Care and

'Caution for the Security of the *Proteſtant Religion*. 'And in many of theſe Places they have put profeſſed Papiſts, tho' the Law has diſabled them, 'and warranted the Subjects not to have any Regard 'to their Orders.

'10. They have alſo invaded the Privileges, and 'ſeized on the Charters of moſt of thoſe Towns 'that have a Right to be repreſented by their Burgeſſes in Parliament, and have procured Surrenders 'to be made of them, by which the Magiſtrates in 'them have delivered up all their Rights and Privileges, to be diſpoſed of at the Pleaſure of thoſe 'Evil Counſellors, who have thereupon placed new 'Magiſtrates in thoſe Towns, ſuch as they can moſt 'entirely confide in; and in many of them they 'have put Popiſh Magiſtrates, notwithſtanding the 'Incapacities under which the Law has put them.

'11. And whereas no Nation whatſoever can 'ſubſiſt without the Adminiſtration of good and 'impartial Juſtice, upon which Mens Lives, Liberties, Honours and Eſtates do depend, thoſe Evil 'Counſellors have ſubjected theſe to an Arbitrary 'and Deſpotick Power. In the moſt important 'Affairs, they have ſtudied to diſcover, beforehand, 'the Opinion of the Judges, and have turned out 'ſuch as they found would not conform themſelves 'to their Intentions, and have put others in their 'Places, of whom they were more aſſured, without 'having any Regard to their Abilities. And they 'have not ſtuck to raiſe even profeſſed Papiſts to the 'Courts of Judicature, notwithſtanding their Incapacity by Law, and that no Regard is due to any Sentences flowing from them. They have carried this 'ſo far, as to deprive ſuch Judges, who in the common Adminiſtration of Juſtice, ſhewed that they 'were governed by their Conſciences, and not by 'the Directions which the others gave them. By 'which it is apparent, that they deſign to render 'themſelves the abſolute Maſters of the Lives, Honours and Eſtates of the Subjects, of what Rank 'or Dignity ſoever they may be; and that without 'having any Regard either to the Equity of the 'Cauſe, or to the Conſciences of the Judges, whom 'they will have to ſubmit in all things to their own 'Will and Pleaſure; hoping by ſuch Ways to intimidate thoſe who are yet in Employment, as 'alſo ſuch others, as they ſhall think fit to put in 'the rooms of thoſe whom they have turned out; 'and to make them ſee what they muſt look for, 'if they ſhould at any time act in the leaſt contrary 'to their good-liking; and that no Failings of that 'kind are pardoned in any Perſons whatſoever. A 'great deal of Blood has been ſhed in many Places 'of the Kingdom, by Judges governed by thoſe 'Evil Counſellors, againſt all the Rules and Forms 'of Law, without ſo much as ſuffering the Perſons 'that were accuſed to Plead in their own Defence.

'12. They have alſo, by putting the Adminiſtration of Juſtice in the Hands of Papiſts, brought 'all the Matters of Civil Juſtice into great Uncertainties; with how much Exactneſs and Juſtice 'ſoever that theſe Sentences may have been given. 'For ſince the Laws of the Land do not only exclude 'Papiſts from all Places of Judicature, but have put 'them under an Incapacity, none are bound to acknowledge or to obey their Judgments, and all 'Sentences given them are null and void of themſelves: So that all Perſons who have been caſt 'in Trials before ſuch Popiſh Judges, may juſtly 'look on their pretended Sentences, as having no 'more Force than the Sentences of any private 'or unauthoriz'd Perſon whatſoever. So deplorable 'is the Caſe of the Subjects who are obliged to anſwer to ſuch Judges, that muſt in all things ſtick 'to the Rules which are ſet them by thoſe Evil 'Counſellors, who, as they raiſed them up to thoſe 'Employments, ſo can turn them out of them at 'Pleaſure, and who can never be eſteemed Lawful 'Judges; ſo that all their Sentences are in the 'Conſtruction of the Law of no Force and Efficacy. 'They have likewiſe diſpoſed of all Military Employments in the ſame manner; for tho' the Laws 'have not only excluded Papiſts from all ſuch Employments, but have in particular provided, that 'they ſhould be diſarm'd; yet they, in Contempt of 'theſe Laws, have not only armed the Papiſts, but 'have likewiſe raiſed them up to the greateſt Military Truſt both by Sea and Land; and that Strangers 'as well as Natives, and *Iriſh* as well as *Engliſh*; 'that ſo by thoſe Means, having rendred themſelves 'Maſters both of the Affairs of the Church, of the 'Government, of the Nation, and of the Courts of 'Juſtice, and ſubjected them all to a Deſpotick and 'Arbitrary Power, they might be in a Capacity to 'maintain and execute their wicked Deſigns, by the 'Aſſiſtance of the Army, and thereby to enſlave the 'Nation.

'13. The diſmal Effects of this Subverſion of 'the Eſtabliſhed Religion, Laws, and Liberties in '*England*, appear more evidently to us, by what 'we ſee done in *Ireland*; where the whole Government is put in the Hands of Papiſts, and where 'all the Proteſtant Inhabitants are under the daily 'Fears of what may be juſtly apprehended from the 'Arbitrary Power which is ſet up there; which has 'made great Numbers of them leave that Kingdom, 'and abandon their Eſtates in it, remembring well 'that Cruel and Bloody Maſſacre which fell out in 'that Iſland in the Year 1641.

'14. Thoſe Evil Counſellors have alſo prevailed 'with the King to declare in *Scotland*, That he is 'cloathed with *Abſolute Power*, and that all the 'Subjects are bound *to obey him without Reſerve*: 'Upon which he has aſſumed an Arbitrary Power 'both over the Religion and Laws of that Kingdom; 'from all which it is apparent, what is to be looked 'for in *England*, as ſoon as Matters are duly prepared for it.

'15. Thoſe great and inſufferable Oppreſſions, 'and the open Contempt of all Law, together with 'the Apprehenſions of the ſad Conſequences that 'muſt certainly follow upon it, have put the Subjects under great and juſt Fears; and have made 'them look after ſuch lawful Remedies as are allowed of in all Nations; yet all has been without 'effect. And thoſe Evil Counſellors have endeavoured to make all Men apprehend the Loſs of 'their Lives, Liberties, Honours, and Eſtates, if 'they ſhould go about to preſerve themſelves from 'this Oppreſſion by Petition, Repreſentations, or 'other Means authoriz'd by Law. Thus did they 'proceed with the Archbiſhop of *Canterbury*, and 'the other Biſhops, who having offered a moſt 'humble Petition to the King, in Terms full of Reſpect, and not exceeding the Number limited by 'Law; in which they ſet forth in ſhort, the Reaſons for which they could not obey that Order, 'which, by the Inſtigation of thoſe Evil Counſellors, 'was ſent them, requiring them to appoint their 'Clergy to read in their Churches the Declaration 'for *Liberty of Conſcience*; were ſent to Priſon, 'and afterwards brought to a Trial, as if they had 'been guilty of ſome enormous Crime. They were

'not only obliged to defend themſelves in that Purſuit, but to appear before profeſs'd Papiſts, who 'had not taken the *Teſt*, and by conſequence were 'Men whoſe Intereſt led them to condemn them; 'and the Judges that gave their Opinions in their 'Favours, were thereupon turned out.

'16. And yet it cannot be pretended, that any 'Kings, how great ſoever their Power has been, 'and how Arbitrary and Deſpotick ſoever they have 'been in the Exerciſe of it, have ever reckon'd it 'a Crime for their Subjects to come in all Submiſſion 'and Reſpect, and in a due Number, not exceeding 'the Limits of the Law, and repreſent to them the 'Reaſons that made it impoſſible for them to obey 'their Orders. Thoſe Evil Counſellors have alſo 'treated a Peer of the Realm as a Criminal, only 'becauſe he ſaid, That the Subjects were not bound 'to obey the Orders of a Popiſh Juſtice of Peace; 'tho' it is evident, that they being by Law rendred 'incapable of all ſuch Truſts, no Regard is due to 'their Orders. This being the Security which the 'People have by the Law for their Lives, Liberties, 'Honours, and Eſtates, that they are not to be 'ſubjected to the Arbitrary Proceedings of Papiſts, 'that are contrary to Law put into any Employments Civil or Military.

'17. Both We our ſelves, and our Deareſt and 'moſt Entirely Beloved Conſort the Princeſs, have 'endeavoured to ſignify, in Terms full of Reſpect 'to the King, the juſt and deep Regret which all 'theſe Proceedings have given us; and in Compliance with his Majeſty's Deſires ſignified to us, 'We declared both by Word of Mouth, to his Envoy, and in Writing, what our Thoughts were, 'touching the Repealing of the *Teſt and Penal* 'Laws; which We did in ſuch a manner, that We 'hoped We had propoſed an Expedient, by which 'the Peace of thoſe Kingdoms, and a happy Agreement among the Subjects of all Perſuaſions, might 'have been ſettled: But thoſe Evil Counſellors 'have put ſuch ill Conſtructions on theſe our 'good Intentions, that they have endeavoured to 'alienate the King more and more from us; as if 'We had deſigned to diſturb the Quiet and Happineſs of the Kingdom.

'18. The laſt and great Remedy for all thoſe 'Evils, is *the Calling of a Parliament*, for ſecuring 'the Nation againſt the evil Practices of thoſe wicked Counſellors: But this could not be yet compaſſed, nor can it be eaſily brought about. For 'thoſe Men apprehending, that a Lawful Parliament being once aſſembled, they would be brought 'to an Account for all their open Violations of Law, 'and for their Plots and Conſpiracies againſt the '*Proteſtant Religion*, and the Lives and Liberties 'of their Subjects; they have endeavoured, under 'the ſpecious Pretence of *Liberty of Conſcience*, 'firſt to ſow Diviſions among Proteſtants, between thoſe of the *Church of England* and the '*Diſſenters*: The Deſign being laid to engage Proteſtants, that are all equally concerned to preſerve 'themſelves from Popiſh Oppreſſion, into mutual 'Quarrellings, that ſo by theſe, ſome Advantages 'might be given to them to bring about their Deſigns; and that both in the Election of the Members of Parliament, and afterwards in the Parliament it ſelf. For they ſee well, that if all Proteſtants could enter into a mutual good Underſtanding one with another, and concur together in 'the preſerving of their Religion, it would not be 'poſſible for them to compaſs their wicked Ends. 'They have alſo required all Perſons, in the ſe'veral Counties of *England*, that either were in 'any Employment, or were in any conſiderable Eſteem, to declare before-hand, that they would 'concur in the Repeal of the *Teſt and Penal Laws*; 'and that they would give their Voices in the Elections to Parliament, only for ſuch as would concur in it. Such as would not thus pre-engage 'themſelves, were turned out of all Employments; 'and others who enter'd into thoſe Engagements, 'were put in their Places, many of them being 'Papiſts. And contrary to the Charters and Privileges of thoſe Boroughs that have a Right to 'ſend Burgeſſes to Parliament, they have ordered 'ſuch Regulations to be made, as they thought fit 'and neceſſary, for aſſuring themſelves of all the 'Members that are to be choſen by thoſe Corporations: And by this means they hope to avoid 'that Puniſhment which they have deſerved; tho' 'it is apparent, that all Acts made by Popiſh Magiſtrates, are null and void of themſelves. So that 'no Parliament can be Lawful, for which the Elections and Returns are made by Popiſh Sheriffs and Mayors of Towns; and therefore as 'long as the Authority and Magiſtracy is in ſuch 'Hands, it is not poſſible to have any Lawful Parliament. And tho' according to the Conſtitution 'of the *Engliſh* Government, and immemorial 'Cuſtom, all Elections of Parliament-Men ought 'to be made with an entire Liberty, without any 'Sort of Force, or the requiring the Electors to 'chuſe ſuch Perſons as ſhall be named to them; 'and the Perſons thus freely elected, ought to give 'their Opinions freely, upon all Matters that are 'brought before them; having the Good of the 'Nation ever before their Eyes, and following in all 'Things the Dictates of their Conſcience; yet 'now the People of *England* cannot expect a Remedy from a *Free Parliament*, legally called and 'choſen. But they may, perhaps, ſee one called, 'in which all Elections will be carried by Fraud or 'Force; and which will be compoſed of ſuch Perſons, of whom thoſe Evil Counſellors hold themſelves well aſſured; in which all Things will be 'carried on according to their Direction and Intereſt, without any Regard to the Good or Happineſs of the Nation. Which may appear evidently from this, That the ſame Perſons tried the 'Members of the laſt Parliament, to gain them to 'conſent to the Repeal of the *Teſt and Penal Laws*; 'and procured that Parliament to be diſſolved, 'when they found that they could not, neither by 'Promiſes nor Threatnings, prevail with the 'Members to comply with their wicked Deſigns.

'19. But to crown all, There are great and violent Preſumptions, inducing us to believe, that 'thoſe Evil Counſellors, in order to the carrying 'on of their ill Deſigns, and to the gaining to 'themſelves the more Time for the effecting of 'them, (for the encouraging of their Complices, 'and for the diſcouraging of all good Subjects) 'have publiſhed, That the *Queen* hath brought 'forth a *Son*; tho' there have appeared, both during the *Queen*'s pretended Bigneſs, and in the 'Manner in which the Birth was managed, ſo many juſt and viſible Grounds of Suſpicion, that not 'only we our ſelves, but all the good Subjects of 'thoſe Kingdoms, do vehemently ſuſpect, that the 'Pretended Prince of *Wales* was not born by the '*Queen*. And it is notoriouſly known to all the 'World, that many both doubted of the *Queen*'s 'Bigneſs, and of the Birth of the Child; and yet

'there

'there was not any one Thing done to ſatisfy them, 'or to put an end to their Doubts.

'20. And ſince our Deareſt and moſt entirely-'Beloved Conſort the Princeſs, and likewiſe We 'Our Selves have ſo great an Intereſt in this Mat-'ter, and ſuch a Right (as all the World knows) to 'the Succeſſion to the Crown: Since alſo the *Eng-'liſh* did in the Year 1672. when the *States-Gene-'ral* of the *United Provinces* were invaded in a 'moſt unjuſt War, uſe their utmoſt Endeavours to 'put an End to that War, and that in Oppoſition 'to thoſe who were then in the Government; and 'by their ſo doing, they run the Hazard of loſing 'both the Favour of the Court, and their Employ-'ments: And ſince the *Engliſh* Nation has ever te-'ſtified a moſt particular Affection and Eſteem, 'both to Our Deareſt Conſort the Princeſs, and to 'Our Selves, We cannot excuſe Our Selves from 'eſpouſing their Intereſts, in a Matter of ſuch high 'Conſequence; and from contributing all that lies 'in us, for the maintaining both of the *Proteſtant 'Religion*, and of the Laws and Liberties of thoſe 'Kingdoms, and for the ſecuring to them the con-'tinual Enjoyment of all their juſt Rights. To the 'doing of which, We are moſt earneſtly ſollicited 'by a great many Lords, both Spiritual and Tem-'poral, and by many Gentlemen, and other Sub-'jects of all Ranks.

'21. Therefore it is, that We have thought fit 'to go over to *England*, and to carry over with 'us a Force, ſufficient by the Bleſſing of God, to 'defend us from the Violence of thoſe Evil Coun-'ſellors. And We being deſirous that our Intenti-'ons in this may be rightly underſtood, have, for 'this End, prepared this *Declaration*, in which, as 'we have hitherto given a True Account of the 'Reaſons inducing us to it; ſo, We now think fit 'to declare, That this our Expedition is intended 'for no other Deſign, but to have a Free and Law-'ful Parliament Aſſembled, as ſoon as is poſſible: 'and that in order to this, all the late Charters 'by which the Election of Burgeſſes are limited 'contrary to the Ancient Cuſtom, ſhall be conſi-'dered as Null and of no Force: And likewiſe 'all Magiſtrates who have been unjuſtly turned out, 'ſhall forthwith reſume their former Employments, 'as well as all the Boroughs of *England* ſhall re-'turn again to their Ancient Preſcriptions and Char-'ters: And more particularly that the Ancient 'Charter of the Great and Famous City of *London*, 'ſhall again be in force: And that the Writs for 'the Members of Parliament ſhall be addreſſed to 'the proper Officers, according to Law and Cuſtom. 'That alſo none be ſuffered to chuſe, or to be cho-'ſen Members of Parliament, but ſuch as are qua-'lified by Law: And that the Members of Parlia-'ment being thus lawfully Choſen, they ſhall meet 'and ſit in full Freedom; that ſo the two Houſes 'may concur in the preparing of ſuch Laws, as 'they upon full and free Debate ſhall judge neceſ-'ſary and convenient, both for the confirming and 'executing the Law concerning the *Teſt*, and ſuch 'other Laws as are neceſſary for the Security and 'Maintenance of the *Proteſtant Religion*; as like-'wiſe for making ſuch Laws as may eſtabliſh a 'good Agreement between the *Church of England* 'and all *Proteſtant Diſſenters*; as alſo for the co-'vering and ſecuring of all ſuch who will live 'peaceably under the Government, as becomes good 'Subjects, from all Perſecution upon the Account 'of their Religion, even *Papiſts* themſelves not ex-'cepted; and for the doing of all other Things, 'which the Two Houſes of Parliament ſhall find 'neceſſary for the Peace, Honour and Safety of the 'Nation, ſo that there may be no more danger 'of the Nations falling at any Time hereafter under '*Arbitrary Government*. To this Parliament we 'will alſo refer the Enquiry into the Birth of the 'Pretended Prince of *Wales*, and of all Things 'relating to it, and to the Right of Succeſſion.

'22. And We, for our part, will concur in every 'thing that may procure the Peace and Happineſs 'of the Nation, which a Free and Lawful Parlia-'ment ſhall determine; ſince we have nothing be-'fore our Eyes in this our Undertaking, but the 'Preſervation of the *Proteſtant Religion*, the Co-'vering of all Men from Perſecution for their Con-'ſciences, and the ſecuring to the whole Nation 'the free Enjoyment of all their Laws, Rights and 'Liberties under a Juſt and Legal Government.

'24. This is the Deſign that we have propoſed to 'our ſelves, in appearing upon this Occaſion in Arms: 'In the Conduct of which, We will keep the For-'ces under our Command, under all the Strictneſs 'of Martial Diſcipline; and take a ſpecial Care, 'that the People of the Countries through which 'we muſt March, ſhall not ſuffer by their Means; 'and as ſoon as the State of the Nation will admit 'of it, We promiſe that we will ſend back all 'thoſe Foreign Forces that we have brought along 'with us.

'24. We do therefore hope that all People will 'judge rightly of us, and approve of theſe our 'Proceedings: But we chiefly rely on the Bleſſing 'of God for the Succeſs of this our Undertaking, 'in which We place our whole and only Confi-'dence.

'25. We do in the laſt Place invite and require 'all Perſons whatſoever, all the Peers of the Realm 'both Spiritual and Temporal, all Lords-Lieutenants, 'Deputy-Lieutenants, and all Gentlemen, Citizens, 'and other Commons of all Ranks, to come and aſ-'ſiſt us, in order to the executing of this our De-'ſign, againſt all ſuch as ſhall endeavour to oppoſe 'us; that ſo we may prevent all thoſe Miſeries 'which muſt needs follow upon the Nations being 'kept under Arbitrary Government and Slavery: 'And that all the Violences and Diſorders which 'have overturned the whole Conſtitution of the '*Engliſh* Government, may be fully redreſſed in a '*Free and Legal Parliament*.

'26. And we do likewiſe reſolve, that as ſoon 'the Nations are brought to a ſtate of Quiet, We 'will take Care that a Parliament ſhall be called in '*Scotland*, for the reſtoring the Ancient Conſtituti-'on of that Kingdom, and for bringing the Mat-'ters of Religion to ſuch a Settlement, that the Peo-'ple may live eaſy and happy, and for putting an 'End to all the unjuſt Violences, that have been in 'a Courſe of ſo many Years committed there.

'We will alſo ſtudy to bring the Kingdom of '*Ireland* to ſuch a ſtate, that the Settlement there 'may be religiouſly obſerved; and that the Prote-'ſtant and *Britiſh* Intereſt there, may be ſecured. 'And we will endeavour by all poſſible Means to 'procure ſuch an Eſtabliſhment in all the Three 'Kingdoms, that they may all live in a happy Uni-'on and Correſpondence together; and that the 'Proteſtant Religion, and the Peace, Honour and 'Happineſs of theſe Nations, may be eſtabliſh'd 'upon laſting Foundations.

Given under our Hand and Seal, at our Court in

in the Hague, *the Tenth Day of* October, *in the Year of our Lord* 1688.

WILLIAM HENRY, PRINCE *of* ORANGE.

By his Highneſs's Special Command,
C. HUYGENS.

His Highneſs's Additional Declaration.

'AFter we had prepared and printed this our 'Declaration, we have underſtood, that the 'Subverters of the Religion and Laws of thoſe Kingdoms, hearing of our Preparations to aſſiſt the People 'againſt them, have begun to retract ſome of the Arbitrary and Deſpotick Powers that they had aſſumed, 'and to vacate ſome of their Unjuſt Judgments and 'Decrees. The Senſe of their Guilt, and the Diſtruſt 'of their Force, have induced them to offer to the 'City of *London* ſome ſeeming Relief from their 'great Oppreſſions; hoping thereby to quiet the 'People, and to divert them from demanding a Re-'eſtabliſhment of their Religion and Laws under 'the ſhelter of our Arms: They do alſo give out, 'That we do intend to Conquer and Enſlave the Nation; and therefore it is that we have thought fit 'to add a few Words to our Declaration.

'We are confident, that no Perſons can have 'ſuch hard Thoughts of us, as to imagine that we 'have any other Deſign in this Undertaking, than 'to procure a Settlement of the Religion, and of the 'Liberties and Properties of the Subjects, upon ſo 'ſure a Foundation, that there may be no danger 'of the Nations relapſing into the like Miſeries at 'any Time hereafter. And as the Forces that we 'have brought along with us, are utterly diſproportioned to that wicked Deſign of Conquering the 'Nation, if we were capable of Intending it; ſo 'the great Numbers of the principal Nobility and 'Gentry, that are Men of Eminent Quality and 'Eſtates, and Perſons of known Integrity and 'Zeal both for the Religion and Government of '*England*, many of them alſo being diſtinguiſhed 'by their conſtant Fidelity to the Crown, who do 'both accompany us in this Expedition, and have 'earneſtly ſollicited us to it, will cover us from all 'ſuch malicious Inſinuations: For it is not to be 'imagined, that either thoſe who have Invited us, 'or thoſe that are already come to Aſſiſt us, can 'join in a wicked Attempt of Conqueſt, to make 'void their own lawful Titles to their Honours, 'Eſtates and Intereſts. We are alſo confident, that 'all Men ſee how little Weight there is to be laid 'on all Promiſes and Engagements, that can be now 'made; ſince there has been ſo little Regard had in 'the Time paſt, to the moſt ſolemn Promiſes. And 'as that imperfect Redreſs that is now offered, is a 'plain Confeſſion of thoſe Violations of the Govern-'ment that we have ſet forth; ſo the Defectiveneſs 'of it is no leſs apparent: For they lay down no-'thing which they may not take up at Pleaſure; 'and they reſerve entire, and not ſo much as mentioned, their Claim and Pretences to an Arbitrary 'and Deſpotick Power; which has been the Root 'of all their Oppreſſion, and of the total Subverſion of the Government. And it is plain, that 'there can be no Redreſs, no Remedy offered but 'in Parliament; by a Declaration of the Rights of 'the Subjects that have been invaded, and not by 'any pretended Acts of Grace, to which the Extremity of their Affairs has driven them. Therefore 'it is that we have thought fit to declare, That we 'will refer all to a Free Aſſembly of the Nation, in 'a Lawful Parliament.

Given under our Hand and Seal, at our Court in the Hague, *the Twenty fourth Day of* October, *in the Year of our Lord* 1688.

WILLIAM HENRY, PRINCE *of* ORANGE.

By his Highneſs's Special Command,
C. HUYGENS.

Mr. *Phipps*. My Lords, The Reaſon why we humbly offer this Declaration, is with relation to that Paſſage in the Sermon, which ſays, that the Prince of *Orange* diſclaimed all Manner of Reſiſtance. All we obſerve is, That it don't appear that he came over with an Army with any other Intent than to defend himſelf againſt evil Counſellors: And if the Doctor has made a wrong Inference, we ſubmit it to your Lordſhips, whether ſuch a Miſapprehenſion of his Highneſs's Meaning ſhall ſubject him to a Charge of High Crimes and Miſdemeanors.

Mr. *Dodd*. My Lords, We have finiſhed what we have to offer on this Article, and ſubmit it to your Lordſhips whether we have not made good our Defence. We are ready to go on to the Second Article, if it be your Lordſhip's Pleaſure.

Then the LORDS *Adjourned to their Houſe Above.*

Monday, March 6. The Seventh Day.

THE Lords coming down into *Weſtminſter-Hall*, and being ſeated in the manner before-mentioned, Proclamation was made by the Serjeant at Arms as follows:

Our Sovereign Lady the Queen doth ſtrictly Charge and Command all manner of Perſons to keep Silence, upon Pain of Impriſonment.

Then another Proclamation was made: *Henry Sacheverell*, Doctor in Divinity, come forth, ſave thee and thy Bail, elſe thou forfeiteſt thy Recognizance.

The Doctor appearing at the Bar accordingly, with his Council, as before:

Lord Chancellor. Gentlemen, you that are Council for the Priſoner may proceed in his Defence.

Mr. *Dodd*. MY Lords, We who are Council for Doctor *Sacheverell*, beg the Favour that we may enter on the Doctor's Defence as to the Second Article: This Article is divided into three Heads. 1. *That the Toleration is unreaſonable, and the Allowance of it unwarrantable.* 2. *That he is a falſe Brother, who defends Toleration and Liberty of Conſcience.* 3. *That it is the Duty of the chief Paſtors to thunder out Anathema's*, &c.

The firſt Head I ſhall ſpeak to is, as to the Toleration. My Lords, We ſay there is no ſuch Thing as a Toleration granted by Law; the Word is not to be found in the Act of Parliament; there is an Act (which we ſuppoſe is intended) *to exempt Proteſtant Diſſenters from the Penalties of certain Laws* therein mentioned: However in this Debate, we ſhall take Notice of it as a Toloration; altho' we think, when there is a Legal Proceeding, the Act ſhould have been called by its own proper Name:

Now, my Lords, this Act of Parliament hath ſeveral Reſtrictions and Limitations in it, and (amongſt others) not to exempt any Perſons from the Penalties, that do not frequent ſome Religious Aſſembly thereby allowed. The Doctor no where finds Fault with a Legal Toleration, or a Toleration granted by Law, within the Deſcription and Meaning of this Act of Parliament. My Lords, we think the Doctor has taken ſuch Care, leſt any Expreſſion ſhould undergo a wrong Conſtruction, as if he were uneaſy at the Toleration, that he Explains himſelf very particularly about it: We ſhall read the Words out of the Sermon, which I think will clear the Doctor as to this Objection; the Doctor ſays, *Pray do not miſunderſtand me, as if I reflected upon that Indulgence the Government has given the Diſſenters, which I am ſure all Well-wiſhers to our Church are ready to grant; nor do I intend to caſt the leaſt Reflection on that Indulgence, which the Law has given to Conſciences truly Scrupulous; let them enjoy it in the full Limits the Law has preſcribed.*

Now after ſuch a Declaration, ſo plain a Confeſſion, ſo full in the Caſe, in Words as ſignificant as can be to ſhew his Meaning, we hope there is no room to tax him with this Part of the Article by any incoherent Words, or Inferences, when it is directly contrary to what he has in Words at length expreſs'd.

My Lords, This being conſidered, we think it is too hard to draw Inferences, and Conſequences, that the Doctor is againſt the Toleration allowed by Law; it is not to be done with Candor, by any one that reads the Sermon without Prejudice, and conſiders the Care he takes to avoid giving any Offence in this Caſe.

As to the Second Part of this Article, we think it may receive the ſame Anſwer; *That he is a Falſe Brother who Defends Toleration and Liberty of Conſcience.* The Doctor does not ſay they are Falſe Brethren that Defend a Legal Toleration; no Body complains of that; but the Perſons intended, are thoſe that Defend an unlawful Toleration, and not a Legal Exemption; which Legal Exemption the Doctor admits to be good and juſt, in the Paſſage I have before repeated. We apprehend, the Doctor means thoſe are Falſe Brethren, and blameable, that Excuſe the Separation from the Church, not on account of the Toleration, but *by laying the Faults on the true Sons of the Church, for carrying Matters too high*; theſe are the People, the Falſe Brethren, that cry out againſt the Church upon all Occaſions.

As to the Doctor's Expreſſions about Archbiſhop *Grindall*, the Doctor thought he had good Grounds for them; but at leaſt they were but unwary Expreſſions, and we hope not Criminal. The Toleration he mentions Archbiſhop *Grindall* to be blamed for, was quite another Thing from the preſent Indulgence now granted; the firſt was by Queen *Elizabeth* alone, or by the Archbiſhop's Authority under her, and without the Parliament; the Diſſenters were then few, and it had been no great Difficulty to have prevented that Schiſm at the beginning. But now the Diſſenters are a conſiderable Part of the Nation, have great Riches, and Properties amongſt us, and it became the Wiſdom of the Legiſlature, to give them an Indulgence according to the Reſtrictions in the Act of Parliament: But this is a different Caſe, and by a different Authority, from what was in Archbiſhop *Grindall*'s time. The Story of that Archbiſhop, as related by one of the Gentlemen Managers, does indeed acquit the Archbiſhop, but how far it clears Queen *Elizabeth*, we muſt leave to your Lordſhips; for ſhould a great Favourite attempt to procure a Grant of the Archbiſhop's Palace, or a chief Revenue of that See or Church, and that the Archbiſhop's oppoſing the Favourite herein (as was by the Gentleman ſuggeſted) ſhould be the Reaſon of his Diſgrace; or if the Archbiſhop did Proſecute or Puniſh a Man in the Spiritual Court, for having two Wives at the ſame time; (which Proſecution or Puniſhment was highly commendable in the Archbiſhop, and was his Duty to do) it would be hard to think, that Queen *Elizabeth* ſhould Suſpend him from the Archbiſhoprick for ſuch a Proceeding, for thus diſcharging his Duty; therefore we can't give Credit to that Hiſtory as it is related; but we ſhall ſhew your Lordſhips, from the Archbiſhop's Letter to the Council, and Letters from *Beza* and *Calvin* at that Time, that it was his Indulgence to the Diſſenters of that Time, that drew the Anger of Queen *Elizabeth* on him; and that this was the Reaſon of it, we ſhall make out by undeniable Proof. Now, my Lords, we apprehend the Fault the Doctor finds in his Sermon is againſt an Univerſal general Toleration that tends to a Diſſolution of all Things; and ſuch a Toleration, would make Religion like that of the *Samaritans*, a mixture of all ſorts, that was odious to the World, and an Abomination to the *Jews*; and indeed, my Lords, we apprehend ſuch a Toleration the Doctor had great Reaſon to find Fault with. Surely ſuch a Toleration is not to be defended, nor would be of any Service to either Church or State: This is the Toleration which we think the Doctor intended, and not againſt a Legal or particular Exemption, which the Wiſdom of the Nation hath thought fit to give. Indeed he thinks, that Occaſional Conformiſts do attempt to hoiſt the Toleration into an Eſtabliſhment, and come into the Communion of the Church to ſerve a particular Purpoſe; and this at moſt can only be ſaid to be the Doctor's Opinion of that Matter, and whether true or falſe, cannot be Criminal. To ſpeak againſt a Law, or to break a Law, is not to be juſtified: Nor has he ſpoke againſt this Law; but if he had, ſurely he had been Puniſhable in the ordinary Methods of Juſtice, and not in a Proceeding of this Nature.

As to the next Head, that is, as to that Part of the Charge about thundering out *Anathema's*; the Diſcourſe is general, and not determin'd to any Perſons, not pointed at the Diſſenters, but properly intended againſt Irreligion; and the Sentence that he dares any Power on Earth to reverſe, is ſuch, and ſuch only, as is ratified in Heaven. He believes ſome Sentences of the Church to be ratified in Heaven; and if that Sentence which is pronounced here on Earth, be ratified in Heaven, it is, beyond all Diſpute, out of the Power of Man to reverſe it. He ſuppoſes ſome Perſons exempt from Puniſhment by particular Laws, may yet, by the Law of Chriſt, be liable to ſuch a Sentence: But from hence, or his Anſwer to the Articles, to draw a Concluſion, That he Aſſerts the State had not Power to reverſe the Sentence of the Spiritual Court, (of which there can be no doubt, but that the Legiſlature has ſuch a Power) or that the Legiſlature is guilty of Blaſphemy, (as has been objected by one of the Gentlemen Managers) is neither true Reaſon nor Logick.

That

That Schiſm is a Sin puniſhable by the Laws of the Church, will not be diſputed, if it be a Separation without a juſt Cauſe; and how far this is ſuch a Separation, or that the Act of Parliament hath taken away this Schiſm, this Sin, we ſubmit to your Lordſhips.

Mr. *Phipps.* MY Lords, We are come now to the Second Article, and we humbly apprehend, ſhall give your Lordſhips as full Satisfaction of the Doctor's Innocence, as to the Crimes charged in this Article, as we hope we did as to thoſe contained in the firſt Article.

As to that Part of the Second Article which ſays, *That the Doctor does Suggeſt and Maintain, that the Toleration granted by Law is unreaſonable, and the Allowance of it unwarrantable:* He conceives there is nothing in his Sermon can warrant that Charge. The Toleration Act is not what the Doctor finds Fault with, but the Perſons that Abuſe it; and I beg leave to ſay, that the ill Uſe which is made of it, is unreaſonable and unwarrantable. But, that the Doctor aſſerts the Toleration it ſelf to be unreaſonable, or the Allowance of it unwarrantable, will appear to be a great Miſtake, when the Paragraphs in the Doctor's Sermon, upon which this Article is founded, are conſidered.

My Lords, The firſt Paſſage is in Page the 8th, where the Doctor ſays thus: *If upon all Occaſions to comply with the Diſſenters, both in publick and private Affairs, as Perſons of tender Conſciences and Piety, to promote their Intereſts in Elections, to ſneak to them for Places and Preferment, to defend Toleration and Liberty of Conſcience, and under the Pretence of Moderation, to excuſe their Separation, and lay the Fault upon the true Sons of the Church for carrying Matters too high,* &c. Theſe are ſome of the Characters which the Doctor gives of Falſe Brethren: But, is there any Thing in this Paſſage that avers Toleration to be unreaſonable, or the Allowance of it unwarrantable?

Page the 10th, the Doctor hath theſe Words, which were urged to Prove this Article: *Our Conſtitution, both in Church and State, has been ſo admirably contrived, with that Wiſdom, Weight and Sagacity, and the Temper and Genius of each, ſo exactly Suited and Modell'd, to the mutual Support and Aſſiſtance of one another, that 'tis hard to ſay, whether the Doctrines of the Church of* England *contribute more to Authorize and Enforce our Civil Laws, or our Laws to Maintain and Defend the Doctrines of our Church. The Natures of both are ſo nicely Correſpondent, and ſo happily intermixt, that 'tis almoſt impoſſible to offer a Violation to the one, without breaking in upon the Body of the other. So that in all thoſe Caſes before-mentioned, whoſoever preſumes to innovate, alter, or miſrepreſent any Point in the Articles of the Faith of our Church, ought to be arraign'd as a Traytor to the State; Heterodoxy in the Doctrines of the one, naturally producing, and almoſt neceſſarily inferring Rebellion and High Treaſon in the other; and conſequently a Crime that concerns the Civil Magiſtrate as much to puniſh and reſtrain, as the Eccleſiaſtical.* Can this be meant of the Toleration? Is the Toleration ſo much as mentioned here? Does he not here ſpeak againſt ſuch as innovate, alter, or miſrepreſent the Articles of our Faith? Is there any Innovation, Alteration, or Miſrepreſentation of any Article of our Faith by the Proteſtant Diſſenters? The Diſſenters do not differ from us in Matters of Faith, but in Matters of Form and Ceremony; if they differ'd from us in Matters of Faith, they would be Hereticks, and Hereſy was never intended to be Tolerated by the Act of Indulgence: And therefore what the Doctor ſays in this Paragraph, can never be taken to be a Reflection on the Toleration.

I ſhall next humbly offer to your Lordſhips Conſideration another Clauſe, which was cited by the Gentlemen of the Houſe of Commons to ſupport this Article, which is *Page* 14. where 'tis ſaid, *Theſe falſe Brethren in our Government, do not ſingly, and in private, ſpread their Poiſon, but (what is lamentable to be ſpoken) are ſuffer'd to combine into Bodies, and Seminaries, wherein Atheiſm, Deiſm, Tritheiſm, Socinianiſm, with all the Helliſh Principles of Fanaticiſm, Regicide and Anarchy, are openly Profeſs'd, and Taught, to Corrupt and Debauch the Youth of the Nation, in all Parts of it, down to Poſterity, to the preſent Reproach, and future Extirpation of our Laws, and Religion. Certainly the Toleration was never intended to Indulge, and Cheriſh ſuch Monſters and Vipers in our Boſom, that ſcatter their Peſtilence at Noon-day, and will Rend, Diſtract, and Confound, the firmeſt and beſt ſettled Conſtitution in the World.* Is there any thing in this Clauſe that can maintatn this Article? The Doctor ſays, Certainly the Toleration was never intended to Indulge and Cheriſh ſuch Monſters, and Vipers in our Boſom, as Atheiſts, Tritheiſts, Socinians, &c. And the Doctor is well warranted in ſaying that, becauſe thoſe enormous Crimes are particularly excepted in the Act of Toleration, and for this we refer to the Act it ſelf.

The next Clauſe that was urg'd to maintain this Article is in the 16th Page, where the Doctor expreſſeth himſelf in theſe Words: *But ſince this Model of an Univerſal Liberty and Coalition fail'd, and theſe falſe Brethren could not carry the Conventicle into the Church, they are now reſolv'd to bring the Church into the Conventicle, which will more plauſibly and ſlily Effect her Ruin: What could not be gain'd by Comprehenſion and Toleration, muſt be brought about by Moderation and Occaſional Conformity; that is, what they could not do by open Violence, they will not fail by ſecret Treachery to accompliſh. If the Church can't be pull'd down, it may be blown up; and no matter with theſe Men how 'tis Deſtroy'd, ſo that it is Deſtroy'd.* Does this ſuggeſt the Toleration to be unreaſonable, or the Allowance of it Unwarrantable? It rather excuſes it from having hurt the Church: For he ſays, *What could not be gain'd by Toleration, muſt be brought about by Moderation and Occaſional Conformity*; ſo that the Injury which is done to the Church is aſcribed by him to ſome other Cauſe. Thus your Lordſhips obſerve there is not any Paſſage in the Doctor's Sermon, whereby he Suggeſts that the Toleration granted by Law is Unreaſonable, or the Allowance of it Unwarrantable, and conſequently no Foundation for this Article, unleſs it is to be ſupported by Inferences contrary to the Doctor's expreſs Words: For the Doctor in his Sermon, *pag.* 20. ſays, *I would not here be underſtood, as if I intended to caſt the leaſt invidious Reflection upon that Indulgence the Government has condeſcended to give them, which I am ſure all thoſe that wiſh well to our Church are very ready to grant to Conſciences truly ſcrupulous; let them enjoy it in the full Limits the Law has preſcrib'd.* By which 'tis evident, he allows the Indulgence given by the Act to Diſſenters, and is very far from ſuggeſting, that it is unreaſonable, or the Allowance of it unwarrantable. He wiſhes with all his Heart they may enjoy it in the full

full Limits of the Law. And therefore if there be any other Expreſſions concerning Toleration, which may ſeem to carry a dubious Senſe, 'tis humbly conceiv'd they ought not to be apply'd to the Exemption granted by Law, but will be ſo interpreted as may conſiſt with his avowed Approbation of that Law. For in all Writings, ſuch Expoſition is to be made, that one Part may not contradict or be inconſiſtent with the other. But to ſtrain the Senſe of any ambiguous Clauſe, and to put ſuch a Conſtruction upon it, as to make it contradict a plain and poſitive Aſſertion in the ſame Writing, was never allow'd, and I am ſure will not be permitted by your Lordſhips, who have ſhew'd ſuch a juſt Abhorrence of ſtrain'd and foreign Inſinuations and *Innuendo's*. And therefore where he ſeems to blame thoſe who defend Toleration, he cannot be thought to condemn the Indulgence granted by Law, becauſe he hath in ſuch poſitive and expreſs Terms allowed and approved of it.

But it muſt have ſome other Meaning, and I think his Meaning is very plain. For by condemning ſuch as defend Toleration, 'tis evident, he means ſuch as maintain, that the Act of Indulgence is a Juſtification of their Separation, and excuſeth them from the Sin of Schiſm: For the Defence of Toleration, and Excuſe of Separation, are mentioned in one and the ſame Clauſe of the Sentence, and in one and the ſame Branch of their Character of falſe Brethren. So that the True and Genuine Senſe of what he hath ſaid in his Sermon concerning Toleration is,

1. That he entirely approves of the Exemption by the Act of Indulgence of Proteſtant Diſſenters from the ſeveral Penalties inflicted by the ſeveral Statutes for their Non-Conformity.

2. That tho' they are exempt from the Penalties, yet that does not excuſe their Separation from the Sin of Schiſm in *foro Conſcientiæ*. And is the Doctor alone in this Notion? Is he not juſtified in it by the Opinion of many Learned Men, who have writ on that Subject? Nay, I appeal to your Lordſhips, whether it be not the concurrent Opinion of the greateſt Part, if not all the Learned Men of our Church at this Day.

And ſince the Act of Uniformity is in Force, and is not repeal'd or enervated by the Act of Indulgence, ſince the Doctrine and Worſhip of the Church of *England* is the Eſtabliſh'd Religion of this Kingdom, whether a Separation from the Church, ſince the Act of Indulgence, is not as much a Schiſm in *foro Conſcientiæ*, as it was before, is humbly ſubmitted.

But ſuppoſe that Separation from the Church by Diſſenters, ſince the Act of Indulgence, ſhould not be thought a Schiſm, yet he having the Opinion of ſo many Learned Men of his Side, his Aſſertion cannot be ſaid to be Wicked, Malicious, and Seditious, nor to be ſo high a Crime and Miſdemeanor, as to be the ſubject Matter of an Impeachment.

But the Paſſages in the Doctor's Sermon, which are ſuppoſed to condemn the Toleration, or to reflect on the Diſſenters, are open to another plain and natural Conſtruction. For ſince he poſitively, and in expreſs Terms, allows Liberty of Conſcience to Conſciences truly ſcrupulous, and which are entitled to the Benefit of the Act: Where he condemns or ſpeaks againſt Toleration, it muſt be intended as to ſuch Diſſenters who are not entitled to the Benefit of the Act, but are excepted out of it: And thoſe are ſuch as by Printing or Writing deny the Trinity, ſuch as do not come to ſome Aſſembly of Religious Worſhip allowed by that Act; and no Aſſembly of Religious Worſhip is allow'd by that Act 'till the Place of meeting be certified to the Biſhop, Archdeacon, or Juſtices at the Quarter-Seſſions, and Recorded, and a Certificate thereof given: And, what Multitudes frequent Religious Aſſemblies which are not allowed by that Act? Nay how few Religious Aſſemblies are qualified according to the Act? What vaſt Numbers go to no Religious Worſhip at all? And how many there are who deny the Second Perſon of the Trinity, is too too evident: And againſt every one of theſe, all the Laws for frequenting Divine Service on the Lord's-Day are ſtill in Force, by the expreſs Words of that Act. Therefore all thoſe who defend a general Toleration, who maintain that the Act extends to all ſuch Diſſenters, are juſtly Cenſur'd by the Doctor; and all the Expreſſions in the Doctor's Sermon againſt Toleration muſt be intended againſt thoſe excepted in the Act, ſince he ſo expreſly approves the Indulgence allow'd to thoſe that conform to the Terms preſcribed by the Act.

My Lords, As to that Branch of this Second Article, which charges the Doctor with aſſerting, *That Queen* Elizabeth *was deluded by Archbiſhop* Grindall *to the Toleration of the* Genevian *Diſcipline*; whether he be not warranted in this Aſſertion, is humbly ſubmitted to your Lordſhips, when 'tis conſider'd, That Archbiſhop was once in the higheſt Eſteem with the Queen, She made him Biſhop of *London*, then Archbiſhop of *York*, and afterwards promoted him to the See of *Canterbury*; and that after this he was in Diſgrace, and died in Her Majeſty's Diſpleaſure, cannot be deny'd. The Reaſon aſſign'd for his Diſgrace was, That he was a great Encourager of unlawful Conventicles, or Propheſyings, as they were then called. Whether that Charge againſt him was true, or whether it was only a falſe Suggeſtion of the Earl of *Leiceſter*, to remove him from the Queen's Favour, I will not preſume to determine. The Learned Manager who ſpoke firſt to this Article, was pleaſed to acquit the Archbiſhop, and lay the Fault upon the Queen; though, whoever reads *Calvin*'s and *Beza*'s Letters to him, when Biſhop of *London*, whoever reads Queen *Elizabeth*'s Letter to the Biſhops, dated the 3d of *May*, 1577, and the Archbiſhop's own Letter to the Lords of the Council the 25th of *November*, 1577, will be fully ſatisfied that he was not Innocent; for he confeſſes he was commanded by the Queen and Council to ſuppreſs the Propheſyings, and that he refuſed, and could not comply with that Command; and acknowledged it to be an Act of great Clemency in Her Majeſty, that She carried Her Reſentment no higher. So, I think, that pious good Queen is entirely acquitted by the Archbiſhop himſelf.

All Hiſtorians admit, that in his Time the Puritans were very numerous, and their Party very ſtrong; and it is evident they grew ſo dangerous, that the Statute of the 35th of *Elizabeth* was made to ſuppreſs their Conventicles, and compel them to come to Church. And at his Death the Affairs of the Church were in ſo great Confuſion, that his Succeſſor, Archbiſhop *Whitgift*, was put to great Trouble to check that growing Faction, and reduce Things into good Order again. If therefore the Doctor was of Opinion the Puritans receiv'd too great Encouragement by the Countenance of that great Man, and if it was his Zeal for the Church, and the Reſentment he had that it ſhould receive any Prejudice by the Connivance of one at the Head of

it, that provoked him to uſe a harſh Expreſſion of that Archbiſhop, 'tis humbly to be hop'd that is not a ſufficient Ground for an Impeachment of High Crimes and Miſdemeanors.

The Gentleman that ſpoke firſt to this Article, was pleas'd to admit, that what the Doctor ſaid in relation to that Archbiſhop, was not an Offence, as it was a Reflection on the Archbiſhop; but that uſing ſuch Expreſſions of the Archbiſhop for his Moderation to the Puritans, was a Reflection on the late Act of Toleration granted to Proteſtant Diſſenters; and that calling the Proſecutions againſt the Propheſyings in Queen *Elizabeth*'s Time *Wholeſome Severities*, is an Encouragement to uſe ſuch Severities againſt the Proteſtant Diſſenters now.

Can what was done in Queen *Elizabeth*'s Time reflect on the Toleration? Can calling the Proſecutions by Queen *Elizabeth* againſt ſuch as frequented Conventicles againſt the Law, and for which there was no Toleration; I ſay, can the calling ſuch Proſecutions *Wholeſome Severities*, reflect on this Toleration granted by Law? Or can it encourage a Proſecution againſt the Diſſenters, who are entituled to the Benefit of the Toleration, and are Exempt from the Penalties of the Laws?

The only Thing that can be inferr'd from what the Doctor ſays, in relation to the Wholeſome Severities is, That he intended to excite the Magiſtrates to put the Laws in Execution againſt ſuch Diſſenters as were excepted out of the Act of Toleration; and I am at a Loſs to find how that can make him an Offender. For ſurely the Parliament never intended that any Perſon ſhould have the Benefit of the Act of Toleration, that did not comply with the Terms and Conditions of it: And therefore when the Doctor preſſeth the Execution of the Laws againſt ſuch as are not entitled to the Benefit of the Act, he ſeems to me rather to Vindicate than Reflect upon the Toleration. Great Offence hath been taken at the Words *Wholeſome Severities* in the Doctor's Sermon; yet, my Lords, I cannot think the Word *Wholeſome* an improper Epithet for the Severities uſed by Queen *Elizabeth* againſt the Puritans; for Faction was then in its Infancy, Schiſm did but juſt begin to diſturb the Church; and by the Severities of the Laws that were put in Execution, and the Courage, Learning, and Prudence of Archbiſhop *Whitgift*, a Stop was put to them. And, I preſume, ſuch Severities as ſuppreſs'd theſe bold and daring Crimes in their Infancy, may be called *Wholeſome* without a *Catachreſis*; and can never be conſtrued to be a Suggeſtion, that the Toleration now granted by Law is unreaſonable, or the Allowance of it unwarrantable.

As to that Part of the Second Article, which chargeth the Doctor with maintaining, *That it is the Duty of Superior Paſtors to thunder out their Eccleſiaſtical* Anathema's *againſt Perſons entitled to the Benefit of the Toleration*: The Doctor humbly apprehends there is nothing in his Sermon can be a juſt Foundation for that Charge.

The Sermon hath this Sentence, *Page* 25. *Let our Superior Paſtors do their Duty, in thundering out their Eccleſiaſtical* Anathema's; *and let any Power on Earth dare reverſe a Sentence ratified in Heaven.* This is an entire and independent Sentence, that doth not relate to any particular Perſon, or any particular Crimes, and does not mention the Perſons entitled to the Benefit of the Toleration.

Nor can it be imagin'd that he ſhould deſire *Anathema's* to be thunder'd out againſt ſuch Perſons who he wiſheth may enjoy the Toleration in the full Limits the Law hath preſcrib'd. But the *Anathema's* muſt be intended to be againſt the Works of Darkneſs, Atheiſm, Prophaneneſs, Faction, and other enormous Crimes which are mention'd in the preceeding Part of his Sermon, ſince it is not apply'd by him to any particular Sins or Offences.

The thundering *Anathema's*, is declaring thoſe Judgments which are denounced in Scripture againſt Sin. And he deſires the Superior Paſtors of the Church to thunder out theſe *Anathema's*, becauſe the greater the Authority is of the Perſon that declares theſe Judgments, the greater Influence they are like to have upon the Perſons guilty of ſuch Sins.

But if he had deſir'd *Anathema's*, or *Excommunications*, (as they would infer) ſhould be thunder'd out againſt Diſſenters, yet it muſt be intended only againſt ſuch as are not entitled to the Benefit of the Toleration; and ſince the Act of Indulgence leaves ſuch Perſons open to the Laws, it cannot be a Crime in the Doctor to preſs the Execution of the Laws againſt them.

For not to accept of the Toleration on the Terms offer'd by the Act, is what the Doctor calls *hoiſting the Toleration into an Eſtabliſhment*, in deſpite of the Act, and ſetting up a Toleration of their own in Defiance of it.

As to the laſt Part of the Second Article, which charges, that the Doctor *Inſolently dares and defies any Power on Earth to reverſe ſuch Sentences*, which Sentences are there inſinuated to be the Sentences, or *Anathema's*, given and thundered out by Superior Paſtors; there are no ſuch Words in the Doctor's Sermon: For, the Doctor's Words are, *Let any Power on Earth dare reverſe a Sentence Ratified in Heaven.* So that the bare Recital of the Doctor's Expreſſion, is a ſufficient Confutation of that Part of the Article.

For, if the Judgments or *Anathema's* denounc'd by Superior Paſtors againſt Sin, are ſuch as are denounc'd againſt ſuch Sins in Scripture, ſuch Sentences may truly be ſaid to be ratified in Heaven: And if ſo, then no one can dare to think, that ſuch Sentences, ſo ratified in Heaven, can be revers'd by all the Powers on Earth united together. And therefore, the Doctor hopes it will not be thought Inſolence, or a High Crime or Miſdemeanor in him, to aſſert what he conceiv'd would be Blaſphemy in any one to deny. This is what I humbly offer to your Lordſhips Conſideration on this Article.

Mr. *Dee*. MY Lords, I humbly beg the Favour of a few Words on this Article. It is divided into Three Parts. The firſt is concerning Toleration; the Charge againſt the Doctor is, That he has reflected on the Toleration as it is Eſtabliſhed by Law. I crave leave to take Notice, that on conſidering the whole Sermon, there are two diſtinct Tolerations mentioned in it; a Toleration that is Legal, (for ſo I call the Act of Indulgence) and a Toleration that is general; and we think that Diſtinction, well obſerved, will clear the Doctor of any Crime in this Particular. Where he reflects on Toleration, it is not the Legal Toleration, but the general; and if it will bear this Conſtruction, you will not put the other upon it; for where he has taken Notice of a Legal Toleration, (which he hath done only in one Place of his Sermon) he is for extending it to the utmoſt Bounds; his Words are theſe, *I would not be here miſunderſtood, as if I intended to caſt the leaſt invidious Reflection upon that*

Indulgence the Government hath condeſcended to give them; which I am ſure all thoſe that wiſh well to our Church, are very ready to grant to Conſciences truly Scrupulous; let them enjoy it in the full Limits the Law hath preſcribed. But, where he ſpeaks againſt Toleration, it's a Toleration of ſuch enormous Crimes, as are not fit to be tolerated in any Chriſtian Nation.

As to the Second Part of the Article, for reflecting on Archbiſhop *Grindal*, and thereby reflecting on the Toleration, it was given up on the other Side; and admitted, that, whether True or Falſe, it was not Material, and then ſurely that will hardly amount to a Crime. But, we ſhall be ſo far from giving up that Point, that we ſhall ſhew he was Falſe to the Church at that Time; and it was a Crime in him, to give up the Diſcipline of the Church. No Laws were then made to indulge any Separation: And for the Head of the Church, under the Queen, to give up the Diſcipline of the Church, was a high Crime in him; and though it may be thought harſh, will bear the true Term of a Falſe Brother.

As to the Third Part of the Article, the thundering out *Anathema's*, I would beg leave to read that Part of the Doctor's Sermon, which, I hope, ſhall not be applied to thoſe that are within the Legal Toleration. *Schiſm and Faction are Things of impudent and encroaching Natures, they thrive upon Conceſſions, take Permiſſion for Power, and advance a Toleration immediately into an Eſtabliſhment:* (I hope the Diſſenters will not take theſe Characters on themſelves:) *And are therefore to be treated like growing Miſchiefs, or infectious Plagues*, &c. Preſently after follows, *Let our Superior Paſtors do their Duty, in thundering out their Eccleſiaſtical* Anathema's; *and let any Power on Earth dare reverſe a Sentence ratified in Heaven.* Now, my Lords, I would beg leave to ſay, that this is only Advice; and although the Doctor may be accounted pretty Pert, to give Advice to his Superior Paſtors, that they ought to thunder out *Anathema's*; yet this cannot be conſtrued to extend to them that are deſcribed in the Act of Toleration, thoſe that could not conform to ſome Ceremonials by reaſon of Scrupulous Conſciences, theſe could not be called Factious, but is meant of other People deſcribed in the Sermon. But if the Doctor had adviſed to thunder out *Anathema's* againſt Diſſenters; (ſuppoſing, but not granting it,) the Queſtion would come to this Point, Whether he was deceived in Point of Judgment or no: For, if they were Schiſmaticks before, the Schiſm remains the ſame, notwithſtanding the Toleration; and if it was Sin before the Act of Toleration, it is ſo ſtill, notwithſtanding the Act; and then his Advice to the Superior Paſtors, is, to do that which is, (with Submiſſion) their Duty to do, 'till prohibited by the Temporal Courts. My Lords, I ſhall mention one Caſe, that will ſhew you, that it is ſtill Schiſm to ſeparate from the Church, and that it is the Duty of Diſſenters to Communicate with the Church. That was the Caſe of one Mr. *Larwood:* In *Hillary Term, ſexto* of King *William.* An Information was exhibited againſt him, for refuſing to take upon him the Office of Sheriff of the City of *Norwich*; he pleads he had not taken the Sacrament in Twelve Months; the Attorney replied, that he ought to have done it. He rejoins, that he was a Proteſtant Diſſenter, and was excuſed by the Act for Toleration. There were two Points in the Caſe; the firſt was, whether it appeared by the Information that the Defendant was duly Elected; the other, whether the Plea in Bar was good, (for the whole Court held, that the Rejoinder was a Departure from the Bar, and that the Replication was inſufficient;) ſo that Judgment was to be given upon the Information, and the Plea in Bar. *Samuel Eyre*, Juſtice, was of Opinion with the Defendant as to both Points; my Lord Chief Juſtice *Holt*, and Mr. Juſtice *Giles Eyre*, were of Opinion againſt him as to both Points, and held the Bar to be inſufficient, becauſe it was only excuſing of one Fault by another, which no Man ſhall be admitted to do; and they held, that the Duty of Communicating with the Church remained notwithſtanding the Act of Toleration: And I ſubmit it to your Lordſhips Conſideration, whether if it be a Duty to Communicate with the Church of *England*, it be not Schiſm to Separate from it. My Lords, I ſhall ſay no more to this Article, but ſubmit it to your Lordſhips.

Dr. *Henchman.* MY Lords, We are now endeavouring to defend Doctor *Sacheverell* againſt the Charge contain'd in the Second Article of Impeachment, in the two firſt Clauſes of which he is ſaid *to ſuggeſt and maintain, That the Toleration granted by Law is unreaſonable, and the Allowance of it unwarrantable: And to aſſert, That he is a Falſe Brother with Relation to God, Religion and the Church, who defends Toleration and Liberty of Conſcience.* But it has not been ſaid by any of the Learned Managers on this Head, that either of thoſe two Branches of this Article are expreſly delivered in any Part of the Sermon preach'd at St. *Paul's*; but what is no where affirm'd, is ſaid to be ſuggeſted, and this Charge is maintain'd by Inferences only, becauſe there is no plain poſitive Propoſition that it can be ſupported by.

My Lords, It is humbly hop'd, That if an Inference may be allow'd as Proof to accuſe him, an open Declaration will be heard in his Defence: If what another Man makes him ſay be thought Ground enough for an Accuſation, then certainly what he himſelf openly declares will be eſteem'd ſomething more than a dry Caution, and have its due Weight with your Lordſhips in his Vindication. I would therefore beg Leave to read a Paſſage where he explains himſelf, and plainly declares what his Thoughts are concerning the Indulgence granted by Law: This Paſſage is in the twentieth Page, where ſpeaking of ſome wholſome Severities us'd in former Reigns, he adds, *I would not here be miſunderſtood, as if I intended to caſt the leaſt invidious Reflection upon that Indulgence the Government has condeſcended to give them, which I am ſure all thoſe that wiſh well to our Church are very ready to grant to Conſciences truly ſcrupulous; let 'em enjoy it in the full Limits the Law has preſcrib'd.*

My Lords, theſe Words are plain and expreſs, and not capable of being miſconſtrued or miſunderſtood: Whether thoſe Learned Gentlemen, who have applied ſome Parts of this Sermon to Purpoſes directly oppoſite to this plain Declaration, have miſunderſtood or miſconſtrued thoſe Paſſages, muſt be ſubmitted to your Lordſhips Judgment; but it ſeems hardly reconcileable, that the ſame Perſon in the ſame Diſcourſe ſhould declare, That all who wiſh well to the Church are ready to grant Indulgence to Conſciences truly ſcrupulous; and at the ſame time maintain, That ſuch Toleration is unreaſonable, and the Allowance of it unwarrantable; that he ſhould deſire it may be enjoy'd in its full La-

Latitude, and yet aſſert that he is a Falſe Brother that defends it.

My Lords, This ſeeming Difficulty will be eaſily reconcil'd, by conſidering who thoſe Perſons are who are deſign'd to be eas'd by the Act of Exemption, and who the Falſe Brethren are, deſcrib'd by Doctor *Sacheverell* in this Sermon.

That Act, in the Preamble, is ſaid to be intended *for the Eaſe of ſcrupulous Conſciences*; one Sett of the Falſe Brethren, mention'd in the Sermon, are *Men of no Conſcience at all*; whether Diſſenters, or ſuch as profeſs themſelves with Zeal to be of the eſtabliſh'd Church, but yet break her Communion by not obeying her Precepts.

That Act was intended for ſuch only, as qualify themſelves according to the Directions laid down in that Act; the Falſe Brethren which the Doctor every where ſpeaks of are ſuch, and ſuch only, as neither qualify themſelves according to that Act, nor think themſelves ſubject to the Penalties of former Acts.

This Act was intended in favour of ſuch as either ſubſcribe the Articles of Religion, excepting only the thirty fourth, thirty fifth and thirty ſixth, ſome Part of the twentieth, and that Part of the twenty ſeventh which relates to Infant-Baptiſm; or elſe for ſuch as ſubſcribe a Profeſſion of their Chriſtian Belief in theſe Words; *I profeſs Faith in God the Father, and in Jeſus Chriſt his Eternal Son the true God, and in the Holy Spirit, one God bleſſed for evermore; and do acknoweldge the Holy Scriptures of the Old and New Teſtament to be given by Divine Inſpiration.* Theſe are the Qualifications requir'd of ſuch as will entitle themſelves to the Benefit of this Act.

On the other hand, the Falſe Brethren deſcrib'd by Doctor *Sacheverell*, are *Atheiſts, Deiſts, Tritheiſts, Socinians, Revilers of the Holy Scripture*, and ſuch like. Are not Men of theſe Opinions Falſe Brethren, with Relation to God and Religion? Or ſhall ſuch Men be ſuffer'd to cover themſelves under the Protection of an Act of Parliament, deſign'd only for the Eaſe of ſcrupulous Conſciences. That there are Men among us of theſe Principles, will be but too viſible, from a Paſſage or two, which I beg leave to lay before your Lordſhips from Books lately Publiſhed.

The firſt which I ſhall mention, is entituled, *A brief but clear Confutation of the Trinity*: If the Title it ſelf has not given too much Offence to your Lordſhips, I ſhall proceed to look into the Book it ſelf; and in the Ninth Page there is this Propoſition laid down, *The Divinity attributed to the Son and Holy Ghoſt is unſcriptural and idolatrous*; and in Page the Tenth he goes on in theſe Words, *This one Fundamental Falſe Principle, as well with* Jews *and* Turks, *as Heathens, has done more Miſchief to Chriſtianity than all other Errors beſides.* Theſe are ſuch bare-fac'd Blaſphemies as muſt make every Man's Ears tingle that hears them; and the Reſpect which is due to your Lordſhips, and this Aſſembly, makes me forbear inſtancing any Thing more from this Author: But he does not ſtand alone; out of many more of the like ſort I ſhall mention but one only, and

This is a Book, entituled, *The Rights of the Chriſtian Church*; and the Author, in p. 108, lays down this Doctrine.

Among Chriſtians one no more than another can be reckon'd a Prieſt. And a little after, *The Clerk has as good a Title to the Prieſthood as the Parſon.*

Thus, my Lords, theſe two Men ſtrike off our whole Religion at once; the Fundamental Doctrine of our Faith is deſtroy'd by the firſt of 'em; and the Miniſters, who are to ſupport and defend that Doctrine, are ſet aſide by the other.

If theſe and ſuch like Opinions have any where prevail'd, is it not high time that ſome wholſome Severities were us'd to ſtop the growing Contagion? Or, if the Superior Paſtors of the Church ſhould thunder out their Eccleſiaſtical *Anathema's* againſt the Authors and Abettors of ſuch horrible Blaſphemies, by what Conſtruction can this be ſaid to be done againſt Perſons entitled to the Benefit of the Toleration?

But, my Lords, there is one Paſſage in this Sermon, which has been urg'd by the Learned Managers on this Head with more than ordinary Force, and as a direct Breach and Inſult upon the Toleration; with your Lordſhips Patience, I ſhall endeavour to ſet that Paſſage in a true Light. It is in the Eighth Page: *Should any one, out of Ignorance or Prejudice to the ancient Rights and eſſential Conſtitution of the Catholick Church affirm, that the Divine Apoſtolical Inſtitution of Epiſcopacy is a novel Doctrine, not ſufficiently warranted by Scripture, and that it is indifferent, whether the Church be govern'd by Biſhops or Preſbyters; is not ſuch an one an Apoſtate from his own Orders?*

It was ſaid, my Lords, that all thoſe Diſſenters who do not acknowledge the Divine Right of Epiſcopacy, and are therefore ſpecially exempted by the Act of Indulgence from Subſcribing ſome of the Articles of Religion, and who are immediately under the Protection of that Act, are yet, in the End of this Paragraph, charg'd with being Falſe Brethren, where he prays, That *God would deliver us from all ſuch Falſe Brethren.*

But, my Lords, it is plain, that theſe Words are not meant, nor can be conſtrued, generally of Diſſenters, who deny the Divine Inſtitution of Epiſcopacy; but are intended peculiarly of ſuch Perſons as have themſelves been Epiſcopally ordain'd; the firſt of theſe cannot be ſaid to be Apoſtates from that Doctrine which they never own'd, nor Subſcrib'd to; the latter, who could not be admitted to their Orders 'till they had ſubſcrib'd the receiv'd Doctrine of our Church, are the only Perſons who can be ſaid to be Apoſtates from their own Orders, if they deny that Divine Inſtitution, by which they themſelves have been Ordain'd, and conſequently, the only Perſons that are intended in this Paſſage, and term'd *Falſe Brethren.*

My Lords, I ſhall not preſume to ſay, what the Duty of the Superior Paſtors of the Church is, when our Religion and Diſcipline is invaded by Atheiſts and Schiſmaticks, much leſs to determine what Sentences juſtly paſs'd by them on Earth, may be ratify'd in Heaven. Thus much I hope I may ſay without Offence, That the Spiritual Power of Church-Paſtors is not deriv'd from the Civil Magiſtrate, but from God; that one Branch of that Power is the cenſuring of Notorious Offenders, and excluding them from the Communion of the Church; and that this has in all Ages, in Fact, and of Right too, been exercis'd by the Paſtors of the Church, by Permiſſion of the Civil Magiſtrate. The Reverend and Learned Bench of Biſhops well know, That before the Civil Magiſtrate did embrace the Chriſtian Religion, the Paſtors of the Church did inflict Spiritual Cenſures on Offenders, for doing ſuch Things as the Imperial Edicts did not only permit, but command; and this Power of inflicting

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Cenſures on Perſons exempted from Puniſhment by the Laws of the Land, has been always challeng'd, and is now exercis'd by the Reform'd Churches abroad; and by the Rubrick of our own Liturgy, open and notorious Evil Livers are to be repell'd from the Lord's Table, until they have openly declar'd their Repentance and Amendment.

We are told by the Learned Managers, That in caſe any Eccleſiaſtical Judge ſhould inflict an illegal Cenſure of Excommunication, the Temporal Courts may, and would ſoon give Relief, by ſending forth a Prohibition. But, your Lordſhips will conſider, that there is a wide and manifeſt Difference betwixt an Excommunication founded upon a Proſecution in the Eccleſiaſtical Courts, and the pronouncing Cenſures purely Spiritual. The external coercive Juriſdiction of Eccleſiaſtical Courts being deriv'd from the Laws of the Land, may, and is frequently by thoſe Laws reſtrain'd; but ſuch Reſtraint does not hinder the Paſtors of the Church from exerciſing the Spiritual Power of the Keys, which they derive not from the Laws of the Land, but from the Inſtitution of Chriſt; and therefore tho' it be provided in the Act of Exemption, that Perſons taking the Oaths, and making the Declaration in that Act mention'd, ſhall not be proſecuted in any Eccleſiaſtical Court for not conforming to the Church of *England*, yet it is not by that Act expreſs'd or intended that Nonconformity to the Eſtabliſh'd Church ſhould no longer be look'd upon as Schiſm; or that Separatiſts may not, by the Paſtors of the Church, be pronounc'd Schiſmatical. If Separatiſts from the Church of *England* were guilty of Schiſm before the Act of Exemption, they are as much guilty of it ſince; the Laws of the Land which require Conformity, being not by that Act repeal'd, tho' the Tranſgreſſors of thoſe Laws are releas'd from thoſe Pains and Penalties to which they were before obnoxious: But were the Laws of the Land which require Conformity to the Church of *England* expreſly or virtually repeal'd; yet whilſt the Laws of God requiring Church-Unity, and forbidding Schiſm, are uncancell'd, and remain in their full Force, thoſe who make cauſeleſs and unneceſſary Diviſions are ſtill guilty of Schiſm, and may by the Paſtors of the Church be cenſur'd as ſuch.

My Lords, I ſhall add but one Word in relation to Archbiſhop *Grindal*, not to diſturb his Aſhes, or blacken his Character, but to vindicate the Memory of that Glorious Queen, under whoſe Diſpleaſure he died.

It was ſaid, my Lords, that the true Ground of that Archbiſhop's Suſpenſion, was partly becauſe he would not give up his Manor of *Lambeth* to the Earl of *Leiceſter*; and partly becauſe he had cenſur'd one *Julio* an *Italian* for an illegal Marriage. Had theſe been the known Reaſons of his Suſpenſion, he would have had juſt Cauſe to complain loudly of that Cenſure; but without entring into the Secret Hiſtory of that Reign, I ſhall put the whole Matter upon that Archbiſhop's own Sentiments, both as to the Cauſe of his Suſpenſion, and the Juſtice of it.

By the Account which is yet extant under his own Hand it appears, that there were in thoſe Days Men of a Fanatical Spirit that call'd themſelves *Propheſiers*: that that Archbiſhop had been order'd by the Queen and Council to ſuppreſs ſuch Exerciſes within his Province, as contrary to the Laws of the Land, and the Eſtabliſh'd Diſcipline of the Church; but this Archbiſhop thought fit not only to delay, but abſolutely to refuſe to join in ſuppreſſing thoſe Exerciſes; and for this Diſobedience to the lawful Commands of his Sovereign he was ſuſpended.

My Lords, His own Words which he uſes upon this Occaſion are very remarkable, when he applies to the Council to intercede with Her Majeſty to be reſtor'd to Her gracious Favour, *viz.*

And whereas I have ſuſtain'd the Reſtraint of my Liberty, and the Sequeſtration of my Juriſdiction, now by the Space of Six Months; I am ſo far from repining thereat, or thinking my ſelf injuriouſly or hardly dealt withal therein at Her Majeſty's Hands, that I do thankfully embrace, and frankly with all Humility acknowledge, Her Princely and Gracious Care and Clemency towards me, who having Authority and Power to have us'd greater and ſharper Severity againſt me, and for good Policy and Example thinking it ſo expedient, hath notwithſtanding dealt ſo mercifully, mildly and gently with me.

My Lords, In this Letter that Archbiſhop frankly acknowledges that he had given Offence, and was, for good Policy and Example, juſtly puniſh'd by Her Majeſty; but had it been known that he was ſuſpended for not tamely parting with the Revenues of his See, or for pronouncing Sentence in a Court of Juſtice againſt an unlawful Marriage, there could have been no Reaſon for him to have acknowledg'd the Juſtice of his Suſpenſion; neither could it be for good Policy and Example expedient, that he ſhould be puniſh'd for not alienating the Revenues of his Church, or for not pronouncing *Julio*'s Marriage with another Man's Wife lawful.

Mr. *Dodd.* We ſhall ſpend little of your Lordſhips Time in reading to this Head; we ſhall only read the Toleration-Act, to ſhow the Exception in it; and offer the Archbiſhop's Letter to the Council, and the Queen's Letter to the Biſhops. We have the Letters of *Calvin* and *Beza*; but I believe we ſhall not have occaſion to read them, but only the other Three. The firſt is the Act of Toleration.

Clerk reads.] Anno Primo Guliel mi & Mariæ. *An Act for Exempting their Majeſties Proteſtant Subjects, Diſſenting from the Church of* England, *from the Penalties of certain Laws.*

'FOraſmuch as ſome Eaſe to ſcrupulous Conſciences in the Exerciſe of Religion may be an effectual Means to unite their Majeſties Proteſtant Subjects in Intereſt and Affection,

'Be it Enacted by the King and Queen's moſt Excellent Majeſties, by and with the Advice and Conſent of the Lords Spiritual and Temporal, and the Commons in this preſent Parliament Aſſembled, and by the Authority of the ſame, That neither the Statute made in the Three and twentieth Year of the Reign of the late Queen *Elizabeth*, intituled, *An Act to retain the Queen's Majeſty's Subjects in their due Obedience*: Nor the Statute made in the Twenty ninth Year of the ſaid Queen, intituled, *An Act for the more ſpeedy and due Execution of certain Branches of the Statute made in the Three and twentieth Year of the Queen's Majeſty's Reign, viz.* The aforeſaid Act, nor that Branch or Clauſe of a Statute made in the Firſt Year of the Reign of the ſaid Queen, intituled, *An Act for the Uniformity of Common Prayer and Service in the Church, and Adminiſtration of the Sacraments*; whereby all Perſons, having no lawful or reaſonable Excuſe to be abſent, are required to reſort to their Pariſh-

'Church

'Church or Chapel, or ſome uſual Place where 'the Common-Prayer ſhall be uſed, upon Pain of 'Puniſhment by the Cenſures of the Church, and 'alſo upon Pain that every Perſon ſo offending ſhall 'forfeit for every ſuch Offence Twelve-pence: 'Nor the Statute made in the Third Year of the 'Reign of the late King *James* the Firſt, intituled, '*An Act for the better Diſcovering and Repreſſing Po-'piſh Recuſants:* Nor that other Statute made in 'the ſame Year, intituled, *An Act to prevent and 'avoid Dangers which may grow by Popiſh Recu-'ſants:* Nor any other Law or Statute of this 'Realm made againſt Papiſts or Popiſh Recuſants, 'except the Statute made in the Five and twentieth 'Year of King *Charles* the Second, intituled, *An 'Act for preventing Dangers which may happen from 'Popiſh Recuſants*; and except alſo the Statute 'made in the Thirtieth Year of the ſaid King *Charles* 'the Second, intituled, *An Act for the more effectual 'preſerving the King's Perſon and Government, by 'diſabling Papiſts from ſitting in either Houſe of 'Parliament*; ſhall be conſtrued to extend to any 'Perſon or Perſons Diſſenting from the Church of '*England*, that ſhall take the Oaths mention'd in a Sta-'tute made in this preſent Parliament, intitled, *An Act 'for removing and preventing all Queſtions and Diſ-'putes concerning the Aſſembling and Sitting of this 'preſent Parliament:* And ſhall make and ſubſcribe 'the Declaration mentioned in a Statute made in 'the Thirtieth Year of the Reign of King *Charles* 'the Second, intituled, *An Act to prevent Papiſts 'from ſitting in either Houſe of Parliament.* Which 'Oaths and Declaration, the Juſtices of Peace at the 'General Seſſions of the Peace to be held for the 'County or Place where ſuch Perſon ſhall live, 'are hereby required to tender and adminiſter to 'ſuch Perſons as ſhall offer themſelves to take, 'make, and ſubſcribe the ſame, and thereof 'to keep a Regiſter. And likewiſe none of the 'Perſons aforeſaid, ſhall give or pay as any Fee, or 'Reward to any Officer, or Officers belonging to 'the Court aforeſaid, above the Sum of Six-pence, 'nor that more than once, for his or their Entry of his 'taking the ſaid Oaths, and making and ſubſcribing 'the ſaid Declaration. Nor above the further Sum 'of Six-pence for any Certificate of the ſame to be 'made out, and ſigned by the Officer or Officers of 'the ſaid Court.

'And be it further enacted by the Authority 'aforeſaid, That all and every Perſon and Perſons 'already convicted, or proſecuted in order to Con-'viction of Recuſancy, by Indictment, Information, 'Action of Debt, or otherwiſe, grounded upon the 'aforeſaid Statutes, or any of them, that ſhall take 'the ſaid Oaths mention'd in the ſaid Statute made 'this preſent Parliament, and make and ſubſcribe 'the Declaration aforeſaid, in the Court of *Exche-'quer*, or Aſſizes, or General or Quarter Seſſions 'to be held for the County where ſuch Perſon lives, 'and to be thence reſpectively certified into the *Ex-'chequer*, ſhall be thenceforth exempted and diſ-'charged from all the Penalties, Seizures, Forfei-'tures, Judgments and Executions, incurred by Force 'of any the aforeſaid Statutes, without any Com-'poſition, Fee, or further Charge whatſoever.

'And be it further Enacted by the Authority 'aforeſaid, That all and every Perſon and Perſons 'that ſhall as aforeſaid, take the ſaid Oaths, and 'make and ſubſcribe the Declaration aforeſaid, ſhall 'not be liable to any Pains, Penalties, or Forfeitures, 'mention'd in an Act made in the Five and thirtieth 'Year of the Reign of the late Queen *Elizabeth*, 'intituled, *An Act to retain the Queen's Majeſty's 'Subjects in their due Obedience:* Nor in an Act 'made in the Two and twentieth Year of the Reign 'of the late King *Charles* the Second, intituled, '*An Act to prevent and ſuppreſs Seditious Conven-'ticles.* Nor ſhall any of the ſaid Perſons be pro-'ſecuted in any Eccleſiaſtical Court, for or by rea-'ſon of their Nonconforming to the Church of '*England.*

'Provided always, and be it Enacted by the Au-'thority aforeſaid, That if any Aſſembly of Per-'ſons Diſſenting from the Church of *England* ſhall 'be had in any Place for Religious Worſhip, 'with the Doors Locked, Barred or Bolted during 'any time of ſuch meeting together, all and 'every Perſon or Perſons that ſhall come to and be 'at ſuch Meeting, ſhall not receive any Benefit 'from this Law, but be liable to all the Pains and 'Penalties of all the aforeſaid Laws recited in this 'Act for ſuch their Meeting, notwithſtanding his 'taking the Oaths, and his making and ſubſcribing 'the Declaration aforeſaid.

'Provided always, that nothing herein contained 'ſhall be conſtrued to exempt any of the Perſons 'aforeſaid from paying of Tythes or other Parochial 'Duties, or any other Duties to the Church or 'Miniſter; nor from any Proſecution in any Eccle-'ſiaſtical Court or elſewhere for the ſame.

'And be it further Enacted by the Authority afore-'ſaid, That if any Perſon Diſſenting from the 'Church of *England*, as aforeſaid, ſhall hereafter be 'choſen or otherwiſe appointed to bear the Office 'of High Conſtable, or Petit Conſtable, Church-'Warden, Overſeer of the Poor, or any other Pa-'rochial or Ward-Office, and ſuch Perſon ſhall 'ſcruple to take upon him any of the ſaid Offices 'in regard of the Oaths, or any other Matter or 'Thing required by the Law to be taken or done 'in reſpect of ſuch Office, every ſuch Perſon ſhall 'and may execute ſuch Office or Employment by a 'ſufficient Deputy, by him to be provided, that 'ſhall comply with the Laws on this behalf.

'Provided always the ſaid Deputy be allowed 'and approved by ſuch Perſon or Perſons, in 'ſuch manner as ſuch Officer or Officers reſpectively 'ſhould by Law have been allowed and approved.

'And be it further enacted by the Authority 'aforeſaid, That no Perſon Diſſenting from the 'Church of *England*, in Holy Orders, or pretended 'Holy Orders, or pretending to Holy Orders, nor 'any Preacher or Teacher of any Congregation of 'Diſſenting Proteſtants, that ſhall make and ſub-'ſcribe the Declaration aforeſaid, and take the ſaid 'Oaths at the General or Quarter Seſſions of the 'Peace, to be held for the County, Town, Parts 'or Diviſion where ſuch Perſon lives; which Court 'is hereby impower'd to adminiſter the ſame; and 'ſhall alſo declare his Approbation of, and ſubſcribe 'the Articles of Religion, mention'd in the Statute 'made in the Thirteenth Year of the Reign of the 'late Queen *Elizabeth*, except the Thirty fourth, 'Thirty fifth, and Thirty ſixth, and theſe Words 'of the Twentieth Article, *viz.* [*The Church hath 'Power to decree Rites or Ceremonies, and Autho-'rity in Controverſies of Faith*] and yet ſhall be li-'able to any of the Pains or Penalties mentioned 'in an Act made in the Seventeenth Year of the 'Reign of King *Charles* II. entitled, *An Act for 'Reſtraining Nonconformiſts from Inhabiting in Cor-'porations*; nor the Penalties mentioned in the 'aforeſaid Act made in the Two and twenti-'eth Year of his ſaid late Majeſty's Reign, for or

'by

'by reaſon of ſuch Perſons Preaching at any Meeting for the Exerciſe of Religion; nor to the Penalty of One Hundred Pounds, mention'd in an Act made in the Thirteenth and Fourteenth of King *Charles* II. entitled, *An Act for the Uniformity of Publick Prayers, and Adminiſtration of Sacraments, and other Rites and Ceremonies; and for Eſtabliſhing the Form of Making, Ordaining, and Conſecrating of Biſhops, Prieſts, and Deacons in the Church of* England, for Officiating in any Congregation for the Exerciſe of Religion, permitted and allowed by this Act.

'Provided always, That the making and ſubſcribing the ſaid Declaration, and the taking the ſaid Oaths, and making the Declaration of Approbation and Subſcription to the ſaid Articles, in manner as aforeſaid, by every reſpective Perſon or Perſons herein before-mentioned, at ſuch General or Quarter Seſſions of the Peace as aforeſaid, ſhall be then and there entred of Record in the ſaid Court, for which Six-pence ſhall be paid to the Clerk of the Peace, and no more.

'Provided, That ſuch Perſon ſhall not at any time Preach in any Place, but with the Doors not Locked, Barred or Bolted, as aforeſaid.

'And whereas ſome Diſſenting Proteſtants ſcruple the Baptizing of Infants; Be it enacted by the Authority aforeſaid, That every Perſon in pretended Holy Orders, or pretending to Holy Orders, or Preacher, or Teacher, that ſhall ſubſcribe the aforeſaid Articles of Religion, (except before excepted, and alſo except Part of the Seven and twentieth Article, touching *Infant-Baptiſm*) and ſhall take the ſaid Oaths, and make and ſubſcribe the Declaration aforeſaid, in manner aforeſaid, every ſuch Perſon ſhall enjoy all the Privileges, Benefits and Advantages, which any other Diſſenting Miniſter, as aforeſaid, might have or enjoy by virtue of this Act.

'And be it further enacted by the Authority aforeſaid, That every Teacher or Preacher in Holy Orders, or pretended Holy Orders, that is a Miniſter, Preacher or Teacher of a Congregation, that ſhall take the Oaths herein required, and make and ſubſcribe the Declaration aforeſaid, and alſo ſubſcribe ſuch of the aforeſaid Articles of the Church of *England*, as are required by this Act in manner aforeſaid, ſhall be thenceforth exempted from ſerving upon any Jury, or from being choſen or appointed to bear the Office of Church-Warden, Overſeer of the Poor, or any other Parochial or Ward-Office, or other Office in any Hundred, of any Shire, City, Town, Pariſh, Diviſion or Wapentake.

'And be it further enacted by the Authority aforeſaid, That every Juſtice of the Peace may at any Time hereafter require any Perſon, that goes to any Meeting for Exerciſe of Religion, to make and ſubſcribe the Declaration aforeſaid, and alſo to take the ſaid Oaths, or Declaration of Fidelity herein after mentioned, in caſe ſuch Perſon ſcruples the taking of an Oath; and upon Refuſal thereof, ſuch Juſtice of the Peace is hereby required to commit ſuch Perſon to Priſon without Bail or Mainprize; and to certify the Name of ſuch Perſon to the next General or Quarter Seſſions of the Peace to be held for that County, City, Town, Part or Diviſion where ſuch Perſon then reſides: And if ſuch Perſon ſo committed, ſhall, upon a Second Tender at the General or Quarter Seſſions, refuſe to make and ſubſcribe the Declaration aforeſaid, ſuch Perſon refuſing ſhall be then and there recorded; and he ſhall be taken thenceforth, to all Intents and Purpoſes, for a Popiſh Recuſant Convict, and ſuffer accordingly, and incur all the Penalties and Forfeitures of all the aforeſaid Laws.

'And whereas there are certain other Perſons, Diſſenters from the Church of *England*, who ſcruple the taking of any Oath; Be it enacted by the Authority aforeſaid, That every ſuch Perſon ſhall make and ſubſcribe the aforeſaid Declaration, and alſo this Declaration of Fidelity following; *Viz.*

'I A. B. *do Sincerely Promiſe, and Solemnly Declare before God and the World, that I will be True and Faithful to King* William *and Queen* Mary; *and I do ſolemnly profeſs and declare, that I do from my Heart abhor, deteſt and renounce, as impious and heretical, that damnable Doctrine and Poſition, That Princes Excommunicated, or Deprived by the Pope, or any Authority of the See of* Rome, *may be depoſed or murthered by their Subjects, or any other whatſoever. And I do declare, That no Foreign Prince, Perſon, Prelate, State or Potentate, hath, or ought to have, any Power, Juriſdiction, Superiority, Preeminence or Authority, Eccleſiaſtical or Spiritual, within this Realm.*

'And ſhall ſubſcribe a Profeſſion of their Chriſtian Belief, in theſe Words;

'I A. B. *profeſs Faith in God the Father, and in Jeſus Chriſt his Eternal Son, the True God, and in the Holy Spirit, One God bleſſed for evermore; and do acknowledge the Holy Scriptures of the Old and New Teſtament to be given by Divine Inſpiration.*

'Which Declarations and Subſcription ſhall be made, and entred of Record, at the General or Quarter Seſſions of the Peace for the County, City, or Place where every ſuch Perſon ſhall then reſide. And every ſuch Perſon that ſhall make and ſubſcribe the Two Declarations and Profeſſion aforeſaid, being thereunto required, ſhall be exempted from all the Pains and Penalties of all and every the aforementioned Statutes made againſt Popiſh Recuſants, or Proteſtant Nonconformiſts; and alſo from the Penalties of an Act made in the Fifth Year of the Reign of the late Queen *Elizabeth*, entitled, *An Act for the Aſſurance of the Queen's Royal Power, over all Eſtates and Subjects within Her Dominions*; for or by reaſon of ſuch Perſons not taking, or refuſing to take the Oath mentioned in the ſaid Act; and alſo from the Penalties of an Act made in the Thirteenth and Fourteenth Years of the Reign of King *Charles* II. entitled, *An Act for preventing Miſchiefs that may ariſe by certain Perſons (called* Quakers*) refuſing to take Lawful Oaths*; and enjoy all other the Benefits, Privileges and Advantages, under the like Limitations, Proviſo's and Conditions, which any other Diſſenters ſhall, or ought to enjoy by virtue of this Act.

'Provided always, and be it enacted by the Authority aforeſaid, That in caſe any Perſon ſhall refuſe to take the ſaid Oaths, when tender'd to them, which every Juſtice of the Peace is hereby empower'd to do, ſuch Perſon ſhall not be admitted to make and ſubſcribe the Two Declarations aforeſaid, tho' required thereunto either before any Juſtice of

'the

'the Peace, or at the General or Quarter Seſſi-
'ons, before or after any Conviction of Popiſh Re-
'cuſancy, as aforeſaid, unleſs ſuch Perſon can with-
'in Thirty one Days after ſuch Tender of the De-
'clarations to him, produce Two ſufficient Prote-
'ſtant Witneſſes, to teſtify upon Oath, that they
'believe him to be a Proteſtant Diſſenter, or a Cer-
'tificate under the Hands of Four Proteſtants who
'are conformable to the Church of *England*, or
'have taken the Oaths, and ſubſcribed the Declara-
'ration above-mentioned; and ſhall alſo produce a
'Certificate under the Hands and Seals of Six, or
'more, ſufficient Men of the Congregation to
'which he belongs, owning him for one of them.

'Provided alſo, And be it enacted by the Autho-
'rity aforeſaid, That until ſuch Certificate under
'the Hands of Six of his Congregation (as afore-
'ſaid) be produced, and Two Proteſtant Witneſſes
'come to atteſt his being a Proteſtant Diſſenter, or
'a Certificate under the Hands of Four Proteſtants
'(as aforeſaid) be produced, the Juſtice of the
'Peace ſhall, and hereby is required to take a Re-
'cognizance with Two Sureties, in the Penal Sum
'of Fifty Pounds, to be levied of his Goods and
'Chattels, Lands and Tenements, to the Uſe of
'the King and Queen's Majeſties, their Heirs and
'Succeſſors, for his producing the ſame; and if he
'cannot give ſuch Security, to commit him to Pri-
'ſon, there to remain until he has produced ſuch
'Certificates, or Two Witneſſes, as aforeſaid.

'Provided always, And it is the true Intent and
'Meaning of this Act, That all the Laws made and
'provided for the frequenting of Divine Service on
'the Lord's Day, commonly called *Sunday*, ſhall be
'ſtill in Force, and executed againſt all Perſons
'that offend againſt the ſaid Laws; except ſuch
'Perſons come to ſome Congregation, or Aſſembly
'of Religious Worſhip, allowed or permitted by
'this Act.

'Provided always, And be it further enacted by
'the Authority aforeſaid, That neither this Act,
'nor any Clauſe, Article, or Thing herein contain-
'ed, ſhall extend, or be conſtrued to extend, to
'give any Eaſe, Benefit or Advantage, to any Pa-
'piſt, or Popiſh Recuſant whatſoever; or any Per-
'ſon that ſhall deny, in his Preaching or Writing,
'the Doctrine of the Bleſſed Trinity, as it is decla-
'red in the aforeſaid Articles of Religion.

'Provided always, And be it enacted by the Au-
'thority aforeſaid, That if any Perſon or Perſons,
'at any Time or Times after the Tenth Day of
'*June*, do and ſhall, willingly and of purpoſe, ma-
'liciouſly or contemptuouſly, come into any Ca-
'thedral or Pariſh-Church, Chapel, or other Con-
'gregation permitted by this Act, and diſquiet or
'diſturb the ſame, or miſuſe any Preacher or Teach-
'er; ſuch Perſon or Perſons, upon Proof thereof
'before any Juſtice of Peace, by Two or more ſuf-
'ficient Witneſſes, ſhall find Two Sureties to be
'bound by Recognizance in the Penal Sum of Fifty
'Pounds; and in Default of ſuch Sureties, ſhall be
'committed to Priſon, there to remain till the next
'General or Quarter Seſſions; and upon Conviction
'of the ſaid Offence at the ſaid General or Quarter
'Seſſions, ſhall ſuffer the Pain and Penalty of Twen-
'ty Pounds, to the Uſe of the King and Queen's
'Majeſties, their Heirs and Succeſſors.

'Provided always, That no Congregation or As-
'ſembly for Religious Worſhip, ſhall be permitted
'or allowed by this Act, until the Place of ſuch
'Meeting ſhall be certified to the Biſhop of the
'Dioceſe, or to the Archdeacon of that Archdea-
'conry, or to the Juſtices of the Peace, at the Ge-
'neral or Quarter Seſſions of the Peace, for the
'County, City, or Place in which ſuch Meeting
'ſhall be held, and regiſtred in the ſaid Biſhop's
'or Archdeacon's Court reſpectively, or recorded at
'the ſaid General or Quarter Seſſions; the Regiſter
'or Clerk of the Peace whereof reſpectively, is
'hereby required to regiſter the ſame, and to give
'Certificate thereof to ſuch Perſon as ſhall demand
'the ſame; for which there ſhall be none greater
'Fee nor Reward taken, than the Sum of Six-
'Pence.

Mr. *Dodd.* The next is the Queen's Letter to the Biſhops: We have it from the *Cotton Library*, and a Perſon here, that has the Cuſtody of it, and proves it a True Copy.

Then Mr. Rawlinſon *was Sworn.*

Mr. *Dodd.* Pray give my Lords an Account, whether you examin'd that Paper; and where; and whether it be a True Copy.

Rawlinſon. I examin'd it in the *Cotton Library*, and (Errors excepted) I believe it a True Copy.

Mr. *Dodd.* Do you believe it to be a True Copy?

Rawlinſon. Yes, I do believe it.

Clerk reads.] '*A Letter from the Quenes Ma-*
'*jeſty, ſent to the Biſhopps through* England,
'*for the ſupplinge of the Exerciſe called Pro-*
'*phecyeing.*

'RIGHT Reverend Father in God, We greete you well. Cotton *Library*, Cleopatra, *F.* 2. *fol.* 287, 288, 289.
'We hear to our great Grieſe, that
'in ſundry Parts of our Realme there
'are no ſmall Numbers of Perſons
'preſuming to be Teachers and Preach-
'ers of the Church, tho' neither la-
'fulie thereunto called, no yet for the ſame, which
'contrary to our Laws eſtabliſhed for the publique
'Devine Service of Almightie God, and the Admi-
'niſtration of his holie Sacreement within this
'Church of *England*, doe dailie demiſe, imagine,
'propound and put in execution ſundrie new Rites
'and Forms in the Church, as well by their preach-
'ing, readings, and miniſtring the Sacraments, as
'well by procureing unlawful Aſſemblies of a great
'Number of our People out of either their ordina-
'ry Pariſhes, and from Place far diſtant; and that
'alſo of ſome of good-will, calling (though there-
'in not well adviſed) to be Hearers of their Diſ-
'putations, and new deviſed Opinions upon points
'of Devinities, farre and unmeete of unlarge Peo-
'ple; which manner of Invaſions they in ſome
'places call Propheſiings, and in ſome other places
'Exerciſes. By which manner of Aſſemblies great
'Numbers of our People, eſpecially the vulgar ſort,
'meete to be otherwiſe ouccupied with honeſt La-
'bour for there Labour for there Livinge, are brought
'to Idleneſs, and ſeduced, and in a manner ſchiſ-
'matically devided amongſt themſelves into varie-
'tie of danngrous Opinions, not only in Towns and
'Pariſhes, but even in ſome Families; and mani-
'feſtly thereby incorraged to the Violation of our
'Laws, and to the Breach of common Order, and
'finallie to the Offence of all our quiett Subjects
'that deſire to ſerve God according to the uni-
'forme Orders off eſtabliſhed in the Church, wher-
'of the Sequele cannot be but over-dangerous to be
'ſuffered. Wherefore, conſidering it ſhould be the

'Duty of the Buſhopps, being the principal ordinary Officers in the Church of God, as you are 'once, to ſee this Diſhoners againſt the Honor of 'God, and the Quietneſs of the Church reformed: 'And that we ſee that by the Increaſe of theſe, 'through Sufferance, great dannger may enſue even 'to the decay of the Criſtianne Faithe, whereof 'we are by God appointed the Defendor; beſides 'the other Inconveniences, to the diſturbance of 'our peaceable Government. We therefore, accor'ding to Authoritie we have, do Charge and 'Command you, as the Biſhopp of that Dyoceſſe, 'with all manner of Diligence, to take Order 'through your Dioceſſe, as well in Places exempt 'as otherwiſe; that no manner of Publique and 'Devine Service, nor other Form of th' Admini'ſtration of the Holy Sacraments, nor any other 'Rightes or Ceremonies be in any ſort uſed in the 'Church, but directlie according to the Orders 'eſtabliſhed by our Laws. Nether that any maner 'of Perſon be ſuffred within your Dioceſſe to 'preach, teach, read, or ani exerciſe any Function 'in the Church, but ſuch as ſhall be lawfully Ap'proved and Licenſed, as Perſons able for their 'Knowledge, and conformable to the Miniſtrie in 'the Rites and Ceremonies of the Church of *Eng'land*. And where there ſhall not be ſufficient able 'Perſons for Learning in any Cures, to preach or 'inſtruct their Cures as were requiſet, there ſhall 'you lymitte the Curates to read the publique 'Homlines, according to the Injunctions heretofore 'by us given for like Cauſes: And furthermore 'conſidering, for the great Abuſe that have byn in 'ſundrie Places of our Realme, by reaſon of our 'forſaid Aſſemblies called Exerciſes, and for that the 'ſame are not, nor have not been Appointed nor 'Warranted by us or by our Laws, we Will and 'ſtraightlie Charge you, that you do charge the 'ſame forthwith to ceaſe, and not to be uſed: But 'if any ſhall attempt, or continew or renew the 'ſame, We will you not onlie to committe there'unto Priſon, as Maynteyners of Diſorders, but al'ſo to advertiſe Us or our Counſaile of the Names 'and Qualities of them, and of their Mayntainers 'and Abbettors, that theupon for better Example 'their Puniſhment may be more ſharp for their Re'formation. And in theſe things we charge you to 'be ſo careful and villiant, as by your Negligence if 'we ſhould hear of any Perſon attempting to ſend 'in the Premiſſes without your Correccion or In'formation to us, we be not forced to make ſome 'Example or Reformation of you, according to 'your Deſerts.

Given under our Signet, at our Mannor of Greenwich, *the 7th of* May, 1577.

Mr. *Phipps.* Your Lordſhips obſerve, this is a Letter from Queen *Elizabeth* to the Biſhops, taking Notice of the Danger that might ariſe from the Propheſyings, and directs them to take care to ſuppreſs thoſe unlawful Aſſemblies; and now we will read to your Lordſhips the Letter from the Archbiſhop to the Council, wherein he tells them, that he could not comply with Her Majeſty's Command.

Clerk Reads.]

To the Lords of the Privy-Council.

'RIGHT Honorable and my ſinguler good 'Lords; I cannot deny but that I have been 'commanded both by the Quenes Majeſtie her 'ſelf, and alſo by divers of your Honorable Lord'ſhips in Her Name, to ſuppreſſe all thoſe Exerci'ſes within my Province, that are commonly called 'Propheſies; but I do proteſt before God, the Judge 'of all Hartes, that I did not of any Stubbernneſs 'or Wilfulneſs refuſe to Accompliſh the ſame, but 'onlye upon Conſcience; for that I found ſuch 'kind of Exerciſe ſet down in the Holie Scriptures, 'and the uſe of the ſame to have contynued in 'the Primitive Church, and was perſwaded that '(the Abuſes being reformed which I always offered 'my ſelf ready to Labour in) the ſaid Exerciſe might 'yet ſerve to the great Proffitt of the Church, and 'feared that the utter ſuppreſſing of them would 'bread Offence, and therefore was a moſt humble 'Suter unto Her Majeſtie, that I might not be 'made the chiefe Inſtrument in ſuppreſſing the 'ſame: Yet not prejudicing or condemning any 'that in reſpect of Pollicie or otherwiſe ſhould be 'of contrary Judgment, or being of Authority, 'ſhould ſuppreſs them: For I know right well, that 'there be ſome things of that Nature, wherein di'verſe Men may be of diverſe Opinions, and abownd 'in their owne Senſe, (being not repugnant to the 'Analogie of Faithe) without any Prejudice to 'their Salvation, or any Prejudice of ether to other. 'Notwithſtanding howſoever others being other'wiſe perſwaded, might ſafely do yt; yet I 'thought it not ſafe for me (being ſo perſwaded 'in Minde) to be the Doer of that whereof my 'own Heart and Conſcience would condemn me. 'And whereas I have ſuſteyned the Reſtraint of my 'Libertie, and Sequeſtration of my Juriſdiction 'nowe by the ſpace of ſix Monethes, I am ſo farre 'from Repininge thereat, or thinkinge my ſelf in'juriouſly or hardlie dealt withal therein at Her 'Majeſties Hands, that I do thankfully Embrace, 'and franklie, with all Humilitie, acknowledge her 'Princely, Gracious, and Rare Clemencie towards 'me, who having Authoritie and Power to have 'uſed greater and ſharper Severitie againſte me, 'and for good Pollicie and Example thinking it ſo 'expedient, hath notwithſtanding dealt ſo merci'fullie, myldelye, and gentlie with me. But the 'greateſt Griefe that ever I have had or have, is the 'Loſs of Her Majeſties Favour, and the ſuſteyninge 'of the Diſpleaſure of ſo gracious a Soveraigne, by 'whom the Church and Realm of *Englande* hath 'been ſo longe and ſo happilie Governed; and by 'whom my ſelf privatelie and ſpeciallie above other 'Subjects have received ſo many and ſo great Be'nefitts above all my Deſervings, for the recovery 'of whoſe gracious Favour, I moſt humbly beſeech 'your Lordſhips to be a meanes to Her Majeſtie for 'me: The which obteyned, I ſhall eſteme far a'bove all worldly Benefits whatſoever. And I pro'teſt here before God and your Honours, that not 'onely my dewtifull and humble Obedience to 'Her Majeſtie ſhall be ſuche, as She ſhall have no 'Cauſe to Repente Her of Her graciouſe Goodneſs 'and Clemencie ſhewed unto me; but alſo that 'by moſte fervente, heartie, and dailie Prayer (as 'I have done hitherto) ſo I will contynew, accor'dinge to my bownden Dewtie, to make moſte 'earneſte Sute unto Almightie God for the longe 'Preſervation of Her Majeſties moſt happie Raigne, 'to the unſpeakable Benefitt of the Church and 'Realm of *England*, &c.

29 *Novemb.* 1577. *EDM. CANTUAR.*

Mr.

Mr. *Dodd.* We hope these Two Letters have set that Matter in a true Light, that the Reason of the Archbishop's Disgrace was, for not complying with the Commands of the Queen. We will add no more upon this Article, but proceed to the Third.

Mr. *Phipps.* My Lords, The Dates of these Letters are material; for your Lordships take notice, they were written in the Year 1577; and Her Majesty's Commands for suppressing the Prophesyings not being obey'd, the *Puritans* in few Years became so dangerous, that the Parliament was necessitated to make the Act of the 35th Year of Her Reign, (with those severe Penalties, which have been so much censured by one of the Learned Managers) to give a Check to them.

Mr. *Dodd.* MY Lords, The Third Article that the Doctor is charged with, is, That *he does suggest and assert, That the Church of* England *is in a Condition of great Peril and Adversity under Her Majesty's Administration; And that, in order to arraign and blacken the Vote or Resolution of both Houses of Parliament, approv'd by Her Majesty, he, in Opposition thereto, does suggest the Church to be in Danger.* And, my Lords, this we take the Liberty totally to deny: The Doctor asserts no such Thing in his Sermon, nor hath it (as we apprehend) been proved upon him.

But true it is, that he asserts, That when National Sins are ripened to Maturity, with other Immoralities and Irreligious Practices therein mention'd, then such a People and Church are in very great Danger, as we apprehend, from the Sins and Vices of wicked Men. My Lords, This we conceive no ways to be opposite to the Votes of the Two Houses of Parliament, nor to Her Majesty's Declaration: We think we have followed the Act of Parliament of the 9th and 10th of King *William*, for suppressing Blasphemy and Prophaneness, and other Acts of Parliament, in asserting this Matter. It must be agreed, that the Church, as a Church Militant, is always in Danger, till it is a Church Triumphant: It is always taken notice so to be; she has many Enemies; she ought to be always on her Guard and Watch, and all good People ought to pray for her Support. The Prayers directed by Her Majesty to be used, and that are used in all Churches, are, *That no Sedition may disturb the State, nor Schism distract this Church*; and that we all ought to lay it to Heart, how great Dangers we are in by our unhappy Divisions: These are the Prayers that are put up every Day in the Churches. Now to object from this, that we look on the Church to be in Danger under Her Majesty's Administration, is so directly contrary to what the Doctor has asserted in his Sermon, wherein he does, as a good and loyal Subject, pray, and pray heartily for the Best of Queens, *that she may long live for the Comfort and Support of this Church and Nation*; after this, one would think, when he has so positively laid it down in plain Words, there could be no Ground to quarrel with him on this Head. And as to that which was urged by one of the Gentlemen Managers for the House of Commons, observing that the Doctor's Expressions were taken out of the *Lamentations*, and that when the *Lamentations* were written, the King was a Prisoner, and the People in Captivity; and therefore the Doctor intended the Parallel to answer the present Times: Surely no such Inference can be drawn from these Passages: I hope the People are in no Captivity whatsoever; nor is our Queen (blessed be God) a Prisoner. And if it was intended by the Gentleman Manager, (as I suppose it was) that the Doctor herein meant the *Pretender*; the Doctor utterly denies it, and has all along disclaimed his Right, and asserted Her Majesty's Right in very express Terms. But in this Place cited by the Doctor, is represented the Prophet's Lamentation for the Sins of the People, and the Judgments that had overtaken the *Jews* for their Sins and Rebellion. The like Prayers may be observed to have been made by King *David*, and yet the Church of the *Jews* was in the greatest Prosperity in his Time: However, there is scarce a *Psalm* but he laments the Sins of the People, for fear lest they should bring down Judgments on the *Jewish* Church and State. This is pathetically express'd almost throughout all the *Psalms*.

As to the Allegation, That *the Members of both Houses were Conspiring the Ruin of the Church*, he totally denies it; nor has the Doctor, in all his Sermon, mentioned the Votes of the Two Houses: Therefore for the Article to charge the Doctor with asserting, *That the Members of both Houses, who pass'd the Vote relating to the Danger of the Church, were Conspiring her Ruin, when they Voted her out of Danger*, is a mistaken Fact. That Vote was almost Four Years ago. There could be no Reason to think he reflected on that Vote; nor is there any Thing that can induce your Lordships (as we humbly apprehend) in the Doctor's Sermon, to believe such a Charge. The Passage in the Doctor's Sermon relates to the Wars in the late Times: And as in those Days there were many ill Men, and God permitted them to bring their ill Designs about; so it is plain, that there were many good Men innocent, as my Lord *Clarendon* expresses it, that had no such ill Designs. Now, when your Lordships and the Commons pass'd that Vote, no doubt it was a just Vote, and gave a great Satisfaction: But no body could expect that Passage to be turned on the Doctor, as a Reflection on your Lordships, the Commons, and Her Majesty, in relation to that Vote. But what he reflects upon is quite another Thing: He takes notice, that the Church is in Danger from evil Men, from evil Practices, and evil Books that are daily publish'd. We hope your Lordships will not take it, that when we urge this, we intend to reflect either on the Pastors of the Church, or the Ministry of the Queen; for it would be hard, that they should be answerable for all those Pamphlets. But when such are publish'd to poison the Notions of the People, and a Minister in the Pulpit takes notice of them, to prevent the ill Consequences of them; whether this can have such a Construction as has been contended for, we may safely submit to your Lordships. The now asserting the Christian Faith to be in Danger by Vice and Irreligion, cannot be contrary to the Votes in the Articles alledged, nor affect him, who makes the Assertion, with any Crime, or (as we think) subject him to any Punishment.

My Lords, We shall be the shorter in opening this Article, because we fear we shall be very long in our Evidence upon this Head; we shall produce and give in Evidence several Books that daily come out, which contain the highest Blasphemy, Irreligion and Heresy that can be publish'd. I will not take upon me to open them, they are so horrid, I leave the Passages to be read, that your Lordships may see what Grounds there are for a Preacher in the Pulpit to take Notice of these Matters. When the Church is run down, the Clergy vilify'd; when they tell us a grey Coat has as much Authority to

adminiſter the Sacrament as a black Coat; and that a Country-Man may make as good a Prieſt as the Parſon of the Pariſh; theſe Things may excuſe the Zeal of the Doctor in ſo warmly Reprehending them.

We ſhall read abundance of this ſort of Learning, and we ſhall do it only to ſhew that there was Reaſon for the Doctor in the Pulpit to forewarn the People, to caution them that they may not have ill Impreſſions made upon them, by ſuch wicked and ſcurrilous Writings. We ſhall humbly offer our Evidence to your Lordſhips, and then ſubmit this Article.

Mr. *Phipps.* MY Lords, I am now to ſpeak to the Third Article exhibited by the Commons of *Great Britain* againſt Doctor *Sacheverell:* And I humbly beg your Lordſhips Patience, while I take Notice of the ſeveral Branches of this Article, and ſhew your Lordſhips, that the Doctor is not guilty of any Offence therein charged.

As to ſuch Part of this Article as charges the Doctor, *That he doth falſly and ſeditiouſly ſuggeſt and aſſert, that the Church of* England *is in a Condition of great Peril and Adverſity under Her Majeſty's Adminiſtration; and that to arraign and blacken the Vote and Reſolution of both Houſes of Parliament, approv'd by Her Majeſty, he, in Oppoſition thereto, doth ſuggeſt the Church to be in Danger:*

I beg Leave to take Notice, that the Firſt Part of the Fourth Article explains this Branch of the Third Article, and ſhews what the Commons meant by the Church being in Danger *under* Her Majeſty's Adminiſtration: For, the Firſt Part of the Fourth Article ſays, That *the Doctor ſuggeſts, that her Majeſty's Adminiſtration, in Eccleſiaſtical and Civil Affairs, tends to the Deſtruction of the Conſtitution.* So that by charging that the Doctor aſſerts the Church is in Danger under Her Majeſty's Adminiſtration, it muſt be intended that he aſſerts the Church to be in Danger by Reaſon of Her Majeſty's Adminiſtration. And therefore if there be any Expreſſion in the Doctor's Sermon which ſuggeſts the Church to be in Danger; yet if it be not alſo therein aſſerted that the Danger proceeds from Her Majeſty's Adminiſtration, the Doctor cannot be an Offender within the Meaning and Intention of this Article: And the Doctor denies, that he hath aſſerted any thing in his Sermon, from whence any ſuch Suggeſtion can be inferred.

To give your Lordſhips full Satisfaction in this Point, I ſhall firſt take Notice of the ſeveral Clauſes in the Doctor's Sermon at St. *Paul*'s, which have been cited to make good this Article.

The firſt Paſſage quoted for this Purpoſe, is in *Page* the 5th, where the Doctor thus expreſſeth himſelf: *I ſhall take the Expreſſion in its full Latitude, without confining it to the expreſs Deſign of the Place, tho' it were very obvious to draw a Parallel here betwixt the ſad Circumſtances of the Church of* Corinth *formerly, and of the Church of* England *at preſent; wherein her Holy Communion has been rent and divided by factious and ſchiſmatical Impoſtors; her pure Doctrine has been corrupted and defil'd; her Primitive Worſhip and Diſcipline prophan'd and abus'd; her ſacred Orders deny'd and vilify'd; her Prieſts and Profeſſors (like St.* Paul*) calumniated, miſrepreſented and ridicul'd; her Altars and Sacraments proſtituted to Hypocrites, Deiſts, Socinians and Atheiſts; and this done, I wiſh I could not ſay, without Diſcouragement, I am ſure with Impunity, not only by our profeſs'd Enemies; but, which is worſe, by our pretended Friends and Falſe Brethren.*

This is the Paſſage which is chiefly inſiſted on to make good this Branch of the Article. My Lords, Is there not too much Truth in this Clauſe? Hath not the Communion of the Church been rent and divided by ſome Factious and Schiſmatical Teachers in Separate Congregations, who have no Orders at all; and by others who refuſe to take the Oaths, and will not comply with the Act of Toleration; by Popiſh Prieſts, who have drawn away Perſons from our Communion to their Church? Have not her Sacred Orders been deny'd and vilify'd by the Papiſts, who pretend Archbiſhop *Parker* was conſecrated at the *Nags-Head?* Are not her Altars and Sacraments proſtituted to Atheiſts, Deiſts and Socinians, who communicate to qualify themſelves for Offices and Places of Truſt; and yet, Is there any thing in this Clauſe can ſupport this Article? Are theſe Evils charg'd upon Her Majeſty; or is it aſſerted, that theſe Miſchiefs are owing to, or proceed from Her Majeſty's Adminiſtration?

The next Paragraph cited to maintain this Article, is in the 14th Page, where the Doctor ſays, *In ſhort, as the* Engliſh *Government can never be ſecure on any other Principles, but ſtrictly thoſe of the Church of* England; *ſo I will be bold to ſay, where any Part of it is truſted in Perſons of any other Notions, they muſt be falſe to themſelves, if they are true to their Truſts; or if they are true to their Opinions and Intereſt, muſt betray that Government they are Enemies to upon Principle. Indeed, we muſt do them that Juſtice, to confeſs, That ſince the Sectariſts have found a way (which their Fore-fathers, God knows, as wicked as they were, would have abhorr'd) to ſwallow not only Oaths, but Sacraments, to qualify themſelves to get into Places and Preferments; theſe ſanctify'd Hypocrites can put on a ſhew of Loyalty, and ſeem tolerably eaſy in the Government, if they can ingroſs the Honours and Profits of it: But, let Her Majeſty reach out Her little Finger to touch their Loins, and theſe Sworn Adverſaries to Paſſive Obedience, and the Royal Family, ſhall fret themſelves, and Curſe their Queen and their God, and ſhall look upwards.*

Here is not one Word of the Church being in Danger by Her Majeſty's Adminiſtration: He only ſhews the Danger the *Engliſh* Government may be in by Occaſional Conformiſts put into Offices and Places of Truſt. For Occaſional Conformiſts, who are Diſſenters, Republicans, Atheiſts and Deiſts, that communicate only to qualify themſelves for Places, if they are true to their Opinions, cannot be true to the Church of *England* in which they communicate, cannot be true to the Government by which they are entruſted in ſuch Offices; for they will be always promoting their own Principles in Religion, and their own Forms of Government in the State.

Both Lords and Commons were of Opinion, it was not ſafe to truſt Occaſional Conformiſts with the Guardianſhip of our Church or Crown, when they agreed to the Bill for preventing Occaſional Conformity, which Enacts, *That if any Perſon, who had any Office Civil or Military, or any Command or Place of Truſt under Her Majeſty; or if any Perſon bearing any Office of Magiſtracy, or Place of Truſt in Corporations, who by the Laws are obliged to receive the Sacrament of the Lord's Supper, according to the Rites and Uſage of the Church of* England, *ſhould after their Admiſſion into their reſpective*

ſpective Offices, and during their Continuance in ſuch Offices, reſort unto any Conventicle, Aſſembly or Meeting, under Colour or Pretence of any Exerciſe of Religion, in any other Manner than according to the Liturgy and Practice of the Church of England, *they ſhould, being convicted thereof, be diſabled from henceforth to hold ſuch Office or Offices.* Tho' this was never Enacted into a Law, yet as it was the Opinion of both Houſes of Parliament, I beg Leave to offer it as a Reaſon, to confirm what the Doctor hath aſſerted.

My Lords, I ſhall trouble your Lordſhips only with one Paſſage more, which was urg'd to prove this Article, which is in Page the 15th, where the Doctor hath theſe Words, *To lay before you the great Peril and Miſchiefs of theſe Falſe Brethren in Church and State; which I ſhall endeavour to do, by proving that they weaken, undermine, and betray in themſelves, and encourage, and put it into the Power of our profeſs'd Enemies, to overturn and deſtroy the Conſtitution and Eſtabliſhment of both.* Theſe Falſe Brethren are the Occaſional Conformiſts mention'd in the Page preceding.

I heartily wiſh, that all who communicate in the Church, were true Sons of the Church; but if, as the Doctor ſuggeſts, there are any that communicate at her Altars, who diſown her Miſſion, who refuſe to comply with her Liturgy, and are Enemies to her Conſtitution; if *Arians*, *Socinians*, Deiſts, and almoſt all Diſſenters, and other Enemies to the Church, communicate with her to get Places and Preferments in Church and State, what Prejudice the Church may receive from ſuch Falſe Brethren, I ſubmit to your Lordſhips Judgment; begging Leave only to offer to your Lordſhips, what was ſaid by the Commons at a Conference with your Lordſhips, upon the Bill for preventing Occaſional Conformity; and which, I hope, in an Impeachment by the Commons, will have ſome Weight with your Lordſhips.

The Commons upon that Conference were pleaſed to take Notice, "That when the Corporation-"Act was made, the Parliament had freſh in their "Minds the Confuſions and Calamities that had "been brought upon the Nation, by ſuch as pre-"tended to be at the ſame time in the true Intereſt "of Religion and their Country. That the Parlia-"ment by that Act, and afterwards by the Teſt-"Act, thought they had ſecured our Eſtabliſhment "both in Church and State; and that they had pro-"vided a ſufficient Barrier to defeat and diſappoint "any Attempts upon them, by Enacting, *That all "in Office ſhould receive the Sacrament of the Lord's "Supper, according the Rights and Uſages of the "Church of* England; and never imagin'd a Set of "Men would riſe up, whoſe Conſciences were too "tender to obey the Laws, but harden'd enough to "break through any.

Thus, my Lords, having ſhewn that the Paſſages cited by the Managers do not maintain this Article, and that the Doctor hath not aſſerted the Church to be in Danger by Her Majeſty's Adminiſtration: I will next ſhew, from what Cauſes the Doctor doth ſuggeſt the Danger of the Church to ariſe: And of theſe Schiſm is one.

That Schiſm may diſtract the Church, a Prayer lately added to our Liturgy tells us? That Separation from the Eſtabliſh'd Church, which impoſeth no Sinful Terms of Communion, is Schiſm, all the Learned Men of our Church agree; and that there are many People in this Nation that are guilty of Schiſm, I think no Body will deny. And altho' it cannot be imagined, nor is it aſſerted by the Doctor, that ſuch Schiſm ſhould grow to ſuch a Head as to endanger the Church, during Her Majeſty's happy Adminiſtration; yet, what ill Conſequence it may be to the Church in another Age, no Body can pretend to know, tho' every Body may have too much Reaſon to fear.

So, my Lords, when Men attack the Articles of our Religion and our Homilies, and repreſent them as Spurious; when they call the Doctrine of Non-Reſiſtance and Paſſive Obedience a Blaſphemous Doctrine, what Influence that may have hereafter upon our Government both in Church and State, your Lordſhips are the beſt Judges.

I ſubmit to your Lordſhips, if the Queen can be ſafe, when it ſhall be averr'd in Print, that there is one on the other Side of the Water that is a *Jure Divino* King, and hath an Hereditary Right. Can the Queen or Church be ſafe, when all the whole Adminiſtration is vilify'd and abus'd as it is in the *Obſervator*, in this Manner? *Countryman* aſks the Queſtion, *Have you any more Knaves to talk of?* Obſ. *Honeſt* Countryman, *What would you have me to do? If I muſt run through all the Liſts of Knaves, I muſt bring in all the Courts, all the Employments, all the Claſſes of Publick Affairs in the Nation.*

Can the Queen be ſafe, when the Murther of King *Charles* the Firſt is juſtify'd in Print, by the *Review* and *Obſervator?* When the *Wet Martyrdom* of King *Charles* the Firſt, and *Dry Martyrdom* of King *James* the Second are ſaid to be all one, and no Difference between them? I ſay, How can Her Majeſty be ſafe, when ſuch Rebellious Principles are ſo publickly avow'd? And if Her Majeſty be in Danger, Can the Church be ſafe?

All Learned Men that underſtand our Conſtitution, have always agreed, that there is ſuch a near Relation between the Church and Monarchy, ſuch a Dependance of one upon the other, that where one falls, the other cannot ſtand.

Can either Church or Queen be ſafe, when ſo great and neceſſary a Part of our Conſtitution, our Parliament, is ſtruck at? When it ſhall be ſaid *that the Members ſit in the Houſe to do nothing, making long Speeches without Meaning, and Voting Bills without Deſign to have them paſs?* And when ſuch Rebellious Principles are broached, as I mentioned to your Lordſhips upon *Friday* laſt out of the *Review*, to ſhew the Neceſſity of Preaching the Doctrine of Paſſive Obedience, *viz. If the next Parliament ſhould prove like this, the Nation will be ſo much nearer that Criſis of Time, when* Engliſh *Liberty being brought to the laſt Extremity, muſt open the Magazine of Original Power?* Theſe are ſome of the Things alledged by the Doctor to be dangerous to the Church and State.

But the chief Cauſes from whence the Doctor ſuggeſts the Danger of our Church and State to proceed, are Atheiſm, Prophaneneſs, and Immorality; for he thus expreſſeth himſelf, *Pag.* 20. *What Reaſon have we to think but that the National Sins are ripen'd up to a full Maturity to call down Vengeance from Providence on a Church and Kingdom thus debauch'd in its Principles, and corrupted in its Manners; and inſtead of the True Faith, Diſcipline and Worſhip, given over to all Licentiouſneſs both in Opinion and Practice; to all Senſuality, Hypocriſy, Lewdneſs and Atheiſm?*

From theſe Sins it is he apprehends the Church and Nation to be in Danger; and what Judgments have been brought down upon Kingdoms and Nations for theſe Sins, we have Multitudes of Inſtances, both in Sacred and other Hiſtories; ſometimes they have

have been depriv'd of the true Worſhip of God, and overwhelm'd with Idolatry and Mahometaniſm. Is not the Name of Chriſt forgot in the Place of his miraculous Birth? And is not the Light of the Goſpel totally extinguiſh'd where it at firſt ſo glorioufly ſhin'd? And by what Means? By Infidelity, Prophaneneſs and Immorality. And may not the ſame Cauſes produce the ſame Effects?

Can *England* be always ſecure from ſuch Judgments, when ſome amongſt us ſcarce own the firſt Perſon of the Trinity, by whom they were created? But many have the Boldneſs to deny the Divinity of the ſecond Perſon, by whom they were redeemed, and many other ſuch Blaſphemies and Atheiſtical Notions are daily propagated and ſpread abroad among us; of which I ſhall beg your Lordſhips Permiſſion to cite ſome few Inſtances, of thoſe many we ſhall offer to your Conſideration in the Courſe of our Evidence; and they are ſuch as I hardly dare Name, and as your Lordſhips will ſcarce bear to hear.

There is a Treatiſe call'd, *A brief but clear Confutation of the Doctrine of the Trinity*, Page the 9th it ſays, *The Divinity attributed to the Son and Holy Ghoſt is unſcriptural and idolatrous.* Page the 14th, *To be ſhort, Trinitarianiſm is Polytheiſm and Idolatry, if there be any ſuch Thing in Nature.*

And a Book called *Brief Notes on the Creed of Athanaſius*, ſpeaking of the Trinity and Incarnation, ſays, *A Belief in theſe Points is in no Degree neceſſary, much leſs neceſſary before all Things.*

The *Account of the Growth of Deiſm*, Page 17. ſays, *Many Doctrines are made neceſſary to Salvation, which it is impoſſible to believe, becauſe they are in their Nature Abſurdities.* Idem, p. 22. *One of my Old Acquaintance always thought the moral Part of the Bible very good; but he alſo thought that by the Strength of his own Reaſon, he could have writ as good a Moral himſelf.*

Theſe are Sins of a very deep Dye, and may juſtly draw down very heavy Judgments; and altho' we are very well aſſured, that the Piety of her Majeſty alone is ſufficient to avert thoſe Judgments that are due to ſuch Crimes during her own Life; and altho' we are ſure, that, by her Majeſty's Care, and the Vigilance of Her Miniſters, thoſe Sins will not grow to ſuch a Head during her Majeſty's Life, as to endanger the Church and State; yet (if not prevented) they may take ſuch Root now, as may hereafter endanger the State, the Church, and even Chriſtianity it ſelf: For as among Men, *Nemo repentè fuit turpiſſimus*, ſo Hereſies and Schiſms in the Church, Factious and Seditious Principles in the State, are not invented and arrive to the Height at once, but ſteal by Degrees into the Church and State: And therefore, as in the Body Natural, ſo in the Body Politick, we muſt meet the Diſeaſe, and prevent the ſpreading of its Contagion: And one of the beſt Methods to do it, is by our Miniſters ſhewing the Heinouſneſs of theſe Crimes, and the dangerous Conſequences that attend them. And we ſubmit it to your Lordſhips, whether the Doctor hath any otherwiſe aſſerted the Church to be in Danger, than what may happen to her as the Conſequences of ſuch Sins; and whether he any where avers the Church to be in Danger by or under her Majeſty's Adminiſtration.

As to the Votes of both Houſes, we dare not preſume to ſay how far they were deſign'd to extend: But I humbly ſubmit to your Lordſhips Conſideration, whether the Vote of both Houſes in 1705, did relate only to ſuch Suggeſtions and Inſinuations of the Church's Danger, as ſhould be made about that Time, or ſome ſhort Time after; or whether it was intended to have a Proſpect, and relate to what ſhould be ſuggeſted four Years after; whereas it was impoſſible for the Wit of Man to foreſee what ſhould happen in ſo long a Time.

We were then, as we are now, engaged in a War with a powerful Enemy; a Pretender, ſupported by that Enemy, and who, ſince that Vote, attempted to invade theſe Kingdoms, if that Army of the *French* had been ſucceſsful in *Flanders*, and the Advantage of the War had turn'd on their Side; and if the Pretender had landed with ſuch a ſucceſsful and powerful Army of *French* Papiſts in *Great Britain*, I believe it would have been impoſſible to have made the Generality of the People avoid thinking both Church and State too in Danger under thoſe Circumſtances.

To conclude this Branch, If there be any Thing in his Sermon, from whence it can be inferr'd that he ſuggeſts the Church to be in Danger, yet if it be not ſuggeſted to be by Reaſon of her Majeſty's Adminiſtration; and if it was not done with a wicked, malicious, and ſeditious Intent to defame Her Majeſty's Adminiſtration, and to contradict and arraign the Reſolutions of both Houſes of Parliament; and unleſs ſuch Intention plainly appears, without *Inuendo's*, he cannot be guilty within the Intent of this Article.

And as to ſo much of the third Article, which chargeth that *the Doctor, as a Parallel, mentions a Vote that the Perſon of King* Charles *the Firſt was voted to be out of Danger, at the ſame time that his Murderers were conſpiring his Death, thereby wickedly and maliciouſly inſinuating, that the Members of both Houſes who paſs'd the ſaid Vote were then conſpiring the Ruin of the Church*; I cannot give a better Anſwer than the Doctor himſelf hath given to it, *viz.*

1. That he doth not draw any Parallel between the Vote concerning the King's Perſon, and the Vote of the Two Houſes.

2. That he does not in his Sermon mention the Vote of the Two Houſes.

3. That if he had mentioned it, he would not thereby wickedly and maliciouſly have inſinuated that the Members of both Houſes, who paſs'd that Vote, were then conſpiring the Ruin of the Church; but would have inſinuated, that as ſome Perſons were conſpiring the Murder of the King, whilſt others, no way privy to their wicked Intentions, voted his Perſon to be out of Danger; ſo when the Two Houſes voted the Church to be in no Danger under her Majeſty's Adminiſtration, there might be ſome others who were conſpiring the Ruin of the Church, and many others, who by their Vice and Infidelity were drawing down God's Vengeance both on Church and State.

Mr. *Dee.* MAY it pleaſe your Lordſhips to indulge me a little upon this Article, and I beg leave to make a Diſtinction, as on the laſt Article, that is, that theſe Words, *Danger of the Church*, ſeem in the Articles to bear one Senſe, and in the Doctor's Sermon another. The Danger ſuggeſted in the Article, is a Danger under Her Majeſty's Adminiſtration. I muſt beg leave to ſay, theſe Words were put in, to inſinuate, that the Doctor does in his Sermon urge the Danger of the Church to ariſe from her Majeſty's Adminiſtration; which, I think, is not to be found there; and if they were omitted, then it will ſtand only thus, That the Doctor

ctor doth affirm that the Church of *England* is under great Peril and Adverſity; and if ſo, I hope, the Aſſertion is not Criminal. I can't, by all the Obſervation I have made on the Doctor's Sermon, find that the Doctor ſuggeſts that there is any form'd Body of Men conſpiring to overthrow the Church; but the Doctor ſays that there are ſuch Men that are falſe Brethren that endanger the Doctrines and Diſcipline of the Church. That there is ſome ſort of Danger, appears by the Form of Prayer that is daily offer'd up for her Safety, and therefore a general Suggeſtion of Danger would not have anſwer'd the End of the Commons to make the Doctor Criminal, without adding the Words *under her Majeſty's Adminiſtration*; and if they can ſhew that the Doctor in any Part of his Sermon has charg'd the Queen with ſuch Adminiſtration as endangers the Church, I am ſure I ſhould be very much to blame to appear for him at this Bar; but the contrary, I think, appears, when he prays for her Life, with theſe Words added, *for the Comfort and Support of this Church and Nation.*

My Lords, I ſhall ſay no more to that Part of the Article, it having been fully ſpoken to already, but beg leave to take Notice, that the Managers for the Houſe of Commons have been pleaſed to ſay, That the Doctor has reflected upon the Reſolutions of both Houſes of Parliament, by drawing a Parallel between the Vote relating to the Murder of King *Charles*, and the Vote of the Two Houſes that the Church was not in Danger. My Lords, To make a Parallel there muſt be Two Lines, a Line firſt given to draw the Parallel Line to; and I beg leave to ſay, that in the Doctor's Sermon there is no ſuch firſt Line given; for he has not in all his Sermon taken Notice of any Vote of both Houſes. If he has not taken Notice of this Reſolution of both Houſes in his Sermon, the Law will not imply that he had any Notice of it. For Votes are private Reſolutions of the Houſes, and always were ſo 'till of late they have been publiſh'd in Print, and the Printing of them will not infer that he had Notice of them. The Doctor's Diſtinction in his Anſwer is very true and plain, that he doth not charge the Perſons concern'd in paſſing that Vote with being concern'd in that odious add execrable Deſign of carrying on the Murder of that Royal Prince; (and I hope Charity will carry us ſo far as to think that very many Perſons that join'd in that Vote were not concern'd in it) but that yet at the ſame Time they paſſed that Vote, that bloody Deſign was carry'd on by a private Juncto of Bloodthirſty Men.

My Lords, I do not admit, but ſuppoſing I ſhould admit the Doctor hath contradicted the Reſolutions of both Houſes, I ſubmit it to your Lordſhips what Crime the contradicting a Vote of the Houſe of Commons, or the Reſolution of both Houſes, is. The contradicting a known eſtabliſh'd Law may be Seditious; but I ſubmit it whether a Vote is ſo publick an Act, that contradicting it, at leaſt without taking Notice of it, be any Crime, or at leaſt be ſo high a Crime as to deſerve a Cenſure. It is very certain he may be thought Saucy and Unmannerly to do it, or it may be a Breach of Privilege; but whether your Lordſhips will interpret it to be a Crime, and ſuch a Crime as will bear an Impeachment for High Crimes and Miſdemeanors, I ſubmit to your Lordſhips.

My Lords, We humbly hope, that notwithſtanding any thing yet offered againſt the Doctor, that your Lordſhips will be of Opinion, that the acquitting the Doctor of this Impeachment will be a noble and convincing Proof of the undoubted Truth of that Vote, That the Church of *England*, (of which the Doctor is a true, though an unfortunate Son, whilſt under a Charge by the Commons of *Great Britain* for High Crimes) under her Majeſty's Adminiſtration, is in a ſafe and flouriſhing Condition.

Dr. *Henchman.* MY Lords, We are now upon the Third Article of Impeachment, in which Doctor *Sacheverell* is charg'd with [*falſly and ſeditiouſly ſuggeſting and aſſerting, That the Church of* England *is in a Condition of great Peril and Adverſity under Her Majeſty's Adminiſtration.*] If by theſe Words, *under her Majeſty's Adminiſtration*, your Lordſhips are to underſtand By the Courſe and Tendency of her Majeſty's Adminiſtration, that Charge we poſitively deny, and humbly aſſure our ſelves that the Learned Managers have not been able to maintain it, either from the general Scope and Deſign of the whole Sermon, or from any particular Paſſages contain'd in it.

If by thoſe Words, *under her Majeſty's Adminiſtration*, is to be underſtood only during the Time of her Majeſty's Adminiſtration, then we apprehend that there may be Perils under her Majeſty's Adminiſtration, which do no ways proceed from ſuch her Adminiſtration, and which may be mention'd without any ſeditious Thought or Intention of Reflecting upon her Majeſty's happy Adminiſtration.

If your Lordſhips look thro' the whole Sermon, it will appear, that he who now ſtands accuſed for caſting this foul Aſperſion upon her Majeſty, never once mentions her throughout this whole Diſcourſe, but in Terms full of the profoundeſt Reſpect and Reverence: In the very beginning of this Sermon, in the ſecond Page, this is reckon'd as one chief Part of that Day's Deliverance, which he was then ſolemnizing, *That this good and pious Relick of the Royal Family ſits now happily upon the Throne of her great Anceſtors.* In the 19th Page we find him with an honeſt and hearty Zeal aſſerting Her Majeſty's Right to the Throne, and praying God to bleſs her in it; and within a few Lines he again repeats that Prayer, *That God would long preſerve her on that Throne*, for this very remarkable Reaſon, *becauſe She is the Comfort and Support of the Eſtabliſh'd Church.*

Is this, my Lords, the Language of one that would ſuggeſt and aſſert, that very Church to be in a Condition of great Peril and Adverſity from her Majeſty's Adminiſtration? Or can your Lordſhips preſume, that any one can ſo far prevaricate with God and Man, as openly to thank God for the peculiar Happineſs that we now enjoy by her Majeſty's ſitting on the Throne of her Anceſtors, and to beſeech him long to preſerve her there for the Support and Comfort of the Eſtabliſh'd Church, and yet aſſert, that that Church is in great Adverſity under, that is from, her Majeſty's Adminiſtration.

In this Caſe your Lordſhips will ſuffer me to ſhew what thoſe Perils are which the Church is ſaid to be in, in this Diſcourſe, and how they do not proceed from her Majeſty's Adminiſtration.

The Dangers ſpoken of in this Sermon are either ſuch as ariſe from the Infidelity and Prophaneneſs, the Vice and Immorality of the Age, or elſe ſuch as always have attended the Chriſtian Church from her firſt Foundation, and always will attend her whilſt ſhe continues Militant upon Earth.

That

That there are Dangers arising to the Church from Infidelity and Prophaneneſs, is already, I doubt, too evident from thoſe Authors I mention'd under the ſecond Article, and from what the Gentlemen who have ſpoke before me, have obſerv'd upon this: If it yet wants a Confirmation, we ſhall beg leave to lay before your Lordſhips a black Catalogue of Prophaneneſs and Blaſphemy, not fit to be heard more than once.

As to the Dangers proceeding from Vice and Immorality, the Laws of the Land, and the many Proclamations iſſued out by Royal Authority upon that Occaſion, are an undeniable Evidence of the growing Danger to the Church on that Head, and of her Majeſty's ſpecial Care to ſuppreſs and prevent that Danger. In the Cloſe of thoſe Proclamations Her Majeſty declares Her Royal Reſolution to puniſh all manner of Vice, Immorality and Prophaneneſs in Perſons of all Degrees whatſoever, and particularly in ſuch as are near her Royal Perſon; and theſe Proclamations are ordered to be read by all Miniſters in their reſpective Congregations at leaſt Four Times in every Year; and they are directed to incite and ſtir up their Congregations to the Practice of Piety and Virtue, and the avoiding all Immorality and Prophaneneſs. My Lords, hard is the Fate of Miniſters, if they muſt reprove Prophaneneſs in Men of all Degrees under Her Majeſty's Diſpleaſure; and yet if they once happen to mention Men of Characters and Stations in their publick Diſcourſes, that too muſt be made one Part of an Impeachment againſt him.

My Lords, It was ſaid indeed by a Learned Manager, that the Pulpit was not a proper Place for Complaints of this Nature; that theſe things ought not to be ſpoken of in Publick, unleſs they could be prov'd; and if they could be prov'd, thoſe that are known to be guilty ſhould be proſecuted in a due Courſe of Law. But, my Lords, I humbly apprehend it to be the Duty of a Miniſter of the Goſpel *to be inſtant in ſeaſon, and out of ſeaſon; to exhort and rebuke with all Authority*, and without Diſtinction. This their Holy Function obliges them to do, and the Dignity of that Function does and ought to protect them in the Performance of that Duty; but that Miniſters ſhould be obliged to proſecute every Offender in a Court of Juſtice, is not yet known to be any Part of their Office; and he that at any time ſhould take that Part upon him, would hardly avoid that Imputation which many People are ready to lay upon the whole Profeſſion.

In the next Place, your Lordſhips will conſider whether the Dangers mention'd in this Sermon are not ſuch as have in all Ages, and under the beſt Princes, infeſted the Church.

I appeal to the Reverend Bench of Biſhops, whether even in the Apoſtles Time there were not *Men of unſtable Minds* crept in among them; ſome *carried about with every wind of Doctrine, deceiving, and being deceiv'd*; others *teaching for Doctrines the Traditions of Men*; and whether in the immediate ſucceeding Ages the Church was not miſerably rent and divided by factious and ſchiſmatical Impoſtors. Their Lordſhips well know that the pious Care of Chriſtian Emperors was not able to prevent the ſpreading of old Errors, and the continual ſpringing up of new ones; neither has Her Majeſty's peculiar Piety and Zeal prevented many Inſtances of Prophaneneſs and Irreligion under Her happy Adminiſtration; but certainly no Inference ought to be made from an Hiſtorical Account, or bare Mention of ſuch like Perils of the Church, as if that was intended to arraign the Adminiſtration of thoſe Princes in whoſe Times they happen'd.

My Lords, That there are ſuch Dangers attending the Church, even under her Majeſty's happy Adminiſtration, needs no other Evidence than that Form of Prayer which is by her Majeſty's Authority directed to be uſed in all Churches; in which we beſeech God, *That no Sedition may diſturb this State, nor Schiſm diſtract this Church; and that he would give us all Grace ſeriouſly to lay to Heart the great Danger we are in by our unhappy Diviſions.* My Lords, this Prayer is enjoin'd to be uſed by publick Authority; and particularly mentions the great Danger of the Church, in being at this Time diſtracted with Schiſm; and I muſt ſubmit it to your Lordſhips Conſideration, how hard it is that a Miniſter may not from his Pulpit mention thoſe Dangers without Offence, which he is ſpecially commanded to pray againſt in his Deſk.

Mr. *Dodd.* We ſhall beg Leave to produce ſeveral Books, wherein there are the ſtrangeſt Opinions that perhaps your Lordſhips ever heard of: And we ſhall firſt confine ourſelves unto them which relate to Blaſphemy, Irreligion and Hereſy, which we confeſs are not pleaſant to be heard, or fit to be publiſh'd, if it were not abſolutely neceſſary for the Doctor's Defence.

Mr. *Phipps.* My Lords, We begin with ſome Miſcellaneous Tracts, publiſh'd by Mr. *Edmund Hickeringill.* And we offer them firſt to your Lordſhips Conſideration, becauſe he was a falſe Brother; and we think his Tracts will juſtify the Doctor in what he hath ſaid in relation to the Church being in Danger, from the Blaſphemy and other enormous Crimes mention'd in his Sermon.

Mr. *Dee.* It's in *Page* 12.

'*Clerk reads.*] The ſecond Pre-
'tender to Infallibility is the Bible; *Part* 1. *p.* 12.
'and that I admit too, ſo ſoon as 'tis
'agreed which Chapter and Verſe is God's Word, and
'which not, and why.---For as for ſome Verſes and
'Clauſes in the Holy Bible, the very Penmen there-
'of did not ſometimes know very well whether the
'ſame were the Dictates of the Spirit of God, or
'no. ----- Sometimes they write ---- *Thus ſaith the*
'*Lord* ---- and not I, but the Lord Commands, ſo
'and ſo: And then again in a Qualm or Quandary,
'modeſtly pretend to gueſſing: *I think alſo*, ſays
'St. *Paul*, *that I have the Spirit of God.*

Mr. *Thompſon.* My Lords, Upon what is offer'd to be given in Evidence, the Managers apprehend there is ſomething that will require their Conſideration, and they deſire to withdraw.

Accordingly the Managers withdrew, and then the Lords adjourned to their Houſe above; and in a ſhort time their Lordſhips being returned, and ſeated as before, and the Managers being returned to the Place appointed for them at their Lordſhips Bar, Proclamation for Silence was made by the Serjeant at Arms.

Mr. *Thompſon.* My Lords, The Managers have conſider'd the Nature of the Evidence open'd by the Council; and without troubling your Lordſhips to obſerve how material it is for the Priſoner's Defence, ſubmit it to your Lordſhips, whether ſuch impious and blaſphemous Paſſages as the Council were aſham'd to repeat, ſhall be republiſh'd in ſo ſolemn a Man-

a Manner, by reading them in Evidence before your Lordſhips.

Lord Chancellor. Gentlemen, You that are of Council for the Doctor may proceed in your Evidence as you ſhall think proper.

Mr. *Dodd.* My Lords, We muſt own there are a Multitude of Sentences never to be repeated, if it were not neceſſary for our Defence; but we think it ſo material for the Doctor's Defence, that we dare not depart from it without your Lordſhips Order.

Mr. *Phipps.* My Lords, The Reaſon that Learned Gentleman gave againſt reading them, is the very Reaſon we offer for reading them; for the Doctor aſcribes the Danger of the Church to thoſe Blaſphemies and impious Doctrines and Tenets, that are ſo frequently publiſhed and which call for God's Judgments on the Nation.

Mr. *Dee.* My Lords, We deſire he may read in the ſame Book he was reading before.

'*Clerk reads.*] For Sabbathiſing. The
Ibid. p. 17. 'Sabbath, Oh the Sabbath----called by
'the cunning Prieſtcraft, not by the
'Holy Scripture, the Lord's Day, to recommend it
'the better to the unthinking Mob.----Of all the
'other Seven Days the Prieſt's beſt Market-Day to
'put off his Wares, and turn them into Money.

'Family Duties are the next plauſi-
Ibid. p. 21. 'ble Piece of Prieſtcraft Divinity, I
'mean Praying with the Family, (not
'that I condemn it) tho' our Bleſſed Saviour ſeems
'to condemn it by his Practice and Preaching.

'Saying Grace, an univerſally cry'd
Ibid. p. 23. 'up Piece of Divinity, Superſtition,
'or Prieſtcraft; for we never read
'that Chriſt or his Apoſtles ſaid Grace, either be-
'fore Meat, or after Meat.

'King *Saul* found to his Coſt, that
Ibid. p. 50. 'he had better have diſpleaſed all
'*Iſrael*, than *Samuel* the good High-
'Prieſt; and had better have rent the Cloaths off
'from his own Back, than have rent *Samuel*'s Caſ-
'ſock.----It fretted the good old Gentleman; and
'in a Paſſion he ſaid, *God hath rent from thee the Kingdom alſo, and hath given it to thy Neighbour that is better than thou.*

'Then the Lord anſwered, *Take an*
Ibid. p. 51. '*Heifer with thee, and ſay I am come*
'*to do Sacrifice to the Lord.* The
'Policy of Heaven, we ſee, jumps with our late
'Prieſtcraft in this, to make Religion the common
'Covert to hide a Plot.

'His Kingdom, which was given
Ibid. p. 52, 'to *David*, becauſe he was a Man after
53. 'God's own Heart, (not in Holineſs,
'that is not meant; for beſides his
'Adultery and Murder, his many other Sins, and
'curſing his Enemies to the Pit of Hell, is unac-
'countable;) but after God's own Heart is a *Hebra-*
'*iſm*, and in *Engliſh* ſignifies as much as a Man for
'my Turn, he will kill and ſlay as the Prieſt directs,
'by Orders receiv'd from Heaven; he will fulfil all
'my Will, ſaith the High-Prieſt.

'I can by no means perceive that
Ibid. Part 2. 'this Commiſſion to Teach, Baptize,
p. 4. 'Excommunicate, or Abſolve, does
'properly or more appertain to a
'Grey Fryar, or any Black Coat, more than to a
'Grey Coat or Layman.

'To ſay, the Uſe (being for God's
'Service) ſanctifies it: So may a Meet- *Ibid. p.* 14.
'ing-Houſe, a Tabernacle, or my
'Dining-Room be conſecrated, when we pray and
'preach there, or ſay Grace there, *pro hac vice*;
'and *vice verſa*, it is unconſecrated when Dinner-
'time comes, or the Punch-Bowl.

Mr. *Dee.* *The Rights of the Chriſtian Church* is the next Book we ſhall offer to your Lordſhips.

'*Clerk reads.*] At the Cloſe of the
'Supper, the great Meal with them, *Page* 105.
'the Maſter of the Feaſt diſtributed
'among his Gueſts ſmall Pieces of Bread; and ha-
'ving firſt drank of the Grace-Cup, deliver'd it to
'be handed about: To which Chriſt, who inſtituted
'no new Rites, ſuperadded the Remembrance of
'his Sufferings; and directs his Diſciples, as often
'as they did this, that is, Celebrate ſuch Feſtivals,
'and cloſe them with the *Poſt-cœnium*, to com-
'memorate him after this manner.

'Does not every one, as well as
'the Miniſter, equally apply the *Ibid. p.* 108.
'Bread and Wine to the ſame Holy
'and Spiritual Uſe, in commemorating the Benefits
'received by our Saviour, and in offering up the
'ſame Prayers, and deſiring the ſame Bleſſings?
'And whoever does this with a due Application of
'Mind, rightly conſecrates the Elements for himſelf,
'ſince this is the only Conſecration they are capable
'of: Any thing further than this may rather be
'called Conjuration than Conſecration.

Mr. *Dee.* The next Book we offer to your Lordſhips is *Blount's Oracles of Reaſon.*

'*Clerk reads.*] Reaſon is able to
'furniſh us with enough to make us *Preface, p.* 3.
'happy, and that is as much as we
'need care for.

'When he made his Cavalcade *Ibid. p.* 165.
'upon *Aſinego*, they extoll'd him as
'the Deſcendant of King *David*; but his untimely
'Apprehenſion and Death, together with his Neg-
'lect to improve the Inclination of the People to
'make him King, did allay the Affections of the
'*Jews* towards him.

'It ſeems a very cruel and very *Ibid. p.* 49.
'hard thing in this reſpect, that God
'ſhould be ſaid to have tormented, nay, and ruin'd
'Mankind, for ſo ſmall a Fault; and that too com-
'mitted thro' the Levity of a Woman's Mind.

Mr. *Phipps.* The next is Dr. *Burnet's Archæologia Sacra.*

'*Clerk reads.*] *Id utiq; videtur graviſſimum, &*
'*aſperrimum in hac Narratione, quod Gentem hu-*
'*manam plexiſſe, imo perdidiſſe dicatur Deus ob rem*
'*exiguam, & fœminilis Ingenii levitate perpetratam.*

Mr. *Phipps.* The next is, *An Account of the Growth of Deiſm.*

'But ſince the Goſpel Simplicity
'has been worn off, the Prieſts of all P. 191, 192,
'Churches have agreed, firſt, That 193.
'it is neceſſary for all Chriſtian Peo-
'ple to communicate at the Lord's Table. Secondly,
'That this Sacrament cannot be rightly celebrated
'without the Aſſiſtance of a Prieſt, who muſt con-
'ſecrate the Elements to the Uſe for which they are
'deſign'd; whereby the Prieſt is made abſolutely

'neceſſary to the very Being of the Sacrament. 'The Prieſt alſo making himſelf Judge of every 'one's Preparation for this Sacrament, has it in his 'Power to admit to a Participation whom he thinks 'fit; as likewiſe to exclude whom he pleaſes from 'this neceſſary Means of Salvation: And hereby 'he is enabled to make his Terms with his People, 'who muſt be contented to ſave their Souls upon 'what Conditions he will admit. No wonder, 'then, that ſo great a Noiſe has been made con-'cerning this Sacred Commemorative Repaſt. 'That Chriſtian Communion which you read of as 'practiſed in the Apoſtles Days, was nothing elſe 'but a Religious Converſation of Chriſtians one 'amongſt another. 'Twas for Society-ſake that 'they went from Houſe to Houſe, that they eat 'and drank together frequently.---- Now it's plain, 'that this ſort of Religious Converſation may be 'kept up among Chriſtians without either Prieſt 'or Altar, or any ſet Form of Prayer, or Praiſe. 'It was long after the Apoſtles were dead and 'buried, before the Temples were built, or Altars 'erected, or ſet Orations were made to the People in 'Churches. And what if you ſhould further con-'ſider, if there be any Part of this Primitive Church-'Communion that might not have been performed 'by a Woman as well as a Man?---- When the Pri-'mitive Chriſtians met together to break Bread, 'from Houſe to Houſe, had any of theſe Women 'craved a Bleſſing on that Bread, we have no Rea-'ſon to doubt but that God would have heard her 'Prayer.

Mr. *Phipps.* The next is, *A Letter concerning Enthuſiaſm.*

'*Clerk reads.*] Is the doing Good
Page 59. 'for Glory's ſake ſo Divine a thing?
'Or is it not diviner to do Good even 'where it may be thought inglorious, even to the 'ungrateful, and to thoſe who are inſenſible of the 'Good they receive? How comes it then, that 'what is ſo divine in us ſhould loſe its Character in 'the Divine Being? And that, according as the 'Deity is repreſented to us, he ſhould more reſem-'ble the Weak, Womaniſh, and Impotent Part of 'our Nature, than the Generous, Manly and Di-'vine?

'One would think it were eaſy to
Ibid. p. 60. 'underſtand, that Provocation and Of-'fence, Anger, Revenge, Jealouſy in 'Point of Honour, or Power, Love of Fame, Glory, 'and the like, belong only to limited Beings, and 'are neceſſarily excluded a Being which is perfect 'and univerſal.

'It is Malice only, and not Good-
Ibid. p. 61. 'neſs, that can make us afraid.

'So that we have only to conſider,
Ibid. p. 62. 'whether there be ſuch a Thing as a 'Mind that has relation to the whole, 'or not: For if there be no Mind, we may com-'fort our ſelves however, that Nature has no 'Malice.

'For no Body trembles to think
Ibid. p. 63. 'that there ſhould be no God, but 'that there ſhould be one.

Ibid. p. 69. 'I am not a Divine good enough 'to reſolve what Spirit that was which 'proved ſo catching among the ancient Prophets, 'that even the Prophane *Saul* was taken by it.

Mr. *Phipps.* The next is, *A Brief, but Clear Confutation of the Doctrine of the Trinity.*

'*Clerk reads.*] The Divinity attri-
'buted to the Son and Holy Ghoſt, is *Page* 9.
'unſcriptural and Idolatrous.

'This one Fundamental falſe Prin- *Ibid. p.* 10.
'ciple, as well with *Jews* and *Turks*, 'as Heathens, has done more Miſchief to Chri-'ſtianity than all our other Errors beſides.

'For my part, I declare I ſhall ne-
'ver more admire at the Abſurdity of *Ibid. p.* 11.
'either Papiſts, *Turks*, or Heathens; 'be they as groſs as they will, I am ſure they will 'never be able to exceed this Doctrine.

'To be ſhort, Trinitarianiſm is Po-
'lytheiſm, and Idolatry; if there be *Ibid. p.* 14.
'any ſuch thing in Nature.

'Revelat. 17. 5. *And upon her Forehead was a 'Name written, Myſtery, Babylon the Great, the 'Mother of Harlots, and the Abominations of the 'Earth.* And to what I pray, in Popery can that 'Word *Myſtery* there ſo properly relate, as to the 'Trinity?

Mr. *Phipps.* The next is, *Brief Notes on the Creed of* Athanaſius.

'*Clerk reads.*] A Belief in theſe
'Points, that have been always con- *Page* 7.
'troverted in the Churches of God, is 'in no degree neceſſary, much leſs before all 'things.

'And now I appeal to all Men that have any 'Freedom of Judgment remaining, whether this 'Creed is fit to be retain'd in any Chriſtian, much 'leſs Proteſtant and Reform'd Church? Since it 'ſubverts the Foundations not only of Chriſtianity, 'but of all Religion, that is to ſay, Reaſon and 'Revelation.

Mr. *Dee.* There is a Book mark'd with the Letter *L*, call'd, *An Account of the Growth of Deiſm.*

'*Clerk reads.*] Many Doctrines are
'made neceſſary to Salvation, which *Page* 17.
'it's impoſſible to believe, becauſe 'they are in their Nature Abſurdities. I reply'd, 'that theſe things were Myſteries, and ſo above 'our Underſtanding. But he aſk'd me, To what 'End could an unintelligible Doctrine be revealed? 'Not to inſtruct, but to puzzle and amuſe.

'One of my old Acquaintance al-
'ways thought the moral Part of the *Ibid. p.* 22.
'Bible very good; but then he alſo 'thought that by the Strength of his own Reaſon 'he could have written as good a Moral himſelf.

'If you look over the State of Re-
'ligion, as it ſtandeth in *Chriſtendom*, *Ibid. p.* 24.
'there is no Church whatſoever which 'will accept you as a Member of its Communion, 'but upon ſome particular Terms of Belief, or 'Practice, which Chriſt never appointed, and it 'may be ſuch as an honeſt and wiſe Chriſtian can-'not conſent to.---- It looks like a Trick in all 'Churches to take away away the Uſe of Mens 'Reaſon, that they may render us Vaſſals and Slaves 'to all their Dictates and Commands. But what 'greater Slavery than to force on Men a Belief of 'ſuch Things as neceſſary to Salvation, of which 'it's not poſſible to form an Idea? Though I am ſa-'tisfied there is no ſuch Thing as a Change of 'Bread into the Fleſh of Chriſt, yet I can form an 'Idea that ſuch a Thing may be, that the ſame 'Power that changed Earth into a Man, may change 'Bread into Fleſh; but I can frame to my ſelf no 'Idea of what your Church teacheth in the Sacra-

'ment,

'ment, *That the Body and Blood of Chriſt are verily and indeed taken and received of the Faithful:* 'And when I ask, how can this be underſtood by a 'Proteſtant who believeth that there is no other 'Body but that of Bread? I am told that the 'Church means it in a Spiritual Senſe. Now I have 'try'd, and find it impoſſible for me to form to my 'ſelf an Idea of a Body verily and indeed in a Spi'ritual Senſe.

Ibid. p. 25. 'Your Church will require me to 'believe other Abſurdities as bad 'as theſe; as that Kings and 'Biſhops have Divine Right to that Power which 'they exerciſe over us; whereas with my own Eyes, 'I ſaw our great and gracious King accept the 'Crown of *England* as the Gift of the People. And 'I ſee as plainly that Biſhops are an Order of Men 'of their own (not of Chriſt's) making.

Ibid. p. 26. 'I can find no Footſteps of any Ju'riſdiction given to the Twelve over the 'Seventy, or indeed over any Body 'elſe.

Mr. *Dee.* The next is, *The Hiſtory of Religion.*

Pag. 310. 'Clerk Reads.] Strange and puz'zling Methods of religious Cere'monies and Myſteries, and of vari'ous Rights of ſacrificing, good for nothing but to 'confound and diſtract the Minds of Men.

Ibid. p. 312. 'In very deed, Creeds were the 'Spiritual Revenges of Diſſenting 'Parties upon one another.

Mr. *Dodd.* The next is *Aſgyl*'s Argument.

Pag. 36. 'Clerk Reads.] God told *Adam*, 'that if he did eat he ſhould die; 'the Devil told *Eve*, that they might 'eat and not die; and theſe were the firſt Words 'ſpoken to Man by God, or the Devil; upon the 'Truth or Falſhood whereof, the very Beings of 'them both were to depend for ever: For which 'ever of them could maintain the Truth of his 'Word againſt the other, he muſt have been God, 'and the other the Devil. And therefore God, 'having turn'd the Lie upon the Devil, he is from 'thence call'd a Liar from the Beginning, and the 'Father of it, and will never be believed again for 'ever. God could not have diſpenſed with his 'Word, without complimenting the Devil with his 'Godhead.

Ibid. p. 82. 'What is it that you do, or would 'believe of Chriſt, or in Chriſt? 'Anſw. Why, we believe him for 'our Saviour. Save you! from what? Why, from 'our Sins. Why, what Hurt will Sin do you? 'Why, it will kill us. How do you know? Why, 'the Law of God ſaith ſo: *In the Day thou eateſt 'thereof, thou ſhalt die.* Why, but then will 'not this Saviour ſave you from this Law, and from 'this Death? No, he'll ſave us from Sin. Why, 'then it ſeems you have got a Pardon for Horſe'Stealing, with a *Non-Obſtante* to be hanged. Do 'but ſee now what a Jeſt you have made of your 'Faith. And yet I defy the Order of Prieſthood to 'form a better Creed than this, without admitting 'the Truth of my Argument, or to make Senſe of 'their own Faith without adding mine to it. It's 'much eaſier to make a Creed, than to believe it 'after it's made: Nor can any Man really believe 'any Part of the Goſpel that doth not believe it at 'all. For it is a Doctrine ſo dependant upon it ſelf, 'that unleſs we know the whole of it from the Be'ginning to the End, we can't know the Uſe and 'Reaſon of any Part of it. Wherefore (notwith'ſtanding this Inundation of Death in the World, 'and the Infection of Fear contracted upon Man 'from hence) I am not affrighted from re-aſſuming 'my Aſſertion at the Beginning, That this long 'Poſſeſſion of Death over Man, is a Poſſeſſion a'gainſt Right.

Ibid. p. 97. 'Behold, ye Deſpiſers, and won'der! Wonder at what? Wonder to 'ſee Paradiſe Loſt, with the Tree of 'Life in the midſt of it! Wonder and curſe at *A'dam* for an Original Fact, who in the Length of 'one Day, never ſo much as thought to put forth 'his Hand for him, and us, and pull, and eat, and 'live for ever. Wonder at, and damn your ſelves 'for Fools of the laſt Impreſſion, that in the Space 'of 1700 Years, never ſo much as thought to put 'forth our Hands every one for himſelf, and ſeal 'and execute the Covenant of Eternal Life, and live 'for ever.

Ibid. p. 98. 'To be even with the World at 'once, he that wonders at my Faith, 'I wonder at his Unbelief. And ſtare 'at me as long as you will, I am ſure that neither 'my Phyſiognomy, Sins, nor Misfortunes, can 'make me look ſo unlikely to be tranſlated, as my 'Redeemer was to be hanged.

Mr. *Dee.* The next is a Book call'd, *Chriſtianity not Myſterious.*

Pag. 80. 'Clerk Reads.] God himſelf, nor 'any of his Attributes are Myſteries 'to us for want of an adequate Idea: 'No, not Eternity.

Ibid. p. 107. 'As far as any Church allows of 'Myſteries, ſo far it is Antichriſtian, 'and may with a great deal of Ju'ſtice, though little Honour, claim Kindred with 'the Scarlet Whore.

Ibid. p. 134. 'For to ſpeak freely, Contradi'ction and Myſtery are but two Em'phatick Ways of ſaying nothing.

Ibid. p. 156. 'Contradiction expreſſes nothing by a Couple of 'Idea's that deſtroy one another; and Myſtery ex'preſſes nothing, by Words that have no Idea's at 'all.

'It will not be amiſs to lay down 'a ſhort Parallel of the ancient Hea'then, and new-coin'd Chriſtian 'Myſteries. And I ſhall endeavour ſo to do it, as 'to make it evident they were one in Nature, how'ever different in their Subjects.

Mr. *Dee.* The next is Sermons and Eſſays of Mr. *Whiſton*'s.

Page 213. 'Clerk Reads.] When the Scri'ptures ſpeak of the one God, or 'of one God, they plainly and di'ſtinctly mean, one Original Fountain and Author 'of all Beings whatſoever; or mean thereby one 'Supreme God, the Father only.

Ibid. p. 215. 'The Moderns call'd theſe three 'Divine Perſons but one God, and 'ſo introduced at leaſt a new, and 'unſcriptural, and inaccurate, if not a falſe Way 'of ſpeaking in the Church.

Mr. *Dee.* He makes it an *Errata*, that he has nam'd the Trinity, and put it out of the Book.

'*Clerk Reads.*] *Errata*, Pag. 123.
Ibid. p. 415. 'lin. 23, 24. To whom with the 'Father, and the Holy Ghoſt, read, 'in the Holy Ghoſt; and *dele* Three Perſons and one 'God.

Mr. *Dee.* The next is, *The Unreaſonableneſs of making and impoſing Creeds.*

'*Clerk reads.*] But what Creeds
Page 14, 15. 'and Articles of Faith can be pro- 'duced that are not doubtful and 'diſputable? That which goes under the Name of 'the Apoſtles not excepted. It being neither of un- 'doubted Authority, nor indiſputable, or unambi- 'guous Senſe in ſome Articles thereof; though it 'be generally received by Chriſtians and as venera- 'rable for its Antiquity, and profeſſed, or rather 'ſaid, by all, even thoſe who underſtand not what 'they ſay when they recite it.

Mr. *Dee.* The next is, *An Account of the Growth of Deiſm.*

'*Clerk Reads.*] If thoſe Wri-
Page 25. 'tings which they call Holy Scrip- 'tures are of their Side, as they 'all ſay they are, I make no doubt, but they are of 'their own Inventing. And if Jeſus Chriſt their 'Patron laid their Foundation of thoſe Powers, 'which both Papiſt and Proteſtant Clergy claim to 'themſelves, from under him, I think the old *Ro- 'mans* did him Right in puniſhing him with the 'Death of a Slave.

Mr. *Phipps.* We ſhall next ſhew ſome Papers that reflect on the Church and Clergy; and ſhall firſt offer to your Lordſhips Conſideration the *Rights of the Chriſtian Church.*

'*Clerk Reads.*] Not only an in-
Page 47. 'dependent Power of Excommu- 'nication, but of Ordination in the 'Clergy, is inconſiſtent with the Magiſtrates 'Right to protect the Commonwealth.

'The Scriptures no where make
Ibid. pag. 104. 'the receiving the Lord's Supper 'from a Prieſt neceſſary; nay, not 'one Inſtance of the Laity's receiving it ſo can be 'produced from thence.

'It can belong only to the Peo-
Ibid. pag. 237. 'ple to appoint their own Eccleſi- 'aſtical Officers. —— It's an in- 'herent fundamental Right of all Communities.

'None pretend to impoſe a Con-
Ibid. pag. 240. 'ductor or Director on another in 'Temporal Affairs, but every one 'is left to manage them, as he thinks beſt for his 'own Intereſt, as being preſumed to underſtand it 'better than another; and therefore is to chuſe his 'own Lawyer, Phyſician, Brewer, Baker, *&c.* and 'by the ſame Reaſon he ought to chuſe his own Spi- 'ritual Conductor.

'It's abſurd to imagine every
Ibid. pag. 137. 'Chriſtian is not capable of ſuch 'Circumſtances, as praying aloud, 'diſtributing the Bread and Wine, or (according to 'the preſent Mode) of ſprinkling an Infant, and re- 'peating a ſet Form of Words.

'Have they not inſerted this
Ibid. pag. 402. 'Power of theirs in an Article of 'the Creed, commonly called the 'Apoſtles, *viz. I believe the Catholick Church?*

Mr. *Dee.* We ſhall next offer the *Review.*

'*Clerk reads.*] Whether our Fa-
'thers had a Neceſſity to make *Vol.* 2. *N.* 112.
'thoſe excluſive Laws and impoſe as *p.* 447, 448.
'neceſſary their indifferent Things, 'acknowledg'd to be ſo, as Terms of Communion: 'Nor is this all, but ſuppoſing they had, which ne- 'vertheleſs I do not grant; then this Addreſs is fur- 'ther preſs'd to your Lordſhips, to examine whe- 'ther that Neceſſity does yet continue, or no? Ei- 'ther of which will be the ſame Thing. For if 'there either was not a Neceſſity at the Time of 'their Enacting, or that Neceſſity does not yet re- 'main, let which will happen to fall out, the Act of 'Uniformity, impoſing ſuch and ſuch indifferent 'Things, as Terms of Communion, will appear 'Scandalous to the Church, Injurious to the publick 'Peace, and a Grievance to the whole Nation.

Leſt it become a new, proverbial Jeſt, Ibid. Vol. 3.
To be as wicked as an Engliſh *Prieſt.* Numb. 27. *p.* 106.

'I cannot but tell him, ſhould
'I publiſh the Matters of Fact *Ibid. Numb.*
'which I am Maſter of, with Re- 27. *p.* 107.
'ſpect to the High-flying Gentle- 'men of the Clergy; ſhould I give a faithful Ac- 'count of the moſt infamous and ſcandalous Beha- 'viour, the Notorious Lives, the Beaſtly Exceſſes, 'and the furious Treatment of their Brethren the 'Diſſenters, which on a ſmall Search I have been ac- 'quainted with; the Inferior Clergy of his Party 'would appear the moſt wretched, provoking, abo- 'minable Crew, that ever God ſuffered to live un- 'puniſh'd, ſince he deſtroyed *Sodom* and *Gomorrha* 'by Fire from Heaven.

'If Words could be made Trea- *Ibid. Vol.* 2.
'ſon, one third at leaſt of the Infe- *Numb.* 105.
'rior Clergy in *England* would be *p.* 418.
'hang'd.

'I again appeal to you, Gentle- *Ibid. Vol.* 2.
'men, Whether, generally ſpeaking, *Numb.* 36.
'all over this unhappy Nation, the *p.* 142.
'Clergy are not, Three Parts in 'Five, in a cloſe Conjunction with the Enemies 'of the Church's Peace, and the profeſs'd Enemies 'of the Government?

'Others, not ſo directly, but alto- *Ibid. Vol.* 6.
'gether as fatally, and tending to the *Numb.* 118.
'ſame End, with ſubtle Deſigns to *p.* 471.
'divide and amuſe the People, by 'Preaching, Writing, and Printing, 'endeavour to revive the ſaid exploded Doctrines 'of Non-Reſiſtance, and abſolute uncondition'd 'Obedience, as things the People of *England* ought 'to think themſelves oblig'd by; which tho' in 'themſelves of no force, yet manifeſtly tend to un- 'ravel the Conſtitution, to invalidate the Queen's 'Title to the Crown, and deſtroy the legal Autho- 'rity of Parliaments in the Nation. An eminent 'Proof of which is now depending before the 'Houſe.

'Drunkenneſs, Oaths, and abomi- *Ibid. Numb.*
'nable Lewdneſs; Ignorance, Negli- 93. *p.* 371.
'gence, and ſcandalous Inſufficiency; 'abhorr'd Error, Deiſm and Socinia- 'niſm, have over-run the Clergy.

'You know the Church he means
'is High-Church, which is a Ficti- Obſervator,
'on, a Church of the Brain, ſup- *Vol.* 4. *Numb.*
'ported by a little, inſignificant, tri- 89.
'fling Number of Brainleſs People; 'and the People of *England* are no more concern'd

'about

'about that Church, than about the Inſtitutions of 'Government laid down in *Moor*'s *Utopia*, *Harring-* '*ton*'s *Oceana*, or *Bacon*'s *New Atlantis*; and all the 'Canons, Rites, and Ceremonies of that Church are 'no more to be conſider'd by you, or me, than ſo 'many Ballads, or *Duck-Lane* Penny Hiſtories.

Ibid. Numb. 67. 'The Univerſities have large En- 'dowments, which I fancy may be 'better employ'd for the publick 'Good than at preſent. Let you and I Vote them 'uſeleſs.

'*Country-M.* With all my Heart, Maſter.

Mr *Dodd*. My Lords, The next Thing we ſhould go upon, is to ſhew ſeveral Paſſages which reflect upon the Queen, the State, and Miniſtry; there are Five or Six Inſtances which we ſhall read, and then we ſhall have done.

Clerk reads.] 'In ſhort, if *Jure* Review, *Vol.* 2. *Numb.* 80. *p.* 519. '*Divino* comes upon the Stage, the 'Queen has no more Title to the 'Crown than my Lord-Mayor's 'Horſe: All the People are bound 'by the Laws of God to depoſe Her as an Uſurper, 'and reſtore their Rightful and Lawful King *James* 'the Third.

Ibid. Vol. 3. *Numb.* 122. *p.* 486. 'The Line of all the World 'ſam'd for Blood, and that had 'ravag'd the beſt Families of the 'Kingdom.

Ibid. Vol. 2. *Numb.* 43. *p.* 170. 'Ever ſince the coming of King '*James* the Firſt to the Crown, 'this Nation has been perplex'd 'with Diviſions, Uneaſineſſes, Op- 'preſſions and Murmurings, both 'in Sovereign and Subject.

Ibid. Numb. 44. *p.* 174. 'Either the Diſſenters had Rea- 'ſon for former Diſcontents, and 'Reaſon to complain of Oppreſſi- 'on, Perſecution, and Infringment 'of Privileges, or they had not. If they had; 'the Church was cruel, and the State unjuſt before, 'in laying thoſe Loads upon them. If they had 'not; both Church and State were infatuated and 'delirious, in granting them the Toleration, and 'Liberties ſince conceded.

Ibid. Numb. 46. *p.* 181. 'If the next Parliament ſhould 'purſue the Steps of the laſt, the 'Nation, in my Opinion, will be 'ſo much nearer that Criſis of 'Time, when *Engliſh* Liberty being brought to the 'laſt Extremity, muſt open the Magazine of Origi- 'nal Power.

Ibid. Numb. 27. *p.* 106. 'What can be ſaid for Members 'ſitting in the Houſe to do no- 'thing; making long Speeches 'without Meaning, and Voting 'Bills without Deſign to have 'em paſs?

Ibid. Numb. 123. *p.* 489. 'The Balance between 41 and '88 will appear to run againſt 'him; and the Difference between 'the dry Martyrdom of King '*James*, by his Paſſive Obedience Church-Subjects, 'and the wet Martyrdom of King *Charles* the Firſt, 'by People that never made any ſuch Pretence, will 'appear ſo ſmall, that it's not worth Dr. *D*----'s 'while to meddle with it.

Obſervator, *Vol.* 2. *Numb.* 89. '*Country-M.* Pray, Sir, are 'there a great many of thoſe 'People alive, that cut off the 'Head of King *Charles* the Firſt?

'*Obſ.* No, no; they are dead and gone a 'long Time ago. However, the Story ſerves ſome 'Men as Raw-head and Bloody-bones, to affrighten 'ſome, and calumniate others. Now, for my part, 'I know nothing of the Buſineſs of King *Charles* I. 'I was born ſince the Reſtoration; and I have ſo 'high a Value for the Prudence and Juſtice of our 'Forefathers, as not to condemn any of their Acti- 'ons for the common Good. We are unkind to our 'ſelves in cenſuring the Juſtice of our Forefathers 'Actions, and thereby do give a Handle to our 'Succeſſors to cenſure ours. Did our Forefathers 'detruncate the Father? Did not we depoſe the 'Son, and put one more Righteous in his ſtead? 'Did we not diveſt him of all his Regalities, and 'make him a Fugitive on the Earth? And may not 'future Ages examine the Difference between the 'Decollation and the Abdication?

Ib. Vol. 4. *Numb.* 97. 'I recite this, to let you know 'the Encouragement the Papiſts 'have had in this Reign; when 'by their Intereſt they can get ſuch 'as write againſt them proſecuted, *&c.*

Ibid. 'Should I tell you, honeſt Coun- 'tryman, the Accounts I have had 'of the Numbers of Popiſh Prieſts 'and Emiſſaries come into *England* the firſt Two 'Years of Her Majeſty's Reign, it would make 'your Hair ſtand on End.

Ibid. Vol. 3. *Numb.* 15. 'They would have but a ſorry 'Foot Soldier of the *Obſervator*. '---- And yet I have been where 'thoſe People that would ſend me 'durſt not come, and where perhaps I have com- 'manded better Men than themſelves. It has been 'my Fortune to be in a fighting Army, under a Ge- 'neral that we now dearly want; who did not uſe 'to return from the War, *ſine Clade Victor*, and 'then ride in Triumph over his Queen on a Me- 'dal.

Ibid. Vol. 3. *Numb.* 99. 'I am ſorry that the Folly of 'ſome, and the Bribery of others, 'have brought us into ſuch ama- 'zing and diſmal Circumſtances, 'that either our Liberties muſt be loſt, or be main- 'tain'd by a Body that is neither of us, nor 'from us.

Ibid. 'I ſhall produce my ſelf as an 'Example of the Arbitrary Power 'of this Parliament; and the Man 'that does not acknowledge their Proceeding againſt 'me to be Arbitrary, muſt aſſert, that an Arbitrary 'Power was never executed.

Ibid. 'Now if this be n't Arbitrary, 'I don't know what to call ſo. 'The *Spaniſh* Inquiſitors have ſo 'much Regard to Juſtice, or the Shew of it at 'leaſt, that they'll ſuffer a Man to ſpeak in his own 'Behalf, *&c.* ------ Now, Countryman, do but 'conſider my Caſe; I was ſentenc'd to the Loſs of 'my Liberty, without being heard.

Ibid. 'Which plainly ſhews, that 'what the Commons condemn'd 'me for, would not bear an Action 'at Law.

Ibid. 'My Intent is to inform ſuch 'as you, honeſt *Roger*, how much 'you have been abus'd by your Re- 'preſentatives.

'This

'This Parliament is the very Re-
Ibid. 'verſe of former Parliaments; as
'they were merciful, this was cru-
'el; as they made good and wholſome Laws to
'preſerve the Liberties of their Electors, theſe
'took away the Freedom of their Electors without
'any Law; as they us'd all Means to keep their E-
'lectors out of Jayl, theſe uſed all Means to put
''em into Jayl.

'*Obſ.* Honeſt Countryman, what
Ibid. Vol. 2. 'woud'ſt thou have me do? If
Numb. 99. 'I muſt run thro' all the Liſt of
'Knaves, I muſt bring in all the
'Courts, all the Employments, all the Claſſes of
'Publick Affairs in the Nation.

'I really find the State of *Eng-*
Review, '*land* in general to be thus. Its
Vol. 2. *Numb.* 'Trade under a ſenſible, miſerable
2. *p.* 5. 'Decay in all its Branches:----Its
'Navy great and flouriſhing; but
'all her well-laid Deſigns either defeated in their
'Preparations, by the miſerable Methods, and ill
'Government, with relation to Seamen, or diſap-
'pointed by the ill Conduct or Cowardice of her
'Commanders. In Civil Concerns, in the utmoſt
'Confuſions of Parties---- blending together the
'moſt abſurd Contradictions, ſuch as propagating
'Religion by a ſcandalous Miniſtry---- reform-
'ing Manners by debauched Magiſtrates, and chu-
'ſing Men to make Laws, by Bribery and Cor-
'ruption.

Mr. *Phipps*. My Lords, We ſhall offer but one Paſſage more, and that is out of *The Divine Rights of the* Britiſh *Nation vindicated.*

Clerk reads.] 'And if he will
Pag. 105. 'but ſtay till the End of this pre-
'ſent Seſſion of Parliament, he'll
'find ſeveral new Powers annex'd to the Regal Of-
'fice, and perhaps ſome made void and repeal'd
'for the Publick Good.

Mr. *Dodd*. My Lords, We have now done with our Proofs; we have gone over the Heads of Blaſphemy, Irreligion and Hereſy; the Church reflected on; the Queen, Miniſtry, and all Orders of Men reflected upon and abuſed. We have cited theſe Books and Paſſages, not to reflect on the Government, but as thoſe which put the Doctor in ſome Heat and Concern both for the Church and State; and we hope your Lordſhips will make the beſt Conſtruction of the Doctor's Intentions in this Matter.

Mr. *Phipps*. If Blaſphemy and Irreligion can endanger the Church; if Treaſon and Rebellion can endanger the Nation, I think, with great Submiſſion, the Doctor has made good his Anſwer; and therefore I hope he is not guilty of any Part of this Article.

Mr. *Dee*. My Lords, I beg Leave that we may apply ſome Part of the Proofs we have read to Day to the Fourth Article.

Mr. *Phipps*. My Lords, The other Article, I fear, will be longer than will be fit to trouble your Lordſhips with now; we ſhall be ready to proceed when it is your Lordſhips Pleaſure.

Then the LORDS *Adjourned to their Houſe Above.*

Tueſday, March 7. The Eighth Day.

THE Lords coming down into *Weſtminſter-Hall*, and being ſeated in the manner before-mentioned, Proclamation was made by the Serjeant at Arms as follows:

Our Sovereign Lady the Queen doth ſtrictly Charge and Command all manner of Perſons to keep Silence, upon Pain of Impriſonment.

Then another Proclamation was made: *Henry Sacheverell*, Doctor in Divinity, come forth, ſave thee and thy Bail, elſe thou forfeiteſt thy Recognizance.

The Doctor appearing at the Bar accordingly, with his Council, as before:

Lord Chancellor. Gentlemen, you that are Council for the Priſoner may proceed in his Defence.

Mr. *Dodd*. IF your Lordſhips pleaſe, we will proceed to the Fourth Article. That Article contains ſeveral Heads: 1. *That the Doctor ſuggeſts Her Majeſty's Adminiſtration tends to the Deſtruction of the Conſtitution.* 2. *That there are Men of Characters and Stations in Church and State, who are Falſe Brethren, who undermine and betray, and put it in the Power of others to overturn and deſtroy the Conſtitution.* 3. *That the Doctor charges her Majeſty, and thoſe in Authority under Her, with a general Male-Adminiſtration.* 4. *That he perſuades the Subjects to keep up a Diſtinction of Faction and Parties, inſtills Jealouſies, foments Diviſions, and ſtirs up the Subjects to Arms, and perverts ſeveral Texts of Scripture.*

My Lords, As to the Firſt, the Doctor is ſo far from ſuggeſting that Her Majeſty's Adminiſtration tends to the Deſtruction of the Conſtitution, that he has not, as we apprehend, ſaid any thing that can bear ſuch a Conſtruction. The Doctor denies, that he has made any Mention of Her Majeſty's Adminiſtration in Church or State in his Sermon: Therefore, How can he argue that it tends to the Deſtruction of the Conſtitution? It has not been proved. But he takes all Opportunities to ſpeak of the Bleſſings we enjoy under her Majeſty's Government; prays for Her Preſervation; and that She may long Reign for the Comfort and Support of the Church; profeſſes what he ſpoke proceeded from a tender Concern for Her Majeſty and Her Government: So that we humbly apprehend there was little Occaſion for ſuch a Charge againſt him.

The Second Part of the Article is, That *there are Falſe Brethren, that are Men of Character and Station in Church and State, who undermine and betray, and put it in the Power of others to overturn and deſtroy the Conſtitution.* Now the Falſe Brethren by him deſcribed, are Perſons who propagate falſe Doctrines, who give up the Diſcipline and Worſhip of the Church, who are for Neutrality in Religion, or who wiſh well to the Church, but do not ſhew their Zeal in obeying her Precepts, and defending her Rights. Theſe are the Falſe Brethren intended; and this is very different from the Allegation in the Impeachment. As to that Part of the Charge, of *putting it in the Power of others to deſtroy the Conſtitution*, he does not mention Men of Characters and Stations in this Place; but, as I take it, in *Pag.* 15. where this Paſſage is ſuppoſed to be contained; and yet it is Twelve Pages after, before thoſe Words are mention'd. They are not joined together, as is ſuppoſed by the Article; and ſpeak nothing of that Matter. It is a Conjunction of Paſſages widely different from, and not relating to one another. The Betrayers of the Conſtitution, to whom the Doctor does refer, are ſuch as by Writing endeavour to ſubvert the Foundation of our Church and State; ſuch as are of a Latitudinarian

rian Principle, *who neither believe her Faith, own her Miſſion, ſubmit to her Diſcipline, or comply with her Liturgy.* My Lords, Theſe are the Heads, and Perſons, that the Doctor refers to; and not ſuch Perſons or Things, as are pretended by the Article.

As to a General Male-Adminiſtration under Her Majeſty, he abhors the Charge; has no where ſaid it: Always, as a good Subject, mentioned Her Majeſty with the profoundeſt Duty and Reſpect; nor does he tax any in Authority with a Male-Adminiſtration. And ſurely it is not ſufficient to charge the Doctor, as if he had fallen foul on the Miniſtry, when there is no Proof of it, and when there is no Paſſage in his Sermon, as we apprehend, that tends to it. The Doctor has on all Occaſions, as a good Subject, juſtified Her Majeſty's Title; and particularly at the Beginning of this War, he preach'd a Sermon at *Oxford*, before the Univerſity, therein juſtifying Her Majeſty's Title to the Crown, and Her entring into the War againſt *France* and *Spain*; wherein he has very clearly demonſtrated theſe Two Points. And as to the Charge of endeavouring to keep up Diſtinction of Parties, he is ſo far from it, that he complains of thoſe that have divided us with a Diſtinction of High and Low Churchmen; *They have villanouſly divided us with knaviſh Diſtinctions*: And what could he mean by all this, but a Service to the Government; and that they which raiſe ſuch falſe Inſinuations, ſuch Fears and Jealouſies, are the People he intended, and complains of? And as he has done that, ſo he takes all Opportunities to pray, *that we may be one Fold under one Shepherd*, and that all invidious Diſtinctions might be laid aſide.

My Lords, The next Thing is, The raiſing theſe groundleſs Fears and Jealouſies, that are ſuggeſted. As to that, the Paſſage we read before is quite oppoſite: The Doctor rebukes them, that do it as ill Chriſtians, and ill Subjects; and earneſtly ſets forth the Miſchief of them. He is ſo far from encouraging it, that he has upon ſeveral Occaſions ſeverely cenſured it. And as to ſtirring up Her Majeſty's Subjects to Arms and Violence, he abhors it, and throughout his Sermon aſſerts the Doctrine of Non-Reſiſtance; which is quite contrary to this Part of the Charge, altho' he conceives it to be the Ground of the Impeachment. Sure there is not any one Paſſage, that tends to excite the Subjects to Arms, in his Sermons.

My Lords, There was Notice taken of a Paſſage (that has little in it) exciting Chriſtians to *put on the whole Armour of God*: But ſure that is diſtinguiſh'd from the Arms of Fleſh and Blood: It cannot be ſo miſinterpreted, as to be underſtood of any Earthly Power whatſoever; for as it is in the Scripture, ſo it is in the Doctor's Sermon, *the whole Armour of God*; *Patience*, *Submiſſion*, &c. This is the Armour he excites Chriſtians to put on; nothing of fleſhly Arms.

As to the Charge of perverting ſeveral Texts of Scripture, to make ill Impreſſions on the People; he denies it, and had no ill Impreſſion to make on any Perſon whatſoever: His Work was to do good, and make good and religious Impreſſions on his Hearers. But he thinks it hard, when he cites Texts of Scripture againſt Vice and Immorality, by a Conſtruction in Prejudice of the Preacher, thoſe Texts ſhould be ſaid to be applied to particular Perſons. The Story of the Prophet, in the Second Book of *Kings*, *Chap.* vi. as printed in the Doctor's Sermon, is miſtaken; but the Two Reflections made upon it, are very unnatural, and not credible. The firſt Inference was, That he had it by Hearſay, and that he had not read it. Sure your Lordſhips cannot think, but that he, that is a Doctor of Divinity, has read every Chapter in the Bible: He, that has been a Student in the Univerſity of Twenty Years ſtanding, and more, and conſtantly keeping to the Church, certainly none can think but he has read the Bible. But then it is turn'd the other way upon him; That, taking it to be ſo, then he repreſents himſelf to be the Prophet that could ſee the Danger, and makes the Lords and Commons the People that were blind.

My Lords, This, I ſuppoſe, was intended to be wittily ſaid; but if it be ſeriouſly (and without Raillery) conſider'd, there is no Wit or Senſe in it. He mentions not the Lords and Commons at all: But true it is, he, as a Preacher, warns the People to have their Eyes open, to ſee the Dangers of Sin and Vice; ſo that we apprehend, there is no Ground, from that Paſſage, to charge the Doctor with corrupting the Scripture.

My Lords, The next Text that is quoted againſt the Doctor upon this Head, is, *Blow the Trumpet in Sion*; *ſound an Alarm.* Now it is urged by the Gentlemen Managers, That this can be for nothing but for War; and this (it's pretended) was only to be done in Time of War, when the Prieſts with the Silver Trumpets were to ſound to Battel. But, my Lords, this cannot have that Conſtruction; for whoever looks into the Scripture, particularly into the Prophet *Joel*, and other Places, (where that Expreſſion is uſed) will find it is to proclaim a Faſt: They were to blow the Trumpet, to ſignify the Generality, and that all ſhould take notice of it. The Alluſion is carried by an Elegancy to the Trumpet, to ſhew the Generality of it, and that all the People ſhould humble themſelves before the Lord. Now, to make this Sedition, to infer it to be to excite the People to War and Rebellion, is not right Reaſoning, nor is there the leaſt Colour for it.

Another Quotation he makes is much preſſed upon the Doctor, where ſpeaking of the Church, he cites that Paſſage out of the *Lamentations: Her Adverſaries are chief, and her Enemies* at preſent *proſper.* This is preſs'd upon us, as if the Doctor had an Eye in it on the Miniſtry. But this, we think, is ſtraining the Words beyond their Senſe or Meaning: For, firſt, he does not ſay her Adverſaries are the chiefeſt, but in the loweſt Degree of Compariſon, her Adverſaries are chief; that is, that amongſt her Adverſaries there are ſome conſiderable Perſons, ſome Men of Eſtates and Figure. And this, I think, appeared Yeſterday in the Pamphlets that were read, ſome whereof are ſuppoſed to be wrote by no mean Perſons; the Doctor cites the Words of Scripture, and we think it can have no ill Conſtruction. As to the ſecond Part of the Expreſſion, *Her Enemies at preſent proſper*, they are the Words of the Prophet; and how true in the preſent Caſe, we muſt ſubmit to your Lordſhips, upon what has been already offered, whether any ill Conſtruction can, or ought to be made of them. Neither the firſt nor ſecond Part of theſe Words are determined to any particular Perſons; we cite the Words themſelves; they are not determined to any Perſon whatſoever; and ſo we hope no Offence can be taken at them, nor any ſuch Inference drawn from them, as hath been endeavoured to be repreſented to your Lordſhips. The Doctor declares in his Sermon, as we formerly mentioned, and read to your Lordſhips, that he hoped what he had

ſpoken would be without any Offence, as it proceeded from an honeſt and good Intention, and a tender Concern for Her Majeſty's Perſon and Government, and an hearty Zeal for the Honour and Safety of our excellent Church and Conſtitution: And ſo we hope your Lordſhips will conſtrue and intend it. And ſo we ſubmit this Article, and the Doctor's Defence, with all Humility, to your Lordſhips. We ſhall read no more than two or three Proclamations: The firſt is againſt Vice and Immorality, and to ſtir up Magiſtrates to take care to execute the Laws. A ſecond takes Notice that Her Majeſty's Commands had not been obeyed nor the Laws executed to ſuppreſs Vice, and commands the Magiſtrates to be careful to do their Duty herein: And, thirdly, a Direction that this Proclamation ſhall be read to the People out of the Deſk. And ſure the reading them there, and preaching them, or the Subject-Matter of them in the Pulpit, are conſiſtent together.

Mr. *Phipps.* MY Lords, We are now humbly to offer to your Lordſhips Conſideration, our Anſwer to the fourth and laſt Article of the Impeachment, to which we think there is no Neceſſity of giving any Anſwer, becauſe we humbly apprehend there is not any Offence charg'd upon the Doctor in that Article, for the Article ſaith, that *the Doctor doth falſely and maliciouſly ſuggeſt*, &c. Now to ſuggeſt can amount to no more than to inſinuate, and is far ſhort of an Averment or Aſſertion; and whether a bare Suggeſtion or Inſinuation can be a ſufficient Foundation to ground an Impeachment, is humbly ſubmitted to your Lordſhips. But ſince 'tis made an Article againſt the Doctor, we humbly hope we ſhall give as full an Anſwer to the Suggeſtions and Inſinuations contain'd in that Article, as we have to the Offences charged in either of the other Articles.

The firſt Part of the Article ſaith, *That the Doctor doth falſly and maliciouſly ſuggeſt that Her Majeſty's Adminiſtration, both in Eccleſiaſtical and Civil Affairs, tends to the Deſtruction of the Conſtitution.* In anſwer to which 'tis humbly offered, That the Doctor doth not any where mention Her Majeſty's Adminiſtration, either in Eccleſiaſtical or Civil Affairs. He eſteems it one of the greateſt Bleſſings and Deliverances, *That her Majeſty now happily ſits on the Throne of Her Anceſtors*; he prays, *that God would long preſerve Her, for the Comfort and Support of the Church*; he profeſſeth, *That what he ſpeaks proceeded from a tender Concern for Her Majeſty and Her Government, and an hearty Zeal for the Honour and Safety of our excellent Church and Conſtitution*; he ſolemnly declares, *That his only Aim and Intention was earneſtly to contend for the Safety, Rights and Eſtabliſhment of Her Majeſty, together with thoſe of the Church.* And how after all this it can be inferred, he ſuggeſts that Her Majeſty's Adminiſtration, in Eccleſiaſtical and Civil Affairs, tends to the Deſtruction of the Conſtitution, I cannot imagine. I humbly ſubmit whether ſuch a Charge can be inferr'd from his Sermons, without carrying Innuendo's farther than ever hath been attempted.

As for that Part of the Fourth Article, which chargeth, that *the Doctor doth ſuggeſt that there are Men of Characters and Stations in the Church and State, which do themſelves weaken, undermine and betray, and do encourage and put it into the Power of others, who are profeſſed Enemies, to overturn and deſtroy the Conſtitution and Eſtabliſhment:* The Doctor denies he ſuggeſteth any ſuch things concerning Men of Characters and Stations.

I can't but obſerve what Art hath been uſed to make up this Article, and I do not doubt but your Lordſhips will be of that Opinion; for the Doctor in Page 22, mentions Men of Character and Stations, but does not mention Men of Character and Station in Church or State; but ſays, *there are Men of Character and Stations that ſhift and prevaricate with their Principles, and ſtart from their Religion upon any Occaſion of Difficulty.* Which is a Charge upon them in their private Capacity, and does not charge them with any Miſbehaviour in their Stations, or in any thing relating to the Publick Adminiſtration; nor does he mention in that Place their weakning, undermining and betraying, or the encouraging or putting it in the Power of our profeſs'd Enemies to overturn and deſtroy the Conſtitution and Eſtabliſhment.

And in Page 15, where he mentions *the weakning, undermining and betraying in themſelves, and the encouraging and putting it in the Power of our profeſſed Enemies to overturn and deſtroy the Conſtitution and Eſtabliſhment of both:* There he does not mention Men of Character and Station, but chargeth the weakning, *&c.* on the Falſe Brethren in Church and State; ſo that he thinks it very hard that a Part of one Sentence in *Page* 22, ſhould be brought back ſeven *Page*, and coupled with Part of another Sentence, Page 15, and put together as one Sentence, to make an Article of High Crimes and Miſdemeanors; whereas one of the Sentences hath no manner of Relation to, or Dependance upon the other, and neither of the Sentences alone can amount to or be charged as a High Crime and Miſdemeanor.

By this Method they might have charged him with High Treaſon, or any other Crime. Nay, my Lords, by this tranſpoſing and altering of Sentences, by taking a Part of one Sentence and coupling it with Part of another, they may make the Scripture it ſelf ſpeak Blaſphemy.

But ſuppoſe it had been one entire Sentence, had this been a Ground for an Impeachment? By Men of Characters and Stations, muſt Men of the higheſt Characters and Stations be neceſſarily underſtood? No, my Lords: Are not inferior Officers, even Conſtables, Mayors, Juſtices of the Peace, Officers of the Militia, Deputy-Lieutenants, Officers of the Army, Officers of the Cuſtoms, and other Branches of the Revenues, all Men of Station? And are not ſome of the Stations very good ones? And are not many of the Perſons that enjoy them Men of Characters too? And if among all theſe there may be found ſome whoſe Conſciences are ſo tender, that they think it a Sin to communicate with the Church upon any other Account than to qualify themſelves for their Offices and Stations; and ſuch who vilify her Orders, calumniate, miſrepreſent and ridicule her Prieſts and Profeſſors: Is it a High Crime and Miſdemeanor in the Doctor to call ſuch Perſons Falſe Brethren, and to ſuggeſt that they are Enemies to our Conſtitution, and that they endeavour to weaken and undermine it? And yet this is all that can be inferr'd from theſe two Pieces of Sentences put together, to form this Article. And does this bring the leaſt Blemiſh or Reflection on the Miniſtry, or thoſe of the Higheſt Character and Stations in the Church? By no Means: For the Miniſtry preſumes that Men in thoſe inferior Stations are well-affected to our Conſtitution, when they qualify themſelves according to Law, by taking the Sacra-

ment

it nt and Oaths; and if any of them are not ſo, mecannot be preſumed to fall under the Notice of the Miniſtry: And in many Caſes, if they did know it, yet it would not be in their Power to redreſs it. I remember one Inſtance, in an eminent Borough in this Kingdom. It was proved, at the Hearing of an Election for that Borough, that the Mayor declared that no Perſon ſhould be admitted into the Corporation, and qualified to Vote for Members of Parliament, but ſuch as were Diſſenters from the *Teſt*; ſo that there may be Mayor, Aldermen, and the whole Corporation who may take the Sacrament in the Church of *England*, and the Oaths, and yet every one Diſſenters: And they may elect Perſons into much higher Stations, if they pleaſe, which are equally diſaffected to our Church, and it is not in the Power of her Majeſty or the Miniſtry to help it. And when there are ſuch found among us, whether the Doctor, when he chargeth them for being Falſe Brethren, can be ſaid to reflect on the Miniſtry, can be ſaid to be guilty of High Crimes and Miſdemeanors, I ſubmit to your Lordſhips.

The Learne Gentleman who ſpoke firſt to this Article, ſeemed to allow that Men of the higheſt Characters and Stations were not intended; but he objected, that to charge the inferior Magiſtrates with a Neglect of their Duty, is charging the Government with Male-Adminiſtration; in which I cannot concur with him. But as this Caſe is, I take it to be plain, that to charge inferior Officers or Magiſtrates with a Neglect of their Duty, cannot reflect on Her Majeſty's Adminiſtration; for there are Magiſtrates which Her Majeſty cannot remove; there are Neglects which Her Majeſty or Her Miniſtry cannot be preſumed to know, as I before mention'd. And to ſet this in a true Light, and to give a full Anſwer to this Objection, we have Her Majeſty's Authority to vindicate the Doctor in this Point; for Her Majeſty chargeth the Magiſtrates with a Neglect of their Duty, and carrieth the Charge higher than can be inferr'd from the Doctor's Sermon, I mean the ſeveral Proclamations that have been iſſued by Her Majeſty, by the Advice of Her Privy-Council (which are Her Miniſtry) for ſuppreſſing Prophaneneſs and Immorality. Thoſe Proclamations take Notice of the ſeveral Acts of Parliament againſt Prophaneneſs and Immorality, and charge the inferior Magiſtrates with a Neglect of their Duty, in not putting thoſe Laws in Execution. And is it an Offence for the Doctor to mention that in his Pulpit, which hath been ſo often repeated by Her Majeſty under Her Great Seal?

It has been objected, That the Doctor, ſpeaking of the Church, ſays, that *Her Adverſaries are Chief.* This is a Quotation out of Scripture, which ſignifies that they are Mighty; but that this reflects on the Miniſtry, or Her Majeſty's Adminiſtration, I cannot apprehend.

But it is alſo objected, that the Doctor, Page 5, ſaith, *That the Communion of the Church hath been rent and divided by Factious and Schiſmatical Impoſtors*, &c. Is the ſaying this is done with Impunity, a Reflection on the Adminiſtration? That Blaſphemy, Atheiſm and Prophaneneſs have been juſtify'd in Print; that the Worſhip and Diſcipline of the Church hath been prophaned and abuſed, her Orders denied and vilified, her Prieſts and Profeſſors calumniated, miſrepreſented and ridicul'd; that Trumpets have been ſounded to Rebellion; that Her Majeſty and Her whole Adminiſtration have been reflected on, I think was ſufficiently proved to your Lordſhips Yeſterday; and that it hath been done with Impunity hitherto, I believe will not be denied, for I have not heard that any of theſe bold Offenders have yet been puniſh'd; and that the inferior Magiſtrates have neglected their Duty in that reſpect, we have Her Majeſty's Authority for it. But that this is a Reflection on Her Majeſty, or Her Miniſtry, is totally denied; for the Execution of the Laws againſt ſuch Offenders is within the Province of inferior Magiſtrates; and God forbid that the Faults of inferior Magiſtrates ſhould be charged upon Her Majeſty. The ſeveral Proclamations iſſued out by Her Majeſty, by the Advice of Her Privy-Council, ſhew, Her Majeſty and Her Miniſtry have done all that in them lies to ſuppreſs Blaſphemy, Prophaneneſs, and other Vices; and that the Fault and Neglect lies entirely at the Door of the inferior Magiſtrates: And this ſufficiently Anſwers the Objection, that what is charged upon inferior Magiſtrates cannot reflect on her Majeſty, or Her Miniſtry. And this is alſo a full Anſwer to that Part of the Fourth Article, which accuſeth the Doctor with charging her Majeſty, and thoſe in Authority, both in Church and State, with a general Male-Adminiſtration; to which I would only add what the Doctor hath ſaid in his Anſwer to this Article, *viz.* "That he abhors the Thoughts of bringing any "Charge againſt Her Sacred Majeſty, whom he "never mentions but in Terms of the profoundeſt "Duty and Reſpect; that he doth not charge thoſe "in Authority with any Male-Adminiſtration; that "he doth not ſo much as mention the Word *Male-Adminiſtration*, nor any other Word Synonymous "with it, or from whence it can be inferr'd, or in "which it is or can be imply'd.

As to ſuch Part of the Fourth Article, which chargeth, that *the Doctor, as a publick Incendiary, perſuades Her Majeſty's Subjects to keep up a Diſtinction of Factions and Parties*; he invites the Diſſenters to leave their Schiſm, and come ſincerely into the Church: He complains of thoſe who have villanouſly divided us with the knaviſh Diſtinctions of High and Low Church. He wiſheth we were all one Fold under one Shepherd; and that all thoſe invidious Diſtinctions, that diſtract and confound us, were loſt.

If wiſhing that People would leave their Schiſm, and come ſincerely into the Church; that we were all one Fold under one Shepherd, makes a Man a publick Incendiary; if blackning thoſe that divide us with knaviſh Diſtinctions with the Character of Villanous; and wiſhing that all thoſe invidious Diſtinctions which diſtract and confound us were loſt, be to keep up Diſtinctions of Factions and Parties, the Doctor is Guilty; but if not, then he conceives there is nothing in his Sermons which can be a Foundation for the Charge in this Branch of the Fourth Article.

But it hath been objected, That tho' the Doctor invites the Diſſenters to come into the Church, yet he invites them upon his own Terms: And I hope, my Lords, they ſhall never come in upon any other Terms than their conforming to the Doctrine and Diſcipline of our Church. I hope I ſhall never ſee the Conſtitution of our Church weakned, and her Pales and Fences broken down, to let her Enemies into it.

As to the other Part of the Article, which chargeth the Doctor with inſtilling groundleſs Jealouſies, and fomenting deſtructive Diviſions among her Majeſty's Subjects, there is no Foundation for it; for, on the contrary, he rebukes and condemns thoſe who by falſe Inſinuations, and raiſing groundleſs Jealouſies and Fears, embroil and bring it into Confuſion.

As to that Part of the Fourth Article, which chargeth, That *the Doctor excites and stirs up Her Majesty's Subjects to Arms and Violence*; if Preaching up Passive Obedience be to stir up People to Rebellion; if Preaching up the Illegality of Resistance be to excite her Majesty's Subjects to take up Arms against Her, I own there is a sufficient Ground in his Sermon for this Charge; but otherwise, there is not one Passage in the Sermon to warrant this Accusation.

I do admit, the Doctor, in the last Page of his Sermon, hath this Exhortation of St. *Paul*'s: *Put on the whole Armour of God, that ye may be able to stand against the Wiles of the Devil; for we wrestle not only against Flesh and Blood, but against Principalities, against Powers, against the Rulers of the Darkness of this World, against Spiritual Wickednesses in high Places.* I pray, my Lords, What is it that the Doctor in the Words of St. *Paul* advises his Auditors to resist? Is it not *the Wiles of the Devil?* With what Armour are they to resist? 'Tis with *the Armour of God.* What is the Armour of God? Are Guns, or Swords of Iron or Steel, the Armour of God?

The Learned Manager that spoke to this Point said, the Doctor could not mean the spiritual Armour, because he departed from the Apostle's Spiritual Meaning. And to make good this Charge, he useth the same Method that was taken to make up the first Part of this Article; for the Words cited by the Doctor are in the Eleventh and Twelfth Verses of the Sixth Chapter of St. *Paul* to the *Ephesians*; and to find out the Doctor's Meaning, he goes back to the Thirty first Verse of the Fourth Chapter, where St. *Paul* saith, *Let all Bitterness, and Wrath, and Anger, and Clamour, and Evil-speaking be put away from you, with all Malice.* And why this should be alledged to shew what the Doctor means, when in the Words of St. *Paul* he adviseth his Auditors to put on the Armour of God, I cannot imagine. If he had read but two Verses after those Words cited by the Doctor, he would have found the Armour of God to be *The Sword of the Spirit, the Shield of Faith, the Breast-plate of Righteousness, and the Helmet of Salvation*; and the Doctor could mean no other Armour: And how her Majesty, or those in Authority under Her, can be resisted by this Armour, or what Violence Her Majesty's Subjects can use with these Arms, I submit to your Lordships. 'Tis plain, that the Principalities, Powers and Rulers, here meant, are not Earthly Principalities, Powers and Rulers; but the *Principalities, Powers, and Rulers of Darkness*, against which Guns and Swords are but a very weak and feeble Defence. These Things being consider'd, I think there is nothing to be collected from this Paragraph, that can excite Her Majesty's Subjects to Arms and Violence; unless it be, to *take the Armour of God*, to *resist the Devil and all his Works*; which, I hope, is not a High Crime and Misdemeanor.

As a further Evidence that the Doctor excites Her Majesty's Subjects to Arms and Rebellion, it is objected, That the Doctor, in his Sermon, *Pag.* 26. says, *Let us therefore, being well assured how much our Cause deserves, and how much at present it requires our bravest Resolutions, hold fast our Integrity and Religion without wavering, and earnestly contend for the Faith which was once delivered to the Saints.* And is not this wholsome and religious Advice? The more strongly and openly the Cause is oppugned, the braver Resolution it requires to defend it. The Cause of Religion is attack'd by Atheists and Deists; the Cause of Monarchy, by Assertors of Republican and Seditious Principles; the Cause of the Church, by Papists and Sectaries of all sorts; and therefore it requires our bravest Resolutions to defend the Church, the Queen, and the Constitution, with the same Zeal they are attack'd, as the Doctor explains himself; *Not doubting, if we shew the same Courage, and indefatigable Zeal and Labour to defend, as our Adversaries to reproach, divide, and ruin our Church; neither their united Malice nor Power, nor all the Plots and Machinations of* Rome, *nor the very Gates of Hell it self, shall ever be able to prevail against Her.* And shall this be construed to excite Her Majesty's Subjects to Arms and Violence?

As to the last Part of the Article, which chargeth, That *the Doctor doth wickedly wrest and pervert divers Texts of Holy Scripture*: It seems, the Printer of the Second Edition mistook one Text. If the Doctor had perverted, or wickedly wrested the Text, he must have been subject to a Prosecution in another Place; but it would not have been a Ground for an Impeachment of High Crimes and Misdemeanors.

To conclude---- My Lords, If condemning the Dethroning and Murdering the Royal Martyr King *Charles* the First, be to cast black and odious Colours on his late Majesty and the Revolution; if the averring the utter Illegality of Resistance to the Supreme Power in all Things lawful; if Preaching the Doctrine of Passive Obedience and Non-Resistance, which hath been enjoined by our Church, and confirmed by the Legislature, and is the Doctrine of all Christian Churches, shall be construed to be a Reflection on the Revolution, and a greater Reflection on it now, than the Preaching of the same Doctrine was in the Reign of his late Majesty, who was the Happy Instrument of that Revolution: If the Doctor be a Criminal for Preaching that Doctrine which the Right Reverend Fathers of our Church, and other Eminent Divines, have preach'd, with the Approbation and Applause of the Crown, and both Houses of Parliament; then the Doctor is guilty of the High Crimes and Misdemeanors in the First Article.

And if to wish that Dissenters, who qualify themselves according to the Act, may enjoy the full Benefit of it; if to desire the Laws to be put in Execution against such who will not comply with the Terms prescribed by the Act, and against Atheists, Deists, and such who frequent no Religious Worship at all, and are particularly excepted out of the Act of Toleration; and if to assert, that a Sentence ratified in Heaven cannot be reversed on Earth, be to affirm the Toleration unreasonable, and the Allowance of it unwarrantable; then the Doctor is also guilty of the High Crimes in the Second Article.

And if to assert the Prejudice the Church receives by Schism and Occasional Conformity; if the shewing the heavy Judgments which may be brought down upon a Church and Nation, by Blasphemy, Atheism, Prophaneness and Immorality; if to shew the Danger the Queen and Church are in, by the rebellious Principles that are daily broach'd and publish'd, be to assert the Church is in Danger under Her Majesty's Administration; the Doctor is likewise guilty of the Crimes in the Third Article.

And laſtly, If to pray for Her Majeſty's long Continuance on the Throne, for the Comfort and Support of the Church and Nation; if to ſhew that the Laws againſt Atheiſm, Blaſphemy, Prophaneneſs and Irreligion, be not put in due Execution by inferior Magiſtrates; that is, if to aſſert in his Pulpit what Her Majeſty, by Advice of her Miniſtry, hath aſſerted in Four Proclamations, be to reflect on Her Majeſty and Her Miniſtry, and to charge Her Majeſty with Male-Adminiſtration in Church and State; and if exhorting the People to *put on the Sword of the Spirit, the Shield of Faith, the Breaſt-plate of Righteouſneſs, and the Helmet of Salvation,* to *reſiſt the Devil, and all the Powers of Darkneſs,* be to excite Her Majeſty's Subjects to Arms and Violence againſt Her Majeſty; and if Preaching up Paſſive Obedience and Non-Reſiſtance, is to ſtir up People to Rebellion; then the Doctor is guilty of the High Crimes and Miſdemeanors in the Fourth Article; eſpecially, if ſtrain'd, foreign and unnatural Inferences, Inſinuations and Innuendo's are to paſs for Proof. But otherwiſe I preſume to ſay, the Doctor is not guilty of any of the Offences charged in either of the Articles; and I humbly hope, your Lordſhips will be of that Opinion.

Mr. *Dee.* MY Lords, This Article is ſhort of the former Articles, in the manner of the Charge. The firſt Part of it is a Charge upon the Doctor, That he *ſuggeſts* only, *That Her Majeſty's Adminiſtration tends to the Deſtruction of the Conſtitution.* As to this Part of the Article, (as has been obſerved) there is no Paſſage in the Sermon mentioning Her Majeſty, but with the greateſt Reſpect, and with hearty Prayers for Her. The Words *Miniſters*, or *Miniſtry*, are not found in the whole Sermon: Therefore, to find any Charge on them by the Doctor, we muſt look to the Second Part of the Article, which charges the Doctor with ſuggeſting, *That there are Men of Character and Stations, who are Falſe Brethren, and do undermine the Conſtitution, and endeavour to betray the Church*; *and* conſequently *charges Her Majeſty with a General Male-Adminiſtration.*

My Lords, As to this Part of the Charge, *viz.* That the Doctor doth ſuggeſt, that Men of Character and Stations are Underminers of our Conſtitution, it is not to be found in any Part of the Sermon: But if he doth ſuggeſt, that Men of Characters and Stations (not ſaying of what Characters, or what Stations) are Falſe Brethren, (if your Lordſhips take notice what thoſe Men are, whom the Doctor calls Falſe Brethren) it will not be a ſufficient Ground for a Charge of High Crimes and Miſdemeanors. There are Four Sorts of Perſons, that the Doctor charges as Falſe Brethren: Thoſe that propagate Falſe Doctrines; Thoſe that give up the Diſcipline of the Church; Thoſe that are for a Neutrality in Religion; and Thoſe that own themſelves to be of the Church, but live not according to her Rules. Now to ſay, that there are ſome Men of Character and Stations in the Nation that are Falſe Brethren, within ſome one or other of theſe Deſcriptions, I wiſh I could ſay it was not true. But when the Doctor comes to charge ſome Perſons as Underminers of the Church and Conſtitution, they are deſcribed to be either thoſe Perſons that ſubvert the Fundamentals of Religion, as Atheiſts, Deiſts, *Socinians*, and ſuch like; or Occaſional Conformiſts, Perſons that creep into the Church, only with a Deſign to do it a Miſchief. And I think theſe Perſons may be juſtly ſaid to be Underminers of the Church.

My Lords, There is a General Charge againſt the Doctor, *That he excites the People to Rebellion.* If this could be naturally inferr'd from his Words, he muſt be guilty of Self-Contradiction, and ought rather to be pitied as a weak, fooliſh Man, than puniſhed as a cunning Incendiary. For when he hath ſo poſitively affirmed the utter Illegality of Reſiſtance to the Supreme Power, if any Thing had dropp'd from him in the ſame Aſſembly tending to Rebellion, he would have expoſed himſelf to the utmoſt Ridicule.

My Lords, Some Things have been obſerved out of the Preface to his Sermon at St. *Paul*'s: One Expreſſion is that of ſounding a Trumpet. I ſhould not have thought this worth taking notice of, but that ſome of the Gentlemen did lay ſome Streſs on it, as if this were ſounding an Alarm, exciting People to Arms: But I conceive, that the Words out of the Mouth of the Doctor, bear the ſame Senſe as out of the Mouth of the Prophet. But for fear that he ſhould be miſconſtrued, the Doctor explains himſelf by the Words immediately following, and ſhews, that ſuch Prohibition or Reſtraint laid on the Clergy, as are there ſuggeſted, are expreſly contrary to the Command of God. His Words are theſe: *We are told by theſe Men, who would ſhut both our Eyes and our Mouths, in order the more effectually to undermine and deſtroy us, that the Pulpit is not a Place for Politicks; and that it is the Buſineſs of a Clergyman to preach Peace, and not ſound a Trumpet in* Sion; *ſo expreſly contrary to the Command of God, to* cry aloud, and ſpare not. So that theſe Words do plainly interpret what the Doctor meant by ſounding a Trumpet.

My Lords, There was another Thing taken notice of from this Preface, and that was the Encouragement he gives to People to Arms and Violence, againſt ſuch as would deſtroy the Church, *&c.* The Words of the Doctor are theſe: *If honeſt Men will ſit ſtill, and give up their Cauſe through want of Courage, or a juſt Senſe of the dangerous Attempts of our Enemies; we may, without the Spirit of Prophecy, foretel what will become of our Conſtitution, when it is ſo vigorouſly attacked from without, and ſo lazily defended from within.* This was look'd upon as dividing the People, and exciting them to make Reſiſtance. But if the Gentlemen had look'd a little before, in the ſame Paragraph, they would have found who the Aſſailants he mentions were; and then they would not, I conceive, have blamed the Doctor, for encouraging the People to make a vigorous Defence. The Aſſailants are thoſe that make rebellious Appeals to the People, as the only Judges of Right and Wrong, and the Dernier Reſort of Juſtice and Dominion: Theſe, he ſays, are the faſhionable Methods now made uſe of to undermine the Church and Legiſlature, by breaking in upon the Prerogative of the Crown, by threatning them with imaginary Legions, and a Popular Tribunal, where their Authority is to be tried and determined. To put a ſtop to this Thing, is what he ſays is the Intent of his Diſcourſe. Now if theſe are the Perſons that attack the Conſtitution, that appeal to the People as the only Judges of Right and Wrong, if theſe are the Aſſailants, ſurely the Doctor may encourage the People vigorouſly to defend themſelves againſt them.

My Lords, There was one Thing more taken notice of by the Gentlemen Managers, That the Doctor had given great Offence to the Commons,

by an Expreſſion he has made uſe of, by way of Exclamation, in the Cloſe of his Anſwer to the Articles; and that runs thus: *Hard is the Lot of the Miniſters of the Goſpel, if when they cite the Word of God in their General Exhortations to Piety and Virtue, or in their Reproofs of Mens Tranſgreſſions, or where they are Lamenting the Difficulties and Conflicts with which the Church of Chriſt, whilſt Militant here on Earth, muſt always ſtruggle; the ſeveral Texts and Paſſages by them cited, ſhall be ſaid to have been by them meant of particular Perſons and Things, and ſhall be conſtrued in the moſt Criminal Senſe, and be made by ſuch Conſtruction one Ground of an Impeachment for High Crimes and Miſdemeanors.* If this Suppoſition, as the Doctor has put it, be turned into a Poſition, he hopes you will pardon him for his Exclamation. If Generals have not been tied to Particulars, to make up theſe Articles, then the Doctor had no Reaſon to make this Exclamation: But if the Doctor's Sermon hath been ſo treated, in order to frame the Articles againſt him, then he is not blameable for that Expreſſion.

My Lords, The Doctor has never before been charged with Diſloyalty to the Government: He hath always been a Man of that Probity, and of ſo blameleſs a Life and Converſation, that he hath not been ſo much as attack'd on that Account. And when a Man of his Character is brought before your Lordſhips, for a Sermon preach'd in a Publick Congregation, for a Doctrine that is the Doctrine of the Church of *England*, and for which he has the Authority of ſo many of the Fathers of that Church, as well as of many of her Learned Sons: For him, I ſay, to be brought before your Lordſhips (by an Impeachment) on that Account, ſurely he may be allowed to ſay this: His Lot (at leaſt) is hard, that he ſhould be made the firſt, and ſo ſolemn Example; when he only followed ſo many and great Examples, as have been ſet him from the Beginning of the Reformation down to this Time. And when your Lordſhips conſider the Circumſtances of the Doctor, I hope your Lordſhips will think, that the Defence of this Proſecution, muſt be a ſufficient Puniſhment for any Crimes he is charged with, and of which he can be ſuppoſed guilty: And ſo I ſubmit him, and his Cauſe, to your Lordſhips Juſtice.

Dr. *Henchman.* MY Lords, In the General Preamble to the Articles of Impeachment, Doctor *Sacheverell* is ſaid to have preached and publiſhed Two Diſcourſes, with *an Intention to defame Her Majeſty's Adminiſtration*; and this laſt Article contains ſeveral particular Charges, of a very high Nature, and great Malignity, againſt Her Majeſty's Happy Adminiſtration.

For a General Anſwer to this Article, I muſt beg your Lordſhips Patience, to look back again upon thoſe Paſſages of this Sermon, which I humbly offer'd to your Lordſhips Conſideration under the Third Article, which will ſet the Doctor's Intentions in a clear Light. In one of them, he readily acknowledges the great Bleſſing we at preſent enjoy, by Her Majeſty's happily ſitting on the Throne of Her Anceſtors: And in the other Places, where he mentions Her Majeſty, it is with great Reſpect, and hearty Addreſſes to God, long to preſerve Her on that Throne; and at laſt concludes with this ſolemn Proteſtation; That what he had then ſpoken, *proceeded from a good Intention, and tender Concern for Her Majeſty's Perſon and Government, and a hearty Zeal for the Honour and Safety of our Excellent Church and Conſtitution.*

My Lords, Some Regard is to be had to the Declarations of every honeſt Man, in relation to his own Thoughts and Intentions, which are known only to God and his own Conſcience: And certainly, when a Prieſt of the Church of *England* does, in the Preſence of God, and Face of the Congregation, ſolemnly declare, That what he ſpeaks is with a tender Concern, and hearty Zeal for Her Majeſty's Perſon and Government; no looſe Words, or diſtant and unconnected Expreſſions, ought to be conſtrued to a direct contrary Senſe of ſo expreſs a Declaration. My Lords, The Senſe of theſe Words is plain and obvious to every Man's Underſtanding: But if a Paſſage in the Two and twentieth Page of this Sermon, in it ſelf, and as it ſtands in its proper Connection, (not Criminal,) muſt be conſtrued by what is ſaid in the Fifteenth Page, little relating to the ſame Purpoſes, and both theſe Paſſages explain'd by a Third ſtill farther diſtant; by ſuch a Method, the moſt inoffenſive Diſcourſe may be made blameable, and it will be very difficult to make any Defence.

My Lords, It has been objected by the Learned Managers, That the Doctor choſe an unſeaſonable Time, and an improper Place, to vent his Notions in. But how does it appear, that either the one or the other was of his own Choice? Does it not rather appear, that he was call'd to perform that Duty by the Publick Magiſtrate; and that both the Time and Place were of his Appointment? Or how can it, at this Time, be thought unſeaſonable, to maintain the Doctrine of our Church, when ſuch Swarms of infamous Libels are daily publiſh'd in Oppoſition to it? Or what Place can be more proper for this Purpoſe, than that in which ſuch Libels uſually firſt appear, and moſt prevail? Whether the Doctor performed his Duty, by Preaching that Doctrine there, which the Rubrick of our Liturgy expreſly commands him to teach on that Day, muſt be ſubmitted to your Lordſhips: And certainly it will always be thought proper, on that Day that our Church and State were deliver'd from a moſt horrid Conſpiracy, to preach againſt the Sin of Rebellion: Upon that Day that the whole Nation was deliver'd from a Popiſh Conſpiracy, it will always be proper to ſhew, that Reſiſtance of the Higher Powers is the Doctrine of Papiſts, and firſt proceeded from them. It is well known to your Lordſhips, what the General Duty of Miniſters obliges them to; but upon State-Days, when they are commanded by Supreme Authority, and directed by the Rubrick, what Subject to treat of; it would be Contempt in them not to obey the Commands of their Superiors, or not to inſiſt upon that Doctrine which they are peculiarly ordered to explain. And I humbly apprehend, that thoſe Reverend Prelates, ſome of whoſe Expreſſions were lately read to your Lordſhips, would not have received the Thanks of this Honourable Houſe, if they had not adapted their Diſcourſes to the Solemnity of that Day, which they then celebrated.

My Lords, Upon a general View of this and the other Articles, the whole Charge will appear to be ſupported, not by any one plain Propoſition, but by Inferences and ſuppos'd Conſtructions. It has been my Endeavour, under every Article, to lay before your Lordſhips one or more clear Paſſages of this Sermon, which ſufficiently declare the Author's Intention

tention as to that Article; and I muſt leave it to your Lordſhips Conſideration, how far an Inſinuation or Inference will be outweigh'd by an expreſs Declaration. If there are any Words in this Diſcourſe which ſeem to bear a doubtful Meaning, your Lordſhips will in all Caſes incline to the moſt favourable Side; and in this Particular, the Character and Function of a Miniſter will deſerve ſome more than ordinary Allowance. My Lords, It is a known Rule in the *Roman* Law, *In ambiguis orationibus maxime ſententia ſpectanda eſt ejus qui eas protuliſſet.* Where-ever Words are capable of a double Conſtruction, there the Intention of the Speaker is chiefly to be look'd after, and attended to. Every Man has a Right to explain his own Intentions; and the darker and more obſcure Expreſſions of his Diſcourſe muſt be conſtrued by thoſe Paſſages which are more plain and explicit. This is a Rule in all Civil and common Caſes between Man and Man; but in Criminal Caſes, there that Law exacts a ſtricter and a nicer Proof: Where-ever the Life or Liberty of a Citizen is concern'd, there the Proofs ought to be *Luce meridianâ clariora*, as evident as the Sun at Noon-day, and ſuch as will convince every one at firſt Sight.

My Lords, I mention theſe Maxims of the *Roman* Law only as they are agreeable to the common Senſe and Underſtanding of Mankind, as Rules of Reaſon and Equity, which your Lordſhips have always govern'd your ſelves by, and always will. The laſt of 'em I mention with the greater Confidence, becauſe I find it has once already received the Sanction of this Honourable Houſe, in Sir *Samuel Bernardiſton*'s Caſe; in which it is declared, *That Innuendo's or ſuppos'd Conſtructions ought not to be allowed; for all Accuſations ſhould be plain, and the Crimes aſcertain'd.* This, my Lords, has once been the Reſolution of this Honourable Houſe, and we humbly hope your Lordſhips will not depart from a Precedent ſo well eſtabliſhed. My Lords, one Part of this laſt Article is, That the Doctor has wreſted ſeveral Texts of Scripture to ſeditious Purpoſes; but it has not yet appeared that he ever harboured one ſeditious Thought: Whether he has perverted any Texts of Scripture will be beſt explain'd by himſelf, when your Lordſhips ſhall be pleaſed to hear him.

Mr. *Dodd.* My Lords, We deſire to read two or three Proclamations: The Firſt is to direct the Magiſtrates to put the Laws in Execution againſt Prophaneneſs and Immorality; and that not being duly obſerved, the Second Proclamation takes notice thereof, and directs the Magiſtrates to put the ſame in Execution: And there are Two ſubſequent Proclamations to the ſame Purpoſe.

Clerk Reads.] *By the Queen, A Proclamation, for Reſtraining the Spreading Falſe News, and Printing and Publiſhing of Irreligious and Seditious Papers and Libels.*

ANNE R.

'WHereas by an Act of Parliament made in 'the Third Year of the Reign of King 'Edward the Firſt, It is Enacted, That none be ſo 'hardy to tell or publiſh any falſe News or Tales, 'whereby Diſcord, or Occaſion of Diſcord or Slan'der may grow between the King and his People, 'or the great Men of the Realm; and that he that 'doth ſo, ſhall be taken and kept in Priſon until 'he hath brought him into Court which was firſt 'Author of the Tale. And by another Act made 'in the Second Year of the Reign of King *Richard* 'the Second, it is declared, That the deviſing, 'ſpeaking and telling ſuch falſe News and Tales, 'was likely to occaſion great Peril and Miſchief to, 'and the quick Subverſion and Deſtruction of this 'Realm: For the preventing whereof, it is thereby 'Enacted, That none be ſo hardy to deviſe, ſpeak 'or tell any falſe News, Lies, or other falſe Things, 'of Prelates, Noblemen, and Officers of the Crown, 'therein named, whereof Diſcord, or any Slander, 'might ariſe within this Realm, under the Pain or'dained by the ſaid Statute of King *Edward* the 'Firſt. And by another Act made in the Twelfth 'Year of the Reign of the ſaid King *Richard* the 'Second, it is Enacted, That when any ſuch ſhall 'be taken and impriſoned, and cannot find him by 'whom the Speech be moved, that he ſhall be 'puniſhed for ſuch his Offence. And whereas the 'preventing of the ſpreading and publiſhing of falſe 'News and Tales, and the Writing, Printing and 'Publiſhing of Heretical, Blaſphemous, Irreligious, 'Treaſonable, Seditious and Scandalous Books, 'Pamphlets, Libels and Papers, is a Matter which 'requires our Publick Care, and is of great Con'cernment; eſpecially conſidering, that by Reaſon 'of the general Licentiouſneſs of the Times, ſince 'an Act for Preventing Abuſes in Printing Seditious, 'Treaſonable and Unlicenſed Books and Pamphlets, 'and for Regulating of Printing and Printing-Preſſes, 'made in the Thirteenth Year of the Reign of Our 'late Royal Uncle King *Charles* the Second, and 'continued by an Act made in the Fourth Year of 'the Reign of the late King *William* and Queen *Mary*, 'expired, many Evil-diſpoſed Perſons have Writ'ten, Printed and Publiſhed divers Heretical, Blaſ'phemous, Irreligious, Treaſonable and Seditious 'Books, Pamphlets, Papers, and many falſe, infa'mous and ſcandalous Libels, and do continue ſuch 'their unlawful and exorbitant Practices, endeavour'ing thereby to Traduce and Reproach the Eccleſia'ſtical and Temporal Government of this Kingdom, 'and the publick Miniſters of the ſame, and the 'Proceedings and Members of both Houſes of Par'liament, and other our loving Subjects, to the 'high Diſhonour of Almighty God, and the en'dangering the Peace of theſe Kingdoms, contrary 'to the ſaid Statutes, and the common Laws of our 'Realm: We therefore (with the Advice of our 'Privy-Council) do by this Our Royal Proclama'tion Charge and Command all our Subjects, of 'what State or Condition ſoever they be, That they 'do not henceforth preſume, either by Writing, 'Printing or Speaking, to tell or publiſh any falſe 'News or Tales, contrary to the Statutes before'mentioned; nor Write, Print, Publiſh or Sell, or 'cauſe to be Written, Printed, Publiſhed or Sold, 'any Heretical, Blaſphemous, Irreligious, Treaſona'ble, or Seditious Books, Papers or Pamphlets, or 'any ſcandalous Libels, reflecting upon us, or upon 'the Eccleſiaſtical or Temporal Government of this 'Realm, or any of our publick Miniſters or Officers, 'or on the Proceedings of either of our Houſes of 'Parliament, or any the Members thereof, or upon 'any other of our loving Subjects. And we do 'hereby further declare, That we will proceed with 'the utmoſt Severity and Rigor of Law, againſt all 'ſuch Perſons who ſhall be Guilty of any the ma'licious and unlawful Practices aforeſaid: We be'ing reſolved, as much as in us lies, to ſuppreſs the 'ſaid Enormities by a more ſtrict and exemplary 'Puniſhment of all ſuch Offenders herein, as ſhall 'here-

'hereafter be diſcovered: To the Diſcoverers where-
'of we will give all due Encouragement. And we
'do hereby ſtraightly charge and command all and
'ſingular our Judges, Juſtices of the Peace, She-
'riffs, Mayors, Bailiffs, and all other our Officers
'and Miniſters whatſoever, to take effectual Care
'for the ſpeedy Apprehenſion, Proſecution aud
'Puniſhment of all ſuch Perſons, who ſhall at any
'Time hereafter be found Offenders herein.

Given at Our Court at Whitehall, *the Twenty Sixth Day of* March, 1702. *In the Firſt Year of Our Reign.*

GOD ſave the QUEEN.

Mr. *Dodd.* Now read the Second. Read the Date firſt.

Clerk Reads.] *Given at our Court at St.* James's, *the Five and Twentieth Day of* February, 1702. *In the Firſt Year of Our Reign.*

By the Queen, a Proclamation for the Encouragement of Piety and Virtue, and for the Preventing and Puniſhing of Vice, Prophaneneſs and Immorality.

ANNE R.

'WHereas on our Acceſſion to the Throne, we
'thought fit, by the Advice of our Privy-
'Council, to Iſſue out our Royal Proclamation for
'the Encouragement of Piety and Virtue, and for
'the Preventing and Puniſhing of Vice, Prophane-
'neſs and Immorality. And whereas we have been
'informed, That our Laws mentioned in the ſaid
'Proclamation have not been executed according to
'our juſt Expectation and Commands: We moſt ſe-
'rioufly and religiouſly conſidering, That it is an
'indiſpenſible Duty on us, to be careful, above all
'other things, to preſerve and advance the Honour
'and Service of Almighty God, and to diſcourage
'and ſuppreſs all Vice, Prophaneneſs, Debauchery
'and Immorality, which are ſo highly diſpleaſing
'to God, ſo great a Reproach to our Religion and
'Government, and (by Means of the frequent ill
'Examples of the Practicers thereof) have ſo fatal
'a Tendency to the Corruption of many of our
'loving Subjects, otherwiſe religiouſly and virtu-
'ouſly diſpoſed, and which (if not timely reme-
'died) may juſtly draw down the Divine Vengeance
'on us and our Kingdoms: We alſo humbly ac-
'knowledging, That we cannot expect the Bleſſing
'and Goodneſs of Almighty God, (by whom Kings
'and Queens reign, and on which we entirely rely)
'to make our Reign happy and proſperous to our
'ſelf and our People, nor hope for the Divine Aſſi-
'ſtance to deliver us from the great and imminent
'Dangers which our Kingdoms, and the true Pro-
'teſtant Religion eſtabliſhed among us, are in this
'preſent Juncture threatned with, without a religi-
'ous Obſervance of God's Holy Laws. To the In-
'tent therefore that Religion, Piety, and good
'Manners may (according to our moſt hearty De-
'ſire) flouriſh and increaſe under our Adminiſtra-
'tion and Government; We have thought fit (by
'the Advice of our Privy-Council) to iſſue this our
'Royal Proclamation; and do hereby declare our
'Royal Purpoſe and Reſolution to diſcountenance
'and puniſh all manner of Vice, Prophaneneſs and
'Immorality in all Perſons, of whatſoever Degree
'or Quality, within this our Realm; and particu-
'larly in ſuch as are employed near our Royal Per-
'ſon: And that for the greater Encouragement of
'Religion and Morality, we will, upon all Occaſi-
'ons, diſtinguiſh Perſons of Piety and Virtue by
'Marks of our Royal Favour. And we do expect
'and require, That all Perſons of Honour, or in
'Place of Authority, will give good Example by
'their own Virtue and Piety, and to their utmoſt
'contribute to the diſcountenancing Perſons of diſ-
'ſolute and debauched Lives; that they being by
'that Means reduced to Shame and Contempt, for
'their looſe and evil Actions and Behaviour, may
'be thereby alſo enforced the ſooner to reform their
'ill Habits and Practices; and that the viſible Diſ-
'pleaſure of good Men towards them, may (as far
'as it is poſſible) ſupply what the Laws (probably)
'cannot altogether prevent. And we do hereby
'ſtrictly enjoin and prohibit all our loving Subjects,
'of what Degree or Quality ſoever, from playing
'on the Lord's Day at Dice, Cards, or any other
'Game whatſoever, either in publick or private
'Houſes, or other Place or Places whatſoever; and
'do hereby require and command them, and every
'of them, decently and reverently to attend the
'Worſhip of God on every Lord's Day, on Pain
'of our higheſt Diſpleaſure, and of being proceed-
'ed againſt with the utmoſt Rigor that may be by
'Law. And for the more effectual reforming of
'all ſuch Perſons, who by Reaſon of their diſſolute
'Lives and Converſations are a Scandal to our King-
'dom; our further Pleaſure is, and we do hereby
'ſtrictly charge and command all our Judges,
'Mayors, Sheriffs, Juſtices of the Peace, and all
'other our Officers and Miniſters, both Eccleſiaſtical
'and Civil, and all other our Subjects, whom it
'may concern, to be very vigilant and ſtrict in the
'Diſcovery, and the effectual Proſecution and Pu-
'niſhment of all Perſons who ſhall be guilty of ex-
'ceſſive Drinking, Blaſphemy, prophane Swearing
'and Curſing, Lewdneſs, Prophanation of the
'Lord's Day, or other diſſolute, immoral or diſor-
'derly Practices; and that they take care alſo effe-
'ctually to ſuppreſs all Bawdy-Houſes, publick Ga-
'ming-Houſes and Places, and other diſorderly
'Houſes; and to put in Execution the Statute made
'in the Nine and Twentieth Year of the Reign of
'our late Royal Uncle King *Charles* the Second, En-
'titled, *An Act for the better Obſervation of the Lord's Day, commonly called Sunday*; and alſo an
'Act of Parliament made in the Ninth Year of the
'Reign of our late dear Brother King *William* the
'Third, Entitled, *An Act for the more effectual ſuppreſſing of Blaſphemy and Prophaneneſs*; and all
'other Laws now in Force for the puniſhing and
'ſuppreſſing any of the Vices aforeſaid; and alſo
'to ſuppreſs and prevent all Gaming whatſoever,
'in publick or private Houſes on the Lord's Day;
'and likewiſe that they take effectual Care to pre-
'vent all Perſons keeping Taverns, Chocolate-
'Houſes, Coffee-Houſes, or other Publick Houſes
'whatſoever, from ſelling Wine, Chocolate, Coffee,
'Ale, Beer, or other Liquors, or receiving or per-
'mitting Gueſts to be or remain in ſuch their
'Houſes on the Lord's Day, (except in Caſe of
'Neceſſity and Charity) as they will anſwer it to
'Almighty God, and upon Pain of our higheſt
'Diſpleaſure. And for the more effectual Proceed-
'ing herein, we do hereby direct and command all
'our Judges of Aſſize and Juſtices of the Peace, to
'give ſtrict Charges at their reſpective Aſſizes and
'Seſſions, for the due Proſecution and Puniſhment
'of all Perſons that ſhall preſume to offend in
'any the Kinds aforeſaid; and alſo of all Per-
'ſons that, contrary to their Duty, ſhall be
'remiſs or negligent in putting the ſaid Laws in
'Execution; and that they do at their reſpective

'Aſſizes

'Aſſizes and Quarter-Seſſions of the Peace, cauſe this our Proclamation to be publickly read in open 'Court immediately before the Charge is given. 'And we do hereby further charge and command 'every Miniſter in his reſpective Pariſh-Church or 'Chapel, to read or cauſe to be read this our Pro'clamation, at leaſt Four Times in every Year, 'immediately after Divine Service, and to incite 'and ſtir up their reſpective Auditories to the Pra'ctice of Piety and Virtue, and avoiding of all Im'morality and Prophaneneſs. And to the End that all 'Vice and Debauchery may be prevented, and Re'ligion and Virtue practiſed by all Officers, private 'Soldiers, Mariners, and others, who are employ'ed in our Service by Sea or Land; We do hereby 'ſtrictly charge and command all our Commanders 'and Officers whatſoever, That they do take care 'to avoid all Prophaneneſs, Debauchery, and other 'Immoralities; and that by their own good and 'virtuous Lives and Converſations, they do ſet good 'Examples to all ſuch as are under their Care and 'Authority; and likewiſe take care of and inſpect 'the Behaviour of all ſuch as are under them, and 'to puniſh all thoſe who ſhall be guilty of any the 'Offences aforeſaid, as they will be anſwerable for 'the ill Conſequences of their Neglect herein.

GOD ſave the QUEEN.

Mr. *Dodd.* My Lords, There are two ſubſequent Proclamations preſſing Magiſtrates to put the Laws in Execution in this Caſe; but they are to the ſame Purpoſe, therefore I think we need not ſpend your Lordſhips Time to read them: They are to the ſame Purpoſe with the laſt, taking notice that the Magiſtrates had not done their Duty as required.

My Lords, We have now done our Defence; only we have one Petition to make, That your Lordſhips would be pleaſed to hear the Doctor ſpeak for himſelf: There are ſome things more proper for him to give an Account of, than for his Council. We apprehend the moſt proper Time will be after the Gentlemen Managers for the Houſe of Commons have replied; but we thought it proper to mention it to your Lordſhips now, and humbly ſubmit it to your Lordſhips.

Mr. *Phipps.* My Lords, The Reaſon why we troubled your Lordſhips with reading thoſe Proclamations, was to ſhew your Lordſhips, that the inferior Magiſtrates being negligent of their Duty in putting the Laws in Execution againſt Prophaneneſs, her Majeſty put out another Proclamation to quicken them to it; therefore when the Doctor charges the Magiſtrates with a Neglect of their Duty, it cannot be underſtood to be a Reflection on the Queen or the Miniſtry, becauſe you ſee what great Care her Majeſty has taken: So that we think this laſt Article is ſufficiently clear'd by theſe Proclamations. One thing, my Lords, I think we have not troubled your Lordſhips with, and that is the Journal of your own Houſe in the Caſe of Sir *Samuel Barnardiſton:* If the Gentlemen of the Houſe of Commons think it is otherwiſe, we are ready to read it.

Sir *Joſeph Jekyll.* My Lords, I have the Commands of the Gentlemen employed in this Service with me, to mention to your Lordſhips, that they are under a great Surprize, that the Council for the Doctor ſhould take upon them to propoſe to your Lordſhips, that the Doctor might ſpeak after the Commons Reply: I have Inſtructions (ſince the Doctor's Council have referr'd ſome Part of the Defence to himſelf) to tell the Doctor, that if he has any thing to ſay for himſelf, now is his Time, before the Commons reply; the Commons claiming it as their Right to ſpeak laſt.

Mr. *Dodd.* My Lords, We ſubmit to it. Doctor, go on.

Dr. *Sacheverell.* MY Lords, The Defence made by *my Council* has been ſo *full* and *particular*, and the *Tryal* it ſelf drawn out into ſo great a *Length*, that I ſhould not add to your Lordſhips Trouble by ſaying any thing for *my Self*, did I not think that in *ſuch a Cauſe* as *this*, (wherein the *Doctrine* of *our Church*, the *Dignity* of *that Holy Order* to which I belong, and even the *Common Intereſt* of *Chriſtianity* it ſelf, are ſo nearly concern'd) it becomes me not to be altogether ſilent.

For, my Lords, it has been own'd by ſome of the *Managers for the Honourable Houſe of Commons*, that tho' I am the *Perſon Impeach'd*, yet *my Condemnation* is not the *Thing* principally aim'd at. I am, it ſeems, an *inſignificant Tool of a Party*, *not worth regarding*; the avow'd Deſign of my *Impeachment* is, by the *means* of it to procure an *Eternal and Indelible Brand of Infamy to be fix'd, in a Parliamentary Way, on all thoſe who maintain the Doctrine of Non-Reſiſtance, and to have the Clergy directed what Doctrines they are to Preach, and what not.* And therefore, as *Inſignificant* as I am in my *Self*, yet the *Conſequences* of my Tryal (if rightly repreſented to your Lordſhips by ſome of *thoſe Gentlemen*) are of the higheſt Moment and Importance.

Since I am the unfortunate Occaſion of bringing theſe Matters in Judgment before your Lordſhips, it will behove me, I think, after what has been pleaded in my Behalf by my *Council learned in the Law*, to ſay ſomewhat alſo for my *Self*, in order to clear the *Innocence* of my *Intentions*, and remove that Load of *Guilt* and *Infamy*, which may be laid upon me, ſhould your Lordſhips determine, (as, I truſt in God, you will not) that the *Articles of Impeachment* Exhibited, have been made good againſt me.

With your Lordſhips Permiſſion then, I ſhall lay before you ſome few *General Remarks*, which in my humble Opinion may be added to what *my Council* have already obſerv'd, concerning the Methods taken by *the Managers for the Honourable Houſe of Commons*, to Prove and Support the *Articles* of their Charge. And ſhall then, with your Lordſhips leave, ſay ſomewhat *ſeverally* to the *Articles* themſelves, which may ſerve to remind your Lordſhips of what my *Council* before offer'd more at large, and with greater Advantage.

My Lords, The Charge brought againſt me in theſe *Articles* is of a very *High*, and *Heinous* Nature; and had it been as *clearly made out*, as it has been *ſtrongly affirm'd*, it would juſtly have expos'd me to a very ſevere Sentence. But the more *heinous* the *Charge* is, the more *evident* and *undeniable*, I ſhould think, the *Proof ought* to be. And how, my Lords, has this Charge been ſupported in the ſeveral *Articles* of it? By *plain*, *direct*, and *expreſs* Paſſages produc'd, and read to your Lordſhips out of my Sermons; or by *Intendments*, *unneceſſary Implications*, and *ſtrain'd Conſtructions*? By laying *entire Sentences* before your Lordſhips, and relying upon what was *manifeſtly* contain'd in them; or by *piecing broken Sentences*, and conjoining diſtant and independent Paſſages, in order to make me *Speak*, what I never *thought* of?

I am

I am unacquainted, my Lords, with the Methods of *legal Proof*, and little thought I ſhould have had *this Occaſion* of enquiring into them. But, as far as I am able to comprehend any Thing of this Nature, I ſhould think, that there cannot be a *clearer Indication* that I am not guilty of having aſſerted what I am charg'd by the ſeveral Articles to have ſaid, than that ſo *many Hours Learning* and *Eloquence* have been employ'd in proving me to have ſaid it. Had I *really* affirm'd thoſe Propoſitions for which I am accus'd, my Sermons being before your Lordſhips, the Places wherein ſuch Propoſitions were directly contain'd, might have been referr'd to, and read, with the ſame Eaſe as *my Council* referr'd to the Paſſages contain'd in the ſeveral *Writings*, and *Sermons* of the *Reverend Fathers*, and other *Eminent Divines* of *our Church*, wherein they Taught the *Doctrine of Non-Reſiſtance* in the ſame Extent as I maintain'd it, or in Terms much ſtronger.

Theſe Paſſages produc'd by *my Council*, were barely *Read* to your Lordſhips: No *Argument*, no *Colours* were us'd, becauſe *none* were *neceſſary*, to prove what Propoſitions were laid down in thoſe Paſſages. Whereas, to prove me guilty of having aſſerted what is laid to my Charge, after my *Sermons* and *Prefaces* were read to your Lordſhips, much Art and Induſtry were us'd to perſuade your Lordſhips, that ſuch Aſſertions were really contain'd in them.

My Lords, When my Words were capable of *Two* Senſes, the *worſt* and moſt *invidious*, though at the ſame Time the moſt *ſtrain'd* and *unnatural Conſtruction*, has been always made of them. Nay, when my Words were ſo *plain* and *expreſs*, that it was *impoſſible* to put any *criminal Gloſſes* or *Colours* upon them, I have been accus'd of *meaning* the *direct contrary* to what I have ſaid: And when I preſs'd the Duty of *Allegiance to the Queen*, your Lordſhips were told, that it was moſt *certain*, I *meant* the *Pretender*.

To *Aggravate* my Guilt, I have been *accus'd* not only for what I am *ſuppos'd* to have ſaid, but for what I am allow'd *not* to have ſaid: Not only for what I *have* taken notice of in my *Sermons*, but for what I have *paſs'd by unobſerv'd*: I have been charg'd with *Negative Crimes*; as if what I *omitted* to ſay, had been *omitted* with *Deſign*, and my *Silence* it ſelf were *Criminal*.

Theſe, my Lords, are the Methods, that have been made uſe of to *prove* me guilty of *Crimes*, which *if* prov'd, might affect my *Liberty* and *Fortune*; no *favourable Allowances* have been made to a *Miniſter of the Goſpel*, diſcharging the *Duty* of his *Function*, and rebuking *Vice* and *Irreligion* with an *honeſt* and *well-meant Zeal*, but ſometimes perhaps carrying him into Expreſſions too open, and unguarded. I could add, my Lords, if ſuch a Complaint might not be thought *improper* from one in *my Circumſtances*, that, in the courſe of my Accuſation, I have been ſtil'd a *Criminal*, and treated as *ſuch* by ſome of theſe *Honourable Gentlemen*, with a Degree of *Scorn* and *Indignity*, from which I hop'd my *Sacred Profeſſion*, my *preſent unhappy Condition*, and a Regard to this *Solemn* and *Awful Judicature* might have ſcreen'd me.

But, my Lords, I lay aſide all *Complaints* of this Nature, and with your Lordſhips Leave ſhall proceed to make ſome few, ſhort Obſervations upon the ſeveral *Branches* of the *Charge* Exhibited againſt me.

I am charg'd, my Lords, in the *firſt Article*, with having Maintain'd, *That the neceſſary Means*, us'd to bring about the *late Happy Revolution*, were *Odious and Unjuſtifiable*; in Proof of which it has been urg'd, that I have in *General Terms* aſſerted, *the utter Illegality of Reſiſtance to the Supreme Power* upon any *Pretence whatſoever*. My Lords, the *Reſiſtance* in that Paſſage by me *condemn'd*, is no where by me applied to the *Revolution*; nor is it applicable to the Caſe of the *Revolution*, the Supreme Power not being then *reſiſted*.

My Lords, I neither expreſly apply'd my Doctrine of *Non-Reſiſtance* to the Caſe of the *Revolution*, nor had I the leaſt Thoughts of including the Revolution under my general Aſſertion. I expreſs'd this Doctrine in the ſame general *Terms*, in which I found it deliver'd by the *Apoſtles of Chriſt*. I taught it as I had learnt it, from the *Homilies* of our Church, and as I was enjoin'd to teach it, by the Articles of our Religion. I us'd no *other Language*, than what had been us'd by our *firſt Reformers*, by a continued Series of *Right Reverend Prelates*, and other *Celebrated Divines* now with God, and by many of thoſe *Venerable Fathers*, before whom I ſtand, and what is perfectly agreeable to the *Laws* and *Statutes* of this Realm. I had *little* Reaſon to apprehend that I could *ever* have been accus'd by the *Gentlemen of the Houſe of Commons* to your Lordſhips as a *Criminal*, or as an *Aſperſer of the Memory of the late King*, for preaching this Doctrine; when *others*, who preach'd the ſame Doctrine, in the ſame Terms, before their late *Majeſties*, before our preſent Gracious *Sovereign*, (whom I pray God long to Preſerve!) before each *Houſe of Parliament*, before this very *Houſe of Commons*, have met with *publick Approbation*: But ſince it is my *ſingular Misfortune* to be *Accus'd*, for what *others* have *receiv'd Thanks*, in ſome Inſtances convey'd to them by ſeveral of the *Managers themſelves*, I do with all humble Confidence rely upon your Lordſhips *Juſtice*; not doubting but that the *Learned Judges*, if thought neceſſary to be conſulted, will declare, what I have in this Caſe aſſerted, to be warranted by *Law*, and the *Right Reverend the Biſhops* will affirm it to be the *Doctrine of the Goſpel*.

The Doctrine I preach'd being the *Doctrine of the Homilies* of our Church, not expreſs'd only in a few particular Paſſages of thoſe *Homilies*, but perfectly agreeable to the *whole Tenor*, the main Scope and Deſign of them; and thoſe *Homilies* being eſtabliſhed by the *Thirty Nine Articles*, as containing godly and wholeſome *Doctrine*; and thoſe Articles being confirm'd by the 13th of Queen *Elizabeth*; and that Statute being made Perpetual and Fundamental to our Conſtitution by the *late Act of Union*; I leave it to your Lordſhips to conſider, how far the Condemnation of *me*, on the Account of that Doctrine, may affect, and ſhake the *preſent Frame* of the *Britiſh Conſtitution*, in Church and State, and tend to diſſolve the *Union of the Two Kingdoms*.

My Lords, Upon the *ſecond Article*, I would humbly pray your Lordſhips to conſider, that I have no where in my Sermon ſhewn any the leaſt Diſlike of the *Indulgence granted by Law to Diſſenters*; that, on the contrary, I have declar'd my *Approbation* of it in the *moſt expreſs Terms* imaginable, which I beg leave once more to repeat to your Lordſhips out of my Sermon preach'd at St. *Paul's*. *I would not* (I there ſay) *be miſunderſtood, as*

as if I intended to caſt the leaſt invidious Reflection upon that Indulgence which the Government hath condeſcended to give them; which I am ſure, all thoſe, who wiſh well to our Church, are ready to grant to Conſciences truly Scrupulous; let them enjoy it in the full Limits the Law hath preſcrib'd.

My Lords, This *then was*, and ſtill *is* my ſincere Opinion; nor am I conſcious that I have uttered *one Word* inconſiſtent with it. I have indeed *blam'd*, and perhaps with ſome Warmth and Earneſtneſs blam'd, the *Abuſes*, which Men of *no Conſcience*, have made, of the *Legal Exemption*, granted to *Conſciences truly ſcrupulous*: Nor could I think that thoſe Reprehenſions of mine, would have drawn upon me the Diſpleaſure of any *ſincere Chriſtian*, which were levell'd againſt *Hypocrites*, *Socinians*, *Deiſts*, and ſuch as, under the Umbrage of that *Act*, *which permits Proteſtant Diſſenters*, and thoſe only, to ſerve God, every Man in his own Way, think themſelves a Liberty to be of no *Proteſtant Congregation*, of *no Religion* at all. I will farther ingenuouſly own to your Lordſhips, that I had in my Eye ſome *Abuſes* made of *that Act* by the *Diſſenters themſelves*; who, I am told, do (both *Paſtors* and *People*) rarely obſerve the *Qualifications* preſcrib'd by *that Act*; and who erect *Seminaries* for educating Youth in *Principles* oppoſite to the *Doctrine*, *Diſcipline*, and *Worſhip* of our Church: Whereas *that Act*, was *intended* for the Eaſe of *thoſe*, whoſe Minds through the unhappy Prejudices of Education, were already eſtranged from the Church; not, as I humbly conceive, to indulge Men in taking the moſt effectual Methods to *Propagate* and *Perpetuate* their *Schiſm*.

My Lords, Of any Favours to Diſſenters granted, or intended by the *Law*, I have no where complain'd. Of *Toleration*, a Word unknown to our *Laws*, and implying, as I am inform'd, much more than our *Lawgivers* deſign'd, if I have ſaid any Thing *Offenſive*, I may, I hope, reaſonably preſume, that it will not be judg'd by your Lordſhips in any wiſe to reflect on that *Act of Exemption*, which I have ſpoken of in Terms, no ways, I think, misbecoming a *good Subject*, or betraying any want of *Chriſtian Moderation*. Nor is there, my Lords, any want of it, I conceive, in affirming that *this Act*, which relieves ſome Diſſenters from *legal Puniſhments*, to which they were before obnoxious, hath not any ways alter'd the *Nature of Schiſm*, or extinguiſh'd the *Obligations* to *Church-Communion*; which is an *Evangelical Duty*, incumbent on all Chriſtians, by the *Rules* of the *Goſpel*, *Antecedent* to all *Secular Laws*, and can by no *human Power* be *Diſpens'd* with. If the *Church* of *England*, my Lords, impoſes no *unlawful* Terms of *Communion*, as She certainly does not, then all *Separatiſts* from her *Communion*, will, notwithſtanding the *Indulgence*, continue to be Guilty of *Schiſm*; The Conſequence of which *Guilt*, may ſtill reſt upon their *Souls*, however it may ceaſe to Affect their *Bodies* or *Eſtates*. For as no *human Law* can render that *Lawful* which God hath *forbidden*, ſo neither can it make that *Void*, which God hath *commanded*.

My Lords, I am accus'd, under this Head, of maintaining, that *it is the Duty of Superior Paſtors to Thunder out their Eccleſiaſtical* Anathema's *againſt Perſons entitled to the Benefit of the Toleration*; I hope, it hath evidently appear'd to your Lordſhips, that I advance no ſuch *Poſition*. Sure I am, that my Words do not in *themſelves* carry ſuch a Meaning, nor does the *Connexion* of my Diſcourſe require *that* Senſe, or eaſily *admit* it. *Schiſmaticks*, my Lords, are not the *only* Perſons againſt whom *Eccleſiaſtical Cenſures* may be denounced; *the Works of Darkneſs*, which I referr'd to, *as fit to be reprov'd*, in that Part of my Sermon, where I ſpeak of *theſe Cenſures*, are of the ſame Kind with thoſe mentioned by the *Apoſtle*, whoſe Words I produc'd, all *lewd* and *immoral* Practices; againſt theſe, my Lords, and againſt *Hereſies*, and *Blaſphemies* (a black Catalogue of which has been diſplay'd before your Lordſhips) I thought the *Anathema's* of the Church would be well employ'd; ſuch *Anathema's*, I doubt not, my Lords, would be *ratified in Heaven*, and would therefore, by any *Power on Earth*, *be irreverſible*.

As to Archbiſhop *Grindal*, though I may ſeem to have us'd ſome undue Aſperity of Expreſſion concerning him, yet I charg'd him with nothing but what I had good Grounds for, from our *Hiſtorians*: It hath been made appear to your Lordſhips, that, on the Account of his *Remiſſneſs in Church-Government*, he liv'd and dy'd under the High Diſpleaſure of Queen *Elizabeth*; and whether therefore he, or *that glorious Queen*, ſhall bear the Blame of his Diſgrace and Sufferings, is with all Humility ſubmitted to your Lordſhips.

I hope, my Lords, I ſtand clear in your Opinions, of the Charge advanc'd againſt me, in the *two firſt Articles*; and as my own Conſcience acquits, ſo I truſt your Lordſhips will acquit me, of whatever is laid to my Charge in the *Third*.

My Lords, I neither have ſuggeſted, nor do in my Conſcience believe, *that the Church is in the leaſt Peril or Adverſity from Her Majeſty's Adminiſtration*. So far am I from any ſuch Thoughts, that I am entirely ſatisfied of Her being a moſt *affectionate Nurſing-Mother* to it. But I hope I may ſay without Offence, that the *Church* may be in Peril from *other Cauſes*, without any Reflection upon Her Majeſty's Government, or any Contradiction to *Her Royal Proclamation*, and the *Reſolution of both Houſes of Parliament*, four Years ago. If the *Church* be in Danger, when the *Chriſtian Religion* is evidently ſo, I hope it will be thought no Crime to ſay, it has ſcarce ever been in greater Danger than it is now, ſince Chriſt had a *Church* upon Earth. For beſides that Deluge of *Prophaneneſs* and *Immorality*, which overſpreads the *whole Kingdom*; beſides the *Variety*, and growing *Strength* of thoſe *Schiſms* which *weaken* and *divide us*, and of thoſe *Heterodox Opinions*, and *damnable Hereſies*, which are daily *publiſh'd* and *propagated* among us; I verily believe, that never were the *Miniſters of Chriſt* ſo *abus'd* and *viliſy'd*, never was the *divine Authority* of the *Holy Scriptures* ſo *arraign'd* and *ridicul'd*, never were *Infidelity* and *Atheiſm* it ſelf ſo *Impudent* and *Bareface'd*, never were ſuch *horrid Blaſphemies* printed in any *Chriſtian State*, from the *Foundation* of *Chriſtianity to this Day*.

Out of the many Inſtances of this Kind, which, being ready at hand, I could have produc'd to your Lordſhips, I have *Selected* a *few* only; but thoſe ſuch, as I am perſuaded your Lordſhips could not hear without Horror and Aſtoniſhment. Pardon me, my Lords, if my Apprehenſion of the ſad Conſequences we may expect from ſuch *crying Abominations*, have forc'd from me ſome Expreſſions, which upon a *leſs* Occaſion might ſeem too harſh and vehement. A Man that dreads no *Danger* from ſuch *unparallel'd Iniquities*, that do as it were *call down* God's ſevereſt Judgments upon that *poor Church* and *Nation*, wherein they are *openly* and *daringly* committed, muſt be *dead* in his *Love* for his *Coun-*

trey and *Religion*. If I have diſclos'd ſuch a *frightful* and *deteſtable Scene* of Impiety, which by reaſon of your Lordſhips *high Stations* and *great Employments*, might poſſibly lie undiſcover'd to your Sight before; I ſhall think my ſelf *happy*, whatever ſhall befal me, if I may by *God*'s Grace become the *mean Inſtrument*, of putting a Stop to that *overflowing* of *Ungodlineſs* and *Blaſphemy*, which as yet no *Laws*, no *Proclamations*, how well ſoever *deſign'd*, and how often ſoever *repeated*, have been *able* to *reſtrain*.

Nor ought I, my Lords, to *forget*, tho' it was *forgotten* by the *honourable Managers*, another *Ground* of *Danger* ariſing to *this Church* from the Attempts of *Popiſh Emiſſaries*, by me mention'd, I hope without the leaſt Offence, in my Sermon at St. *Paul*'s; where I ſay, *It were highly to be wiſh'd that thoſe excellent Laws, made for the Defence and Security of the Church, were at preſent put ſtrictly in Execution; for the* Roman *Catholick Agents, and Miſſionaries, that ſwarm about this great City, as 'twere in Defiance and Contempt of them, were never more buſy in making Proſelytes to their Superſtition and Idolatry, and perverting and debauching Her Majeſty's Subjects in every Corner of our Streets.* I have not, my Lords, been called upon to prove the Truth of *this Paſſage*, nor has it been reckon'd among the *falſe Inſinuations* I have made that the *Church is in Danger*. I pray God, the Church may be in *no* Danger, upon *any* of theſe Accounts! Her Majeſty, your Lordſhips, and the *Commons*, have indeed provided againſt theſe *Dangers* by *wholeſome Laws*, and I hope, I did not *exceed* the Limits of my *Function*, when, being call'd to Preach before *Magiſtrates*, I exhorted them to prevent *theſe Dangers*, by putting *thoſe Laws* ſtrictly in Execution.

Juſt had been the *Indignation* of *the Honourable Houſe of Commons*, Juſt would be your Lordſhips moſt ſevere *Reſentments*, if by any *Parallel* by me drawn, I had inſinuated that the *Members of both Houſes, who paſs'd the Vote concerning the ſafe and flouriſhing Condition of the Church, had been then conſpiring its Ruin.* I have already *purg'd* my ſelf from this *Imputation*, by obſerving, that the *Parallel*, aſcrib'd to me, implies, that they who Voted *King* Charles *the Firſt* to be out of *Danger*, and thoſe who *Conſpir'd his Death*, were the very *ſame Perſons*, whereas it is certain they were not; for, my Lords, the *Vote* about the *King's Safety* was paſs'd by *Lords and Commons* an *Year and half* before his execrable Murther, which had been contriv'd by *the Army*, and was perpetrated by a *pretended Ordinance* of a *ſmall Remnant of the Houſe of Commons (not a tenth Part of the whole) after the reſt of the Members had been Impriſon'd or Secluded, and without the Concurrence of the Houſe of Peers, who totally rejected it.* You have had, my Lords, a very *different Repreſentation* of *this Fact* made by *one* of the *Learned Managers:* But this, my Lords, is the *real Truth*, as recited in the *Act of Parliament* for the *Attainder of the King's Murtherers*; and is an *Evidence*, that I *could* not poſſibly mean by any *odious Parallel* to inſinuate, that the *Members* of *both Houſes*, who paſs'd the Vote concerning the Safety of the Church, were *then* conſpiring its Ruin.

I humbly crave your Lordſhips Patience yet a little farther, whilſt I ſpeak to what is alledg'd in the *Fourth Article*, which charges me with many Crimes of a very *high* and *flagrant* Nature; none of which have been endeavour'd to be prov'd upon me, otherwiſe than from *ſuppos'd Suggeſtions*, and *undetermined Expreſſions*; and I muſt ſtill, with your Lordſhips Leave, humbly *inſiſt* upon it, that where the *Expreſſions* are *doubtful*, there the *favourable Senſe*, is always to be *preferr'd*.

After all that has been ſaid by the *Learned Managers for the Commons*, What Miniſter of State, I beſeech your Lordſhips, have I been *prov'd* to *Reflect upon, directly or indirectly? Where*, and *how* do I, by any *Suggeſtion*, charge Her Majeſty, or *thoſe in Authority under Her, with a general Male-Adminiſtration? How* do I perſuade Her Subjects to keep up a *Diſtinction of Parties and Factions*, while I reprove thoſe who *divide* us by *knaviſh Diſtinctions*, and while I perſuade my Fellow-Subjects to *loſe* and *forget* them? *How* is it *poſſible*, I ſhould *ſtir up the People to Arms and Violence*, when I am endeavouring to convince them of the utter *Illegality* of *Reſiſtance* upon *any Pretence whatſoever?* Theſe Things, my Lords, ſeem to be *Inconſiſtent*, unleſs a Man may be thought a *Rebel* for Recommending *Loyalty*, or *Seditious* for preaching againſt *Sedition*.

I remember, indeed, at the Opening of this Charge againſt me, that *one of the Managers for the Houſe of Commons*, vouchſaf'd to offer his charitable Aſſiſtance towards *Reconciling* this *ſeeming Inconſiſtency*; for he was pleaſed to *ſuppoſe* that, when I ſpake againſt *reſiſting the Sovereign*, I had not our *gracious Queen*, but *ſome other Perſon* in view; and that I might therefore agreeably to *my Principles of Non-Reſiſtance*, ſtir up the People to Arms and Violence againſt Her ſacred Majeſty. Your Lordſhips will once more pardon my Earneſtneſs, if I call God to witneſs, that I utterly deteſt any ſuch *traiterous Intention*; and I ſhould in my own Opinion be unworthy of the *Name* of a *Chriſtian*, if I could give my ſelf leave to caſt ſuch a *black, and groundleſs Imputation* upon any one in *like* Circumſtances with *mine*, who had given all *poſſible Evidences* of his *Duty* and *Affection* to the *preſent Government*. My Lords, I have taken the *Oaths of Allegiance to Her Majeſty*, and that of *Abjuration* againſt the *Pretender*: and when therefore I preach'd the *Doctrine of Non Reſiſtance*, it is moſt apparent, that the *Government*, which I perſuaded my Fellow-Subjects not to *Reſiſt*, is the *preſent Government*; and I humbly conceive, that the *preſent Government* can never be *Overturn'd*, if it be *never Reſiſted*.

How *true* a *Zeal* and *Affection* I have always born to her Majeſty's *Perſon* and *Government*, I leave to be judg'd by your Lordſhips, and the *whole World*, from thoſe *publick Demonſtrations* which I have given of it, at all Times, when I had occaſion to make mention of *either*. I hope your Lordſhips will pardon me, if *I* refer to ſome of my own *printed Expreſſions*, as an evident Proof of my unfeigned Duty and Allegiance. "If, to call it the "moſt ineſtimable Bleſſing this Nation could en- "joy, that Her Majeſty, the good and pious Relict "of the Royal Family, ſits now happily upon the "Throne of Her Anceſtors; If to Pray, that God "may long preſerve Her for the Comfort and Sup- "port of the Church, as the only Security, under "God, it has to depend upon; If, earneſtly to con- "tend for the Safety, Rights, and Eſtabliſhment of "Her Majeſty, together with thoſe of the Church; "If, to vindicate Her Majeſty's Title to the Crown "againſt the Uſurpations, Pretences, and Encroach- "ments of Her Adverſaries, and to aſſert Her "Right to the Throne to have been ſo clear, mani- "feſt, and undoubted, that even Her worſt Ene- "mies (*could ſuch a pious Princeſs be ſuppos'd to*

"*have*

" *have any*) muſt acknowledge it; That She was " proclaim'd as 'twere by the Voice of God, in the " univerſal Joy, Satisfaction, and Unanimity of " Her Subjects; that Her *perſonal Merit* exempted " from *that*, made Her worthy of a brighter Dia- " dem than She wears; If, to perſuade Her Subjects " with the moſt hearty Zeal, and Generoſity, to " enter into a neceſſary War, for the Defence of " Her Majeſty, and the common Preſervation of " our Church, Liberties, and Conſtitution, againſt " a powerful Adverſary; If, to beſeech God to " proſper ſo good an Undertaking, to give an hap- " py Event and Iſſue to ſuch a Rightful Cauſe, to " crown our Arms with Victory, and to make them " as ſucceſsful, as they are juſt and honourable; " And that, in order to this, we are all bound, " both in Duty to God and our Sovereign, as well " as by our own Intereſt, unanimouſly, and heartily " to aſſiſt and ſupport her under this great Under- " taking, as far as our Prayers, and Eſtates, Lives, " and Fortunes can ſerve Her; If, to perſuade Her " Subjects, that the great and threatning Dangers " of our Enemies, ſhould have that juſt Effect up- " on us, to unite us, as much in our Reſolutions " and Affections, as they do in our common Inte- " reſts, Apprehenſions, and Troubles; If, to ſet out " the Bleſſings we enjoy in the wiſe Conſtitution of " our Government and Laws, in the moſt refin'd " Policies of our Parliament and Miniſtry, in the " Strength and Number of our Armies, Fleets, " and Confederates, in the Care and watchful Vigi- " lance, the Courage, Reſolution and Conduct of " our General, and *above all* in the Piety and Pru- " dence of our *moſt gracious* QUEEN; If, to " affirm that She daily gives freſh Inſtances of Her " Wiſdom, in the happy Adminiſtration of Her " Government, and in nothing more ſhews Her Po- " licy, and diſtinguiſhing Judgment, than in ma- " king Choice of ſuch Miniſters of State, who are " acceptable to their Countrey, and expreſs ſuch a " Zeal and Steadineſs in its Service and true Inte- " reſts, and whom nothing could Bribe, or betray " into a Party, wherein it might any ways ſeem to " be endanger'd; If, with the moſt ardent Requeſts " to implore God's Providence, which through ſo " many Dangers and Difficulties has rais'd up, and " preſerv'd Her Majeſty, to carry on theſe glorious " Undertakings with Succeſs, that She may be able " to Reſtore and Settle the Peace of *Europe*, in its " juſt Rights and Limitations; and that, as God " has beſtow'd a Crown upon Her in this World, " as the Reward of theſe heroick and pious Deſigns, " ſo, after a long Reign here, he would advance " Her to an higher Throne in Heaven, and dignify " Her with a glorious and immortal Crown here- " after": If this, my Lords, I ſay, is *falſely and maliciouſly to Suggeſt*, that Her Majeſty's *Adminiſtration both in Eccleſiaſtical and Civil Affairs, tends to the Deſtruction of the Conſtitution*; If this *be charging* Her Majeſty, *and thoſe in Authority under* Her, *both in Church and State, with a general Male-Adminiſtration*; If this be, *as an Incendiary, to perſuade* Her *Subjects to keep up Diſtinctions of Factions and Parties*; If this be *Inſtilling groundleſs Jealouſies, fomenting deſtructive Diviſions, and ſtirring up* Her Majeſty's *Subjects to Arms and Violence*, againſt any but Her Enemies; then, my Lords, I am Guilty of *this Article of Impeachment*; otherwiſe I am innocent.

My Lords, I have always thought it *my Duty*, upon all *publick Occaſions*, to Aſſert theſe Principles of *Loyalty and Subjection* to the Supreme Power, whenever I had a *proper Call* ſo to do; of this there are *numberleſs Witneſſes* in thoſe ſeveral Places to which I have belong'd. One of theſe I beg leave of your Lordſhips particularly to mention, *Magdalen College* in *Oxford*, whereof I am at preſent an unworthy Member; and which by the known *Sufferings* of the *whole Body* for the *Church* and *Conſtitution*, contributed as much towards the *late happy Revolution* as any *Society* in the *Kingdom*: To which *Honourable Society* I humbly appeal for my *Character* and *Behaviour*. I could alſo appeal for the ſame to a *Right Reverend Lord*, that now ſits on the *Bench of Biſhops*.

Had it been fit to have troubled your Lordſhips with *Evidences* of my *hearty Affection* to the *preſent Government*, I could have produced them in great Abundance, from the *Perſons* with whom I have *Convers'd*, from the *Gentlemen* whom I have *Bred* up, and from the *Congregations* to which I have *Preach'd*. If my *Principles* had any Tendency towards *Alienating* the *Affections* of Her Majeſty's Subjects, ſurely *ſome* one Inſtance of my *Diſloyalty* to the QUEEN, ſome *favourable Expreſſions* toward the *Pretender*, ſome *Indications* of my *Diſlike* to the *preſent Settlement*, and the *Proteſtant Succeſſion*, might have been *pitch'd* upon, and *expos'd* to your Lordſhips, in order to *juſtifie* the *Charge of Sedition* againſt me. But I cannot but with Pleaſure obſerve to your Lordſhips, that from the *whole Courſe* of my *Actions*, no one Inſtance of *that kind* is *alledg'd*, or ſo much as *pretended*.

My Lords, The Charge of *wickedly wreſting divers Texts of Scripture* lies very heavy upon me, as a *Chriſtian*, and *Miniſter of Chriſt*. If I am Guilty of it, there is *another Tribunal, another Bar* at which I am to appear, and where by *that Scripture*, which I have *wreſted*, I ſhall be *Judg'd* and *Condemn'd*. In the mean time, my Lords, I hope that thoſe, whoſe particular *Profeſſion*, and *Studies qualify* them to be the moſt *competent Judges* of *ſuch Matters*, will *abſolve* me in this Particular.

Upon the *whole*, therefore, my Lords, I hope it appears, that I am not *guilty* of *any* of the Crimes of which I am *accus'd*; that I have Tranſgreſs'd *no Law of the Land*, neither *Statute*, nor *Common Law*, relating either to Her Majeſty, or to my *Fellow Subjects*, to the *Church*, or to the *State*: And that I may with all Humility apply to my own Caſe, the Words of that *bleſſed Apoſtle*, whoſe *Doctrine* I *defend*, and whoſe *Example* I hope I ſhall have the Grace to *follow*, *Neither againſt the Law, nor againſt the Temple, nor againſt Cæſar, have I offended any thing at all.*

What I have hitherto humbly offered to your Lordſhips relates to my *Words* and *Actions*; and as to the *Thoughts* and *Intentions of my Heart*, which are known only to *God*, and *my own Conſcience*, and which are *affirm'd* in my *Impeachment* to be *wicked, ſeditious* and *malicious*; I call the *Searcher* of *Hearts* to *witneſs* in the moſt *ſolemn*, and *religious Manner*, as I expect to be *acquitted before God, and his Holy Angels*, at that *Dreadful Tribunal*, before which not only *I*, but all the World, even your Lordſhips, who now ſit in *Judgment* upon me, muſt *appear*, to be *Acquitted* or *Condemn'd*; that I had no ſuch *wicked, ſeditious*, or *malicious Intentions*; that there is nothing upon Earth, I more *deteſt* and *abhor*: That my *Deſigns* were, in every reſpect, directly contrary. I had no *Intention to aſperſe the Memory of His late Majeſty*, to *traduce*, or *condemn* the *late Happy Revolution*, or to *arraign the Reſolu-*

tions of both Houſes of Parliament. So far was I from deſigning to *undermine* and *ſubvert* Her Majeſty's *Government*, and the *Proteſtant Succeſſion* as by *Law Eſtabliſh'd*, that it was my *ſincere Intention* to exert my *beſt Endeavours* for their *Security*. So far was I from intending, to perſuade Her Majeſty's *Subjects to keep up a Diſtinction of Parties and Factions, from inſtilling groundleſs Jealouſies, fomenting deſtructive Diviſions among them*, or *exciting and ſtirring them up to Arms and Violence*, that my Aim was to perſuade them to lay aſide *all Diſtinctions*, to *unite in one, well-compacted Body*, to be Obedient to their Governors, and to ſupport the *preſent Eſtabliſhment*. So far was I from deſigning to *defame* Her Majeſty's *Adminiſtration*, or to infuſe any *undutiful Thoughts* of Her, that I not only pay Her all Honour and Obedience, but am from the *bottom of my Soul* zealouſly, and affectionately *Loyal* to Her; being entirely perſuaded, that the *Church* is ſo far from being in Danger from Her, that She is as *heartily affected to its Eſtabliſhment*, and *Proſperity*, as I hope I have always ſhew'd my ſelf to be to Her *Sacred Perſon, and Government*.

As to the *Proteſtant Succeſſion by Law Eſtabliſh'd*, tho' the *Doctrine* which I preach'd tends to the *Security* of it, (as I heartily deſire *every thing* by me ſpoken ſhould tend) yet having no *Occaſion* in either of my *Sermons* to take Notice of it, I do no where in thoſe Sermons *mention* it, nor ſay any thing that can be *Interpreted* to have *any View* towards it. Therefore tho' I cannot with my beſt Application apprehend, how it comes to be ſaid in the *Preamble to my Impeachment*, that *I had deſign'd to undermine and ſubvert it*, yet I ſhall gladly take this Opportunity, of *declaring my ſelf* before your Lordſhips upon *that Subject*. It is my ſincere and hearty Prayer, that *God* would prolong the Life of Her Moſt Sacred Majeſty, whoſe *Exemplary Goodneſs* and *Piety*, give us the beſt Hopes we have of *averting* that *Vengeance*, which is due to the *Wickedneſs* of the *Age* we live in; that He would *bleſs* Her *Councils* at *Home*, and Her *Arms Abroad*, and make Her *Reign* exceed that of Her *Renown'd Predeceſſor Queen* Elizabeth, *in Length*, as well as *Glory*. But when the *Inheritrix of the Bleſſed Martyr's Crown*, and *Piety*, when She, *the Deſire of our Eyes, and the Breath of our Noſtrils*, ſhall full of *Years*, and *Honour*, be *Gather'd* to *Her Fathers*, and exchange Her *Temporal* for an *Immortal* Crown; (ſince we are deprived of *that Prince*, Her Royal Off-ſpring, whoſe *Loſs* no *true Lover* of his *Country*, and of the *Royal Family* can reflect upon without a *Bleeding Heart*, and whom *God* in his *Anger* took from us, becauſe we were *unworthy* of ſo *inеſtimable a Bleſſing*,) I earneſtly beſeech *God*, in deſect of *Future Iſſue* from Her Majeſty, to *Perpetuate* the *Succeſſion* of the *Crown*, as it is *Eſtabliſh'd* in the moſt Illuſtrious Houſe of *Hanover*, which I look upon as, next to his Providence, the *beſt Guard* we have againſt *Popery* and *Arbitrary Power*, the *beſt Security of our Church*, and of the *Conſtitution* of our *Government*, which is the *Glory* and *Happineſs* of our *own Nation*, and the *Envy of all others*. And I cannot *yet* apprehend, how the *Doctrine*, which I have taught, tends to *weaken* or *undermine* it; nor on the other ſide, how the *Doctrine of Reſiſtance*, which brought Her Majeſty's *Royal Grand-Father* to the Block, (*ſuppoſing* it a *true Doctrine*) comes to be *mention'd*, or *thought of*, much leſs to be *induſtriouſly maintain'd*, as a neceſſary and indenſpenſible Duty, under the moſt *mild* and *gracious Adminiſtration* of the beſt of Queens. Nothing ſeems more *ſtrange* than that *Reſiſtance* ſhould be ſo carefully taught under *ſuch a Government*, unleſs it be that *Non-Reſiſtance* ſhould *overturn* it.

So far was I therefore from having any of thoſe *wicked, malicious*, or *ſeditious Deſigns*, which are laid to my *Charge*, that my *Intentions* were, on the *contrary*, to *inſtil* the *Principles of Loyalty* and *Obedience* into my Fellow-Subjects, and withal to put a ſtop to that *Torrent* of *Lewdneſs, Irreligion*, and *Atheiſm*, of which I have given your Lordſhips ſo many *flagrant Teſtimonies*.

Thoſe *outrageous Inſults* upon *God*, and *Goodneſs*, are ſo Provoking, that they may excuſe ſome *Heat*, and *Severity of Expreſſion* in a *Miniſter of Chriſt*, who has a *juſt Senſe of Religion*, a *due Concern* for the *Diſcharge* of his *Holy Function*, or for the *Honour* of his *Maker* and *Redeemer*. And if any Objection be made againſt me, for Treating with an *Unbecoming Bitterneſs* ſuch *Daring Rabſhekahs*, who *defy the Living God*; I beg leave to Reply in the Words of a *Reverend Father of our Church*, *Let them conſider what Moderation, and Temper, a Man had need be of, that in this Nation, and this Age, ſhall ſpeak againſt Faction, Rebellion* (I add *Deiſm, Tritheiſm*, and all ſorts of *Hereſy, Blaſphemy*, and *Atheiſm*) *without extraordinary Severity*. Nay, it is our *Duty in ſuch Caſes*, to expreſs our ſelves with *Warmth* and *Sharpneſs*, according to the Example of our *Bleſſed Saviour*; who, tho' *Meekneſs it ſelf*, could not but ſhew the utmoſt Indignation at the *Prophaning* the *Houſe of God*. This is not, my Lords, to *rail*, but to *rebuke*; and thoſe, who ridicule, or cenſure us for it, either *have not*, I preſume, or *will not* own they have, a *right Notion* of the *Dignity* of our *Office*; will not conſider, that we are the *Ambaſſadors of Chriſt*, that we are *commanded*, in his Name, *to exhort, and rebuke with all Authority*; and that our *Authority* is *deriv'd* from thoſe to whom it was ſaid by our *Bleſſed Saviour*, *He that deſpiſeth you, deſpiſeth me, and he that deſpiſeth me, deſpiſeth him that ſent me*: Whatever Expreſſions therefore in my Sermons may have *ſlipt* from me, which ſeem ſo *far* liable to *Exception*, as to carry a Senſe I never *intended* (as he muſt be an *Happy Speaker* indeed, whoſe Words are altogether unexceptionable) yet I humbly hope, the above-mention'd Provocations will plead my Excuſe, or that, at the very worſt, ſome *haſty*, or even *violent Expreſſions*, ſhall not be deem'd *High Crimes and Miſdemeanors*. I deſire it may be farther conſider'd by your Lordſhips, that I could have no *Temporal Intereſts* to ſerve by the *Doctrines* I advanc'd; and therefore could have no *Deſign* in view, but to *diſcharge* my Duty to God, as a *Miniſter of Chriſt*, and to my *Sovereign*, as a *Faithful*, and *Loyal Subject*.

My Lords, Theſe Things being humbly offer'd to the Conſideration of your Lordſhips, I hope, that what I have already *ſuffer'd*, as a *ſuppoſed Criminal*, will be thought *ſufficient Puniſhment* for one, who has offended againſt *no Law yet in Being*. It muſt be thought no little *Grief*, and *Vexation* to any *ingenuous Man*, to be brought to *this Bar*, under the leaſt *Suſpicion* of ſuch *Crimes* as are laid to my Charge; but for a *Perſon* of *my Function* to have an *Accuſation* of this Nature alledg'd againſt him, ſo heinouſly reflecting upon his *Holy Character*, is ſuch a *foul Blot*, as though his *Innocence* ſhould at laſt be clear'd by your Lordſhips, upon the moſt *undeniable Evidence*, muſt leave a *Scar* upon his *good Name*; which is to all Men dear, but much

more ſo to *thoſe*, whoſe whole *Capacity* of *doing good* in the World *principally* depends upon it.

My Lords, As the *Matter* of my *Charge* was highly *criminal*, ſo the *Form* and *Manner* of it ran in ſuch *general*, and *uncertain Terms*, that 'twas impoſſible to know the Grounds of my *Accuſation*; or *how* to *defend* my ſelf, when I knew not *where* I ſhould be *attack'd*. So that after I had provided as *particular an Anſwer* as ſuch a *general Accuſation* would admit of, the *Commons* were pleaſed in their *Replication* to ſay, that there *were ſeveral Things in it Foreign to the Charge*. To the great Misfortune of falling under the *Diſpleaſure* of that *Honourable Houſe*, I might add, That of a *long and cloſe Confinement*, and of an *Expence* no ways proportion'd to my *Circumſtances*. Theſe, my Lords, are Afflictions which can be conceiv'd by no Body ſo well as by *him*, who has been ſo *unhappy* as to *feel* the *Weight* of them. And among theſe I reckon it not the leaſt of my *Sufferings*, that I have been for ſo long a time debarr'd, *from taking heed to that Flock, over which the Holy Ghoſt hath made me an Overſeer*. For even ſince I have had my *Liberty*, by the Favour of your Lordſhips *admitting me to Bail*, I have purpoſely avoided doing any Part of the *Duty* of my *Function*, or even *appearing in Publick*, leſt it ſhould occaſion any *Tumult* or *Diſturbance*; as my *neceſſary Attendance* on your Lordſhips from time to time, has ſince been thought *unhappily* to have done, without any *Fault of mine*, or the *leaſt degree of Encouragement* given by *me*, which I profeſs, in the Preſence *of God*, to abhor.

All theſe Circumſtances, my Lords, being conſider'd, together, with the *Publick Manner*, the *Length* and *Solemnity* of my *Tryal*, before ſo Auguſt a Court of Judicature, by which Means *I am made a Gazing-ſtock, both by Reproaches, and Afflictions, and a Spectacle to the whole World*; I have ſtood in this Place Day after Day, to hear my ſelf Accus'd of the *blackeſt Crimes*, and openly *revil'd*; I have been repreſented as a *Papiſt* in Diſguiſe, as a *Rebel*, as an *Enemy to* Her Majeſty's *Perſon and Government*, and a *Favourer of the Pretender*, tho' I have *abjur'd* him, (but not *forgot* him, as a Learned Perſon was pleas'd to ſay) that is, as the worſt of *Perjur'd Villains*: I have been call'd *an inſignificant Tool of a Party* on the one Hand, and *a moſt dangerous Incendiary* on the other, nay, *an Angel*, that is a Devil, *detach'd from the Infernal Regions*: All theſe things, I ſay, being conſider'd, (and your Lordſhips I am ſure, in tender Compaſſion to me, will conſider them,) it is moſt certain, that, whatever be your Lordſhips Determination concerning me, I cannot eſcape without being a very *great Sufferer*, and I ſhall have been abundantly *puniſh'd*, tho' I ſhould have the *Happineſs* to be by your Lordſhips at laſt *Acquitted*.

Yet I cannot Reflect without *Comfort*, (the *greateſt of Comforts* next to *that* of a *good Cauſe*, and *a good Conſcience*) that *I Anſwer for my ſelf this Day* before the moſt Illuſtrious Aſſembly in the World, *the whole Body of the Nobility of* Great Britain; whoſe *Princely Extraction*, and *High Quality*, whoſe *Magnificent Titles*, and *Splendid Fortunes*, whoſe *Hereditary Candor* and *Generoſity*, *inherent* in *Noble Blood*, *inſeparable* from the *Birth* and *Education* of *Peers*; in a word, whoſe *Solid Judgment*, and *exact Skill* in the *Laws* of *this Realm*, ſo eminently Qualify them for the *final Determination* of *Juſtice*; who are neither to be *ſway'd* by *Hopes*, *over-rul'd* by *Fears*, nor *miſled* by any *Falſe Prejudice* or *Paſſion*. If it muſt be a Man's *Misfortune* to *labour* under ſuch *hard Circumſtances* as *mine*, it is no ſmall *Mitigation* of them, that he *Pleads* his *Cauſe* before *ſuch Judges*, who, he knows, will *Decide* it with the ſtricteſt *Impartiality*, *Equity*, and *Honour*.

And when I conſider that *I now ſtand*, and *am Judg'd* for ſome of the *Doctrines* of *that Goſpel*, which God *deliver'd unto our Fathers*, and you; my Lords the Biſhops, their *Succeſſors*, have receiv'd from *Chriſt* and *his Apoſtles*, as the *ſacred Depoſitum* of the *Church*, to be Maintain'd inviolably in its *Primitive Simplicity*; when I conſider, what is the *Cauſe for which I am this Day call'd in Queſtion*; that it is *One* of thoſe *Eternal Truths*, which you are ſo Solemnly *commiſſion'd* to Teach, and *earneſtly Contend* for; when I conſider, that 'tis what our *Bleſſed Lord* and his *Apoſtles* ſeal'd with their *precious Blood*, and ſo many *Primitive Martyrs* maintain'd even in the midſt of *Flames*, ſo many *Learned Biſhops*, and *Confeſſors recommended to Poſterity* in their *immortal Writings*, as the *diſtinguiſhing Badge*, and *Glory* of our *Reformation*; nay, when I conſider, that 'tis what *you your ſelves* have *already ſupported* with *inconteſtable Reaſon*, and *Authority*; it is no ſmall Satisfaction to me to think, that as your Lordſhips are my *Judges*, ſo, I hope in God, you muſt be my *Advocates*. What a *Guilt*, as well as *Diſgrace*, would it juſtly devolve upon the *Clergy*, to *recede* from any *Principle* of our *excellent Church*, eſpecially from what has been ſo long *retain'd*, and *boaſted of*, as its *peculiar Character!* By *abandoning* which we muſt *relapſe* into ſome of the *worſt Doctrines* even of *Popery* it ſelf, and render *our ſelves* the moſt *contemptible*, as well as *inconſiſtent Church* in the World! I think, I may therefore with Confidence uſe the Words of the *Great Apoſtle* to his *Accuſers*; *Having obtain'd Help from God, I continue unto this Day, witneſſing both to ſmall and great; ſaying none other Things than thoſe which the Prophets and* Moſes (I may add, Chriſt and his Apoſtles,) *did ſay*.

For, my Lords, if I have committed any Faults or Errors in Expreſſion, yet as I *inſiſt* upon my *Innocence* with reſpect to all the *High Crimes* laid to my *Charge*, ſo I muſt ſtill *inſiſt* upon *all the Doctrines* which I have taught, as being *agreeable* to the *Word* of *God*, and to the *Doctrine* of our *moſt excellent* and truly *Apoſtolical Church*, and which *we* of *the Clergy* are *oblig'd* both by *Subſcription*, and *Oath* to *acknowledge*, and *defend*. And how *hard* are our *Circumſtances*, if we muſt be *puniſh'd* in this World for *doing* that, which if we *do not*, we ſhall be more heavily *puniſh'd* in the *next!* What a *Condition* are we in, if we are *commanded* to *cry aloud and ſpare not, to exhort, rebuke, in Seaſon and out of Seaſon*, on the one Hand, and *proſecuted, impriſon'd, ruin'd* on the other! If this be our Caſe, *who indeed is ſufficient for theſe Things?* Aud how truly may we of the *Miniſtry* above all Men living, apply to our ſelves thoſe Words of the Apoſtle, *If in this Life only we have hope in Chriſt, we are of all Men moſt miſerable*: But our *Comfort* is, that our *Hope in Chriſt* is not only in *this Life*. Juſtly might we be *reproach'd*, and *deſerve* ſome of thoſe *Reflections*, which in theſe *Licentious Times* are ſo plentifully *pour'd* upon us, were we not ready to *Practiſe* the *Doctrines* we *preach*, of *Self-Denial, taking up our Croſs*, and *patient Submiſſion to Sufferings* and *Afflictions!* For my *own* Part, it matters not what becomes of *me*, nor is *my Deliverance*, or *Ruin*, of any Moment to the World; or, if it be, *I am not only ready to be bound, but to dye*, could

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I by that do Service to my *Queen*, my *Church*, or my *Country*; *neither count I my Life dear, so that I might finish my Course with Joy, and the Ministry which I have received of the Lord Jesus.* But may *God* so direct your Lordships, that through *me* a *Wound* may not be given to the *Doctrines* of the *Scriptures*, and of *the Church, which Christ hath purchas'd with his own Blood.*

And so, with all *Humility* and *Resignation*, I submit my self to your Lordships *Judgment*; be it what it will: *One Thing* I am sure it can never *take* from me, the Power of *Wishing* and *Praying*, and (whether in *Prosperity* or *Adversity*, whether I am *Acquitted*, or *Condemn'd*,) I shall always pray for the Queen my Sovereign, for your Lordships my *Judges*, and for the Commons my *Accusers*; most earnestly beseeching Almighty God, to deliver all Orders, and Degrees of Men amongst us, *from all false Doctrine, Heresy, and Schism, from Hardness of Heart, from Contempt of his Word, and Commandment*; *from Envy, Hatred, and Malice, and all Uncharitableness.*

Then the LORDS *Adjourned to their House Above.*

Thursday, March 9. The Ninth Day.

THE Lords coming down into *Westminster-Hall*, and being seated in the manner before-mentioned, Proclamation was made by the Serjeant at Arms as follows:

Our Sovereign Lady the Queen doth strictly Charge and Command all manner of Persons to keep Silence, upon Pain of Imprisonment.

Then another Proclamation was made: *Henry Sacheverell*, Doctor in Divinity, come forth, save thee and thy Bail, else thou forfeitest thy Recognizance.

The Doctor appearing at the Bar accordingly, with his Council, as before:

Lord Chancellor. Gentlemen, you that are Managers for the House of Commons may proceed to yonr Reply.

Sir Joseph Jekyll. MY Lords, Doctor *Sacheverell* and his Council having concluded what they had to offer to your Lordships, I shall enter upon the Province assign'd to me, in further Execution of the Commands of the House of Commons, which is, to Reply to the Defence made for the Doctor to the first Article of the Commons Charge.

My Lords, I shall take Notice, first, of the Concessions made by the Doctor's Council; secondly, of the Exposition they have put upon those Passages of the Sermon, which have been relied on by the Commons to maintain this Article; and, thirdly, of the Acts of Parliament, the Homilies, the Books, the Sermons, the Pamphlets and the Gazettes, which the Doctor's Council have call'd for to be read to your Lordships.

And if I shall satisfy your Lordships, that the Concessions made by the Doctor's Council are a Departure from the Defence made for him in his Answer, that they are extorted by Necessity, and are likely to be retracted when this Turn is serv'd; if I shall shew your Lordships, that their Exposition of the Passages in the Sermon, is contrary to the plain Meaning of those Passages; if I shall shew, that the Acts of Parliament, the Homilies, and the other Prints that have been produc'd, are either immaterial, or condemn the Doctrine laid down in the Sermon; and if I shall shew, that this Criminal, for so I must call him, since the House of Commons have call'd him so; (whether he will be so in the Event, I agree, rests only in your Lordships Judgment); if, I say, I shall shew he is guilty of a most heinous Offence, I shall not doubt of your Lordships Justice.

My Lords, The Concessions are these, That Necessity creates an Exception to the General Rule of Submission to the Prince: That such Exception is understood or implied in the Laws that require such Submission: And That the Case of the Revolution was a Case of Necessity.

These are Concessions so ample, and do so fully answer the Drift of the Commons in this Article, and are to the utmost Extent of their Meaning in it, that I can't forbear congratulating them upon this Success of their Impeachment; That in full Parliament this erroneous Doctrine of unlimited Non-Resistance is given up and disclaim'd. And may it not, in After-Ages, be an Addition to the Glories of this bright Reign, that so many of those who are honour'd with being in Her Majesty's Service, have been, at your Lordships Bar, thus successfully contending for the National Rights of Her People, and proving they are not precarious or remediless.

But to return to these Concessions; I must appeal to your Lordships, whether they are not a total Departure from the Doctor's Answer; whether there is one Word in the Answer which looks that Way.

In his Answer he takes Notice, that the general Assertion in his Sermon, of the utter Illegality of Resistance, is a colourable Pretence for the Article; but does he add the Restriction or Limitation to it, which hath been now thought necessary, and hath been insisted upon as most material for his Defence? No, my Lords, but the quite contrary; for these are the Words of his Answer, *The said* Henry Sacheverell *doth with all Humility aver the Illegality of Resistance, on any Pretence whatsoever, to be the true Doctrine of the Church of* England. Now, could any thing have been more material for him in his Answer, than adding these Restrictions to his general Assertion in his Sermon, which his Council now say he intended, tho' he did not express? Or if that was his Intention, could he possibly have forgot it, when the Frame of his Answer was under Consideration?

But now he sees the Resolution of the Commons, and the Endeavours of those who have their Commands to carry on this Prosecution, to bring him to Punishment; now he sees your Lordships daily Attendance upon this Trial, and your Atttention to the Charge against him; now he sees, if he had abided by his Answer, *he* must have been condemn'd, or *the Revolution*; these are the Motives which have prevail'd upon him to tolerate his Council to make these unwilling Concessions, and have extorted them from him.

And how little these Concessions ought to avail him, your Lordships will see, when you consider how likely it is he will retract them when this Turn is serv'd. May we not then expect he will use this very Argument of Necessity, the Coertion or Restraint he is under by this Prosecution, as an Excuse for these Concessions? And when your Lordships are told, that it is the Duty of Divines (whose Office it is to explain the Scripture to the People)

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to inculcate this Doctrine of Non-Reſiſtance in the moſt unconfin'd and unlimited Terms they are able, and mentally reſerve the Exception to themſelves; when Authorities have been produced for aſſerting this Doctrine in ſuch a manner as to exclude any Exception whatſoever, and the Doctor himſelf did not expreſly come into theſe Conceſſions, it is certain they ought not to be of any Avail to him.

Your Lordſhips will therefore give me Leave to conſider the Expoſition which hath been put on thoſe Paſſages, which the Commons relied on for Proof of their Firſt Article: And I ſhall ſhew that Expoſition to be contrary to the plain Meaning of thoſe Paſſages.

My Lords, I readily agree, that no ſtrain'd Innuendo's, or ſuppos'd and forc'd Conſtructions (which are the Words us'd in the Reaſon given for reverſing the Judgment in Sir *Samuel Barnardiſton*'s Caſe) ought to be admitted, to explain the Meaning of the Doctor, in order to prove him Criminal. I think the Principles laid down upon the Reverſal of that Judgment are ſolid and juſt; and therefore nothing but expreſs Words, or a neceſſary Implication collected from a Man's Words, can make him an Offender. But I would not have it gone away with, that there muſt be expreſs Words of Scandal to make a Man Criminal; indirect or oblique Scandal has in all Times been met with and puniſh'd in the ordinary Courts of Juſtice; and if it were otherwiſe, that which aggravates the Crime (the Subtilty or Contrivance of it) would prevent the Puniſhment: And therefore it is, that Ironical Scandal, nay, even dumb Scandal (Scandal by Pictures, or by Signs) as is mention'd in the Caſe *de Libellis Famoſis*, in my Lord Chief Juſtice *Coke*'s Fifth Report, is puniſhable by Law. The only Caution neceſſary in theſe Caſes is, that the Conſtruction or Interpretation be not ſtrain'd or forc'd. And, my Lords, in this Caſe we have not only a ſeditious Meaning plainly collected from the Doctor's Words, but expreſs Criminal Words, a falſe Suggeſtion, that his late Majeſty, in his Declaration, diſclaim'd the leaſt Imputation of Reſiſtance, introduc'd for a malicious and ſeditious Purpoſe.

My Lords, The Firſt Article has been rightly divided into Three Parts. The Doctor is charg'd with ſuggeſting and maintaining, Firſt, *That the neceſſary Means us'd to bring about the Revolution, were odious and unjuſtifiable.* Secondly, *That his late Majeſty in his Declaration diſclaim'd the leaſt Imputation of Reſiſtance:* And, Thirdly, *That to impute Reſiſtance to the Revolution, is to caſt black and odious Colours on his late Majeſty and the Revolution.*

The two laſt Branches, my Lords, are Particulars. The firſt is the General; and if the two laſt are proved, ſuch Proof makes out the firſt: But I ſhall conſider the Anſwer given by the Doctor's Council to the Proof of the two laſt Branches in their Order, and proceed to conſider the Anſwer that has been given to the proper Proofs of the firſt.

My Lords, The firſt Proof of this Branch was the general Aſſertion of *the utter Illegality of Reſiſtance upon any Pretence whatſoever.* It hath been ſaid in Anſwer to this, that this is ſpoken of the Supreme Power, which is the Legiſlative Power, and then there ought to be no Exception whatſoever.

But, my Lords, that the Doctor did not mean the Supreme Legiſlative Power, but the Supreme Executive Power, is evident.

Firſt, From the Account he preſently gives of thoſe that oppoſe his Principle of Non-Reſiſtance, which runs all along upon the Perſon of the Prince only, *as cancelling their Allegiance, calling their Sovereign to Account, Dethroning and Murthering him.*

Secondly and Principally, From his bringing in the Caſe of the Revolution, as urg'd by thoſe who are Adverſaries to his Principle of Non-Reſiſtance. Now the Revolution is not, cannot be urg'd as an Inſtance of the Lawfulneſs of any thing, but of reſiſting the Supreme Executive Power acting in Oppoſition to the Laws; and this the Doctor himſelf admitted, when he told your Lordſhips that *the Supreme Power was not then reſiſted.* This is therefore the Supreme Power he affirms it is utterly unlawful to reſiſt.

But it was ſaid by one of the Doctor's Council, *That the Non-Reſiſtance the Doctor preaches up, is the utter Illegality of Reſiſting the Supreme Power in all Things Lawful*; for thoſe Words, *in all Things Lawful*, make part of that Sentence. My Lords, I admit they do; but thoſe Words are relative to his Aſſertion concerning Active Obedience, and not Paſſive, as will appear by reading the whole Sentence. *The grand Security of our Government, and the very Pillar upon which it ſtands, is founded upon the ſteady Belief of the Subjects Obligation to an abſolute and unconditional Obedience to the Supreme Power in all Things Lawful, and the utter Illegality of Reſiſtance upon any Pretence whatſoever.* The one dividing Member of the Sentence is, the *Obligation to Obedience in all Things Lawful*; the other, *the Illegality of Reſiſtance on any Pretence whatſoever*; the one is reſtrain'd, the other unlimited. It muſt be taken therefore (notwithſtanding theſe Objections) That the Doctor aſſerts the utter Illegality of Reſiſtance to the Supreme Executive Power, though acting not in Conformity, but in Contradiction to the Laws.

My Lords, I go on to the ſecond Proof of the firſt Branch of this Article, which is, the Doctor's Inſinuation that the Parliament diſown'd the Reſiſtance at the Revolution, by *declaring that they ſet the Crown on the King's Head on no other Title than of the Vacancy of the Throne.* One of the Council thought fit to ſtand to this Fact, becauſe the Vacancy of the Throne is mention'd in the Bill of Rights; and he ſays, there is no other Fact there ſtated. I beſeech your Lordſhips, Does not the ſame Act take Notice of the Male-Adminiſtration of King *James*, and his Abdicating the Government, as the Means by which the Throne became void? And I may appeal to your Lordſhips Journal, and the Journal of the Houſe of Commons, whether the Word *Abdicated* was not uſed rather than the Word *Deſerted* (after a Conference between the Two Houſes) for this Reaſon, inſiſted on by the Commons, that that Word *Abdicate* included in it Male-Adminiſtration, which the Word *Deſert* did not.

The ſame Council ſaid, the *Act for preventing Vexatious Suits*, urg'd by the Commons as a Parliamentary Declaration, juſtifying the Reſiſtance at the Revolution, was only for Indemnifying thoſe that acted at that Time, and was no more than was done in the Reign of *Edward* the Third, after *Edward* the Second was Dethroned. This ſurely is no

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manner of Anſwer to the Declaratory Part of that Law, which takes Notice of the King's undertaking a glorious Enterprize, for delivering the Kingdom from Popery and Arbitrary Power; and that divers Subjects, in Aid and Purſuance of that Enterprize, did ſeveral Acts of Violence and Reſiſtance; and this Law declares ſuch Acts were neceſſary, and ought to be juſtify'd. And I can't but obſerve this by the way, that the Parliament and the Doctor are of different Opinions; the Parliament thought that Reſiſtance ought to be juſtify'd; the Doctor thinks not; and if ſo, then *Doctor* Sacheverell *doth ſuggeſt and maintain, that the neceſſary Means uſed to bring about the Revolution were odious and unjuſtifiable.*

I come now, my Lords, to the ſecond Branch of the Firſt Article, the Doctor's Aſſertion, *That his late Majeſty in his Declaration diſclaim'd the leaſt Imputation of Reſiſtance*; and the Doctor's Anſwer to it.

My Lords, His Council admit this Aſſertion is in the Sermon, and that this Aſſertion is not true; but they ſay it was a Miſtake only in the Doctor, that the Doctor has expreſs'd himſelf ſomewhat obſcurely, and now he has explain'd himſelf, that Explanation ought to be receiv'd. The Doctor meant, they ſay, Conqueſt; and ſo he had explain'd himſelf not only in the Marginal Note, but in the Sermon it ſelf. My Lords, if this were ſo, I admit it would be a good Defence; but that this was not a Miſtake, or rather was a wilful one in the Doctor, and that he thereby deſign'd to Traduce the Memory of his late Majeſty and the Revolution, I ſhall ſhew from what his own Council inſiſt on.

They ſay the Doctor muſt mean Conqueſt, becauſe the Prince of *Orange*, who was no Subject, but a Sovereign Prince, could not be ſaid to reſiſt according to the common underſtanding of that Word. Now, my Lords, it is true, the Prince of *Orange* could not be ſaid to reſiſt, and ſo could not diſclaim Reſiſtance for himſelf; but could he not be join'd and aſſiſted by the Subjects of the Realm, who might be ſaid to reſiſt, and were invited by him ſo to do? Doth not this appear by the whole Tenor of his Declaration, and even by the Paſſages quoted by the Doctor? And ſince his late Majeſty could not be ſaid to reſiſt, but the Subjects, who, upon his Invitation, join'd with him, could; and the Reſiſtance of Subjects is what the Doctor is ſpeaking againſt; it is plain, that the Doctor ſpeaks of the King's diſclaiming the Reſiſtance of thoſe who join'd with him, and not his own Reſiſtance. And therefore I cannot ſee that the Quotation of the Paſſage out of the Prince's Declaration, at the bottom of that Page, doth make out that he meant Conqueſt, by Reſiſtance in his Sermon; or if it did, Would it excuſe the Doctor's Preaching this Part of his Sermon, which was done without referring to that Paſſage?

But it is ſaid, he has explain'd that he meant Conqueſt by Reſiſtance in the Body of the Sermon, becauſe he ſays *the Parliament burnt a Libel that would have pleaded the Title of Conqueſt, by which Reſiſtance was ſuppoſed.* But that this Paſſage doth not make out that he meant Conqueſt by Reſiſtance, is evident, from his making Reſiſtance not to be Conqueſt, but only an Ingredient in it. And by repreſenting Reſiſtance and Conqueſt to be the ſame thing with the Doctor, he is made to ſay, that the Parliament burnt a Libel that would have pleaded the Title of Conqueſt, by which Conqueſt is ſuppos'd.

It is plain therefore that *Doctor* Sacheverell *hath aſſerted, that his late Majeſty in his Declaration diſclaim'd the leaſt Imputation of Reſiſtance*; and diſclaim'd it at a Time, if you'll believe the Doctor, when he was exhorting the Subjects of King *James* to reſiſt, and was joining with them, and encouraging them in it; than which it is impoſſible there can be a greater Reflection on his late Majeſty, or the glorious Cauſe he then had in Hand.

My Lords, I come now to conſider the Proof of the Third Branch of the Firſt Article, and the Anſwer that has been given to it. The Third Branch is this, *That to impute Reſiſtance to the Revolution, is to caſt black and odious Colours upon his late Majeſty and the Revolution:* The Proof is, that Part of the Sermon wherein the Doctor aſſerts, *That the Adverſaries to the Doctrine of Non-Reſiſtance, who urge the Revolution in their Defence, are the greateſt Enemies to that and his late Majeſty, and the moſt ungrateful for the Deliverance, in endeavouring to caſt ſuch black and odious Colours upon both: How often muſt they be told,* &c. The Anſwer to this is, That the Perſons the Doctor deſcribes as caſting black and odious Colours on his late Majeſty and the Revolution, are not thoſe who impute Reſiſtance to the Revolution, of whom he affirms nothing, but thoſe new Preachers and new Politicians, who teach Antimonarchical and wicked Doctrines, and who urge the Revolution in Defence of 'em.

My Lords, If the Doctor had meant theſe Perſons, he would have ſhewn them, which he certainly might have done, that what was acted at the Revolution, did not in the leaſt juſtify their Opinions; but he declining to do this, and placing the Defence of the Revolution on a falſe Fact, known to be ſo to himſelf and to the whole Nation; and this, taken together with his introducing theſe Men as defending their Principles by the Revolution, leaves the Load of theſe deteſtable Opinions on the Revolution, and not only condemns the Reſiſtance at the Revolution, but brands it.

But it is ſaid, my Lords, that the Clauſe, *Our Adverſaries think they effectually ſtop our Mouths*, &c. relates to the Defence of theſe Antimonarchical Principles, and not to the general Propoſition of the utter Illegality of Reſiſtance upon any Pretence whatſoever; and if ſo, I agree there is no Foundation for this Branch of the Article; and whether he is guilty of this Branch or not, turns entirely on this Queſtion.

My Lords, I little thought ſuch a Conſtruction would have been endeavour'd, by a wrong Recital of this Clauſe in the Sermon, by the Doctor in his Anſwer; for there it is ſaid, as from the Words of the Sermon, *That they, that is*, ſays the Doctor, *theſe new Preachers and new Politicians, urge the Revolution in defence of ſuch Principles*; when your Lordſhips ſee the Words of the Sermon are, *Our Adverſaries think they effectually ſtop our Mouths, and have us ſure and unanſwerable on this Point, when they urge the Revolution of this Day in their Defence.* This therefore brings the Caſe of the Revolution, urg'd by theſe Adverſaries, to the Point or Propoſition he had before laid down, which was the utter Illegality of Reſiſtance on any Pretence whatſoever; and not to the Defence of divers Antimonarchical Principles, taught by the new Preachers and new Politicians. And this is ſtill plainer, if your Lordſhips conſider that the Doctor's Reply to theſe Adverſaries, by denying there was any Reſiſtance at the Revolution, can only relate to the Point of Non-Reſiſtance he had before aſſerted; and which Reſiſtance,

ſiſtance, if it were not denied, muſt ſtand condemn'd by the Doctor's Propoſition.

As little, my Lords, did I expect to hear from one of the Doctor's Council, that there are twenty or thirty Lines between the General Propoſition and this Clauſe; ſince if there be a Connection between this Clauſe and that Propoſition (which I have already ſhewn there is) it is not the Intervention of ſo many Lines will hinder it; and if there had been no Connection, their being cloſe together would not have made one. And by this manifeſt Connection, the Doctor hath brought this general Poſition, of the Unlawfulneſs of all Reſiſtance, to bear upon the Revolution. Which I hope may ſerve for an Anſwer to the ſame Gentleman, who ſays, It is one thing to lay down the General Rule without making the Exception, and another thing not to make the particular Exception out of that Rule; for the Doctor has mentioned the Revolution, but not in order to except it, but to include it.

Indeed, my Lords, the Learned Doctor who is of his Council pretends to have found out the Exception in the Sermon, *Page* the 10th, becauſe he finds the Word *Neceſſity* there: The Words are theſe, *Only this Maxim in general I preſume may be eſtabliſh'd for the Safety, Tranquility and Support of all Governments; that no Innovation whatſoever ſhould be allowed in the Fundamental Conſtitution of any State, without a very preſſing, nay, unavoidable Neceſſity for it.* But if the Doctor had but read to the End of the Sentence, he would have found Doctor *Sacheverell* condemns all that bore a Part in the Revolution, before a Law was made about it: The Words that follow are theſe, *And whoſoever ſingly, or in a private Capacity ſhould attempt it, is guilty of the higheſt Miſdemeanor, and is an Enemy to that Politick Body of which he is a Member.* And if that Sentence reſpects the Revolution, then Doctor *Sacheverell* condemns all, from the higheſt to the loweſt, who, in their private Capacity, joined with the Prince of *Orange*, or aſſiſted in bringing about the Revolution. This is the Thing he is now charged with; not condemning the Revolution as a Thing ſettled by Law, but the Neceſſary Means uſed to bring it about. But if the Doctor inſtructed his Council to inſinuate, that there was any Innovation in the Conſtitution wrought by the Revolution, it is an Addition to his Crime. The Revolution did not introduce any Innovation; it was a Reſtoration of the ancient Fundamental Conſtitution of the Kingdom, and giving it its proper Force and Energy.

Indeed, all the other Council differ'd from that Learned Civilian, and maintain'd, that Doctor *Sacheverell* did not, nay, ought not, to make any Exception; and one of 'em ſaid, if Clergymen, inſtead of preaching up the general Rule of Obedience, were permitted to ſtate the ſeveral excepted Caſes, ſuch Exceptions would in time devour all Allegiance. My Lords, If the Doctor had pretended to have ſtated the particular Bounds and Limits of Non-Reſiſtance, and told the People in what Caſes they might, or might not reſiſt, he would have been much to blame; nor was one Word ſaid in the Articles, or by the Managers, as if that was expected from him; but on the contrary, we have inſiſted, that in no Caſe can Reſiſtance be lawful, but in Caſe of extreme Neceſſity, and where the Conſtitution can't otherwiſe be preſerv'd, and ſuch Neceſſity ought to be plain and obvious to the Senſe and Judgment of the whole Nation; and this was the Caſe at the Revolution. And is there no Difference between a Divine's mooting and putting Caſes of lawful Reſiſtance, and excepting the Reſiſtance at the Revolution out of the general Rule of the Illegality of Reſiſtance, on a Day, when he was oblig'd not only to commemorate the Revolution, but the Reſiſtance, the neceſſary Means uſed to bring it about, as appears by the Service appointed for that Day?

And, my Lords, Is a Houſe of Commons, who are vindicating that Revolution only, to be repreſented as if we were calling upon Divines to ſtate the Caſes wherein Reſiſtance is lawful, and wherein not? A Taſk unfit for any one, and more eſpecially for them to meddle with; And are we, by ſuch Suggeſtions as theſe, to be defam'd and inſulted, and repreſented as promoting Anarchy and Confuſion?

My Lords, There can be no Order or Regularity, if the Conſtitution, the beautiful Frame of a Legal Monarchy, which this Nation hath ſo long enjoy'd and proſper'd withal, be deſtroy'd or given up. What Inclination has the preſent Age ſhewn to ſubmit to Arbitrary Power; or rather, what hath been wanting in it to ſhew the contrary?

But I go on, my Lords, to conſider an Argument made uſe of by another of the Doctor's Council, That it was needleſs for him to except the Caſe of the Revolution, for that was known to every body, and had often been approv'd by the Legiſlature. I beſeech your Lordſhips, Could the Doctor know this, and not only not except that Caſe, on a Day appointed to give ſolemn Thanks for it, but introduce it for no purpoſe but to leave it under the Condemnation of the General Rule of Non-Reſiſtance? And by this Method the Doctor has brought his General Rule to bear upon the particular Caſe of the Revolution. For he takes but one way of acquitting the Revolution, which is by laying down that for Truth, which every Man knows to be falſe; and they that aſſert this Truth, he ſays, *caſt black and odious Colours on the late King and the Revolution:* Which makes out, that *Dr.* Sacheverell *doth ſuggeſt and maintain, that to impute Reſiſtance to the Revolution, is to caſt black and odious Colours on his late Majeſty and the Revolution.*

I am ſenble how tedious I muſt have been in this nice tracing the Anſwers given by the Doctor's Council to our Proofs of this firſt Article; but becauſe the Judgment of the Caſe will depend very much upon it, I am ſure I ſhall have your Lordſhips Pardon.

And now, my Lords, What a Repreſentation is here of that Glorious Tranſaction, the late happy Revolution! The Part the Subject had in it is repreſented as contradicting the expreſs Command of God in Scripture, and deſtructive of all Governments: His late Majeſty is repreſented as encouraging this pernicious Wickedneſs, and diſowning it at the ſame time: Give me Leave therefore, on behalf of the Nation, and the Memory of his late Majeſty, its Deliverer, to ſtate this Affair ſhortly, and in another Light to your Lordſhips.

The Subjects reſiſted, the late King join'd his Army with the Arms of Reſiſtance; and if the Nation at that time had not had Recourſe to that Remedy, how abject and how miſerable muſt they have been! If we look into the Hiſtories of other Countries, Have not the beſt and happieſt Nations been moſt tenacious of their Liberties? And while they have continu'd ſo, and withſtood Abſolute Power, they have been proſperous at home, and conſiderable abroad: But when they have fallen from this

Zeal and Induſtry, which is the Foundation of their Proſperity at home, and Magnanimity, which makes them conſiderable abroad, have deſerted them, and they have ſunk into Sloth and Effemihacy. Can any one therefore, with any Colour, ſay, That Reſiſtance, in Caſes of Extreme Neceſſity, has worſe Conſequences than Unlimited Subjection?

Let us now turn our Eyes a little on the Part our late King had in the Revolution. Did he not undertake a moſt hazardous Enterprize, to procure us Happineſs at home, and to give us that Weight abroad, which this Nation had long enjoy'd, but at that Time was depriv'd of? And with what Care and Anxiety, even to the laſt Moment of his Life, did he labour to ſecure theſe Bleſſings to us!

Let us look beyond his Time, and ſince, for the Senſe of the Nation upon this Point. What Satisfaction did the Nation take, in the Aſſiſtance his Renowned Predeceſſor (Queen *Elizabeth*) gave to the Oppreſſed *Provinces*, our then Good Neighbours, and our now Potent Allies? How zealouſly did the Nation promote the Aſſiſtance King *James* the Firſt gave to the injur'd Prince *Palatine*, againſt the Emperor his Superior Lord? And what Reſolution and tender Concern for the perſecuted *Rochellers*, did King *Charles* the Firſt ſhew and expreſs? And has not Her Majeſty aſſiſted the *Spaniards*, againſt a Prince acknowledg'd by them, and ſeated on the Throne? Nor did Her Goodneſs, which is as extenſive as Her Power, overlook the poor Eſtate of the People in the *Cevennes*, or neglect to give them all poſſible Aſſiſtance, againſt their King exerciſing a cruel Dominion over them. Theſe, and many more Inſtances which might be fetch'd from other Countries, are ſo many Authorities againſt this Doctrine of unlimited Non-Reſiſtance.

And now, my Lords, I come to conſider the Authority the Doctor pretends to have for it: His Council ſay, They have Acts of Parliament for this Doctrine; I ſhall not mention the particular Acts, becauſe they are well known, but conſider them under Three Heads. Firſt, Thoſe Acts that were before the Reſtoration. Secondly, Thoſe after the Reſtoration, and before the Revolution. And, Thirdly, Thoſe after the Revolution.

My Lords, As to thoſe before the Reſtoration, I readily admit they condemn Reſiſtance generally; they don't mention any Exception. The Council of the other Side have furniſh'd me with an Anſwer to 'em: They ſay, Theſe, and all other Laws, have an Exception imply'd in them. The Wiſdom of the Law, in not expreſſing the Exception, is plain: It is neither decent, nor probably would have a good Effect, to put odious Caſes, ſuch as a Prince's Overturning the Conſtitution. The *Roman* Law did not provide againſt Parricide, nor doth the *Engliſh* Law neither; ſince it hath no diſtinct Puniſhment for that kind of Murder, tho' it hath ſome for others, which are call'd Petty Treaſons. Laws are fram'd upon a View of ordinary and common Caſes: *Ad ea quæ frequentius accidunt jura adaptantur*, is a known Maxim, and of great uſe in the Expoſition of Laws. And if our Legiſlators had been ask'd the Queſtion, Whether they meant by thoſe Laws to make all other Laws, and even thoſe Laws themſelves, of no Validity? (Which, if Abſolute Power can't be withſtood, would be the certain Conſequence;) Would not they have anſwer'd, Nothing was farther from their Thoughts? And if it be *Maledicta Expoſitio quæ corrumpit Textum*, apply'd to any particular Law; what a curſed Expoſition muſt that be, which corrupts, or rather annuls the Text of all the Laws at once?

My Lords, The next Head of Acts, are thoſe after the Reſtoration, and before the Revolution. I do admit, thoſe Laws go farther than the former, and ſeem to condemn all Reſiſtance, and in ſuch Terms, as to exclude any Exception whatſoever. My Lords, What I have ſaid relating to the former Laws, may be apply'd to theſe. But further, I deſire it may be conſider'd, theſe Legiſlators were guarding againſt the Conſequences of thoſe Pernicious and Antimonarchical Principles, which had been broach'd a little before in this Nation; and thoſe large Declarations in Favour of *Non-Reſiſtance*, were made to encounter, or obviate the Miſchief of thoſe Principles; as appears by the Preamble to the fulleſt of thoſe Acts, which is the *Militia-Act*, in the 13th and 14th of King *Charles* the Second. The Words of that Act are theſe: *And during the late Uſurped Governments, many Evil and Rebellious Principles have been inſtilled into the Minds of the People of this Kingdom, which may break forth, unleſs prevented, to the Diſturbance of the Peace and Quiet thereof: Be it therefore Enacted*, &c. Here your Lordſhips may ſee the Reaſon that inclined thoſe Legiſlators to expreſs themſelves in ſuch a manner againſt Reſiſtance: They had ſeen the Regal Rights ſwallow'd up, under the Pretence of Popular ones; and it is no Imputation on them, that they did not then foreſee a quite different Caſe, as was that of the Revolution; where, under the Pretence of Regal Authority, a total Subverſion of the Rights of the Subject was advanc'd, and in a manner effected. And this may ſerve to ſhew, that it was not the Deſign of thoſe Legiſlators to condemn Reſiſtance, in a Caſe of Abſolute Neceſſity, for preſerving the Conſtitution, when they were guarding againſt Principles which had ſo lately deſtroy'd it.

But now, my Lords, let us ſee how the Laws run after the Revolution. Your Lordſhips will find, that the Reſiſtance at the Revolution is not only approv'd of in expreſs Terms, by the Act for preventing Vexatious Suits; and indeed, every Act paſs'd ſince the Revolution, is an implicit Approbation of it; but the Declaration of the Unlawfulneſs of taking Arms againſt the King on any Pretence whatſoever, (requir'd to be taken by the Corporation-Act, the Militia-Act, and the Act of Uniformity,) is now repeal'd. There was another Act mention'd by one of the Doctor's Council, the Act for Regulating Select Veſtries: That Act expir'd in King *Charles* the Second's Time, and was never continu'd. The firſt Gentleman that ſpoke for the Doctor, ſaid, in Anſwer to the Repeal of this Declaration, by a Clauſe in *the Act of the Firſt of King* William *and Queen* Mary, *for abrogating the old Oaths, and appointing new ones*; that it is a very tender Repeal, if it be one. I did not, my Lords, well underſtand his Meaning; but I am ſure, that is a very tender Anſwer, if it be any at all. My Lords, if it be thought that this Declaration, as it is enjoin'd by the Corporation-Act, is not repeal'd, becauſe the Corporation-Act is not particularly mention'd in the Clauſe of the Act of the Firſt of King *William* and Queen *Mary*, which repeals the Declaration; I anſwer, After the Militia-Act, and the Act of Uniformity are mentioned, there follow general Words, *Any Law or Statute to the contrary notwithſtanding*: And this repeals the Declaration as to that Act, as well as to the other

Two

Two Acts. And this Opinion has prevail'd univerſally; and if it were otherwiſe, there is ſcarce a Corporation in *England*, but would be diſſolv'd by the Incapacity of their Members.

But the ſame Council argu'd, That the Doctrine mention'd in that Declaration muſt be true Doctrine, or the Declaration would not have been enjoin'd and taken ſo long as it was; and the Repeal don't make the Propoſition falſe: And we might as well argue the *Solemn League and Covenant* to be a Lawful Oath. My Lords, As to the Declaration againſt the Covenant, that was conſider'd as a Temporary Thing only, and, by the Act of Uniformity, was to ceaſe upon the 25th of *March*, 1682. and therefore not at all to be compar'd with the other Declaration, which was intended to be perpetual. As to the Truth of the Doctrine in this Declaration which was repeal'd, I'll admit it to be as true as the Doctor's Council aſſert it; that is, with an Exception of Caſes of Neceſſity; and it was not repeal'd becauſe it was falſe, underſtanding it with that Reſtriction; but it was repeal'd, becauſe it might be interpreted in an unconfin'd Senſe, and excluſive of that Reſtriction; and being ſo underſtood, would reflect on the Juſtice of the Revolution: And this the Legiſlature had at Heart, and were very jealous of; and by this Repeal of that Declaration, gave a Parliamentary, or Legiſlative Admonition, againſt aſſerting this Doctrine of Non-Reſiſtance in an unlimited Senſe.

My Lords, I muſt confeſs, I did not expect to hear the Aſſociation and the Abjuration-Oath brought in as aſſerting this Doctrine; if they do, this may ſerve to account for their taking them who believe that Doctrine, which otherwiſe perhaps they would be at a Loſs to find an honeſt Reaſon for. But, my Lords, Doth engaging to ſtand by, and aſſiſt one another againſt all the King's Enemies, or ſwearing to defend the King or Queen againſt all Traiterous Conſpiracies, ſignify any more than what is implied in the old Oath of Allegiance? There is, my Lords, indeed ſomething more in the Aſſociation and Abjuration-Oath; for the Perſon taking them in his late Majeſty's Time, declar'd, That he believ'd in his Conſcience King *William* was Rightful and Lawful King of this Realm. This certainly put the Conſcientious Taker of 'em upon a Conſideration, of the Foundation on which that Right and Title was built. And ſince there was no Foundation for it but the Revolution, and that Revolution was founded on Reſiſtance; how thoſe could bring themſelves up to take that Aſſociation, or that Abjuration-Oath, who believ'd that Reſiſtance unlawful, I am at a Loſs to know.

My Lords, Upon this Head of theſe ſeveral Acts of Parliament that have been mention'd, I beg Leave to obſerve, That as it is not to be ſuppos'd it was the Original Intention of any Laws to enervate the Force of all the Laws, ſo your Lordſhips ſee, there are ſince the Revolution Laws that do exclude any ſuch Suppoſition, and do affirm that Indefeaſible Inheritance which the People have in the Laws.

My Lords, The next Part of the Evidence offer'd by the Doctor, was the Homilies; which are ſaid to be confirm'd by Act of Parliament, becauſe the Articles of the Church of *England* are ſo; and the Thirty fifth Article approves the Homilies, as containing godly and wholſome Doctrine; and the Clergy are oblig'd to read and ſubſcribe thoſe Articles.

My Lords, I believe it will be admitted, that no more is intended by that Subſcription, but that the Doctrine contain'd in the Homilies is right in the main, and not that every Sentence in 'em is ſo: For in this laſt Senſe, I believe, never any Divine ſubſcrib'd the Articles; and it will be hard to name any Preacher, or Writer of Note, who has not contradicted ſome Paſſage or other in them: Nay, as to one, the general and approved Practice of the Church is againſt it; I mean that Paſſage, which condemns the Uſe of Organs in Churches.

And ſurely, my Lords, the Senſe of the Homilies can't be found out, by reading ſelect Paſſages out of them, (as was done in the Doctor's Defence) but by obſerving the Frame and Tendency of the whole: And I may appeal to your Lordſhips, and eſpecially to my Lords the Biſhops, whether thoſe who compil'd the Homilies againſt Rebellion, ſeem'd to have had at all under their Conſideration the Caſe of a total Subverſion of the Conſtitution. It's plain, the main Deſign of thoſe Homilies was againſt the Riſings of the Popiſh Faction, and the plauſible and popular Pretences made uſe of by them for ſupporting their Rebellions. Did not that Great Queen, in whoſe Time the latter Book of Homilies was compiled, explain Her own Opinion on this Point, by the Aſſiſtance ſhe gave to the *Hollanders* againſt the *Spaniſh* King, their Sovereign? Did not the Parliament explain Themſelves, by the Supplies given to the Queen for that Purpoſe? And did not the Clergy explain Themſelves likewiſe, by the Supplies granted in Convocation, in Favour of that Aſſiſtance? Can it therefore be imagin'd, the Homilies intended to condemn that Reſiſtance, which the Queen and the whole Nation, nay, even the Clergy themſelves aſſembled in Convocation, approv'd of? And I dare ſay, if Doctor *Sacheverell* had read any of the Homilies againſt Rebellion, which he ſays he is commanded to do, if there be no Sermon on the Fifth of *November*; I ſay, if he had read any one of them to his Congregation at St. *Paul*'s, not one of his Auditors would have thought the Revolution condemn'd by the Homily, whatever they might have thought of the Doctor.

My Lords, That which we accuſe him for, is, That he lays down this General Doctrine of Non-Reſiſtance, in Terms excluſive of any Exception; and, not content with that, points out the Revolution, for Men to compare it with, and condemn it by. How much better would it have become the Doctor, to have imitated that Zeal which appears in the Compilers of thoſe Homilies, for a Proteſtant Queen againſt a Popiſh Faction; than to arraign the Revolution, upon the defaming of which, the Hopes of a Popiſh Faction againſt a Proteſtant Queen are built?

My Lords, Let us now conſider the other Books, or Writings, the Doctor has produced to juſtify his Doctrine: Theſe are chiefly, if not all of them, the Labours of Divines; and I will place them in theſe Two Claſſes, Thoſe before the Revolution, and thoſe ſince. And, my Lords, I will ſay, If this Queſtion of Submiſſion were left by the Divines, to thoſe who make the Municipal Laws of their Country, or the Nature of Laws in general, their Study; and they would confine themſelves to the preſſing a Legal Submiſſion only, founded (as it is by the Law of *England*) on common Conſent, and common Good; it would be much more for the

Honour of Religion, and the Peace and Felicity both of the Sovereign and the Subject.

And this will be very manifeſt, if your Lordſhips call to mind but Two of the Doctor's Quotations before the Revolution, which were read to your Lordſhips: The one is a Paſſage out of Biſhop *Sanderſon*, the other the *Oxford* Decree in 1683.

My Lords, Biſhop *Sanderſon* (and he only of all that have been quoted) has put the Caſe of Reſiſtance for the Preſervation of Church and State, which are but other Words for the Conſtitution; and has deliver'd this Doctrine of Non-Reſiſtance in ſuch unlimited and bold Terms, as I ſhall not repeat, to create a Second Diſpleaſure in this Great Aſſembly. And I willingly admit, he was a very Learned, Judicious, and Pious Prelate: And if ſo great and good a Man fell into ſuch indiſcreet, indecent and ſhocking Expreſſions on that Subject, as did viſibly affect ſuch an Aſſembly as this, one would think it ſhould diſcourage others from delivering that Doctrine in ſuch a Latitude.

The next is the *Oxford* Decree, which condemns all Reſiſtance whatſoever: But, my Lords, it is obſervable, that in the ſame Decree, there is a Condemnation of this Propoſition that I am going to read to your Lordſhips; *That it is Lawful to Preclude the next Heir from his Right and Succeſſion to the Crown:* And yet at the ſame Time, the condemning this Propoſition, that is, the *holding, affirming or maintaining* the contrary Propoſition, was (by the 13th *Eliz. Cap.* 1.) made High Treaſon in her Time, and a Forfeiture of Goods and Chattels ever after. And how the Law now ſtands as to that Particular, by the *Act for Securing Her Majeſty's Perſon and Government, and the Succeſſion of the Crown of* Great Britain *in the Proteſtant Line*, every one knows. And, my Lords, when we find ſo Great and Learned a Body criminally erring in a Point ſo Fundamental, and upon which our Proſpect of Happineſs to future Ages doth, under God, depend; ought it not to diſcourage particular Divines, from pretending to determine Points of Law and Policy? For my own Part, I ſhould hope, that that Univerſity's having fall'n in at firſt ſo heartily with the Revolution, is as ſincere a Condemnation of the Doctrine of Unlimited Non-Reſiſtance, as their ſolemn taking the Abjuration-Oath is a publick Profeſſion, that a Parliamentary Excluſion is Lawful.

As for all the Paſſages which have been read to your Lordſhips out of the Books or Sermons of Divines before the Revolution, in Favour of Non-Reſiſtance, your Lordſhips may obſerve their Reaſons reach only ſo far, as when the Miſchief is not Univerſal; or if it be Univerſal, where it is tolerable, and not ſo miſchievous as a Civil War. I ſhall not mention any Paſſages in them, (which have not been read) to limit the Generality of the Expreſſions concerning Non-Reſiſtance; becauſe I avoid bringing in any Thing, which hath not been given in Evidence. But how candid the Doctor's Collections have been, your Lordſhips may judge by that Quotation out of my Lord Biſhop of *Salisbury*'s Book, where there is an expreſs Exception of the Caſe of ſubverting Fundamentals: But your Lordſhips may ſee the ſame Candor ſhining out in ſeveral Paſſages of the Doctor's Sermon, with reſpect to that Reverend Prelate, whoſe Services, my Lords, (before, and at the Time of the Revolution,) will never be forgotten by one Part of the Nation, nor forgiven by another.

My Lords, I come now to the Sermons and Writings ſince the Revolution: And I may appeal to your Lordſhips, whether they don't moſt plainly condemn the Doctor; thoſe, I mean, where we had the Fortune to be ready to call for other Paſſages to be read out of the ſame Books. Does not my Lord Biſhop of *Lincoln* expreſly mention the Caſe of the Revolution, and juſtify the Reſiſtance then uſed? How carefully does his Grace the Archbiſhop of *York* limit this Doctrine of Paſſive Obedience, which the Doctor ſays ought to be deliver'd in the moſt unconfin'd Terms? And it is by his Grace's Notion of this Doctrine, that the Commons deſire this Cauſe may be judged and determined. I beg Leave to read again to your Lordſhips his remarkable Words: *Care muſt be taken, that this General Doctrine be not miſapplied in particular Countries. Tho' Non-Reſiſtance or Paſſive Obedience be a Duty to all Subjects, and under all Governments, yet it is not expreſs'd the ſame way in all Places; but both the Objects and the Inſtances of it do vary in different Nations, according to the different Models of their Government. To ſpeak this as plainly as I can: As the Laws of the Land are the Meaſures of our Active Obedience, ſo are alſo the ſame Laws the Meaſure of our Submiſſion. And as we are not bound to obey, but where the Laws and Conſtitution require our Obedience; ſo neither are we bound to ſubmit, but as the Laws and Conſtitution do require our Submiſſion.*

This, my Lords, is the Doctrine the Commons are maintaining, and are calling this Criminal to an Account for contradicting. If our Obedience and Submiſſion is not to be extended to the Prejudice of the Conſtitution, the Reſiſtance at the Revolution, for preſerving the Conſtitution, ſtands juſtified, and the Doctor's unlimited Doctrine of Non-Reſiſtance ſtands condemn'd.

How prudently does his Grace, my Lords, caution the Doctor, and the reſt of the Clergy, in another Part of his Sermon, by theſe Words? *If, indeed, a Preacher ſhould in the Pulpit preſume to give his Judgment about the Management of Publick Affairs, or to lay down Doctrines (as from Chriſt) about the Forms and Models of Kingdoms or Commonwealths, or to adjuſt the Limits of the Prerogative of the Prince, or of the Liberties of the Subject in our preſent Government: I ſay, if a Divine ſhould meddle with ſuch Matters in his Sermon, I do not know how he can be excuſed from the juſt Cenſure of meddling with Things that nothing concern him. This is indeed a Practiſing in State Matters, and is Uſurping an Office that belongs to another Profeſſion, and to Men of another Character. And I ſhould account it every whit as undecent in a Clergyman, to take upon him to deal in theſe Points, as it would be for him to determine Titles of Lands in the Pulpit, which are in Diſpute in* Weſtminſter-Hall. And how well the Doctor has obſerv'd this neceſſary Caution laid down by his Grace, I leave your Lordſhips to conſider.

My Lords, I have purpoſely omitted taking notice of any Writings, except ſuch as were produced by the Doctor, and I am ſatisfied how ſuperficially I have conſider'd them: But, in general, I may appeal to your Lordſhips, whether in the loweſt Ebb of Liberty, there have been wanting thoſe in this as well as other Countries, who have denied this ſlaviſh Doctrine of Unlimited Non-Reſiſtance; whether ſince the Revolution this Nation has been ſo ungrateful to their Deliverer, or unthankful for their Deliverance, as to want thoſe who have maintain'd the

the Principles of the Revolution, and have ſhew'd them to be as agreeable to the Chriſtian Religion, as they are to the Nature of that Excellent Government we live under, which is that of Limited Monarchy.

And yet notwithſtanding the unanſwer'd Performances of divers, both of the Clergy and Laity, upon this Subject, the Doctor has the Boldneſs to affirm his Doctrine to be the Doctrine of our Bleſſed Saviour and his Apoſtles.

My Lords, I can't mention this, without the deepeſt Concern for the Honour of the Chriſtian Religion. I beſeech your Lordſhips, What is Liberty but Juſtice, and what is Juſtice, but doing to every one as we would be done by? And nothing, I think, is likelier to promote the Practice of this Chriſtian Precept, than ſpreading a true Senſe and Love of Liberty, that Principle which caſts out of us a narrow Regard to our ſelves, and introduces a diffuſive Benevolence to others.

And againſt this Principle is it, that the Doctor has offended.

My Lords, I have endeavour'd to ſhew that the Charge in the Firſt Article ſtands prov'd againſt the Doctor, and that this Proof remains unanſwer'd; and if ſo, his being a Miniſter of the Goſpel, his having taken the Oaths to the late King, and to Her preſent Majeſty, his being a Fellow of that College which was in a particular manner delivered by the Revolution, are all of them Aggravations of his Offence (if it can be aggravated;) and which, if prov'd, his own Council admit, brings a foul Imputation on Her Majeſty and Her Government, makes Her Government an Uſurpation, and Her Subjects Rebels; and that no Puniſhment can be too great for him.

My Lords, I never ſaw that Criminal for whom I had not a hearty Compaſſion, but there is both Compaſſion and Juſtice due to the injur'd Innocent. Your Lordſhips have before you on the one hand, the Care and Concern of Doctor *Sacheverell*; on the other, the Honour and Proſperity of a wiſe and brave Nation, who as they have thought nothing too much to give or hazard to defend their Liberties againſt a Foreign Enemy; ſo they hope your Lordſhips Juſtice on this Offender, will ſecure thoſe Liberties againſt Domeſtick ones.

Mr. Sollicitor General. MY Lords, I am commanded by the Commons to join with the Learned Gentleman who ſpoke laſt, in Replying to the Defence that has been made upon the Firſt Article of this Impeachment, which the Commons inſiſt upon to be well grounded, and fully prov'd, notwithſtanding the ſeveral Objections and Excuſes that have been offer'd by Doctor *Sacheverell* and his Council.

One of the Doctor's Council has agreed, That if he has aſſerted, that the Reſiſtance uſed to bring about the Revolution was Unlawful, no Puniſhment can be too great for him; But what they have offer'd to your Lordſhips in his Defence is, That no ſuch Poſition can be made out without the help of *Innuendo's* and forced Conſtructions, which infer a Meaning contrary to the Natural Senſe and Import of his Words; and this way of Charging a Man with a Crime, they truly ſay, is not agreeable to the Rules of Law, and would contradict one of the Reaſons given for the Judgment of the Houſe of Lords, in the Caſe of Sir *Samuel Barnardiſton*: And if this was the Caſe, it would not become the Commons of *Great Britain*, who have ſuch an Affectionate Regard to the Laws and Liberties of their Country, to proceed upon an Impeachment ſo ill grounded. But when the Commons had ſo fully and particularly proved the Aſſertions charged upon the Doctor by this Article, they little expected to have heard that his Words had been wreſted to wrong Meanings, and made to ſpeak what he never thought: And therefore, ſince the Queſtion depends altogether upon Conſtruction, and your Lordſhips have been told that the Paſſage upon which this Charge is grounded, has not been fully ſtated, the Commons muſt give you the trouble of Reading the Paſſage at large, as it ſtands in the Sermon; that your Lordſhips may judge, whether they have not taken his Words in the common and ordinary Senſe, and given them the only Meaning they can bear.

The Paſſage is in theſe Words.

" The grand Security of the Government, and " the very Pillar upon which it ſtands, is founded " upon the ſteady Belief of the Subjects Obligati- " on to an Abſolute and Unconditional Obedience to " the Supreme Power in all Things Lawful, and " the utter Illegality of Reſiſtance upon any Pre- " tence whatſoever. But this Fundamental Do- " ctrine, notwithſtanding its Divine Sanction in " the expreſs Command of God in Scripture, and " without which, it is impoſſible any Government, " of any Kind or Denomination in the World, " ſhould ſubſiſt with Safety, and which has been ſo " long the Honourable and Diſtinguiſhing Chara- " cteriſtick of our Church, is now, it ſeems, quite " Exploded and Ridicul'd out of Countenance, as " an Uufaſhionable, Superannuated, nay (which is " more wonderful) as a dangerous Tenet, utterly " Inconſiſtent with the Right, Liberty, and Property " of the People; who, as our New Preachers, and " New Politicians teach us, (I ſuppoſe by a New " and Unheard-of Goſpel, as well as Laws) have, " in Contradiction to Both, the Power inveſted in " them, the Fountain and Original of it, to Cancel " their Allegiance at pleaſure, and call their Sove- " reign to Account for High Treaſon againſt his Su- " preme Subjects, forſooth! Nay, to Dethrone and " Murther him for a Criminal, as they did the Roy- " al Martyr, by a Judiciary Sentence. And, what " is almoſt Incredible, preſume to make their Court " to their Prince, by maintaining ſuch Antimonar- " chical Schemes. But God be thank'd! neither " the Conſtitution of our Church or State is ſo far " alter'd, but that by the Laws of both, (ſtill in " Force, and which I hope for ever will be) theſe " Damnable Poſitions, let them come from the " Pulpit or the Preſs, either from *Rome* or *Geneva*, " are condemned for Rebellion and High Treaſon. " Our Adverſaries think they effectually ſtop our " Mouths, and have us ſure and unanſwerable on " this Point, when they urge the Revolution of this " Day in their Defence. But certainly they are the " greateſt Enemies of that, and his late Majeſty, " and the moſt Ungrateful for the Deliverance, who " endeavour to caſt ſuch Black and Odious Colours " upon Both. How often muſt they be told, that " the King himſelf Diſclaim'd the leaſt Imputation " of Reſiſtance in his Declaration; and that the " Parliament declar'd, That they ſet the Crown up- " on his Head, upon no other Title, but that of the " Vacancy of the Throne? And did they not Una- " nimouſly condemn to the Flames (as it juſtly de- " ſerv'd) that Infamous Libel that would have " pleaded the Title of Conqueſt, by which Reſiſt- " ance was ſuppos'd?

And the Queſtion now before your Lordſhips is, Whether by theſe words he has aſſerted, *That his late Majeſty in his Declaration diſclaim'd the leaſt Imputation of Reſiſtance; and that to impute Reſiſtance to the Revolution, is to caſt Black and Odious Colours upon his late Majeſty and the Revolution*; which are the Aſſertions charg'd upon him in this Article, as *Suggeſting and Maintaining, that the neceſſary Means us'd to bring about the late happy Revolution were odious and unjuſtifiable:* Now that there was Reſiſtance in the Revolution, and that ſuch Reſiſtance, in a caſe of that abſolute and unavoidable Neceſſity, is conſiſtent with the Doctrine of the Church, and the Fundamental Law of the Kingdom, is agreed by the Council; and they have endeavour'd to convince your Lordſhips, that the Doctor has aſſerted nothing to the contrary; for they ſay, "The Reſiſtance which the Doctor affirms "the King to have diſclaim'd, was only a Reſiſtance "which tended to Conqueſt; and that the Doctor "did well to wipe off this Imputation, for the Par-"liament had declared it injurious to his rightful "Title to the Crown, and had order'd a Treatiſe to "be burnt, which Suggeſted a Title by Conqueſt; "and that the Doctor having his Eye in that Ex-"preſſion on the matter of Conqueſt, expreſſed the "ſame by Reſiſtance, which was applicable to the "Subject-Matter before, and therefore ought not to "be wreſted to any other Purpoſe.

This, my Lords, is the Turn which the Council would give to the Doctor's Aſſertion, *That the King diſclaim'd the leaſt Imputation of Reſiſtance.* And indeed the Words of the Sermon are ſo plain and particular, that they are forced to have Recourſe to this Evaſion of a Reſiſtance by Conqueſt: But I wonder Gentlemen can argue in this manner, and at the ſame time ſpeak of reading the Words with Candor and Ingenuity; when 'tis moſt apparent that there is no *previous Diſcourſe* of a Title by Conqueſt, or of any Treatiſe in which it had been aſſerted, that could give occaſion for his vindicating the late King from any ſuch Imputation, or to which theſe Words can in any Conſtruction by applied; for the Doctor ſays nothing of Conqueſt 'till after he had Aſſerted that the King diſclaim'd the leaſt Imputation of Reſiſtance; and then he goes on and lays another Foundation for the Settlement upon the Revolution, by grounding it upon the Vacancy of the Throne, before he ſays any thing about Conqueſt, or mentions the Book which had pleaded that Title; and even then he condemns that Title for no other Reaſon but becauſe it implied Reſiſtance; which plainly ſhews, that his Argument was carried on upon the Subject of Reſiſtance, and not upon that of Conqueſt.

And the Anſwer which they have given to that part of the Article, whereby he is charg'd with Aſſerting, *That to impute Reſiſtance to the Revolution, is to caſt Black and Odious Colours upon his late Majeſty and the Revolution*, is equally evaſive.

What they have offer'd to your Lordſhips upon this Head is, That the Doctor is not ſpeaking of the utter Illegality of Reſiſtance, when he introduceth his Diſcouſe about caſting Black and Odious Colours, by ſaying, *Our Adverſaries think they have us ſure and unanſwerable on this Point, when they urge the Revolution of this Day in their Defence*; but of the damnable Poſitions with which the Doctor charges the new Preachers and new Politicians, in the Words immediately preceding: And in this place it is, that the Manager appointed to maintain this Article is charg'd with omitting about twenty or thirty Lines between the General Doctrine and the Paſſage concerning the Revolution, in which ſeveral diſtinct and entire Sentences are contain'd, concerning thoſe Perſons and their Principles, to which that Paſſage entirely relates: And your Lordſhips are told, that to apply the Inſtance of the Revolution to juſtify ſuch wicked Principles, is what the Doctor calls caſting Black and Odious Colours upon his late Majeſty and the Revolution.

But the Commons take it to be very clear, That upon ſtating of the whole Paragraph, and all the Words in the order in which they lye, and upon comparing the ſeveral Paſſages, it will manifeſtly appear, that what the Doctor ſaid about *caſting Black and Odious Colours* upon the Revolution, can be applied only to thoſe who maintain, that the Reſiſtance us'd to bring about the Revolution was lawful and juſt, and that the Perſons he calls *our Adverſaries* are ſuch as urg'd the Revolution in oppoſition to his general Doctrine of the utter Illegality of Reſiſtance upon any Pretence whatſoever; and not to thoſe who urge the Revolution in Defence of thoſe damnable Poſitions, which, he ſays, the new Preachers and new Politicians had laid down.

This the Commons apprehend to be the only Meaning that his Words in any Conſtruction can bear; for *the Point* he is ſpeaking of, and which he ſays his Adverſaries thought they had him ſure and unanſwerable upon, muſt be ſome certain ſingle Poſition which was mentioned before, ſome one Poſition or Principle, and not many; for 'tis *this Point*, not *theſe Principles*; and that ſingle Point could be no other, than the *Point of Reſiſtance*: And the Perſons he calls his Adverſaries, who think they have him ſo ſure, can be no other than thoſe who deny his general Doctrine, and not thoſe new Preachers and new Politicians, who ſay the People have a Power veſted in them to cancel their Allegiance at pleaſure; becauſe thoſe who deny this General Poſition of the utter Illegality of Reſiſtance, as applied to any one particular Caſe, are certainly his Adverſaries, and Enemies to his Fundamental Doctrine: For whoever can find an excepted Caſe, or ſhew an Inſtance in which Reſiſtance is lawful, deſtroys his general Aſſertion. And he ſufficiently ſhews, that he meant thoſe who oppos'd his general Doctrine of abſolute Non-Reſiſtance, by *our Adverſaries*, when he ſays that they urg'd the Revolution of that Day in their Defence; becauſe the Reſiſtance at the Revolution, which was founded in Unavoidable Neceſſity, could be no Defence to a Man that was attack'd for aſſerting that the People might cancel their Allegiance at Pleaſure, or Dethrone and Murther their Sovereign by a Judiciary Sentence. For it can never be inferr'd from the Lawfulneſs of Reſiſtance at a Time when a *Total Subverſion* of the Government both in Church and State was intended, that a People may take up Arms and call their Sovereign to account at pleaſure; and therefore, ſince the Revolution could be of no Service in giving the leaſt colour for aſſerting any ſuch wicked Principle; the Doctor could never intend to put it into the Mouths of thoſe new Preachers and new Politicians for a Defence; unleſs it be his Opinion, that the Reſiſtance at the Revolution can bear any Parallel with the Execrable Murther of the Royal Martyr, ſo juſtly deteſted by the whole Nation; or that there was no other Difference between the two Caſes, than what the Learned Gentleman, who firſt ſpoke for him, was pleas'd to mention in the Concluſion of his Argument, by quoting an odious Expreſſion which I forbear to repeat: But it was very proper

proper to take notice of the Reſiſtance at the Revolution, as an Objection to his general Doctrine, for it really is ſo; and 'tis impoſſible that Doctrine can be true in its full Extent, if the Reſiſtance at the Revolution was lawful; for 'tis moſt apparent, that the Juſtice of a Revolution, founded in Reſiſtance, and the Principle of Non-Reſiſtance upon any Pretence whatſoever, can never ſtand together.

And therefore he could mean nothing by *the Point* his Adverſaries thought they had him ſo ſure upon, but the general Poſition of Non-Reſiſtance, which was the only Point contended for in that Place; and he muſt mean thoſe only who denied his Doctrine of abſolute Non-Reſiſtance, by *our Adverſaries*: And having no other way of maintaining the utter Illegality of Reſiſtance upon any Pretence whatſoever, and of anſwering the Caſe of the Revolution, which, from the Reſiſtance that was in it, was made an Objection; he goes on and denies the Reſiſtance, by ſaying, That *the King ſolemnly diſclaim'd the leaſt Imputation of Reſiſtance*; and calls thoſe who ſay that there was any Reſiſtance in the Revolution, *the greateſt Enemies of that and his late Majeſty, and the moſt ungrateful for the Deliverance, who endeavour to caſt ſuch Black and Odious Colours upon both.*

This, my Lords, is plainly Aſſerting, That to impute Reſiſtance to the Revolution, is to repreſent it as Black and Odious; and this Aſſertion is fairly collected from the plain Courſe and Tendency of his Argument, not from ſtrain'd Inferences and Innuendo's, not from ſuppos'd or forc'd Conſtructions, but from his own Words, as they lye together, taken in their natural and genuine Senſe, and is the only Conſtruction that can give them any reaſonable Meaning or Coherence.

And therefore the Commons apprehend, That the Charge againſt the Doctor, for aſſerting, That *to impute Reſiſtance to the Revolution, is to caſt Black and Odious Colours upon his late Majeſty and the Revolution*, is fully prov'd, and ſtands unanſwer'd.

But tho' the Charge, and the Paſſages produc'd for the Proof of it, are ſo very particular, and directly pointed at the Reſiſtance us'd to bring about the late happy Revolution, yet the Doctor and his Council are pleas'd to ſay, " That he has only Aſ-
" ſerted the Doctrine of Non-Reſiſtance in general
" Terms, as it has been taught by the Apoſtles,
" the Homilies, and the Fathers of the Church in
" all Ages: That in this Caſe, as in all other gene-
" ral Propoſitions, Caſes of unavoidable Neceſſity,
" *as the Revolution undoubtedly was*, are always un-
" derſtood to be excepted; and that there is no
" other Difference between the Gentlemen of the
" Houſe of Commons and the Doctor, but Whe-
" ther when the general Rule of Obedience is
" taught, the particular Exceptions which may be
" made out of that Rule are always to be expreſs'd;
" or, Whether when the general Rule is laid down,
" the particular Exceptions are not more properly
" to be underſtood or implied: And upon this ground they have been very Elaborate, and have produc'd many Proofs to ſatisfy your Lordſhips, that the Doctor's general Aſſertion of the utter Illegality of Reſiſtance to the Supreme Power upon any Pretence whatſoever, without mentioning any Exception, is warranted by the Doctrine of the Church, and by the Law of the Land.

But, with great Submiſſion, all this Pains might have been ſpar'd; for 'tis plain that the Doctor is not Impeach'd for preaching a general Doctrine, and enforcing the general Duty of Obedience, but for preaching againſt an Excepted Caſe, after he has ſtated the Exception. He is not Impeach'd for preaching the general Doctrine of Obedience, and the utter Illegality of Reſiſtance upon any Pretence whatſoever; but becauſe, having firſt laid down the general Doctrine as true, without any Exception, he ſtates the excepted Caſe, the Revolution in expreſs Terms, as an Objection; and then aſſumes the Conſideration of that excepted Caſe, denies there was any Reſiſtance in the Revolution; and aſſerts, that to impute Reſiſtance to the Revolution would caſt Black and Odious Colours upon it. This, my Lords, is not preaching the Doctrine of Non-Reſiſtance in the general Terms us'd by the Homilies, and the Fathers of the Church, where Caſes of Neceſſity may be underſtood to be excepted by a Tacit Implication, as the Council have allow'd; but is preaching directly againſt the Reſiſtance at the Revolution, which in the Courſe of this Debate has been all along admitted to be neceſſary and juſt, and can have no other Meaning, than to bring a Diſhonour upon the Revolution, and an Odium upon thoſe great and illuſtrious Perſons, thoſe Friends to the Monarchy and the Church, that aſſiſted in bringing it about. For had the Doctor intended any thing elſe, he would have treated the Caſe of the Revolution in a different manner, and have given it the true and fair Anſwer; he would have ſaid, that the Reſiſtance at the Revolution was of Abſolute Neceſſity, and the only Means left to revive the Conſtitution; and muſt be therefore taken as an excepted Caſe, and could never come within the Reach or Intention of the general Doctrine of the Church. But inſtead of this, he denies that there was any Reſiſtance in the Revolution, and repreſents it as a Scandal upon the Revolution to ſay there was any Reſiſtance in it; *Thoſe*, ſays he, *are the greateſt Enemies to it, who caſt ſuch Black and Odious Colours upon it.*

My Lords, If extraordinary Caſes, if Caſes of Neceſſity, which are implicitly Excepted, are not to be ſtated at the Time when the general Prohibition is inculcated, and it would be of dangerous Conſequence in this particular Inſtance of the Doctrine of Non-Reſiſtance, " by picking Holes for
" the Subject to creep out of his Allegiance"; I ſubmit it to your Lordſhips Conſideration, whether ſtating an Excepted Caſe, and then bringing it within the general Prohibition, particularly in this Inſtance of the Revolution, muſt not have the ſame pernicious Conſequence: " Does not this plainly ſhew what
" Spirit the Doctor is of, and what he aims at?

But your Lordſhips have been told, that " What
" the Doctor aſſerts concerning the utter Illegality
" of Reſiſtance to the Supreme Power, can never
" be applied to the Revolution; for the Legiſlative,
" the King, Lords and Commons, is the Su-
" preme Power; and there was no Reſiſtance to
" the Lords and Commons, for they join'd
" with his late Majeſty in bringing about the Re-
" volution; the Reſiſtance was made only to that
" unfortunate Prince who was then upon the
" Throne. But 'tis plain from his applying the Illegality of Reſiſting the Supreme Power to the Caſe of the Revolution, that he meant the Executive Power, which was then Reſiſted; and he uſes *Sovereign*, and *Prince*, as Synonimous Terms with the Supreme Power in other parts of the ſame Paragraph of the Sermon; for he ſpeaks of calling

ing the Sovereign to Account, and of Cancelling Allegiance at Pleaſure, which can be due only to the Prince; which ſhews, that the Prince only, and not the Legiſlature, can be underſtood by *His Supreme Power*.

I ſhall not trouble your Lordſhips, to ſhew that the Reſiſtance us'd at the Revolution was conſiſtent with the Doctrine of the Church, and with the Law and Conſtitution of *England*: This is no Part of the Controverſy, and is not diſputed by the Council; for they agree ſuch Caſes to be excepted out of the General Rule, and profeſs to uſe the ſeveral Paſſages that have been read to your Lordſhips, only to excuſe or extenuate the Doctor's Offence, and not to arraign the Juſtice of the Revolution; and therefore I ſhall not enter into a particular Examination of them, but only obſerve, That if the Books, out of which theſe Paſſages were taken, were narrowly examined, 'tis poſſible ſome Expreſſions might be found, to ſhew that the Authors never intended that their General Rule ſhould extend to Caſes where the total Subverſion of a Government was aim'd at. For your Lordſhips muſt needs have obſerv'd, from the Uſe that has been made of the Book of a Learned Prelate, call'd, *A Vindication of the Authority, Conſtitution and Laws of the Church and State of* Scotland; *Printed in* 1673. that a perfect State of Truth is not altogether to be depended upon, from the Proofs that have been collected out of ſeveral Authors, and read to your Lordſhips; and that the Sincerity of the Collector is very much to be queſtion'd: For that Book was produced to prove the Duty of Abſolute Submiſſion, and a Paſſage was read for that Purpoſe; but when the Managers look'd into the Book, they found another Paſſage, where the Author ſtating the Caſe of Abuſes tending to a total Subverſion, allows, That in ſuch a Caſe, the Supreme Power may be adminiſtred by another: Which ſhews, That this Reverend Prelate, who was ſo inſtrumental in the Revolution, did not act in Contradiction to his former Sentiments, (as was inſinuated, by citing this Treatiſe;) but was firm and conſtant to himſelf, when he embark'd in that Glorious Enterprize.

Several Sermons that have been preach'd ſince the Revolution, have been likewiſe offer'd to your Lordſhips, to ſhew that the Doctrine of Non-Reſiſtance has been deliver'd in general Terms; but theſe can be of no Service in his Defence, for the Reaſons that have been given. Beſides, the Commons don't think themſelves concern'd to enter into the Examination of private Opinions. And for thoſe that have been preach'd by the Right Reverend Fathers of the Church now living, they are the beſt Expoſitors of their own Meaning; and I ſhould miſ-ſpend your Lordſhips Time, to enter into any Explication of them. The Doctor has appeal'd to the Right Reverend Fathers of the Church; to theſe Right Reverend Fathers we leave him; not doubting but the Nation will be ſatisfied how much they are concern'd for the Honour of the Revolution, and the Security of the preſent Happy Eſtabliſhment under Her Majeſty, by the juſt Judgment they will give upon this Occaſion.

And as to the Laws of the Kingdom, there needs little to be ſaid, after what the Learned Gentleman who ſpoke laſt, has offer'd to your Lordſhips; eſpecially ſince the Council for the Doctor have all of them own'd, That the General Expreſſions in the Laws don't extend to any ſuch Caſe as that of the Revolution, which no Municipal Law can be ſuppos'd to include. And if Doctor *Sacheverell* had been ſatisfied with laying down the General Doctrines of Obedience and Non-Reſiſtance, in the manner the Laws have done, the Commons had never given your Lordſhips this Trouble. 'Tis his entring into the Debate of what is agreed by his own Council to be an Excepted Caſe, and his arraigning the Juſtice of the Revolution, (which has been already ſtated at large to your Lordſhips) that has given Occaſion for the Proſecution upon this Article.

Beſides this, there have been other Things ſaid in the Doctor's Behalf.

The Commons had alledg'd, That to ſhake the Juſtice of the Revolution, and the Validity of thoſe Acts of Parliament, by which Her Majeſty's Title to the Crown was declared, and the Succeſſion ſettled in the Proteſtant Line, was a Matter of the greateſt Conſequence, at a Time when the Hereditary Right to the Crown was conteſted; and that the Friends of the Pretender could advance his Intereſt upon no other Ground. But it has been urg'd for the Doctor, That he could never mean any Service to the Pretender; for he aſſerts the Hereditary Right to be in the Queen; and that thoſe who deny Her Hereditary Right, are moſt like to bring in the Pretender. And by this Anſwer, they inſinuate, That the Doctor has aſſerted an Hereditary Right in Her Majeſty; and that thoſe who defend Her Parliamentary Title, deny Her Hereditary Right. The Paſſage they cite for his aſſerting an Hereditary Right in Her Majeſty, is *Pag.* 2. where he calls Her Majeſty, *The Good and Pious Relict of the Royal Family*: And they argue, That if Her Majeſty be the Relict, and the only Prince of that Family left, ſhe muſt have the Hereditary Right of Courſe.

This Paſſage, your Lordſhips cannot but obſerve, requires ſome Straining, to give it any Appearance of anſwering the Purpoſe to which they would apply it; and after all, it can carry no ſuch Meaning: Her Majeſty is not the only Deſcendant of the Royal Family now in being; there are ſeveral Branches of it yet remaining; and I can't believe, that the Gentlemen who uſe this Argument, intend to exclude the Illuſtrious Houſe of *Hanover* from being Part of it. In the next Place, they turn it upon the Commons, as if they denied the Hereditary Right (which they ſhall ever avow) when they aſſerted the Title by Act of Parliament. I ſubmit it to your Lordſhips, Whether any thing more was ſaid, than that the Hereditary Right was conteſted? And this is notorious to all the World - - - - is taken notice of in our Oath of Abjuration, and was claim'd Two Years ago, by the Pretender's Attempting an Invaſion. And in ſuch a Caſe, 'tis certainly the Duty of every Subject, to make good all the Fences which guard Her Majeſty's Title to the Crown. And, my Lords, We have Reaſon to lay ſome Weight upon a Parliamentary Title, ſince the Proteſtant Succeſſion entirely depends upon it; and to defend the Power of Parliament, to limit the Succeſſion of the Crown, ſince the Doctor has offer'd to your Lordſhips in Evidence a Decree of the Univerſity of *Oxford*, in the Year 1683. where this Propoſition, *viz.* "That it is Lawful to Preclude "the next Heir from his Right and Succeſſion to "the Crown, was ſolemnly condemned, as Falſe, "Seditious and Impious:" Which I the rather take notice of, becauſe the Doctor relies ſo much upon the Authority of that Univerſity. But I muſt take Leave to ſay, That if the ſame Principle ſhould ſtill

continue

continue to be taught, or to be believ'd in that Univerſity, where ſo many of our Gentlemen receive their firſt Impreſſions, it muſt one Time or other involve us in Blood, and leave Poſterity in endleſs Diſputes about the Title to the Crown. And therefore 'tis of the greateſt Conſequence to Her Majeſty, and the Security of Her Perſon and Government, the Continuance of the Succeſſion in the Proteſtant Line, and the Peace and Happineſs of this Kingdom, to maintain the Power of Parliament to ſettle the Succeſſion to the Crown; which has been exercis'd in all Times, and frequently reſorted to by Her Majeſty's greateſt and wiſeſt Predeceſſors. This is not to make way for the Pretender, but to ſhew that he is effectually and legally excluded; and that Her Majeſty has not only the Hereditary Right, but the Sanction of an Act of Parliament, which has been always thought ſufficient to bind the Succeſſion to the Crown, and is the plain way to eſtabliſh Her Majeſty's Throne againſt all Attempts whatſoever.

But your Lordſhips are told, That theſe Sermons were not preach'd with a Seditious Intention; and that the Doctor can never be ſuppos'd to have a Deſign to undermine the Government, by Preaching up the utter Illegality of Reſiſtance.

This, my Lords, has indeed ſome Shew of an Excuſe; but if your Lordſhips conſider in what manner he has applied his Doctrine of Non-Reſiſtance, and the Uſe he has made of it, together with the General Deſign of the Sermon, which is a virulent Invective throughout; it will appear, that he could not take a more proper Courſe to incite the People to Sedition, and to create Jealouſies and Diſcontents in the Kingdom. For, Firſt, He endeavours to ſhew, That if there was any Reſiſtance in the Revolution, the Foundations of our preſent Happy Settlement were laid in an unlawful Force; becauſe ſuch Reſiſtance was, as he ſays, utterly Illegal, Odious, and Unjuſtifiable. And having laid this Ground, he charges Her Majeſty, and thoſe in Authority under Her, with a General Male-Adminiſtration: And what Inference can the People make from ſuch Poſitions as theſe; but that the Government they are under is ill founded, and therefore no Obedience is due to it; and ſince there is a General Miſmanagement in the whole Adminiſtration of the Executive Power, 'tis their Intereſt to get rid of it as ſoon as they can?

This, my Lords, is the plain Tendency of his whole Diſcourſe; and whoſe Intereſt is beſt ſerv'd by ſuch Diſcourſes as theſe, whether that of Her Majeſty, our moſt Gracious Queen, or that of the Pretender, I ſubmit to your Lordſhips impartial Conſideration.

My Lords, The Doctor will have no Reaſon to complain of being hardly us'd, in having his Intentions cenſur'd as ſeditious, if he conſiders what that Great Prelate, my Lord Archbiſhop of *York*, has ſaid in the Sermon that has been produc'd in Evidence before your Lordſhips; in which there is this Paragraph, *viz.*

" They are the Factious, they are the Setters up " or Abettors of Parties, who endeavour to deſtroy, " or unſettle, or diſparage, or at leaſt to hurt and " weaken the Government and the Laws, as they " are eſtabliſh'd; let the Principles upon which " they go, or the Pretences they make, be what " they will.

And if his Seditious Intentions be apparent from the Sermon, his having taken the Oaths of Allegiance, his Signing the Aſſociation, and his taking the Abjuration, are ſo many Aggravations of his Guilt.

I have troubled your Lordſhips a great while; but I can't forbear taking notice of one Thing, which the Doctor has complain'd of as a Hardſhip; I mean, that he has been proſecuted in this Publick Manner by an Impeachment, by which, he ſays, he ſhall have been abundantly puniſh'd, tho' he ſhould have the Happineſs to be at laſt acquitted. But this Complaint is anſwer'd by his own Council, who acknowledge his Caſe to be a Cauſe of very great Moment; and that the Points now under your Lordſhips Conſideration, are proper only to be ſettled in Parliament. And certainly, no other Courſe could have been ſo proper: For when the Foundations of the Government in Church and State are apparently ſtruck at, and undermin'd, under Pretence of Zeal for the Conſtitution; when Her Majeſty's Title to the Crown is endeavour'd to be weaken'd, under the Colours of Obedience and Loyalty; when the Quiet and Repoſe of Her Majeſty's Proteſtant Subjects is diſturb'd, under a pretended Zeal for the Good of the Church; when the Safety of the Church is in the greateſt Danger, from thoſe who declare the moſt affectionate Concern for her Welfare and Proſperity; when the Fathers of the Church are defam'd, by thoſe who pretend the greateſt Reverence for the Epiſcopal Order; and when Her Majeſty's Happy Adminiſtration is publickly vilified and expos'd, in the moſt audacious and inſolent manner; where ſhould the Commons apply for Juſtice, but to this Supreme Judicature? Or where could they expect an adequate Remedy to theſe great and growing Evils, but in full Parliament?

They have therefore brought this great Offender before your Lordſhips; and have the higheſt Satisfaction, in a full Aſſurance of your Lordſhips Impartial Judgment.

Mr. *Lechmere.* MY Lords, The Gentlemen who have now ſpoke before me, have gone thro' the Subſtance of the Reply to this Firſt Article: They have ſhewn to your Lordſhips the Weakneſs and Vanity of the Defence, which has been made to it; and have fully reaſſerted this Part of our Charge, by which Doctor *Sacheverell* ſtands accus'd, in the Name of the Commons of *Great Britain*, of Condemning the Neceſſary Means us'd to bring about the Happy Revolution.

Your Lordſhips Conſideration of this Branch of our Impeachment, and of what has been offer'd to you in Maintenance of it, has, doubtleſs, created in your Minds an Impreſſion equal to its Weight, and to the many great Conſequences which depend upon it: But we perſuade our ſelves, that when you reflect on the Nature and Method of the Defence, 'twill more clearly diſcover to your Lordſhips and the World, how neceſſary a Task the Commons have taken on themſelves in this Proſecution; of what high Concern it is to Her Majeſty and Her Government, and to our common Security, that this Fundamental Queſtion ſhould receive this Publick and Solemn Diſcuſſion; That the falſe Zeal, which the diſguis'd Enemies of Her Majeſty's Title have the Confidence to put on, by endeavouring to cover the worſt Deſigns, under the Sacred Names of God and Religion, and the ſtrongeſt Profeſſions of Loyalty and Allegiance, may be brought to the Teſt, and the true Foundations of the Safety of the Kingdom be underſtood and aſſerted.

The Part assigned me in opening the Charge, leads me to take Notice of some Passages which have fall'n from the Council; and tho' what I shall first mention, has been already observed and fully refuted, yet I must beg your Patience to resume it a little. The Gentleman who began the Defence said, That 'twas insisted on the first Day of the Trial, *That the Doctor had not only asserted the utter Illegality of Resistance on any Pretence whatsoever*; ☞ *but that he had likewise* declared *himself, That the Revolution was not such a Case as ought to be excepted out of his General Rule*, and this he said, *he denied*; *and if such an Expression could be found in the Doctor's Sermon*, he should think *no Punishment too great for him.* Your Lordships could not but observe the Argument which immediately followed: 'Tis *one thing*, says he, *expresly to affirm the Revolution is such a Case as ought not to be excepted, and another thing not to make that Exception.* You were told, indeed, in the Beginning of the same Discourse, and afterwards by the Doctor himself, That his general Assertion of the utter Illegality of Resistance on any Pretence whatsoever, did not relate to the Resistance used to bring about the Revolution, it being applied to the Supreme Legislative Power, to which no Resistance was then made, the Lords and Commons joining in it. This, my Lords, is a Meaning which the Doctor had not in view when he preach'd the Sermon; for, by observing the Passages, you will find that the Words *Supreme Power*, are no Part of the Assertion of the utter Illegality of Resistance on any Pretence whatsoever. He doth, indeed, affirm unconditional Obedience to the Supreme Power in all things lawful, but the Illegality of Resistance is indefinitely and universally affirm'd, and not restrain'd to the Supreme Power. 'Tis likewise evident, not only from his mentioning the Case of the Revolution, which was the Case of Resistance to the King, as an Objection to his general Rule of the utter Illegality of Resistance, but likewise from the subsequent Parts of the same Paragraph, that the Non-Resistance which he preach'd up, was Non-Resistance to the Supreme Executive Power; and, indeed, this is still more evident from the Fallacy of that, which is offer'd to induce your Lordships to think otherwise, it being undeniable, that the Lords and Commons did not join in that Resistance, as part of the Legislative and Supreme Power, but as part of the collective Body of the Nation. This Subterfuge, frivolous as it is, being soon departed from, the Argument proceeded upon the Supposition, that the general Assertion in the Sermon was to be understood of the Supreme Executive Power. I return therefore to the Objection as stated before, which being deliver'd with uncommon Ostentation, your Lordships will allow me to enter into the Examination of it. *The Subjects Obligation to an unconditional Obedience to the Supreme Power in all things Lawful, and the utter Illegality of Resistance on any Pretence whatsoever*, is the Doctor's general Rule, which he affirms to be the Security of our Government, and the Belief of this *the very Pillar on which it stands.* Your Lordships may here observe, that the Doctor, in delivering his general Rule, has gone pretty much beyond that Apostle he would be thought to imitate: The Apostle in general Terms enjoins the Duties of Obedience and Subjection to the higher Powers, not mentioning any Exception, when he lays down those Precepts. The Doctor goes on, and his next Sentences contain a general Observation, That tho' his fundamental Doctrine was now become unfashionable and exploded, as a dangerous Tenet, inconsistent with the Rights, Liberties and Property of the People; yet, God be thanked, it still continued to be the Doctrine both of Church and State: And then follow these Words, *Our Adversaries think they effectually stop our Mouths, and have us sure and unanswerable on this Point, when they urge the Revolution of this Day in their Defence.* No Body can doubt what Revolution the Doctor means, nor, that under the Term *Revolution*, by which he expresses the Objection made to the general Rule of Non-Resistance, he meant the Resistance suppos'd to be made at that Revolution. This he states, as the unanswerable Objection made by his Adversaries to his Point, to his Rule of Non-Resistance on any Pretence whatsoever.

If your Lordships collect the Sense of the Paragraph thus far, it will stand thus. Those Persons who explode absolute Non-Resistance to the Prince as a Tenet dangerous to Liberty; in Defence of that their Opinion, object to us, who avow this Tenet as the honourable and distinguishing Characteristick of our Church, the Resistance us'd to bring about the late happy Revolution, as an Exception out of our general Rule of Non-Resistance. The Doctor having thus laid down his Rule in universal Terms, and expresly taken Notice of the Case of the Revolution as an Objection raised against it by other People; your Lordships are next to consider what becomes of this Objection; in what manner is it treated by him, and what Judgment does he pass upon it? My Lords, The Doctor does not drop the Objection without considering it further; he is not *silent in the Matter*; he doth not leave this as an Exception *implied*, and *to be suppos'd* by the general Rule; he proceeds and argues expresly upon it for two or three Sentences together: The Doctor's Expressions in this respect also are not entirely agreeable to those of the Apostle. In the next place, Doth the Doctor yield the Objection to his Adversaries? Doth he allow the Resistance used to bring about the late happy Revolution to have been a lawful Resistance, and to be an Exception out of his general Rule? No, my Lords, just the contrary: He is so far from agreeing with his Adversaries in this Point, or giving way to the Exception, that in Vindication of the Revolution, as he would be thought to speak, he pronounces those who make the Exception, and contend for the Lawfulness of that Resistance, to be Enemies to the Revolution; and that Resistance, which the Commons assert to be the necessary Means by which it was brought about, he describes to be odious Colours cast upon the Revolution. In his next Sentence he insinuates, That there was no Resistance at the Revolution, and to that End, misrepresents his late Majesty as having disclaim'd it; and with the same Intent likewise, that the Parliament set the Crown on his Head on no other Title than of the Vacancy of the Throne; and still the more effectually to delude his Hearers into the Belief of his general Assertion, grosly and ridiculously perverts the Censure past by a future Parliament upon the Notion of Conquest, as a Condemnation of that Resistance. Having thus consider'd this Objection of the Revolution, and the following Parts of his Paragraph being Expressions of Triumph over his Adversaries, whose Objection he would be supposed to have confuted, towards the Close of it he uses these Words, as his Conclusion and Judgment upon it: *In short, as the* English *Government can never be secure on any other Principles but strictly those*

thoſe of the Church of England, *ſo he will be bold to ſay*, &c. His general Rule of Non-Reſiſtance on any Pretence whatſoever he had before laid down as the Doctrine and Principle of the Church; which, after having conſider'd the Caſe of the Revolution as an imaginary Exception to it, he reaſſerts in thoſe Words. And what clearer Indication can your Lordſhips receive of the Doctor's Intention in his general Aſſertion? Can your Lordſhips, or any Body that ſhall conſider the Tenor of that Part of his Diſcourſe, retain any Doubt whether he has *plainly and fully declared* himſelf, That the Reſiſtance uſed to bring about the late happy Revolution was odious and unjuſtifiable, and not to be excepted out of his Fundamental Rule of the Illegality of Reſiſtance on any Pretence whatſoever? And, my Lords, Can it be ſaid that this Interpretation of his Diſcourſe is *ſtrain'd* and *unnatural*? Is this Part of our Charge maintain'd *by conjoining diſtant* and *independent Paſſages*? Or is not the Connexion clear and neceſſary, and the Senſe we contend for, the only Senſe the Words can properly bear, in the moſt candid and genuine Interpretation of them? The Gentleman, whoſe Objection from the Bar I have been conſidering, ſaid, *That tis one thing expreſly to affirm that the Revolution is not to be excepted, and another thing not to make that Exception.* But tho' the Words of the Sermon are not an expreſs and literal Affirmation, yet if this Conſtruction appears to your Lordſhips to be neceſſary and certain, they will be taken by you to be an ample and undeniable Declaration of his Mind; and this poor Shift, thus emphatically inſiſted on at the Bar, will amount to no more than what the Doctor had before ſaid in his Anſwer in plainer Words, That he had not maintain'd the Neceſſary Means to be Odious and Unjuſtifiable, becauſe he had not made uſe of thoſe very Words.

The next Paſſage which I ſhall obſerve to your Lordſhips, fell from the Gentleman who ſpoke third in Defence of this Article; his Words were theſe: I have been *careful and exact* in collecting them, "One Learned Gentleman, "ſays he, did obſerve, that there was an Original "Contract; and that by that Contract, if the Executive Power invaded the reſt, that Contract was "broke, and the People diſcharged from their Allegiance; but he did not think fit to take Notice "when that Contract was made. I would fain "know, whether it was before *Magna Charta*, or "ſince; if it was before, it is much no Mention "was made of it there, for that has been always "look'd upon as the Great Charter of the Rights of "the People. Was it before 25 *Ed.* 3.? Then I "would know, Whether that Contract, made before "the 25. *Ed.* 3. could ever diſcharge that Act which "was made after it? If it doth diſcharge the Subject "of their Allegiance, I have never yet known it pleaded to any Indictment for High Treaſon upon that "Act; and therefore, *Till the Legiſlature ſhall determine what that Contract is, and what Breach of it "ſhall diſcharge the Subjects of their Allegiance, I "muſt take Leave to ſay, that Reſiſtance ſtands ſtill "upon the Foot of the Statute of* 25 Ed. 3.

My Lords, The Nature and Conſequence of this Paſſage would bear a much more ample Conſideration, than my Time has allowed me to give it, or than may be fit to trouble your Lordſhips with on this Reply; but I conceive a ſhort Notice of it, and of the near Relation it bears to the Matter now before you in Judgment, may yield a pretty clear Diſcovery and Explanation of the whole. But the Diſtance of Time ſince the opening of the Charge, and the many palpable Miſconſtructions which ſome of the Council have allow'd to themſelves, of what has been offer'd by ſome of us in behalf of the Commons, makes it neceſſary for me, even in this Particular, to remind your Lordſhips of the Connexion of the Diſcourſe, out of which this Obſervation was rais'd. Your Lordſhips were acquainted, in opening the Charge, with how great Caution, and with what unfeigned Regard to Her Majeſty and Her Government, and to the Duty and Allegiance of Her Subjects, the Commons made choice of the Words *Neceſſary Means*, to expreſs the Reſiſtance that was made uſe of to bring about the Revolution, and with the condemning of which the Doctor is charged by this Article; not doubting, but that the Honour and Juſtice of that Reſiſtance, from the Neceſſity of that Caſe, and to which alone we have ſtrictly confin'd our ſelves, when duly conſider'd, would confirm and ſtrengthen, and be underſtood to be, an effectual Security of the Allegiance of the Subject to the Crown of this Realm in every other Caſe, where there is not the ſame Neceſſity; and that the Right of the People to Self-defence, and Preſervation of their Liberties by Reſiſtance, as their laſt Remedy, is the Reſult of a Caſe of ſuch Neceſſity only, and by which the Original Contract between King and People is broke. This was the Principle laid down and carried thro' all that was ſaid with reſpect to Allegiance, and on which Foundation, in the Name, and on the Behalf of all the Commons of *Great Britain*, We aſſert and juſtify that Reſiſtance by which the late happy Revolution was brought about. When the Gentleman from the Bar endeavour'd thus, in a ludicrous manner, to explode the Original Contract between the King and People, he muſt not be ſuppoſed to be ignorant, that thoſe very Words are part of the Vote of the Abdication, the Vote of both Houſes of Parliament, at the Time of the Revolution, antecedent to that Settlement of the Crown, on which Her Majeſty's Parliamentary Title and our preſent Eſtabliſhment is founded. I have thought it neceſſary to tranſcribe that Proceeding from your Lordſhips Journals, now lying on your Table, and will ſtate it to you as I have taken it from thence.

Upon the Twenty Ninth of *January*, 1688. *A Meſſage* was brought *from the Commons* by *Mr.* Hambden *and others*, who ſaid, *The Commons taking into their Conſideration the State of this Kingdom, had paſs'd a Vote, to which they deſired your Lordſhips Concurrence*; which Vote was as follows: *Reſolved, That King* James *the Second having endeavoured to ſubvert the Conſtitution of the Kingdom, by breaking the Original Contract between King and People; and by Advice of Jeſuits and other wicked Perſons, having violated the Fundamental Laws of this Kingdom; and having withdrawn himſelf out of this Kingdom, has abdicated the Government, and the Throne is thereby become Vacant.* Your Lordſhips Houſe Reſolved it ſelf into a Committee of the whole Houſe, and the Vote, containing in it divers Particulars, upon the 30th Day of *January*, was conſidered by Paragraphs; the firſt of which was, *That King* James *the Second having endeavoured to ſubvert the Conſtitution of the Kingdom, by breaking the Original Contract between King and People*: To which the Committee, and the Houſe afterwards, agreed without any Amendment. Now, when it appears to your Lordſhips and the World, that *breaking the Original Contract between King and People*, were the Words made Choice of by that Houſe of Commons, with the greateſt Deliberation and Judgment,

and approv'd of by your Lordſhips, in that firſt and fundamental Step made towards the Re-eſtabliſhment of the Government, which had receiv'd ſo great a Shock from the evil Councils which had been given to that unfortunate Prince, and that they are ſtated in that Vote as a Conſequence of his endeavouring to ſubvert the Conſtitution of the Kingdom; I need not ſay how much the Lawfulneſs of that Reſiſtance, which had been before made by the People, and which is now the immediate Queſtion, nay, how much the Juſtice of the Revolution it ſelf would be affected by a Condemnation of that Poſition: And what Light doth it give to the Queſtion now before your Lordſhips, when at your Bar, in Defence of a Perſon accus'd by the Commons, for condemning the Neceſſary Means which brought about the Revolution, you have heard that Original Contract, at that Time ſo ſolemnly declar'd to be *a Fundamental Principle*, publickly deny'd, ridicul'd, and endeavour'd (in what Manner 'tis eaſy to judge) to have been exploded?

My Lords, The Truth of that Poſition has its Foundation in the Nature and Eſſence of the Conſtitution of our Government, and it will ſtand ſo long as this remains; and the Sanction it has receiv'd from your Lordſhips, and from that Houſe of Commons, who had with ſo much Wiſdom and Bravery aſſerted the Rights of the Kingdom in that extraordinary Juncture, and who, purſuant to that Reſolution, ſettl'd the Crown upon Her Sacred Majeſty, ought to render it indiſputable, ſo long at leaſt as that Eſtabliſhment is preſerv'd to us. But yet, could I think it ſeaſonable to enter into it, to conſider more particularly the Nature of our Government, to draw together ſome of the many inconteſtible Evidences of its Original Freedom, to conſider the Nature, Antiquity and Hiſtory, of the Coronation-Oath, and the Oath of Allegiance, and the mutual Obligations and Conſequences ariſing from them to the Prince and People: Was I to go over the ſeveral Branches that make up the ancient Frame of our Government, and which ſpeak and expreſs a Conſent and Compact between the Prince and People in their Inſtitution; and was I to obſerve that inſeparable Relation and equal Security which they import between the Crown and the Subject, and which are ſo many infallible Tokens of Original Conſent ſtampt upon them; the Truth and Certainty of that Poſition of an Original Contract between the King and People, might be laid down to your Lordſhips in demonſtrative Terms. The Gentleman that rais'd this Obſervation, ſoon afterwards, in the ſame Diſcourſe, ſuppos'd, That by the Original Contract, the Original Conſtitution was meant; how ſtrictly proper that Manner of ſpeaking might be found to be, I will not now determine; yet thus much may with Certainty be concluded, That the denying the Original Contract, is not only to diſavow the whole Proceeding at the Time of the Revolution, but to renounce the Conſtitution it ſelf, to diſclaim thoſe many and undeniable Proofs and Teſtimonies of it, which almoſt every Part of our Hiſtory, our Records, and Memorials of Antiquity, will furniſh: To deny the Original Contract of Government, is to contradict and condemn the Voice and Tenor of all our Laws, of every Act of the Supreme Legiſlative Power, the Force and Efficacy of which exiſts upon the Conſent of the Crown, Lords, and Commons, and are therefore ſo many laſting and unerring Proofs of that, as the Original Foundation of that Supreme Power; 'tis not only to oppoſe the conſtant Judgment of all learned Men, who have underſtood and wrote impartially of our Government, but even the Senſe of many of thoſe Writings which have been produc'd and read to you in the Doctor's Defence, and more particularly that of the judicious Mr. *Hooker*: To deny and condemn the Original Contract between King and People, what other Conſequences could it produce, than to unhinge the Government, and to deſtroy that excellent Balance of Power, which is ſecur'd by it, and by which it has been ſo long preſerv'd? It muſt weaken the ancient and juſt Prerogatives of the Crown, ſubvert the Foundations of your Lordſhips Legiſlative and Judicial Powers, render the Parliamentary Rights of the Commons precarious and uncertain, and terminate at length in that abſurd, yet dangerous Opinion, of the *Patriarchal Right*, which, when joined together with the Doctrines of abſolute and unlimited Non-Reſiſtance, and unconditional Obedience of the Subject to their Prince, compleats that fatal Syſtem, which has been, of late, ſo much contended for, towards the enſlaving Mankind.

But your Lordſhips will conſider further, what Uſe and Application was made of this Paſſage by the Council; his Concluſion was, *That till the Legiſlature had determin'd what the Contract was, and what Breach of it ſhall diſcharge the Subjects of their Allegiance, he took leave to ſay, that Reſiſtance ſtill ſtood upon the Foot of* 25. E. 3.

My Lords, We ſtand here entruſted to maintain the Charge contain'd in our Article, to aſſert the Juſtice of that Reſiſtance only, which brought about the late happy Revolution; and that being the Reſiſtance in Queſtion, and to which alone we have apply'd our ſelves, and in Support of which the Original Contract was mention'd; what is the plain *Engliſh* of this Inference drawn from the denial of it? Does it not amount to an open and poſitive Declaration from the Mouth of Dr. *Sacheverell*'s Council, That that Reſiſtance which was the neceſſary Means us'd to bring about the late happy Revolution, inſtead of being an Honourable and Lawful Reſiſtance, was an Act of Rebellion and High-Treaſon?

Having conſider'd theſe Particulars, I beg your Indulgence to make a few Obſervations on the Nature and Method of the Defence to this Article: Your Lordſhips will remember, tho' it ſeems to have been totally forgot on the Priſoner's Part, that the Maintenance of this Article has not reſted on the Doctor's general Aſſertion alone, but upon the following Paſſages, now ſtated to you; from whence we have undertaken to convince your Lordſhips, that Dr. *Sacheverell* has apply'd that general Rule of Non-Reſiſtance to the particular Caſe of the Revolution; and this having render'd the Independant Conſideration of the general Aſſertion wholly immaterial, when you afterwards heard the Admiſſions that were made by the Council, of the Legality of the Reſiſtance us'd to bring about the Revolution, your Lordſhips might reaſonably have expected, that the only Queſtion remaining on this Article would have been, How far thoſe ſubſequent Paſſages of the Sermon did evince the Intent of the general Aſſertion? But, tho' the Queſtion has been thus plainly ſtated and maintain'd, and the Method of the Doctor's Vindication thus clearly pointed out to him, yet how little has been ſaid? How little Notice has been taken of this, which was his proper Defence? The Gentleman who began the Defence has, indeed, denied the Charge of this Article; the Force of that,

and of his Argument which followed, have been conſidered; but if your Lordſhips ſhall not think fit to accept that ſingle Attempt as ſufficient to acquit the Priſoner, (together with a nervous Obſervation of the Interpoſition of ſome Lines between the general Aſſertion, and that Sentence wherein the Revolution is named) how much will your Lordſhips find, throughout that long and labour'd Harangue, that can be judged by you at all material to the true Queſtion before you? For tho' the general Doctrine of Non-Reſiſtance, the Doctrine of the Church of *England*, as ſtated in her Homilies, or elſewhere deliver'd, by which the general Duty of Subjects to the Higher Powers is taught, be owned to be, as unqueſtionably it is, a godly and wholſome Doctrine; tho' this general Doctrine has been conſtantly inculcated by the Reverend Fathers of the Church, dead and living, and preach'd by them as a Preſervative againſt the Popiſh Doctrine of depoſing Princes, and as the ordinary Rule of Obedience; and, tho' the ſame Doctrine has been preach'd, maintain'd and avow'd by our moſt Orthodox and able Divines from the Time of the Reformation; and, how *Innocent a Man* ſoever Doctor *Sacheverell* had been, if, *with an honeſt and well-meant Zeal*, he had preach'd the ſame Doctrine, in the ſame general Terms, in which he found it deliver'd by the Apoſtles of Chriſt, as taught by the Homilies, and the Reverend Fathers of our Church, and, in Imitation of thoſe great Examples, had only preſs'd the General Duty of Obedience, and the Illegality of Reſiſtance, without taking Notice of any Exception; yet, what Excuſe can be derived, to the Matter now in Queſtion, from ſuch Conſiderations as theſe, in Favour of the Doctor, who has not only aſſerted the general Rule in Terms of the greateſt Latitude, but has expreſly mention'd and diſallow'd the Exception of the Reſiſtance, which brought about the Revolution? And whatever is the Language of our Laws, *Repealed or in Force*, wherein the ſame general Duty of Subjects is ſtated, and the Rule laid down to them, as Neceſſary and Fundamental for the Safety of the Crown and Government, and the Peace of the Kingdom, and which are meant to enforce and ſecure their Civil Obedience in ordinary Caſes, (but which no Body will ſay can be conſtrued to extend to the Caſe of a People threatned by their Prince with total Deſtruction, the utter Subverſion of their Laws, and the Loſs of their Religion and Liberties, to a Caſe of the laſt Neceſſity, *(ſuch a Caſe as the Revolution was,)* yet no Uſe can poſſibly be made of ſuch Declarations in our Acts of Parliament to juſtify the Doctor, who by his general Aſſertion, has not only out-gone even thoſe general Declarations, but has undeniably applied it in Condemnation of the Caſe of the Revolution, which is the Charge of this Article.

Your Lordſhips will allow me to obſerve yet a little farther; The Nature of this Article appearing to every Body to be of that near Concern to Her Majeſty and Her Government, you have, indeed, heard very warm and pathetick Expreſſions of Loyalty, of very tender and dutiful Regard to Her Majeſty's Title, and much Labour and Vehemence was uſed to perſuade your Lordſhips into a Belief of this: But yet, your Lordſhips could not but obſerve, where the real Streſs and Force of the Argument was placed, and where it center'd at laſt; your Lordſhips will find, the great Effort was made to eſtabliſh the general Doctrine of Non-Reſiſtance, to inculcate this, in Terms of the largeſt Extent, in the ſame univerſal Terms, wherein the Doctor has deliver'd it, and than which I am at a Loſs to find Words that can extend it further: If your Lordſhips ſhould think fit to look back, with particular Exactneſs, upon the ſeveral Diſcourſes which have been made from the Bar on this Article, and, for your more accurate Judgment, ſhall think proper to lay them together, and obſerve their Conſiſtency; and if, from ſuch an Examination, you ſhould ſee Cauſe to compare that which was firſt deliver'd, with that which was afterwards *ſpoke* by the Doctor himſelf, (for, my Lords, between them the Reſemblance ſeems to be the neareſt, and *the Difference between them in the Notions of Allegiance* but *very ſmall*,) your Lordſhips may perhaps, in a great Meaſure, collect from thence the true Genius of this Defence. Your Lordſhips will obſerve, in how different a Manner, with what different Zeal, the main Points in Agitation have been handled by them; I mean, the Juſtice of the Reſiſtance, which brought about the Revolution, and the general Doctrine of Non-Reſiſtance. It has already been obſerved to you, that the Doctor himſelf made no Admiſſions concerning the Lawfulneſs of that Reſiſtance, but has *us'd Expreſſions* of due Regard to the Proteſtant Succeſſion; The Gentleman, who open'd the Defence, it being, it ſeems, of no Conſequence to the preſent Occaſion, came to no Declaration in this Point of the Proteſtant Succeſſion; But, as to the Honour and Juſtice of the Revolution, his Approaches are nearer: He has acquainted your Lordſhips, That *there is nothing further from our Hearts, nor any Thing leſs Neceſſary for our Defence, than for us to call in Queſtion the Juſtice of the Revolution.* At another Time, he delivered himſelf in general Terms: *Such a Caſe*, (that is a Caſe of Neceſſity, a Caſe never to be mentioned, but to be ſuppoſed and implied) *the Revolution was*: But, in other Parts of the ſame Diſcourſe, the Expreſſions even concerning the Revolution will be found to be more reſerv'd and wary, and always ſoften'd with ſome ſaving Particle: Thus ſhy and tender at the beſt, have the Admiſſions been from thoſe Two Diſcourſes, of the Lawfulneſs of that Reſiſtance which brought about the late Happy Revolution: But as for the Doctrine of Abſolute, Unlimited Non-Reſiſtance, by which, if it be not an Erroneous Doctrine, the Juſtice of the Reſiſtance, which was the neceſſary Means that brought about the Revolution, (and in purſuance of which, the Crown was ſettled on Her Majeſty and the Proteſtant Line) muſt for ever remain condemn'd. What Fervency and Copiouſneſs of Expreſſion was uſed to eſtabliſh that? What Cautions have appear'd to guard and ſecure this Doctrine as inviolable? How often, and with what Zeal was it inculcated, that the general Doctrine, was that Doctrine which alone was to be preach'd and preſs'd? The Exception, *The Caſe of Neceſſity, the Caſe of the Revolution*, the only Caſe contended for, was not fit to be mention'd: The Doctor's general Rule was that alone, which was proper to be inculcated and believ'd; the excepted Caſe never to be ſtated, but to be ſuppos'd or imply'd, and *to be left to juſtify it ſelf.*

My Lords, How comes it to paſs, that ſo little Concern has been ſhewn, in the Courſe of this Debate from the Bar, to that which was the proper Defence of the Criminal, to clear the Paſſages of his Sermon from the noxious Meaning they had been ſhewn to bear? How comes it to paſs, that the Honour and Juſtice of the Revolution is thus tenderly acknowledged; but yet all that has been ſaid

to

to ſupport it, has by this Gentleman been endeavour'd to be enervated, and at the ſame Time the extremeſt Zeal ſhewn to eſtabliſh the general Poſition, tho' altogether immaterial? I'll once more venture at a *charitable Reconciliation* of *thoſe* ſeeming *Inconſiſtencies*: Upon a very ſtrict and minute Recollection, your Lordſhips will find that *the Reſiſtance*, the *Neceſſary Means* us'd to bring about the Revolution, is never once acknowledg'd in that firſt Diſcourſe, in *plain and expreſs Terms*: The Caſe of Neceſſity in general, the Caſe of the Revolution, was ſo ambiguoſly ſpoke of, and ſo skilfully given up, that, by the *kind Help of ſome happy Diſtinction*, when *the Seaſon is proper*, 'twill be eaſy to retrieve it. Tho' your Lordſhips may remember ſome plauſible Expreſſions concerning the Juſtice of the Revolution, yet you will find the real Concluſions of the Diſcourſe tend to condemn it; and ſuch remarkable Inſtances choſen, ſuch as the Caſe of the Two *Spencers*, which, being applied to the Caſe of the Revolution, repreſent its Principles damnable, its Conſequences deteſtable, and the Aſſertors of it deſerving Baniſhment; Your Lordſhips will find the Argument ſo well adjuſted to the *main Point in view*, to eſtabliſh the *ſlaviſh* Doctrine of *Abſolute*, *Unlimited Non-Reſiſtance*, that, if the worſt ſhould happen, even that againſt which we are now contending, the judicious Reſerves that Gentleman has uſed on the Point in Queſtion, and the real Service he may be thought to have done to that *ſlaviſh* Doctrine, may, in due Time, raiſe a Merit in Favour of all its Conſequences.

But, as an undeniable Evidence of a *ſincere Affection* to the Caſe of Neceſſity, the Caſe of the Revolution, let me put your Lordſhips in mind of the Paſſage quoted from Mr. *Pym* in his Declaration againſt Doctor *Manwaring*: The Doctrine preach'd in thoſe Days, and for which he was impeach'd by the Commons, was, The attributing an Abſolute Power to the King over the Property of the Subject, tho' with ſome *deceitful* Limitations, as that of extreme and urgent Neceſſity. Mr. *Pym* had ſhewn the Vanity and Fruitleſsneſs of that Limitation, it being left to the Prince to determine what is an urgent and preſſing Neceſſity: And to repreſent the Danger of ſuch a Caſe, of allowing any Exception upon any Pretence, even that of extreme Neceſſity, he cites the Charter of *Lewis* 10. of *France* to the Dutchy of *Normandy*, wherein that Prince having acknowledged the Franchiſes of the Dutchy, and granted to them, that for ever afterwards they ſhould be free from all Exactions from him and his Succeſſors, theſe Words followed, *unleſs great Neceſſity required*; which ſmall Exception, Mr. *Pym* obſerved, had in Time devoured all their Immunities. Mr. *Pym*, in that Speech, arguing againſt the Poſition advanc'd by Doctor *Manwaring*, condemns the leaſt Pretence of any Exception: The Gentleman, who quoted this Paſſage from him, having endeavoured to eſtabliſh his general Doctrine of Abſolute Non-Reſiſtance, the Doctrine preach'd by Dr. *Sacheverell*, and having ſhewn the Danger of mentioning any Exception to it, even that of the Caſe of Neceſſity, and *ſuch a Caſe*, he had before told your Lordſhips, *the Revolution* was, concludes from that Inſtance, that ſuch Exceptions wou'd in Time devour all Allegiance. This, my Lords, hath been the Method, theſe have been the Arguments us'd to acquit the Doctor, to ſhew the Innocence of his Intention, and that there was no Deſign either in his Sermon, or his Defence, to condemn the Reſiſtance, *the neceſſary Means* which brought about the late Happy Revolution; And from theſe Obſervations you may poſſibly diſcern the Conſiſtency of the whole Defence. I beg leave only *to turn the Caſe*, to ſuppoſe a Caſe of a real Deſign to condemn the late glorious Revolution, and all the happy Conſequences of it: At a Time, when expreſs Declarations of ſuch a wicked and traiterous Intention may not be judged proper; at a Time, when ſome plauſible Expreſſions of the Juſtice of it, may be thought Uſeful and Neceſſary; and, at ſuch a Time, let the Illegality of Reſiſtance on any Pretence whatſoever, be laid down and enforc'd in its utmoſt Extent; let the Danger of ſtating or mentioning any Exception to it, be ſtrongly inculcated; let the Juſtice of the Exception, even of the Caſe of Neceſſity, *ſuch a Caſe as the Revolution was*, be illuſtrated by an Inſtance, wherein 'tis expreſly condemned; and, May it not be ſaid, *'Tis eaſy to diſcern what Spirit* ſuch a Perſon *is of, of what Party he* is, *what he aims at, and what he intends; that he has not been ſpeaking in Defence of the late Revolution*, can't be look'd upon *to have been arguing for it, and to ſhew the Juſtice of it, but was covering the Treaſon of his Heart, and under Pretence of juſtifying one Revolution, was labouring to bring about another*: But, what vain Imaginations muſt poſſeſs thoſe Minds, which can flatter themſelves into a Belief, that, even whilſt they are maintaining Principles that tend moſt certainly to undermine the Foundation of Her Majeſty's Government, and the Proteſtant Succeſſion, the moſt ſolemn Proteſtations out of the ſame Mouth, and in the ſame Breath, ſhould paſs for an Atonement with your Lordſhips, or give Satisfaction to any that hear them.

My Lords, Your Lordſhips will conſider the evident and neceſſary Tendency of the Doctrines, which have been preach'd by the Priſoner, and have been again aſſerted, though not openly avow'd, in their full Extent and Conſequence, in Defence of this Article. The Doctrine of *Abſolute Non-Reſiſtance*, the condemning the Original Contract, renouncing the Ancient Legal Conſtitution of the Government, which is our Title to our Liberties, are Poſitions, which can have no better Tendency, than to ſhake the preſent Settlement of the Crown, and our preſent Eſtabliſhment, and to make way for the Pretence of a Natural and Divine Right of Succeſſion: Are not thoſe the Principles taught, and avow'd by Papiſts and Nonjurors, and whereon their Hopes are founded? And are they more Wholeſome, or leſs Dangerous, when they fall from the Mouth, or drop from the Pen of the Priſoner, or are aſſerted in his Defence, tho' gilded over with ſpecious Pretences, and under the Umbrage of a true Son of the Church? If theſe Doctrines of Unlimited Non-Reſiſtance, of a ſole Hereditary and Divine Right of Succeſſion to the Crown, are the very Doctrines, on the Belief of which, the profeſſed Enemies of Her Majeſty and Her Government, inviolably engage themſelves againſt Her Title, and againſt the Proteſtant Succeſſion; If theſe are the Tenets, by which they openly condemn the late Glorious Revolution, and all its Conſequences; From which Part of this Defence can your Lordſhips collect the Innocence of the Priſoner? By what way of Reaſoning can it be concluded, that the ſame Opinions, embrac'd by this Gentleman, do not inevitably engage him in the ſame Intereſt?

Sir *Peter King.* MY Lords, It is my Part to Reply to the Anſwer that has been given by the Doctor, to the Charge of the Com-

Commons of *Great Britain*, with Relation to the Second Article. When I was entruſted by the Commons to manage this Part of the Charge, I both quoted and read the Paſſages of the Sermon, to make good that Charge; I did not deſire that any Thing ſhould be taken upon Truſt, nor any Thing receiv'd againſt him, but what appear'd from his plain expreſs Words, or by clear, neceſſary and unavoidable Conſequence. Indeed, after the whole Sermon had been read by the Clerk, I thought it too great a Trouble to your Lordſhips, to have the Clerk read over the particular Paſſages again at the Table, and therefore I read them my ſelf, truly and fairly, as they were in his Sermon; and if I had done otherwiſe, the Doctor and his Council would have ſet me right. I agree with the Doctor and his Council, that in a Caſe of this Nature, and I will ſay further, in all Caſes whatſoever relating to Crimes, the Charge muſt be maintain'd by poſitive plain Words, or neceſſary and unavoidable Inference, ſuch as no reaſonable Man can withſtand the Light of. And therefore, if there was nothing in this Caſe but dark Hints, ſtrain'd Innuendo's, and forc'd Conſtructions, I am ſure, neither the Commons of *Great Britain*, nor my ſelf, would appear before your Lordſhips with an Attempt to make out a Charge of this Nature; if it is not prov'd by plain, poſitive and expreſs Words, or neceſſary and unavoidable Inference, I am ſure your Lordſhips will never convict him; becauſe it would not be juſt and right ſo to do. It is a perverting of Common Juſtice to condemn a Perſon without plain and direct Proof; therefore what we repreſent to your Lordſhips is, that by plain and clear Paſſages in his Sermon, he is guilty of the Charge in the Second Article, of maintaining, *That the Toleration granted by Law is unreaſonable, and the Allowance of it unwarrantable; and that he is a falſe Brother with Relation to God, Religion, or the Church, who defends Toleration, and Liberty of Conſcience.*

When the Doctor put in his Anſwer to this Article, he had not found out that there was a Toleration granted by Law to the Diſſenters; but his Council have now found it out, and they do agree, that there is a Toleration granted by Law, and that it is that Indulgence which is contain'd in the Act made in the Time of the late King and Queen; but they inſiſt at the ſame Time, that the Doctor in his Sermon has not condemn'd or cenſur'd that Toleration; they ſay he has condemn'd a Toleration, but they inſinuate there are Two Tolerations mention'd in his Sermon, the one a Toleration granted by Law, which he allows and approves of; and the other a general unlimited Toleration, which they admit he does condemn; ſo that we are now agreed upon the Word *Toleration*, and they do admit that he doth in his Sermon Cenſure and Condemn a Toleration: But, ſay they, it is not the Toleration granted by Law, becauſe he took Care in his Sermon that his general Expreſſions ſhould not be miſconſtru'd, and put in this expreſs Caution in the 20th Page: *I would not be here miſunderſtood, as if I intended to caſt the leaſt invidious Reflection upon that Indulgence the Government has condeſcended to give 'em, which I am ſure all thoſe that wiſh well to our Church, are ready to grant to Conſciences truly ſcrupulous; let them enjoy it in the full Limits the Law has preſcrib'd.* This, they ſay, is an expreſs and full Declaration of his Meaning, that he is not againſt the particular Toleration granted by Law; and therefore all thoſe other Paſſages in his Sermon condemning Toleration, are to be applied to a general Toleration, and not to the particular Legal one.

When I made out this Charge, I mention'd this Caution of the Doctor's, but at the ſame Time ſubmitted it, whether ſuch a general Expreſſion as that is, could ſcreen him from other plain Paſſages in which he has condemn'd the Toleration; if in other Places he has condemn'd it, this Caution is but *Proteſtatio contra factum*; an oblique Defamation may be as Criminal as a direct one: In the common Caſes of Scandal, if I obliquely defame another, and deſcribe him ſo, that it is impoſſible but every one muſt know him, it is no Excuſe that I do not poſitively accuſe him; ſo that the Queſtion will be, whether the Doctor has not in the other Paſſages cited againſt him, plainly cenſur'd and condemn'd the Toleration granted by Law.

The firſt Paſſage cited out of his Sermon, to prove this Charge upon him, was in the 10th Page; I trouble your Lordſhips with reading it again, that I may be ſure to do him no Injury; the Words are, *So that in all thoſe Caſes before-mention'd, whoſoever preſumes to innovate, alter, or miſrepreſent any Point in the Articles of the Faith of our Church, ought to be arraign'd as a Traytor to our State; Heterodoxy in the Doctrines of the one, naturally producing, and almoſt neceſſarily inferring Rebellion and High Treaſon in the other, and conſequently a Crime that concerns the Civil Magiſtrate as much to puniſh and reſtrain, as the Eccleſiaſtical.*

The former Part is relative to what went before; the latter Part is a general Aſſertion, that *Heterodoxy in the Doctrines of the Church infers Rebellion and High Treaſon in the State.*

The relative Part of this Clauſe has Relation to the ſeveral Doctrines mention'd before; among which, one of the Caſes and Inſtances of falſe Brotherhood is, *the affirming that the Divine Apoſtolical Inſtitution of Epiſcopacy is a Novel Doctrine, not ſufficiently warranted by Scripture; whoever affirms this, is guilty of an Innovation or Alteration of the Articles of our Church.* Now the Diſſenters of all Sorts univerſally hold this Propoſition, and they are exempted from ſubſcribing the 36th Article, which aſſerts Epiſcopacy: But, ſaith the Doctor, though they are exempted, yet whoſoever aſſerts this Propoſition, is to be puniſh'd as a Traytor to the State, as well as an Enemy to the Church.

The Learned Civilian of Council for the Doctor ſays, that the reading the whole Paſſage will ſhow, that it was not intended for the Diſſenters, but for one in Holy Orders; that if ſuch an one ſhould maintain this Doctrine, *he would be an Apoſtate from his own Order*; now this Allegation is true, as it ſtands in *Page* 8.; abſolutely conſider'd in its ſelf, it is there applied to one in Holy Orders; but as it ſtands in Relation to this Clauſe, in *Page* 10. it is a general Aſſertion, that *whoſoever innovates, or alters that Article of the Church*, which the Diſſenters do, *ought to be arraign'd as a Traytor to the State.*

Another Anſwer that hath been given hereto, is, That the Doctor there means thoſe who are for Innovations and Alterations in Matters of Faith, which can't reſpect the Diſſenters or their Toleration, becauſe the Diſſenters agree with the Church in Matters of Faith, and differ only in Matters of Diſcipline. But if you give this Turn to it, it alters the Senſe and Meaning of the Doctor; for he is not ſpeaking here of Matters of Faith, in Contradiſtinction

tradiſtinction to Matters of Diſcipline, but he is ſpeaking in general of the Articles of Faith of our Church; *whoever preſumes in any of the Caſes before-mentioned to innovate, alter, or miſrepreſent any Point in the Articles of the Faith of our Church, ought to be arraign'd as a Traytor to the State.* Now what are the Articles of Faith of our Church? Are they not the Thirty Nine Articles? Are not they the Articles of the Faith and Religion of the Church? Doth not the Thirty Sixth Canon expreſly require the Clergy to ſubſcribe willingly, and *ex animo*, that all and every the Articles of Religion, being in Number Thirty Nine, are agreeable to the Word of God? Now if the Thirty Nine Articles be the Articles of Faith of our Church, and the Diſſenters disbelieve the Thirty Sixth Article; and if for that Innovation or Alteration they are to be arraign'd as Traytors to the State, what then is become of the Toleration, that exempts them from the Penalties, and from ſubſcribing the ſaid Thirty Sixth Article?

As to the general Propoſition immediately following in the ſame Clauſe, *viz. Heterodoxy in the Doctrine of the one, naturally producing, and almoſt neceſſarily inferring Rebellion and High Treaſon in the other, and conſequently a Crime that concerns the Civil Magiſtrate as much to puniſh and reſtrain, as the Eccleſiaſtical*; I don't remember that any Anſwer whatſoever was given to it by the Doctor or his Council. And I pray your Lordſhips caſt your Eyes on this, and ſee here is an Affirmation, that any different Opinion in any of the Articles of the Church, is a Crime againſt the State. Now all the Diſſenters are exempted by the Act of Toleration from ſubſcribing Three Articles and an half, others from Four and an half, and others from all. And when this Act grants them all theſe Exemptions, ſhall it be affirm'd that this Heterodoxy allow'd by that Act is High Treaſon and Rebellion, and that they ought to be arraign'd as Traytors? I ſubmit to every ones Judgment, whether any Thing can be more plain againſt the Toleration than this.

The next Paſſage cited out of his Sermon, to prove the Charge of the Second Article, is in the 16th and 17th Pages: *What could not be gain'd by Comprehenſion and Toleration, muſt be brought about by Moderation and Occaſional Conformity; that is, what they could not do by open Violence, they will not fail by ſecret Treachery to accompliſh. If the Church can't be pull'd down, it may be blown up; and no Matter with theſe Men how 'tis deſtroy'd, ſo that it is deſtroy'd.*

My Lords, Here is an Affirmation, that Toleration was doing open Violence to the Church, that the Falſe Brethren had a Deſign by Toleration to pull down the Church. Now the Anſwer given to this by one of the Council, is what one can ſcarce imagine he was ſerious in, *viz.* That this doth not ſuggeſt the Toleration to be unreaſonable, or the Allowance of it unwarrantable, but that it is rather a Commendation of the Toleration, becauſe it ſhews that it could not do the Church any Hurt, it could not pull down the Church, and therefore they have found out a more peſtilent Way, of Occaſional Conformity and Moderation. But all that can be collected from hence, is, that Toleration is a leſs ſucceſsful Evil than Moderation: Toleration was a ſtorming the Church by Violence, and an endeavouring to pull it down; but though, by the good Providence of God, it hath not been ſo ſucceſsful an Evil as Moderation, which is a Secret Treachery to undermine the Church, and blow it up, yet it is an Evil: And to ſuppoſe the Church to be either pull'd down, or blown up, which way ſoever it be done, it is ſo great an Evil, that every Member of the Church muſt be for preventing it, and uſing all his Endeavours to prevent both thoſe Evils; and therefore to repreſent Toleration to be ſuch an Evil to the Church, as to be doing open Violence to the Church, and pulling it down, is an undue Reflection on the Fathers of the Church, and on that Parliament that granted that Toleration, as if they concurr'd in Endeavours to pull down the Church, and deſtroy it.

Another Paſſage, in *Page* 14. of the Sermon, was cited by the Council of the other Side, as a Paſſage cited by me to make out the Charge againſt the Doctor; but herein they miſtook me, it was not cited by me for that Purpoſe, but to ſhew that the Doctor underſtood the Act of Indulgence to be a Toleration; and the Paſſage was this, *Certainly the Toleration was never intended to indulge, and cheriſh ſuch Monſters and Vipers in our Boſom, that ſcatter their Peſtilence at Noon-day, and will rend, diſtract and confound the firmeſt and beſt ſettled Conſtitution in the World.*

I cited this Paſſage to ſhew, that the Doctor himſelf, at the Time he preach'd this Sermon, knew what was meant by the Toleration; and it plainly proves it, and the Doctor himſelf doth not now diſown it. But as to the Propoſition it ſelf contain'd in that Part of his Sermon, I agree with him that the Toleration was not intended, and I hope will never be made uſe of, to ſupport Atheiſm, Deiſm, Tritheiſm, or any ſuch Monſters and Vipers, but only diſſenting Proteſtants.

The next Paſſage I cited was in the 8th Page. *If upon all Occaſions to comply with the Diſſenters, both in publick and private Affairs, as Perſons of tender Conſcience and Piety, to promote their Intereſts in Elections, to ſneak to them for Places, and Preferments, to defend Toleration, and Liberty of Conſcience; and under the Pretence of Moderation, to excuſe their Separation, and lay the Fault upon the true Sons of the Church, for carrying Matters too high; if to court the Fanaticks in private, and to hear 'em with Patience, if not Approbation, rail at and blaſpheme the Church, and upon Occaſion to juſtify the King's Murder; if to flatter both Dead and Living in their Vices, and to tell the World, that if they had Wit, and Money enough, they need no Repentance, and that only Fools and Beggars can be damn'd; if theſe, I ſay, are the modiſh and faſhionable Criterions of a true Church-man, God deliver us all from ſuch Falſe Brethren.* So that here the Doctor makes it one of the Characters of a Falſe Brother to defend Toleration, and Liberty of Conſcience.

The Anſwer given to it is this, That where the Doctor blames thoſe that defend Toleration, it is not thoſe that defend that only and ſingly, and do no other Thing, but they muſt at the ſame Time not only defend Toleration, but excuſe the Separation, not by Reaſon of the Toleration, but *by laying the Fault on the Sons of the Church for carrying Things too high:* He don't blame them that barely juſtify Toleration, unleſs they fall too on the Sons of the Church for carrying Things too high. But whether or no that Place is capable of ſuch an Interpretation, your Lordſhips will be the beſt Judges, by looking on the Place, and conſidering whether any Two of thoſe Characters are to be united in any one Perſon to make him a Falſe Brother. Whether theſe ſeveral Characters are not ſo

many different *Criterions* of False Brotherhood; if he does defend Toleration and Liberty of Conscience; if he does excuse their Separation, and lay the Fault upon the True Sons of the Church, for carrying Matters too high, *&c.* They are all different Marks of False Brotherhood; so that whosoever defends Liberty of Conscience, and the Toleration, is a False Brother.

It was also answer'd, That in the Act of Indulgence there are a great many Restrictions; and therefore this Passage must be understood of a Toleration of such as are not qualified by the Act to receive it: And for that end the Act was read, in which are several Restrictions; and the Toleration is not unlimited, but to Persons under such and such Qualifications, conforming themselves to the Rules there laid down. But what Foundation is there for this Answer in the Passage it self? Doth not he there condemn Toleration generally? Doth not an Universal Indefinite Proposition include all manner of Toleration, whether General or Special? If he had meant it in this restrained Sense, he should then have express'd himself, That he that defends Toleration, except such Toleration as is allow'd by Law, is a False Brother; but not doing so, but expressing it generally, it is plain, that he has condemn'd that Toleration that is granted by Law: And it is submitted to your Lordships, that this is a plain Proof against him of this Article.

The next Passage, is that relating to the Perfidiousness of Archbishop *Grindall*, in deluding Queen *Elizabeth* to the Toleration of the *Genevian* Discipline: The Doctor, in his Answer, did conceive he had good Authority from History to make out that Assertion; but whether he had or no, he did apprehend that such Assertion was no Proof of his maintaining or suggesting, that the present Legal Toleration was unreasonable, or the Allowance of it unwarrantable.

I did, in making out the Charge, agree with the Doctor, That whether he was, or was not mistaken in that Fact, was not the material Point in Question; but that he had put it on the right Question, Whether that Assertion (true or false) relating to Archbishop *Grindall*, was a Condemnation of the Toleration now granted by Law? To that I principally applied my self, to shew that that Fact, as stated by the Doctor, was a Censure of the Toleration; not forgetting, at the same Time, to say something in Vindication of the Memory of that Great Prelate.

But now, the Doctor's Council (in their Defence) have in a great measure quitted the true Point that the Doctor rightly put it upon in his Answer, and instead of endeavouring to shew that this is no Reflection on the Toleration, have rather endeavoured to shew, that this Fact of the Archbishop is true; That the Reason of his Disgrace was, for deluding the Queen to the Toleration of the *Genevian* Discipline, and for giving up the Discipline of the Church: That at that Time, there was no Law to indulge any Separation from the Church; and therefore for the Head of the Church, under the Queen, to give up the Discipline of the Church, was an High Crime in him; and tho' it be a harsh Term, yet it was true to call him a Perfidious Prelate, and False Son of the Church.

For this End, they did produce and read Two Letters; the one from Queen *Elizabeth*, to the Bishops throughout *England*, for suppressing the Exercise called *Prophesying*, and the other of the Archbishop to the Council; and out of these Two, they say, there is Proof out of the Archbishop's own Mouth, That the Reason why he was under a Suspension, was for deluding Her Majesty to permit a Toleration of the *Genevian* Discipline; and that he acknowledg'd the Justice of his Punishment for that Crime. And they farther aggravate it, That it would be an invidious Reflection on the Character of that Glorious Queen, that she should cause an Archbishop to be suspended, for prosecuting *Julio* the *Italian* for having Two Wives, or for not giving up the Palace at *Lambeth* to the Earl of *Leicester*: As if I had insinuated, or could have imagined, that the apparent visible Reason of the Disgrace of the Archbishop, were these Things! No; it can't be thought I meant so. The apparent visible Cause of *Grindall*'s Disgrace was, no doubt, the Encouraging of the Exercise called *Prophesying*; and Queen *Elizabeth* knew no other: But yet the real Spring, the secret History, and true Reason, was the Artifice of the Earl of *Leicester*, who had the greatest Power and Credit at that Time with the Queen. The good Archbishop had, by his Prosecution of *Julio* the *Italian* Physician, and by his Refusal to alienate *Lambeth*, offended this Great Earl, who thereupon meditates Revenge against him: And knowing the Archbishop to be a great Favourer and Promoter of the Exercises called *Prophesyings*, which were far from being Conventicles, or Parts of the *Genevian* Discipline; he misrepresents these to the Queen, and by those Means incens'd the Queen; and the Queen was angry with the Archbishop, only upon the Account of these *Prophesyings*. But these Misrepresentations, that incens'd the Queen, had not been, if the Archbishop had not first incens'd *Leicester* in the forementioned Two Particulars. To make this out to be the Fact, I desire your Lordships Patience, whilst I refer to One or Two Histories of good Credit. *Fuller*, in the Ninth Book of his Ecclesiastical History, *p.* 130. after he hath recited a long Letter of *Grindall*'s to the Queen about this Matter, thus concludes: *Alas! all in vain:* Leicester *had so fill'd Her Majesty's Ears with Complaints against him, there was no Room to receive his Petition. Indeed* Leicester *cast a Covetous Eye on* Lambeth-*House, alledging as good Arguments for his obtaining thereof, as ever were urg'd by* Ahab *for* Naboth's *Vineyard. Now* Grindall, *tho' generally condemn'd for Remissness in this kind, (parting with more from his See, than ever his Successors thank'd him for) stoutly oppos'd the Alienating of this his Principal Palace, and made the* Leicestrian *Party to malice him.*

This is as express an Account as can be, that this was one of the secret Springs of that Prosecution: And as for the other, That he carried on the Prosecution against *Julio*, that is taken notice of by the same Author, in *Page* 163. and by *Cambden*, in his History of Queen *Elizabeth*, and other Authors: So that the true secret Reason of *Grindall*'s Disgrace, was not for Tolerating the *Genevian* Discipline. And indeed it would be a Paradox, that the Earl of *Leicester*, who was the Great Patron and Support of the *Puritans*, should run down this Archbishop for encouraging of *Puritanism*. Can that be thought? No: It shews plainly, there was some other Reason. And it is no Reflection on Queen *Elizabeth*, that she was deceiv'd by the Misrepresentation of a Person on whom she entirely relied. Princes are not exempt from the common Frailties of Human Nature, and may be impos'd on by those whom they most trust.

But, my Lords, without conſidering the latent Cauſes of his Diſgrace, let us conſider the viſible Cauſe, which was known only to Queen *Elizabeth*. Do the Letters (which they have produc'd) prove, that the Archbiſhop ſuffer'd for deluding the Queen to the Toleration of the *Genevian* Diſcipline? It appears thereby, that Queen *Elizabeth* was diſpleaſed at thoſe Exerciſes called *Propheſyings*, which the Archbiſhop encouraged and favoured; but it is a great Miſtake, to think, that thoſe *Propheſyings* were Conventicles, or Aſſemblies of *Puritans*: They were really Meetings of the Parochial Clergy of the Church of *England*, (which ſince have been called Conferences,) to improve one another in the Expounding of the Scriptures. The Manner of theſe *Propheſyings* was this: The Miniſter within each Archdeaconry, or ſome other Precinct, met on ſome Week-Day, in the moſt noted Place in that Precinct; ſome Ancient Grave Miniſter, appointed by the Biſhop, did preſide: Then every Miniſter ſucceſſively (the youngeſt ſtill beginning) did handle ſome Text of Scripture, ſhewing the Senſe of the Place, the Propriety of the Words, the Diverſity of Interpretation, the Virtues enjoined, and the Vices prohibited. No Layman was ever ſuffer'd to ſpeak, nor any Clergyman, unleſs firſt Licenſed by the Biſhop. This was that which they call'd *Propheſying*, and continued about Two Hours; and then the Concluſion was with a Prayer for the Queen and all Eſtates, as is appointed by the Book of Common-Prayer, and a *Pſalm*. Now can any one think, this was an Encouragement of the *Genevian* Diſcipline?

The Parochial Clergy met by Conſent of the Biſhop, and diſcourſed about the Meaning of ſome Text of Scripture, and cloſed with a Prayer, as is appointed in the Common-Prayer-Book, and with a *Pſalm*: And can this be ſaid to be Encouraging the *Genevian* Diſcipline? Can this be called the Holding of Conventicles; or Receding from the Diſcipline of the Church? Nothing like it: Tho', if it were, it appears by the Letters, that he did not delude the Queen to encourage the *Genevian* Diſcipline. No; if this was the *Genevian* Diſcipline, the Queen would not be deluded by him; and becauſe he would not obey the Queen in ſuppreſſing theſe *Propheſyings*, this was the apparent Cauſe of his Diſgrace.

As to the Letter, becauſe it is ſaid the Archbiſhop owns his Crime; how does he do it? *I can't deny*, ſays he, *but that I have been Commanded, both by the Queen's Majeſty Her ſelf, and alſo by divers of your Honourable Lordſhips in her Name, to ſuppreſs all thoſe Exerciſes within my Province, that are commonly called Propheſyings.* He did not deny the Queen had given him that Command, or that he did not comply with it: *But*, ſaith he, *I do proteſt before God, the Judge of all Hearts, that I did not of any Stubbornneſs or Wilfulneſs refuſe to accompliſh the ſame, but only upon Conſcience*: And goes on and ſhews the Reaſons on which that Conſcience was founded. He denied it not out of *Stubbornneſs or Diſobedience*, but out of a *Perſwaſion of Conſcience*, becauſe he found it *profitable and uſeful to the Church*. Well, how did he behave himſelf under this? *And whereas* ſays he, *I have ſuſtained the Reſtraint of my Liberty, and Sequeſtration of my Juriſdiction, now by the Space of Six Months; I am ſo far from repining thereat, or thinking my ſelf injuriouſly or hardly dealt withal therein at Her Majeſty's Hands, that I do thankfully embrace, and frankly, with all Humility, acknowledge her Princely, Gracious, and Rare Clemency toward me; who having Authority and Power to have uſed greater and ſharper Severity againſt me, and for good Policy and Example thinking it ſo expedient, hath notwithſtanding dealt ſo mercifully, mildly and gently with me.*

What Language more becoming a Grave Prelate could be uſed? He patiently ſubmits to Her Majeſty's Authority, neither murmuring, nor obſtinate: But there being a ſuperior Obligation of Conſcience, which it was not in the Power of any Man to diſpenſe with, he thinks himſelf obliged, as a true Example to all Clergymen and others, to ſubmit to the Dictates of his Conſcience; but ſtill with Patience, Calmneſs and Obedience.

Is there any Thing in this, that looks like giving up the Intereſts of the Church? Not only this good Archbiſhop, but ſeveral others of the beſt Biſhops of thoſe Times, had thoſe Exerciſes in their Dioceſes, and concurr'd with him in the Encouragement of them. And can it be thought, that thoſe Biſhops, who were Exiles in Queen *Mary*'s Time, and were afterwards the Happy and Glorious Inſtruments, under God, in ſettling the Liturgy and the Articles of the Church, were for giving up the Eſtabliſhment of the Church, by introducing that which is now inſinuated to be the *Genevian* Diſcipline? But thoſe Biſhops then thought, it was a likely way to make an Honeſt, Learned, and Laborious Clergy. Is there any thing in this, to occaſion the calling him a perfidious Prelate? A perfidious Man, is he that violates his Conſcience, to obtain a Temporal End; but he choſe to loſe the Queen's Favour, rather than part with a good Conſcience.

I never found, that Archbiſhop *Grindall* was ever ſpoke hardly of by any *Engliſh* Divine of Credit, till the Time of Archbiſhop *Laud*; and then, to extol Archbiſhop *Laud* for an active, zealous Prelate, it became the Faſhion to run down his Predeceſſor, *Abbot*, as a remiſs Man; to court the preſent Archbiſhop, by detracting from the Memory of the laſt. And, to carry on the Compliment, a Parallel was made between Archbiſhop *Grindall*, and his Succeſſor *Whitgift*. I only mention this, to ſhew that for a long Time the Memory of that good Archbiſhop was had in Eſteem; and he was always look'd upon as a principal Father of the Reformation of the Church, before this Time.

But, my Lords, it is now Time to come to the main Point; and that is, Whether or no the Doctor's Repreſentation of Archbiſhop *Grindall*, as a Falſe Son of the Church, and a perfidious Prelate, for doing what he lays to his Charge; and, Whether his Commendation of Queen *Elizabeth*, for the Reſolution ſhe took to ſuppreſs the Diſſenters, and for her Prudence in Exerciſing Wholeſome Severities on them, whereby the Crown ſat eaſy on her Head, be a Cenſure or Condemnation of the preſent Toleration?

As to this, the Council for the Doctor firſt ſay, That in Queen *Elizabeth*'s Time, Schiſm was in its Infancy; the Number of Diſſenters were but few, and therefore the Exerciſing of Severities at that Time was wholeſome, becauſe it might have cruſh'd them in their Beginning, and prevented the growing Encroachments of thoſe Perſons: But at the Time when the Act of Toleration was made, the Diſſenters were increaſed, and were Poſſeſſors of great Property, and it was reaſonable to grant them a Toleration; for it might be a Diſturbance to the State, to exerciſe thoſe Severities upon them, which might

might have been ſafely done in the Time of Queen *Elizabeth*, when Schiſm was in its Infancy, and their Numbers few: And thence they infer, that what was ſpoken of the Toleration then, can't be applied to the Toleration now.

My Lords, Suppoſing the Fact to be true, then it follows, that the Juſtice and Reaſonableneſs of the preſent Toleration depends only on the Strength and Number of the Diſſenters: When they are Strong and Numerous, then they are to be Tolerated and Permitted; but when their Numbers decreaſe, and it ſhall be alledg'd that they are but few, then they are to be cruſh'd, and the wholeſome Severities are to be renew'd upon them again; notwithſtanding the Preamble of the Bill to prevent Occaſional Conformity, which ſays, "That "Perſecution for Conſcience only, is directly con- "trary to the Profeſſion of the Chriſtian Religion, "and particularly to the Doctrine of the Church "of *England*, and that the Act of Toleration "ought to be inviolably preſerved". If it ought to be inviolably preſerved, then, whether the Diſſenters in *England* be more or leſs, they ought to be Tolerated.

This brings to my Mind the memorable Edict that was Publiſh'd by the *French* King for reverſing the Edict of *Nants*, in *October* 1685. the Preamble of which Edict recites, "That by reaſon of "the great Troubles and Wars occaſion'd by thoſe "of the Reformed Religion, his Grandfather *Henry* "the Fourth had given them Liberty by the Edict "of *Nants*, retaining notwithſtanding a Deſign of "bringing all back again to the *Romiſh* Church; "and his Father and himſelf had had all along the "ſame Deſign; and that in his Time the beſt and "greateſt Part of the Proteſtants were Converted "to the Catholick Faith, and that by reaſon there- "of the Execution of that Edict was become of "no uſe; and therefore, entirely to wipe out the "Memory of thoſe Troubles and Confuſions which "the Proteſtants had occaſion'd, he thereby Re- "vok'd that Edict.

May it not be ſaid in this Caſe, That in Queen *Elizabeth*'s Time, becauſe the Number of Diſſenters were few, therefore thoſe Severities were good; and that when the Toleration-Act was made, there were greater Numbers, and therefore thoſe Severities were then fit to be taken away; but now the Diſſenters are but few again, therefore it may be fit to return to thoſe Severities again.

Another Anſwer that hath been given is, That in Queen *Elizabeth*'s Time there was no Toleration eſtabliſh'd by Law, and all the Doctor aim'd at was to Excite the Magiſtrates to put the Laws in Execution againſt ſuch Offenders as are not Exempted by the Toleration Act. But I ſubmit to your Lordſhips, whether the Words are capable of that Interpretation. Here is a Commendation of the Piety and Zeal of Queen *Elizabeth*, who reſolv'd entirely to ſuppreſs the Diſſenters, and ſhe in her Prudence put thoſe wholeſome Severities in Execution. What thoſe wholeſome Severities were, your Lordſhips have been told; they were Hanging, Burning, Abjuration, Confiſcation, Impriſonment, Loſs of Eſtate, Liberty and Life; I ſay no more of them; but I believe there is not one Perſon here, but if theſe Severities were to be inflicted on him, would be far from thinking them wholeſome, and deſire to be excus'd from them. I would not be thought in any thing to reflect on the Memory of that glorious Queen, who was ſo eminent an Inſtrument of God, to deliver this Kingdom from Popery, from the Power of *Spain*, and to ſettle the Proteſtant Religion among us; but it muſt be confeſs'd, there were theſe Spots and Blemiſhes in her Reign, permitted by God's Providence for wiſe Ends and Purpoſes; and this ſhould raiſe our Gratitude to Almighty God, and our Thanks to Her preſent Majeſty, whoſe Reign hath exceeded Her Predeceſſor's, Queen *Elizabeth*, without being chequer'd with any of thoſe Spots or Stains. And as Queen *Elizabeth* preſerv'd this Kingdom from the Monarchy of *Spain*, ſo Her Majeſty has preſerved us from the united Power of *France* and *Spain*, been the Terror of Her Enemies abroad, whilſt at the ſame time She has, with univerſal Clemency and Juſtice, cheriſh'd and protected all Her Subjects at Home; and as by theſe Means She has engag'd in the ſtrongeſt Affection the Hearts of all Her People, ſo no doubt they will always continue to retain the ſtricteſt Duty to a Queen, who hath been ſo univerſally good to all Her Subjects.

The laſt part of the Charge is, That *the Doctor aſſerts it is the Duty of ſuperior Paſtors to thunder out their Eccleſiaſtical Anathema's againſt Perſons entitled to the Benefit of the Toleration; and inſolently dares or defies any Power on Earth to reverſe ſuch Sentences.* One of the Council ſaid, that the thundring out thoſe Anathema's, is no more than declaring the Judgments of God denounc'd in Scripture againſt the Wickedneſs of Men; and that he deſires the Superior Paſtors to denounce them, becauſe the greater the Authority of the Perſon denouncing them is, the greater Influence they will have on the Minds of the People. But the Anathema's he excites them to, are Eccleſiaſtical Anathema's, which are plainly Eccleſiaſtical Cenſures and Excommunications; it is a plain exciting the Superior Paſtors to denounce Excommunications and other Eccleſiaſtical Cenſures. It is ſaid, that this Expreſſion is ty'd up only to thoſe Anathema's and Sentences that are ratify'd in Heaven, and thoſe, they ſay, no Power on Earth can reverſe. I ſhall not enter into that Queſtion, whether this is a Propoſition ſtrictly juſt in Divinity: All I ſhall ſay as to that, is this, That all who have wrote the higheſt of the Power of the Keys, allow and maintain that there is a double Power, a Power of remitting as well as retaining, of looſing as well as of binding, of opening as well as of ſhutting, both exercis'd by the Church on Earth. If the Superior Paſtor has for good Cauſe bound or ſhut any Perſon out of the Church, that Sentence is ratify'd in Heaven; but yet notwithſtanding, if that Perſon, ſo cenſur'd, reforms and amends, and the Church on Earth reſtore him again, the firſt Sentence, tho' ratify'd in Heaven, is vacated and done away by the Church's Power on Earth.

But this is not the Matter now before your Lordſhips; the Queſtion is, Whether he excites the Superior Paſtors of the Church to thunder out their Anathema's againſt Perſons that are entitled to the Toleration; and I think, that he does ſo, is own'd by his Council; for they ſay, that Schiſm doth expoſe a Man to the Cenſures of the Church; that the Diſſenters were Schiſmaticks before the Act of Toleration, and that that Act don't excuſe the Schiſm; and therefore remaining Schiſmaticks ſtill, they are ſtill liable to the Cenſures of the Church: Now I do agree with the Doctor, that the Act of Toleration hath made no Alteration as to the Sin of Schiſm; if the Diſſenters were Schiſmaticks before the Toleration, they are Schiſmaticks ſtill; and taking that for granted, then here is the Force of the Doctor's

Argument: The Diſſenters were Schiſmaticks before the Act of Toleration; as they were Schiſmaticks before, ſo they are Schiſmaticks ſtill; it is the Duty of all Superior Paſtors to thunder out their Anathema's againſt Schiſmaticks; when they thunder out thoſe Anathema's they are ratify'd in Heaven; whatever is ratified in Heaven, no Power on Earth can reverſe; therefore, tho' the Diſſenters be exempted from Human Penalties by the Toleration Act, and are thereby preſerv'd in the free Exerciſe of their Religion and Conſciences; yet notwithſtanding that, *Let the Superior Paſtors do their Duty, and thunder out their Anathema's againſt them, and let any Power on Earth reverſe thoſe Anathema's if they can.* Now can there be a more plain, poſitive and direct Proof of this part of the Article, than this is? Can any thing be a clearer Evidence to prove this laſt part of the Charge againſt him, That *he Suggeſts and Maintains that it is the Duty of Superior Paſtors to Thunder out their Eccleſiaſtical Anathema's againſt Perſons entitled to the Benefit of the Toleration Act, and that he inſolently Dares or Defies any Power on Earth to Reverſe ſuch Sentences?*

My Lords, This is what I have to offer by way of *Reply:* There is a Gentleman to come after me, who will amply ſupply what I have omitted, and therefore I ſhall not trouble your Lordſhips any further.

Then the LORDS *Adjourned to their Houſe Above.*

Friday, March 10. The Tenth Day.

THE Lords coming down into *Weſtminſter-Hall*, and being ſeated in the manner before-mentioned, Proclamation was made by the Serjeant at Arms as follows:

Our Sovereign Lady the Queen doth ſtrictly Charge and Command all manner of Perſons to keep Silence, upon Pain of Impriſonment.

Then another Proclamation was made: *Henry Sacheverell*, Doctor in Divinity, come forth, ſave thee and thy Bail, elſe thou forfeiteſt thy Recognizance.

The Doctor appearing at the Bar accordingly, with his Council, as before:

Lord Chancellor. Gentlemen, you that are Managers for the Houſe of Commons may proceed in your Reply.

Mr. Cowper. MY Lords, When by Command of the Commons, I ſpoke to your Lordſhips a few Days ſince, in Maintenance of the Second Article, towards the Concluſion of what I then ſaid, I preſented to your Lordſhips a ſhort View of what I apprehended we might reaſonably expect would be the Conſequence of the Doctor's bitter Invectives againſt the Act of Toleration, and the Perſons intended to be protected by it. I likewiſe took Notice of thoſe Heats and Diſputes, of the Feuds and Animoſities, which were then apparently ſtirred up throughout the Kingdom.

I am ſorry to have ſo early an Occaſion to ſay, that my Apprehenſions in this Particular were ſo well grounded: Your Lordſhips have ſeen, that this ſeditious Libel, under the ſpecious Title of a Sermon, calculated to ſeduce and delude the Rabble, has, even during the Continuance of the Tryal, produced an actual Rebellion; in which ſeveral Places of Religious Worſhip (appointed for thoſe Perſons, who are by Law tolerated and allowed, but have the Misfortune nevertheleſs to be repreſented by Doctor *Sacheverell* as neceſſary to be deſtroyed) have been accordingly pulled down, and burnt, in Defiance of the Supreme Power of the Kingdom; and this, my Lords, at the Inſtigation of one who would be thought an Advocate for Paſſive Obedience.

I could wiſh the Priſoner's indiſcreet Behaviour (which ſeems to have abuſed the Liberty with which your Lordſhips have indulged him) may not unhappily have given ſome Occaſion to the Outrage and Violence of late committed, notwithſtanding the Apology he has made in this Particular.

Sure I am, that Diſcord which flames in the Kingdom was unheard-of among us, until the Toleration was thus publickly and ſeditiouſly branded, until Doctor *Sacheverell* had preſumed to repreſent it to the People, it's impoſſible to ſay how! without referring to his whole Libel.

His Council have obſerved, that the Second Article contains ſeveral Charges, and have inſiſted that the Paſſages given in Evidence by the Commons, are not ſufficient to maintain the firſt and ſecond; and as to the third and fourth, they ſeem rather to juſtify than deny thoſe Branches of the Charge.

My Lords, The Commons apprehend, notwithſtanding what has been ſaid, Firſt,

That Doctor *Sacheverell* has plainly ſuggeſted and maintain'd, *That the Toleration granted to Diſſenters is unreaſonable, and the Allowance of it unwarrantable.*

This, my Lords, we inſiſt he has done, not in ambiguous or doubtful Words, not in uncertain Expreſſions, but in direct and poſitive Aſſertions.

The Council admit, That to ſpeak againſt a Law in Being cannot be juſtified. The Act of Toleration is not only a Law in Being, but is a Law which has viſibly attained the End for which it was made; that is to ſay, by giving Eaſe to ſcrupulous Conſciences in the Exerciſe of Religion, it has proved an effectual Means to unite Her Majeſty's Proteſtant Subjects in Intereſt and Affection.

Yet, my Lords, this Law, which, by the Experience of more than Twenty Years, has been found ſo uſeful and neceſſary, hath been traduced and arraigned by the Priſoner, both from the Pulpit, and the Preſs, with a malicious and ſeditious Purpoſe, to deſtroy the Publick Peace, and Security of the Kingdom.

This Offence, it ſeems, is of too high a Nature to be juſtified by the Priſoner and his Council, and therefore it is thought more expedient to deny it. The Turn that's given is this; ſay they, Doctor *Sacheverell* affirms nothing touching Legal Indulgence or Toleration, but all that he has ſaid reſpects only Univerſal Toleration.

My Lords, I thought I had obviated this Excuſe, by obſerving that this Notion of Univerſal Toleration has been conceived and brought forth ſince the Impeachment.

However I am willing to enter into the Queſtion: Whether the Toleration mentioned in the Libel, is intended or can be underſtood of Univerſal Toleration.

Fol. 24. Your Lordſhips will find theſe Words: *Nay, now they have advanced themſelves, from the Religious Liberty our Gracious Sovereign has indulged them, to claim a Civil Right, as they term it, and to juſtle the Church out of her Eſtabliſhment, by bringing their Toleration into its Place.* Vide *Sermon.* My

My Lords, Will any Man deviate ſo far from Senſe, as to ſay, that the Doctor here meant Univerſal Toleration, in the Senſe the Doctor and his Council have defined it? Is Univerſal Toleration a Religious Liberty, with which our Gracious Sovereign hath indulged her Subjects? Nay, my Lords, Have not every one of them argued, and that rightly, that the Doctor's Univerſal Toleration is not tolerated by Law? That Atheiſts, Deiſts, Tritheiſts, Socinianiſts, and thoſe who go to no Religious Place of Worſhip, are not exempted from the former Penalties? How then is it poſſible the Doctor ſhould be underſtood, as ſpeaking of Univerſal Toleration in this Paſſage? Is not this directly and poſitively affirmed of the Toleration, with which the Diſſenters are indulged by our Gracious Sovereign? Can your Lordſhips conceive the Diſſenters are not the Perſons intended, when he ſays, *They claim a Civil Right, as they term it, to juſtle the Church out of her Eſtabliſhment, by hoiſting their Toleration into its Place?*

Again, Folio 25. *They thrive upon Conceſſions, take Permiſſion for Power, and advance Toleration into an Eſtabliſhment.* ---- Pray, my Lords, What Conceſſions have been made to Perſons not within the Benefit of the Act of Toleration? What Permiſſion is it they can be ſaid to take for Power? What Toleration have they to advance into an Eſtabliſhment.

My Lords, *Folio* 14, and in many other Places, your Lordſhips cannot but ſee that all the Doctor's Spleen is levell'd at the Legal Indulgence or Toleration. But it is miſpending your Time, to prove what it is impoſſible not to know and be convinc'd of, upon reading every Paſſage in the Libel where Toleration is but ſo much as mention'd.

The next Thing they urge in the Doctor's Defence is, That if his Expreſſions do relate to the Legal Indulgence or Toleration, they are ſo dubious and uncertain, that nothing can be inferr'd from them without Innuendo's and forc'd Conſtructions.

My Lords, Now the Queſtion is, Whether Doctor *Sacheverell*'s Expreſſions relating to the Toleration, and the Perſons indulged, are dubious and uncertain? Whether any Innuendo or forc'd Conſtruction is neceſſary to demonſtrate their Malignity?

Your Lordſhips will be pleaſed to remember, that the Council, from the firſt to the laſt, maintained very ſtrenuouſly (as did the Doctor likewiſe in his Speech) that altho' the Act of Toleration exempts the Diſſenters from Penalties, yet they remain Schiſmaticks notwithſtanding; for, ſay they, Diſſention was Schiſm before the Statute, and a bare Exemption from a Penalty has not alter'd the Caſe, but the ſame remains Schiſm ſtill; and this Poſition, I find, is agreeable to the Doctor's Opinion as deliver'd in his Sermon, with this Addition only, that all Schiſm and Separation is damnable Sin, without making any Allowance for Ignorance, or Prejudice of Education.

His Words are theſe, Folio 8. *Is this the Spirit and Doctrine of our Holy Mother? To aſſert Separation from her Communion to be no Schiſm; or if it is, that Schiſm is no damnable Sin.*

My Lords, When I obſerve in this and other Paſſages what Spirit this Man is of, I wonder not to find, that the moſt Chriſtian Virtues of Charity and Moderation are mention'd by him with Slight and Contempt. *Folio* 25, you will find him citing a Paſſage from St. *Paul*'s Epiſtle to the *Galatians*, Chap. 2. after which he adds theſe Words: *If our Diſſenters*, ſays he, *had lived in thoſe Times, they would have branded him (i. e.* St. *Paul,) for an intemperate, hot, furious Zealot, that wanted to be ſweetned by the gentle Spirit of Charity and Moderation, forſooth!* My Lords, If our Diſſenters had lived in thoſe Days, they would have been highly to blame, if they had branded the Apoſtle with thoſe opprobrious Names; whoever peruſes that Chapter, will find there is not the leaſt Occaſion for it. But Doctor *Sacheverell* would willingly have St. *Paul* thought like himſelf.

My Lords, I cannot take upon me to ſay what the Diſſenters would have ſaid, had they lived in St. *Paul*'s Days: But for my own part, I cannot forbear ſaying now, That ſince it appears to be the Doctor's Opinion that all Separatiſts are Schiſmaticks, and that all Schiſmaticks are damned, I cannot but think that Doctor *Sacheverell* wants to be ſweetned by that ridicul'd Spirit of Charity and Moderation. I own, my Lords, I was amazed to hear this Gentleman in his Speech affirm, that he had not betrayed any want of Chriſtian Moderation in his Sermon: I wiſh he has not been unmindful even of Chriſtianity it ſelf; when it is ſo apparent that in this ſhort Sentence, and in the Paſſage (*Folio* 24.) which I formerly cited at large, he has ſentenc'd to Eternal Damnation, not only the Diſſenters of whatſoever Denomination, but thoſe alſo who defend the Toleration.

It is to be hoped, ſome Things which he has vowed and ſaid for himſelf in his Defence, may have more of Truth in them than this has.

But, my Lords, to return: The Doctor and his Council are agreed that all Diſſenters are Schiſmaticks; conſequently when he ſpeaks of Schiſm and Schiſmaticks, he muſt mean the Diſſenters; and then be pleaſed, my Lords, to judge if the Doctor's Expreſſions touching the Toleration, and the Diſſenters, can be ſaid to be dubious; on the contrary, whether they are not plain, poſitive and certain.

Before I enter into this Matter, I cannot but take Notice again of that remarkable Paſſage, (*Fol.* 16, and 17.) *What could not be gained by Toleration, muſt be brought about by Occaſional Conformity; that is, what they could not do by open Violence, they will not fail by ſecret Treachery to accompliſh. If the Church can't be pull'd down, it may be blown up; and no matter with theſe Men how it is deſtroyed, ſo it is deſtroyed.* My Lords, Is not here a direct Aſſertion that the Toleration is downright open Violence, and Occaſional Conformity ſecret Treachery? Is not here an Aſſertion, that altho' the Toleration has not been able to anſwer the End for which it was deſigned, (*i. e.*) to pull down the Church, yet Occaſional Conformity may blow it up? Pray, my Lords, What Conſtruction can theſe Words admit of, *No Matter with theſe Men how it is deſtroyed, ſo it is deſtroyed?* What Men are here intended? Even Diſſenters and Occaſional Conformiſts.

Is this Paſſage doubtful and ambiguous? Is here any Occaſion for a forc'd Conſtruction, or an Innuendo? My Lords, 'tis moſt ſcandalouſly plain, and as plainly ſeditious.

Your Lordſhips have obſerved, that neither the Doctor, or any of his Council, (one only excepted) have taken the leaſt Notice, in their Anſwer of this Paſſage: It was produced and given in Evidence againſt him, and Twice at leaſt mentioned by the Managers. I wonder the Author wou'd not vouchſafe to explain it, Is not this Silence a Confeſſion of his Guilt?

The Council that did mention it, was pleaſed to ſay, that it rather commended the Toleration, than found Fault with it; as if it was ſome Credit to the Toleration, which was intended to pull down and deſtroy the Church, that it had not done it. In what Humour, my Lords, that Anſwer was made, to ſo high and Criminal a Charge, I know not; the Commons might reaſonably have expected a more ſerious Anſwer. But, my Lords, from hence we conclude that no Anſwer can be given to it.

Again (*Folio* 10.) the Doctor affirms, *That whoever preſumes to alter or innovate any Point in the Articles of the Faith of our Church, ought to be arraign'd as a Traytor to the State; Heterodoxy in the Doctrines of the one, naturally producing, and almoſt neceſſarily inferring Rebellion and High Treaſon in the other, and conſequently a Crime that concerns as much the Civil Magiſtrate to puniſh and reſtrain, as the Eccleſiaſtical.* Then he goes on, and adds, *This Aſſertion at firſt View, may look look like an high flown Paradox.* ------I own, at firſt View it look'd to me ſomething like it, and I am not yet convinc'd but it is ſo.

Are not the Diſſenters Heterodox in Opinion? Conſequently they are Rebels and Traytors, according to Doctor *Sacheverell*, and ought to be puniſhed by the Civil Magiſtrate as ſuch: That is to ſay, they are to be hang'd as Rebels, and damn'd as Diſſenters.

Still, my Lords, we have the Doctor's Word for it, he has not betray'd the leaſt Want of Chriſtian Charity or Moderation.

Many are the Paragraphs in this Libel equally obnoxious, and which, like theſe, are too plain to admit of any Anſwer.

My Lords, I ſhall not loſe Time as to the Second Head, or Charge, in this Article. *Folio* 8. you will find it aſſerted, as plain as Words can ſpeak, that to defend Toleration is the Mark or Characteriſtick of a Falſe Brother; and (*Folio* 24.) you will find his Portion aſſigned him, with all the reſt of the Falſe Brethren, *with Hypocrites and Unbelievers, with all Lyars, in the Lake which burns with Fire and Brimſtone, with the Grand Father of Falſhood, the Devil and his Angels.*

My Lords, The Charge which relates to Archbiſhop *Grindall* is, *That Doctor* Sacheverell *aſſerts, Queen* Elizabeth *was deluded by him to the Toleration of the* Genevian *Diſcipline; and that, to ſhew his Reſentment againſt the Archbiſhop for favouring Toleration, he calls him a falſe Son of the Church, and a perfidious Prelate.*

The Doctor, throughout his Sermon, is arguing with a furious and intemperate Zeal againſt the preſent Toleration; he is repreſenting it as a Law that gives Encouragement and Protection to Schiſmatical Impoſtors, Enthuſiaſts, Hypocrites, to a Mungril Union of Sects, to Fanaticks, Rebels, Traytors, Atheiſts, Deiſts, Tritheiſts, Socinianiſts, to the Principles of Fanaticiſm, Regicide, and Anarchy, to Monſters and Vipers, that ſcatter their Peſtilence at Noon-day, to *Jews, Quakers*, and *Mahometans*; in a word, to all falſe Brethren; and after a great deal more of this unpreſidented Language, he breaks out, (*Folio* 19.) *Theſe Charges are ſo flagrant and undeniable, that a Man muſt be very weak, or ſomething worſe, that thinks or pretends the Diſſenters are to be gained, or won over, by any other Grants or Indulgence, than giving up our whole Conſtitution.*

Have they not, ſays he, *ever ſince their unhappy Plantation in this Kingdom, by the Interceſſion of that falſe Son of the Church, Biſhop* Grindall, *always improved, and riſe upon their Demands in the Permiſſion of the Government.*

My Lords, I would fain know whether Doctor *Sacheverell*, by theſe Words, *A Man muſt be weak, or worſe, that thinks the Diſſenters are to be won by any other Indulgence than giving up our whole Conſtitution,* could mean any other than the preſent Diſſenters, and that Indulgence which is at preſent afforded them.

In the very Line following he calls them *Clamorous, Inſatiable, and Church-devouring Malignants*; and then proceeds in the Words I have mentioned: *Have they not*, (i. e.) the Diſſenters, *ever ſince their unhappy Plantation in this Kingdom, by the Interceſſion of that falſe Son of the Church, Archbiſhop* Grindall, *improved and riſen upon their Demands in the Permiſſion of the Government.*

The Priſoner's Defence has explained this Paſſage; they were barely permitted or ſuffered, he ſays, for a Time by Queen *Elizabeth*, but they have improved and riſen upon their Demands, 'till in this Age they have obtained an Indulgence by Act of Parliament, and this Act of Parliament is manifeſtly what the Doctor has taken Offence at.

Then he goes on------*Inſomuch*, ſays he, *that Queen* Elizabeth, *who was deluded by that perfidious Prelate, to the Toleration of the* Genevian *Diſcipline, found it ſuch an headſtrong, encroaching Monſter, that in Eight Years ſhe found it would endanger the Monarchy, as well as the Hierarchy: And, like a Queen of true Reſolution, and pious Zeal for both, pronounced them Factious, and ſuppreſs'd them by wholeſome Severities.*

My Lords, I think we ſhould have been wanting in that Duty we owe to the Memory of that great Prelate and Father of the Church, who was ſo conſiderable in eſtabliſhing the Reformed Religion, had we not taken Notice of theſe harſh and unjuſtifiable Expreſſions.

Doctor *Sacheverell* ſpeaks of them as carrying an undue Aſperity, but ſuch as he hopes may be forgiven, ſince it was neceſſary, he pretends, that either Queen *Elizabeth*, or that Archbiſhop, muſt bear the Blame; and he rather thought it reaſonable to charge it on the Archbiſhop, than to ſuffer it to lye at the Queen's Door.

My Lords, Your Lordſhips will obſerve, that all the Anſwer he has given to this Part of the Charge, is, as if the Commons had impeached him for being too free with Archbiſhop *Grindall*, for uſing, as he calls it, an undue Aſperity of Expreſſion towards him.

But your Lordſhips will diſcern that this Paſſage is made uſe of in our Charge, to ſhew that the Diſſenters are repreſented as headſtrong and encroaching Monſters, dangerous to the Monarchy, as well as the Hierarchy; and the Example of Queen *Elizabeth* is produced, to ſhew how neceſſary it is by wholeſome Severities to ſuppreſs them.

Are any ſtrain'd Conſtructions or Innuendo's neceſſary to apply this Evidence to the firſt and main Head of the Charge, which is, *That Doctor* Sacheverell *aſſerts and maintains, that the Toleration is unreaſonable, and the Allowance of it unwarrantable?*

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My Lords, Before I take my Leave of this Head, I cannot forbear ſaying upon this Occaſion, that ſure I am the Toleration is not ſo dangerous to the Monarchy, as is this late Notion of an Hierarchy to the Supremacy of the Queen's Majeſty; which however I hope ſhall be continued and preſerved in the Crown of *England*, for the Peace and Safety of the Church as by Law eſtabliſhed, to all Poſterity.

My Lords, To the next and laſt Part, which relates to the Thundring out Eccleſiaſtical *Anathema's*, the Defence is, That thoſe *Anathema's* are not intended againſt the Perſons intitled to the Toleration.

To this I anſwer: He is particularly ſpeaking, in this Part of the Libel, of the Schiſmaticks and Diſſenters, and expreſly names them in theſe Words, (Fol. 25.)

And yet if our Diſſenters had lived in thoſe Times, they would have branded him as an intemperate, hot and furious Zealot. —— Schiſm and Faction are Things of impudent and encroaching Natures, they thrive upon Conceſſions, take Permiſſion for Power, and advance a Toleration immediately into an Eſtabliſhment. ——— Are not the Diſſenters here expreſly named? Are we not to underſtand the Words *Schiſm* and *Faction*, as coupled with *Toleration*, to be meant of the Diſſenters, and of them only? Sure this is too plain to admit of any Doubt.

Then, my Lords, he proceeds; *And are therefore to be treated like growing Miſchiefs, or infectious Plagues, kept at a Diſtance, leſt their deadly Contagion ſpread. Let us therefore have no Fellowſhip with theſe Works of Darkneſs, but rather reprove them: Let our Superior Paſtors do their Duty, in Thundring out their Eccleſiaſtical Anathema's, and let any Power on Earth dare reverſe a Sentence ratified in Heaven.*

My Lords, Is here one Word of Hereſies, Blaſphemies, and the reſt of thoſe enormous Offences, to which the Doctor would have theſe *Anathema's* relate? No, there is nothing to be found here but Diſſenters, Schiſm, and Toleration.

If theſe *Anathema's* are to be underſtood (as certainly they are) to extend to Perſons entitled to Toleration; then, my Lords, that Air of Inſolence that concludes the Period is explained.

Let our Superior Paſtors do their Duty; that is to ſay, let them exert themſelves, and Thunder out their *Anathema's, and let any Power on Earth dare reverſe them.*

Theſe Words, my Lords, ſeem too big and mighty, to mean any little or ſubordinate Power.

Thus have we ſupported, and made good the ſeveral Charges contained in the Second Article.

My Lords, As the Commons are fully ſenſible how neceſſary it is to ſupport the Honour and Juſtice of the Revolution, to which we owe no leſs than the ineſtimable Bleſſing of Her preſent Majeſty, the Guardian Angel of this Church and State, the future Expectation of a Proteſtant Succeſſion, the Religion, Laws, Rights, and Liberties of the *Britiſh* Nation; ſo are they thoroughly convinced that the Peace and Welfare, the Security and Strength of the Kingdom in great meaſure depend upon the inviolable Preſervation of the Act of Toleration, which has been moſt maliciouſly and ſeditiouſly traduced and miſrepreſented by Dr. *Sacheverell.*

Mr. *Thompſon.* MY Lords, It is my Part to trouble your Lordſhips with a Reply to ſuch Anſwers as have been offered to the Third Article of this Impeachment; and notwithſtanding what has been ſaid by the Council, what has been produced in Evidence; and what has been alledged by the Doctor himſelf to move your Lordſhips Compaſſion, I am concerned, even for his Sake, that I can obſerve it to your Lordſhips, That the Charge in this Article remains entirely unanſwered.

Before I enter into the Particulars, I muſt obſerve to your Lordſhips, that if there were any doubtful, or any the leaſt favourable Conſtruction to be made of ſome Paſſages in this Sermon, the Commons would not have given your Lordſhips this Trouble, nor the Doctor an Opportunity of cenſuring their Impeachment as a hard-hearted and uncharitable Proſecution.

My Lords, I cannot but think it very ungenerous to inſult any Man in Misfortunes, or to treat one in his Condition with Scorn and Indignity; neither have I, or ſhall I be guilty of it; but I muſt take leave to ſay, that no other Interpretation can be made of ſome Paſſages applicable to this Head, but what is Criminal, ſince ſo many Learned Council, ſince ſo many Able Heads who have aſſiſted the Doctor in his Defence; nay, ſince he himſelf, who ſhould know beſt his own Meaning, has not been capable of giving the leaſt Colour or Pretence of any Conſtruction of them in his Favour.

Whatever Pity your Lordſhips may be inclined to in your private Capacities, for any one who has (I cannot ſay through Inadvertency) brought himſelf into Affliction, whatever Diſpoſitions you may have to Mercy, yet I need not ſay, that there is a Compaſſion, a tender Regard due to the Welfare of your Countrey, a Care incumbent on you to ſuppreſs what has the leaſt Tendency to Sedition, and the Diſturbance of the publick Peace of the Kingdom, and that theſe important Truſts have a Claim to your Lordſhips Juſtice, preferable to any private Concern whatſoever.

Not to detain your Lordſhips any longer in Generals, I ſhall proceed to ſtate the Charge and Defence, that your Lordſhips may have a View of the Inſufficiency of the latter. My Lords, the Charge is, " That the Doctor ſuggeſts and maintains, that the " Church of *England* is in a Condition of great Pe- " ril and Adverſity under Her Majeſty's Admini- " ſtration: " He denies that he ſuggeſts any Danger to the Church, only from Vice, Infidelity, Blaſphemy and Hereſy, but not at all from or under any Part of Her Majeſty's Adminiſtration.

The firſt Paſſage I produced to your Lordſhips, to prove the Charge, was in Page the 5th; I muſt beg leave to trouble your Lordſhips with reading it again, becauſe it may be neceſſary; " Tho' it were " very obvious to draw a Parallel here betwixt the " ſad Circumſtances of the Church of *Corinth* for- " merly, and the Church of *England* at preſent, " wherein our Holy Communion has been rent and " divided by Factious and Schiſmatical Impoſtors; " her pure Doctrine has been corrupted and defiled, " her Primitive Worſhip and Diſcipline prophaned " and abuſed, her Sacred Orders denied and vilified, " her Prieſts and Profeſſors (like St. *Paul*) calum- " niated, miſrepreſented and ridiculed, her Altars " and Sacraments proſtituted to Hypocrites, Deiſts, " Socinians and Atheiſts; and this done, I wiſh I " could not ſay without Diſcouragement, I am ſure " with Impunity, not only by our profeſſed Ene- " mies, but, which is worſe, by our pretended " Friends and falſe Brethren.

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The learned Council pretended to ſhew, that moſt of theſe Calamities attending the Church, proceeded from the Blaſphemous and Heretical Books and Pamphlets produced to your Lordſhips, and that the Doctor meant them to be the Cauſe of the Danger he ſuggeſts: Now, pray my Lords, how can that Conſtruction be made? How can this be conſiſtent with the Doctor's Aſſertion, that all this is done, not only by profeſſed Enemies (which every Body will agree takes in the Infidels, Blaſphemers and Hereticks) but by pretended Friends and falſe Brethren? When I took the Liberty to obſerve on this Paſſage, I ſtated it thus; Who could proſtitute Altars and Sacraments to Hypocrites, Deiſts, Socinians and Atheiſts, but ſome of the Doctor's own Order? And who were to puniſh thoſe Crimes? Who could they be that did not diſcourage them, but ſuffered them to be committed with Impunity, but his Eccleſiaſtical Superiors? And that they were Part of Her Majeſty's Adminiſtration, no Body could deny.

Now what Anſwer, my Lords, was given to this? To the firſt Part of this Paragraph, about rending the Communion by Schiſmatical Impoſtors, and ſo to the other Particulars, 'till the laſt, it was ſhifted off to the profeſſed Enemies, the Infidels, Blaſphemers and Hereticks, Diſſenting Teachers, and Popiſh Prieſts, but nothing laid to the falſe Brethren, who, the Doctor ſays, neither Puniſh nor Diſcourage. But when the learned Council came to the laſt Calamity of the Church, that of proſtituting the Altars and Sacraments, *&c.* they are pleas'd to make Occaſional Conformiſts their Atheiſts, *&c.* that receive the Sacraments; but as to the Charge of arraigning the Perſons that do not diſcourage or puniſh thoſe who proſtitute Altars to Atheiſts, *&c.* they thought fit to ſlide it over, and not ſay one Syllable to it; they did not ſo much as mumble this Thiſtle, and the others but very tenderly. Pray, my Lords, in the Interpretation I make, where is there any foreign Intendment, any forced Conſtruction, or ſtrained Inference againſt the Doctor's expreſs Words, and poſitive Aſſertions? Let every candid Reader, without Prejudice, impartially conſider the Meaning of this Paſſage; Is this a Danger ſuggeſted from Books or Pamphlets? Or is it not a plain and direct Invective againſt thoſe Perſons in the Church, who are charged with being the Occaſion of theſe Dangers to the Church by their Remiſsneſs in their Duty, not only in not puniſhing, but not ſo much as diſcouraging thoſe Crimes: And to whom can his lazy Defenders within relate, but to the ſame Perſons, thoſe that are within the Church, and are to protect it?

But if it were true, that Altars and Sacraments were thus proſtituted, why muſt the World be told in this Manner of it? Tho' it is the Duty of a Clergyman at all Seaſons, and in all Places, as one of the Doctor's Council was pleaſed to ſay, to preach againſt Vice and Infidelity, Immorality and Prophaneneſs; yet ſure none will ſay, that he is to revile his Superiors, and charge them in this Method with their want of Duty, and Care for the Church: What other End muſt ſuch licentious Reproaches produce, but a Contempt of their Perſons, a leſſening the Dignity of their Order, and a Diminution of that Character which gives them the Capacity of doing Good in the World whilſt they preſerve a Veneration and Eſteem, but which muſt ceaſe when they meet with the contrary: The Doctor was ſo ſenſible of this, when he mentioned it as his own Caſe, that he thought the very Imputation of a Crime to any of his Function, tho' acquitted of it, muſt leave a Scar ſo as to blemiſh his Character; ſure then he ought to have uſed the utmoſt Caution, before he preached or publiſhed this Sermon, and to have conſidered the pernicious Conſequences of reviling thoſe in Authority. If, as he was pleaſed to ſay, ill treating of him, who was an Ambaſſador of Chriſt, was deſpiſing Chriſt himſelf; ſure it cannot be thought an unnatural Inference, if Her Majeſty is ſaid to be reviled, by reflecting on thoſe who act under Her Commiſſion, and are Part of Her Adminiſtration.

The ſecond Paſſage I troubled your Lordſhips with, is in *Page* 16; he had been talking of the Comprehenſion and Union of the Church and Diſſenters, and giving a great many hard Names to it; which Deſign your Lordſhips know had its Riſe from a Commiſſion under the Great Seal from his late Majeſty to ſeveral Lords, Biſhops, and other learned Divines, who were to conſider of proper Methods to accompliſh it: "But he thanks God, that "Providence had blaſted the long projected Scheme "of theſe Eccleſiaſtical *Achitophels*"; with other ſcurrilous Reflections on the Deſign, and thoſe concerned in it; and then he ſays, "That ſince this "Model of univerſal Liberty and Coalition failed, "and theſe falſe Brethren could not carry the Con-"venticle into the Church, they are now reſolved "to bring the Church into the Conventicle, which "will more plauſibly and ſlily effect her Ruin; what "could not be gained by Comprehenſion and To-"leration, muſt be brought about by Moderation "and Occaſional Conformity; that is, what they "could not do by open Violence, they will not fail "by ſecret Treachery to accompliſh. If the Church "can't be pulled down, it may be blown up; and "no Matter with theſe Men how 'tis deſtroyed, ſo "that it is deſtroyed.

Now pray, my Lords, where is the forced Conſtruction to make the Doctor in this Paſſage ſpeak of Perſons in Church and State who endanger the Church, and not of Books and Pamphlets, Vice, Infidelity, *&c.*?

He is on his ſecond general Head of the Perils of Falſe Brethren in Church and State, and of thoſe Perſons who could not accompliſh the Deſtruction of the Church by the Comprehenſion, but were doing it another Way, by Occaſional Conformity and Moderation; I do not know that either of theſe are condemned by the Law for Vice, Infidelity, Blaſphemy, Hereſy or Prophaneneſs; be that as it will, 'tis from the Perſons in Church and State the Danger is ſuggeſted to ariſe, and who, as he is pleaſed to ſay, make uſe of theſe only as means to blow up and deſtroy the Church: But then I ſuppoſe theſe Perſons in the Church muſt be interpreted to be only the moſt inferior, and ſo no Reflection on the Adminiſtration: As Men of Characters and Stations in the State were conſtrued to be Conſtables, Exciſe-Men and Cuſtom-Houſe Officers, ſo theſe Perſons who were to bring about the Comprehenſion, and are now blowing up and undermining the Church in another Manner, muſt be Church-Wardens, Pariſh-Clerks and Sextons. Theſe Sort of Conſtructions by the Doctor's Learned Council, are ſo eaſy and natural, that I muſt agree with his Obſervation, that they have not much Argument, Learning or Eloquence to ſupport them.

And I cannot but obſerve a very extraordinary Method of anſwering this Paſſage and the next, by one of the Learned Council; he is pleaſed to cite Two other Paſſages in the Sermon, which were never

ver mentioned by me, or any of the Managers of this Article; and with very ſtrenuous Zeal he explains thoſe Paſſages by chiming in with the Doctor, in charging Occaſional Conformiſts with Atheiſm, Deiſm, and the worſt of Crimes; and then he concludes, that the Doctor, in thoſe Paſſages he cited, has not aſſerted the Church to be in Danger under Her Majeſty's Adminiſtration; but not one Syllable to this Paſſage, which I cited in Page the 16th.

The third Place I troubled your Lordſhips with, was in the 18th Page; his Words are, "Falſhood "always implies Treachery; and whether that is "a Qualification for any one to be truſted, eſpeci- "ally with the Guardianſhip of our Church or "Crown, let our Governors conſider": Theſe Words ſpeak ſo plainly, they need no Comment, nor have they offer'd at any Explanation of them; they muſt relate to Perſons, and can have no Reference to Books or Pamphlets, Blaſphemies or Hereſies, *&c.* by any Conſtruction whatever.

The Fourth Paſſage, my Lords, was in Page the 20th; he is talking of Dangers from National Sins, which are occaſioned by Diſſenters and Falſe Brethren; and then he ſays, "And now are we un- "der no Danger in theſe deplorable Circumſtances? "Muſt we lull our ſelves under this ſad Repoſe, "and in ſuch a ſtupid lethargick Security embrace our "Ruin? I pray God we may be out of Danger; "but we may remember the King's Perſon was "voted to be ſo, at the ſame Time that his Murde- "rers were conſpiring his Death.

The Subſtance of the Charge in this Paſſage, is an Intention to reflect on the Members who voted the Church to be out of Danger, by the Compariſon and Alluſion to the Vote relating to the King. The Meaning ſeems evidently, that though the King was voted to be out of Danger, yet he was not out of Danger; and ſo, though the Church was voted out of Danger, yet the Church was then, and is ſtill in Danger: But whether he meant it of the Members that paſſed that Vote, is the Queſtion; he ſays he only meant it according to his Notion of that Vote of the King, that thoſe not privy to the Deſign againſt him voted him ſafe, whilſt others conſpired his Murther; ſo when the Members voted the Church of *England* to be in no Danger under Her Majeſty's Adminiſtration, it was none of them, but others that were conſpiring her Ruin.

The Doctor was pleaſed to ſay too, That that Vote was a Year and half before the King's Death, and that there were not a Tenth Part of thoſe Members who voted the King ſafe, the reſt being turned out, and no Houſe of Lords: Be that as it will, they were the ſame Parliament that voted the King out of Danger; and they that conſpired his Death, were Part of thoſe who voted him ſafe, and who turned out the reſt to accompliſh their Deſigns: And though the Parallel ſhould not run ſo as to reflect on both Houſes of Parliament, and all the Members, yet if it glances at ſome of them, and was ſo intended, it is a Circumſtance of Aggravation, and that is the only Intent of its being Part of the Article; and I can't but think the Doctor was apprehenſive of ſome Reflection of that Kind, for he ſays immediately the very next Words, "That he hopes what he has "ſo freely ſpoken will not give Offence: If he had not a View to that Vote of the Danger of the Church, there was no Occaſion for that Apology.

The fifth and laſt Place I troubled your Lordſhips with, was in the laſt Page, where there were ſome Pathetical Expreſſions which the Doctor choſe out of the Scripture, and managed them with others of his own, ſo as to repreſent the Church to be in the utmoſt Peril; he mentions nothing of Vice, Blaſphemy or Infidelity, "But that "ſhe lies bleeding of the Wounds ſhe has received "in the Houſe of her Friends": He cited the *Lamentations* for it, but there being no ſuch Text there, I took the Liberty of ſaying it was a Lamentation of his own making.

I ſhould not trouble your Lordſhips any more as to this Particular, but that I am in ſome meaſure oblig'd to vindicate my ſelf from what one of the Learned Council hinted upon this Occaſion; he was pleaſed to ſay in the Defence to the Firſt Article, he was as much at a Loſs to find out a Paſſage in the Sermon, as one of the Managers was to find the Text in the *Lamentations*. Though, my Lords, this is but a Trifle to the Thing in Queſtion before your Lordſhips, yet ſince that Learned Gentleman was pleaſed to triumph, as if he had me ſure and unanſwerable on this Point, I beg your Lordſhips Indulgence that it may appear which of us is in the right.

The Doctor cited that Text to be in the 2d *Lam.* 4th. I looked through the *Lamentations*, therefore knew I might venture to ſay what I did; I have looked over it again, and am ſure there is no ſuch Text there. It gave me Occaſion to read and reflect on the other Texts cited by the Doctor in the Prophecy of *Zachariah*, the 13th Chapter, where there are ſome Words that I ſuppoſe are meant, though I could not but obſerve the Doctor to be very unhappy in the Choice of his Scripture, this as well as others being directly contrary to his Purpoſe. The Words cited are in the 6th Verſe, the two preceeding Verſes explain them; the Subject Matter was falſe Prophecy. In the 4th Verſe 'tis ſaid, *It ſhall come to paſs in that Day, that the Prophet ſhall be aſhamed, every one of his Viſion, when he has propheſied.* In the 5th Verſe the Prophet is to deny that he is a Prophet, and ſay he is *a Husbandman, and no Prophet.* And in the 6th Verſe he is asked where he received his Wounds? He anſwers, *in the Houſe of his Friends*: So that he retains the Character of a falſe Prophet all along; and what he ſays in each Verſe is equally true, and conſequently that the Wounds he received were not in the Houſe of his Friends. Whatever may be thought of the Doctor in this Matter, I think I may conclude, that his Learned Council had his Scripture by Hearſay, or elſe he would not have triumph'd when he had ſo little Reaſon. There was a Diſpute, my Lords, not many Years ſince, between Two Learned Divines of our Church, about the Rights of the Convocation; one inſulted the other for his Ignorance in the *Common-Prayer* Book; but upon Examination it appear'd, that he who triumph'd moſt, was moſt ignorant of what he charged on the other: Whether this Caſe is not ſomewhat applicable, I ſubmit to your Lordſhips.

Having done, my Lords, with the ſeveral Paſſages made uſe of to maintain this Article, I think I may ſay the Charge contained in it, (That the Doctor aſſerts the Church to be in Danger, not only generally, or ſo as to be meant from Vice, Infidelity, Schiſm or Hereſies, Blaſphemy or Prophaneneſs, but from and under Her Majeſty's Adminiſtration,)

is not only affirmed, but ſtrongly proved. He is not charged here with ſpeaking contrary to his Words, or with Negative Crimes, nor is his Silence, as he was pleaſed to ſay, made Criminal.

I muſt now beg leave to obſerve a little on the Evidence produced on the Doctor's Behalf, and in his Defence to this Article. Your Lordſhips had a Collection of many ſcandalous Books and Pamphlets, drawn from Obſcurity, to be republiſh'd to the World, for the more effectual ſuppreſſing Blaſphemy and Prophaneneſs: And ſince the Doctor's Council forbore to mention the Particulars, I ſhall not enter into them; only in general I think I may ſay, that they have been proved to be no way material to what is in Iſſue before your Lordſhips: But it may not be improper to take Notice, that moſt of theſe Books appear'd to have ſtol'n into the World, and the Authors ſtill concealed; ſome of them Printed in *Holland* ſeventeen Years ago, and others Publiſh'd ſince the Doctor's Sermon: And for the *Obſervators*, and *Rights of the Chriſtian Church*, 'tis well known the Author of one, and Publiſher of the other have been Proſecuted; ſo that theſe cannot be ſaid to be tolerated with Impunity, nor meant as the Provocation for the Doctor's Cenſure.

I am ſorry there are any of theſe prophane and impious Pamphlets: There are ſome others too that have been publiſhed within this Seventeen Years, which might have been taken notice of, but I don't find them in the Doctor's Catalogue. There was a blaſphemous Sermon preach'd and publiſh'd by Doctor *Binks*; Mr. *Dodwell*'s *Charge of Schiſm*, and unbiſhoping moſt of the preſent Biſhops; the ſame Gentleman's *Baptiſmal Union of the Spirit*, or his *No Immortality of the Soul*; and one Mr. *Leſley*'s *Project of uniting ours and the* Gallic *Church*. Whether theſe Books were thought by the Doctor to tend to the right Eſtabliſhing our Church and true Religion, I need not ſay, but I do think they were worthy his Notice, and may vie with moſt in his Collection; and if he had been ſo incenſed againſt erroneous Doctrines, it had been a worthy Task ſure, and well becoming his honeſt well-meaning Zeal, to have endeavour'd a Confutation of them; then his Aſperity in rebuking, his harſh and vehement Expreſſions, would not have been ill employ'd: But, inſtead of this, to turn his Violence againſt his Superiors, for not Puniſhing what, it may be, they never heard of; and to lay the Danger from theſe Doctrines at their Doors, is not to be juſtified by any pretended Provocation of this Kind whatſoever.

There was another Piece of Evidence produced to your Lordſhips, ſome Proclamations againſt Immorality and Prophaneneſs: If there is any Thing to be inferr'd from them in the Doctor's Favour, I muſt own I can't conceive it. Becauſe the Queen commands the Magiſtrates to put the Laws in Execution, therefore every private Divine may arraign his Superiors for a ſuppos'd Neglect of their Duty, as often as he thinks fit; I ſay, I don't underſtand this Inference, but I can eaſily apprehend the Conſequence to all Governments that will ſuffer ſuch Preſumptions.

The Doctor himſelf was pleaſed to ſay, That one of the Dangers of the Church mention'd by him was forgot by the Managers, that was from Papiſts and their Emiſſaries: I will do him the Juſtice to remember, that he has beſtow'd ſix Lines on this Danger, but Twenty ſix large Pages on the Danger from thoſe in Church and State. Then it was ſaid, that the Doctor prays for the Queen, has taken the Oaths to the Queen, and therefore he could have no Intention to reflect on Her Majeſty, or any Part of Her Adminiſtration either in Church or State. And the Doctor in his own Speech was pleaſed to acknowledge Her Majeſty to be a Nurſing-Mother to the Church: But I could not obſerve one Syllable to the Reverend Fathers of the Church, of his Opinion of their Care of it: I could hear him admoniſh that Venerable Bench of the Guilt of departing from the Church, and abandoning the Principles of the Church, if they ſhould puniſh him, a true Son of the Church, for Preaching the ſame Doctrine with theirs; as if there was no manner of Difference whatever.

It ſeems, my Lords, very ſtrange, that after a Charge of this Nature of Reflection upon his Eccleſiaſtical Superiors, that, after having ſtudied ſo much Submiſſion, he ſhould not prevail with himſelf for ſo much as a Compliment upon this Occaſion. Such Behaviour ſeems to need no Explanation. I ſhould be very unwilling to recollect any of the Doctor's charitable Opinions of his own Brethren, who, as he is pleaſed to ſay, can ſacrifice their ſolemn Declarations and Oaths to Complaiſance and Preferments. I would be ſo charitable as to believe well, and think favourably of all Men; but when the contrary does ſo manifeſtly appear, it would be Injuſtice to the reſt of Mankind not to judge accordingly. It would be a Remiſſneſs and Negligence of Duty, juſtly blameable, if we were to ſhut our Eyes, and reſolve not to ſee what ſo evidently threatens the Peace and Quiet of the Kingdom. If Men muſt be allow'd to vent their Diſpleaſure at ſuch Proceedings of their Governors which do not ſuit their particular Humours, what muſt become of the Credit and Reputation of any Government, which is ſo neceſſary to preſerve it?

Your Lordſhips have heard a great many Objections againſt *Innuendo's*, that they are dangerous Things, and never encourag'd; and that your Lordſhips have been pleas'd to ſhew your Diſlike of them. I ſhall not ſcruple to own, that to lay a Meaning to a Man when his Words will not bear it, to make any invidious Conſtruction when it will admit of a favourable one, I can neither approve or deſire. But becauſe the extreme or ill Uſe of any Thing is not to be allowed, that therefore you muſt never apply it at all, is ſuch Logick and Law as I have not been uſed to.

My Lords, In the Caſe *de Libellis famoſis*, cited by the Doctor's Council, your Lordſhips will find, that if only plain poſitive Aſſertions are Libels, there will be no Fence againſt the Envy and Malice of wicked Spirits: And if the Law has guarded every private Man's Reputation, ſo as not to be blaſted by oblique Turns and ſcandalous Inſinuations, it would be very hard if thoſe in Authority ſhould be expoſed to the Virulence of every diſcontented Humouriſt. Malice will never want a Pretence, or Means to convey Scandal and Reproach by ſly Parallels and Alluſions, which may do equal Miſchief with poſitive Aſſertions: But I muſt obſerve to your Lordſhips, That there are not only oblique Inſinuations, but poſitive Aſſertions.

Not only thoſe Paſſages which I have produc'd which are expreſs, but the whole Scope and Tenor of his Sermon, relates to the Peril of the Church

Church from Perſons in Church and State, and not thoſe evaſive Shifts of Vice and Infidelity, Books and Pamphlets. If the Doctor had only rebuk'd Immorality, Blaſphemy, Prophaneneſs and Irreligion, he might ſtill have attended his Flock, * and they not have been brought to attend him; nor would he have been thought to arraign the Reſolution of the Parliament. But for him to take upon him to cenſure and expoſe his Superiors, and to inſinuate into the Minds of the People the Danger of the Church from thoſe Perſons who have the Protection of it, is no likely Method to ſuppreſs Immorality and Prophaneneſs, and is directly contrary to the Words and Intent of the Reſolution of your Lordſhips and the Commons.

To what End the Doctor has thought fit thus to diſperſe his Sermons, may be eaſily imagined; and your Lordſhips cannot be unacquainted with the Hiſtory of a Neighbour Nation, what temporal Ends were to be accompliſh'd by a loud Outcry of Danger to the Church, the Church, Religion and the Church. Whether that will not bear a Parallel with the groundleſs Clamours which have occaſion'd many of our preſent unhappy Diviſions, I ſubmit to your Lordſhips.

It remains, my Lords, that I anſwer one of the Learned Council, what the Nature of this Offence is: I ſhall only tell him in the Words of your Lordſhips and the Commons Reſolution, made publick by Her Majeſty's Proclamation, "That "whoever creates unreaſonable Diſtruſts, and "groundleſs Jealouſies in the Minds of the Peo-"ple; whoever diſtracts the Kingdom by falſe "and ſeditious Rumours of the Danger of the "Church, to cover Deſigns they dare not own; "whoever goes about to inſinuate that the Church "is not in a ſafe and flouriſhing Condition under "Her Majeſty's happy Adminiſtration, is an Enemy "to the Queen, the Church, and the Kingdom." Which, in other Words, is, Againſt the Law, againſt the Temple, and againſt *Cæſar* has he offended.

Nay, my Lords, Has not this bold Offender gone yet farther? Has he not told your Lordſhips at your own Bar, That, notwithſtanding the Toleration, the Diſſenters are Schiſmaticks, and liable to Spiritual Cenſure; that by continuing the Indulgence to them, you countenance Schiſm; and that while Schiſm is continued, the Church muſt be in Danger? So that reſolve what you pleaſe, and make what Laws you will in their Favour, he muſt ſtill thunder out his vehement *Anathema*'s againſt them, as dangerous to the Church.

This, my Lords, is a Specimen of that Independency of the Church that of late has been ſo much ſtruggled for; and which, if not confuted in time by Authority, may ſoon devour the Supremacy and the State. And ſince the Doctor has and does ſtill thus preſume to defie and arraign the Reſolution of your Lordſhips and the Commons, he is properly before this Tribunal; and I may apply to him the Saying to a Goat browſing on a Vine, and which was applied to one of another Function upon ſuch an Occaſion, who had defied the Power of Parliaments:

Rode Caper vitem tamen hinc cum ſtabis ad Aras
In tua quod fundi Cornua poſſit, erit.

My Lords, The Commons are ſo fully aſſur'd of your Lordſhips Wiſdom and Juſtice, that they cannot queſtion but your Determination in this Proceeding will be to their Satisfaction; therefore I ſhall trouble you no farther, but ſubmit to your Lordſhips Judgment.

Serj. Parker. MY Lords, Having already, by Command of the Commons, endeavour'd to make good the *Fourth Article* of this Charge; It is now my Duty to *ſupport*, what I *offer'd before*, both againſt the particular *Objections*, and the general *Rules*, propos'd or inſinuated by the *Council*, or the *Priſoner*.

The firſt Thing I attempted to prove *by particular Paſſages*, was the ſecond Clauſe of this Article,

"That Doctor *Sacheverell* ſuggeſts, That there "are *Men of Characters and Stations* in Church and "State, who are *Falſe Brethren*, and do in them-"ſelves *weaken, undermine and betray*, and do *en-"courage* and *put it in the Power* of others, who are "profeſſed Enemies, to *overturn* and *deſtroy the "Conſtitution and Eſtabliſhment*.

This I thought would be plainly made out, if I could ſhew theſe *Two Things*:

1. That the Doctor has aſſerted, in expreſs Terms, of *all Falſe Brethren* in general, that *they do in themſelves weaken, undermine and betray, and do encourage and put it in the Power of others, who are profeſſed Enemies, to overturn and deſtroy the Conſtitution and Eſtabliſhment*. And,

2. That he charges *Perſons of Characters and Stations* with *Falſe Brotherhood*.

Apprehending the *Conſequence clear*, that if theſe Two Things were aſſerted by the Doctor, the Charge was juſt:

I uſed likewiſe ſome farther Proofs, which I ſhall not need repeat.

Beſides ſome little Cavils as to the Two Propoſitions, which I ſhall take Notice of by the way; great *Complaint* is *made*, often *repeated*, and much *exaggerated*, that I have brought together theſe Two Propoſitions, that are twelve, or nine, or at leaſt ſeven Pages aſunder.

My Lords, I took Notice of this *Trifling Objection* before; and what I ſaid to it, neither the *Doctor* nor his *Council* have *attempted* to Anſwer.

But they all ſeeming to lay the greateſt Streſs upon this Part, and the Council every one repeating it, I beg Leave to ſtate once more how that Matter ſtands.

The Doctor in this Sermon propoſes (1.) To deſcribe *Falſe Brotherhood*; (2.) To ſhew the *Miſchief*; and (3.) the *Malignity* of it.

And this *ſingle Conſideration* would make one expect, that theſe *Heads* ſhould *relate to one another*, at whatever Diſtance he takes them up.

Under the Second Head, * Page 15, he aſſerts, of *all Falſe Brethren in general*, that "they do in "themſelves weaken, undermine and betray, and "do encourage, and put it in the Power of o-"thers, who are profeſſed Enemies, to overturn "and deſtroy the Conſtitution and Eſtabliſhment.

This is my firſt Propoſition *in Terms*, and nothing is objected to it.

Only a little Attempt is made to *divert* the Queſtion, by mentioning *ſome particular ſorts* of *Falſe Brethren*, and ſaying he there ſpeaks of *Falſe Brethren* in ſome of *thoſe Senſes* of the Word.

* *His Pariſhioners part of the Mob that attended him to and from his Tryal.*

* Note, *The Pages of the Sermon are referred to as in the Second Edition, which was that which was proved and read in Evidence.*

I agree it: He that ſpeaks of *all*, ſpeaks of ſuch as are included in thoſe *Senſes* of the Word which he mentions; but likewiſe ſpeaks of *all others too*; ſpeaks of ſuch as *he* has *mention'd any where elſe*, as well as *there*, ſuch as *are Men of Characters and Stations*, as well as ſuch as *are not*.

Under the Third Head,

In ſhewing the *Malignity* of this Sin (not *in it ſelf*, that he had ſhewn before, but) *with regard to the World*: He inſtances firſt, in the *Miſchiefs* ariſing from *Men of Characters and Stations*, in the Words I formerly cited. This, I thought made out *my* Second Propoſition to be the *Doctor's*, "That *Men of Characters and Stations* are *Falſe Brethren*.

This is *faintly* deny'd; and 'tis ſaid, he does not here ſuggeſt Men of Characters and Stations to be Falſe Brethren; but what is *here* ſpoke relates to their *private Behaviour*, and not to the *Adminiſtration*.

Beſides, that this is directly againſt the *plain Import* of the Words; to let your Lordſhips ſee the *Candor* of this *Defence*, let us ſuppoſe it *true*; and that it is the *Doctor's Opinion* that the Perſons he here ſpeaks of, be they *great* or *mean*, are *not* Falſe Brethren.

Then the Doctor, to be *conſiſtent* with this Defence, muſt affirm, that he here ſets forth the *Malignity* of *Falſe Brotherhood*, by ſhewing the *Malignity* of *another Sin* which is *not FALSE BROTHERHOOD*, in *Perſons* of Characters and Stations, who are *not FALSE BRETHREN*.

This is the wretched Shift he is driven to, taking it the beſt for him.

That theſe *Characters and Stations* relate both to *Church and State*, *all* his *Diſcourſe* in the *Places cited*, and *every where elſe*, ſhews; nor has *he* or his *Council* made it an *Objection* that they do *not*; ſo that it would be very much miſpending your Lordſhips Time, to go to *prove*, what is not *deny'd*, that by *Men of Characters and Stations*, he intends Men of Characters and Stations in *Church and State*.

The Two *Propoſitions* being thus cleared, let us ſee if that which is laid hold of to *declaim* ſo earneſtly upon, have any more weight in it, that is, the *joining* together theſe Two *diſtant* Propoſitions.

The Objection, rightly ſtated, is this:

He has in *one Place* affirmed of *all Falſe Brethren* in general, "That they do in themſelves "weaken, undermine and betray, and put it in the "Power of others, who are profeſſed Enemies, to "overturn and deſtroy the Conſtitution and Eſta-"bliſhment:

And ſeven Pages off, has repreſented *Men of Characters and Stations* as *Falſe Brethren*:

And we (very unreaſonably!) have charged him with ſuggeſting, "That there are Men of Cha-"racters and Stations in Church and State, who are "Falſe Brethren, and do in themſelves weaken, un-"dermine and betray, and do encourage and put it "in the Power of others who are profeſſed Ene-"mies, to overturn and deſtroy the Conſtitution "and Eſtabliſhment.

This is the *true Strength* of the *Objection*, and the very *ſtating* it *expoſes* it.

The *general Miſchief* he mentions, as common to *all* Falſe Brethren, *Page* 15, I preſume will be admitted to belong to *thoſe* deſcribed *Page* 7; Why then not as well to *thoſe* Page 22.?

Muſt not what is ſaid of *all Falſe Brethren*, extend both to *thoſe* whoſe *Crime* he deſcribes, and to *thoſe* whoſe *Malignity* for *that Crime* he expoſes?

And which is moſt to be regarded, the *Diſtance* of the *Place*, or the *Connexion* of the *Scheme*, and the *Nature* of the *Propoſitions*?

The Doctor himſelf ſeems rather to preſs the Objection thus, That this is *Inference*, and *joining independent Propoſitions*; which, tho' ſpoke by him in general, the *Unanimity* of his Council in falling upon this Part of what I ſaid, ſhew, it was ſpoke *principally* with a *View* to theſe two *Paſſages*. Are then *Paſſages* that ſpeak of *all* Falſe Brethren, and that ſpeak of *ſome particular* Falſe Brethren, *independent*?

My Lords, Theſe are ſo far from being *independent*, and ſo *ill* have they *choſen* out what to find fault with, that (if your Lordſhips will pardon the *Pedantry*, conſidering I have a Man of *Logick* and *Diſputation* to deal with) the two Propoſitions are the two Propoſitions of a *Syllogiſm*, concluding in the *firſt Figure*.

And the *Inference* he complains of is the *Concluſion* neceſſarily ariſing from them, according to the *Rules* of *Logick*.

The whole Syllogiſm runs thus.

All Falſe Brethren *do in themſelves weaken, undermine, and betray, and do encourage and put it in the Power of others who are profeſs'd Enemies, to overturn and deſtroy the Conſtitution and Eſtabliſhment.*

Perſons of Characters and Stations are Falſe Brethren.

Therefore Perſons of Characters and Stations, do, *&c.*

The two firſt Propoſitions are what I have ſhewn the Doctor plainly to lay down; the other only a *neceſſary Conſequence*.

Would any one expect that the Doctor ſhould be ſo forgetful of the Rules of Logick, as when he had laid down the *Premiſes*, to deny the *Concluſion*? Or to deny the *Concluſion* to be HIS DOCTRINE, who laid down thoſe *Premiſes*?

Can it be thought, that he laid them down without an *Intention* that his *Hearers* ſhould make the *Concluſion*? Or *could* he think it *poſſible* they ſhould *not* make it?

Or ſhall the *ſuppreſſing* a Concluſion ſo plainly ariſing, which is *taken Notice* of in ſome that write of Logick as an *Elegance* in Diſcourſe, *paſs* for an *Excuſe*?

Let the Doctor deſcribe *Falſe Brethren* in general as *Betrayers and Deſtroyers* of the *Church*, and the proper *Objects* of the *Rage* and Fury of the People, and then *expoſe* as Falſe Brethren thoſe *in the Adminiſtration*, Perſons of *Characters and Stations*, from the *chief* to the *leaſt*, the *People* will quickly make the *Application*.

If any one ſhould inflame the Mob to ſuch a Degree of *Rage* and *miſtaken Zeal*, as to forget the *Spirit* of the *Goſpel*, and to believe it their *Duty* to ſerve *God* by breaking the *publick Peace*, and to ſupport his Church, by pulling down all Meeting-Houſes, and rifling the Houſes of all Diſſenters; he needs afterwards only to tell them, THIS IS A MEETING-HOUSE; HERE LIVETH A DISSENTER, they are *not* ſo *dull* as to fail of making the *Concluſion*; THEREFORE THIS HOUSE IS TO BE PULL'D DOWN; THEREFORE THIS MAN IS TO BE PLUNDERED; and of putting it immediately in *Execution* where they *dare*.

Sup-

Suppoſe ſuch a Man ſhould, in *Defence* of himſelf, ſay, " I did not bid them pull down *this* " *Houſe*, nor rifle *that*; my telling them *All Meet-* " *ing-houſes* were to be pull'd down, *All Diſſenters* " to be *mark'd* and plunder'd, was *Four Months* " before I told them THIS WAS A MEET- " ING HOUSE, OR THAT MAN " A DISSENTER; and to *carry back* a " Man's Words, ſpoke only by way of *Informa-* " *tion*, to what was ſaid Four Months before by " way of *Doctrine*, is the greateſt *Hardſhip* in the " World.

Would this paſs for an *Excuſe*? Or would it not add to the *Indignation* againſt ſo impertinent a *Trifler* on ſo *ſad* an Occaſion.

My Lords, The burning a *Meeting-Houſe*, the burning *all* the Meeting-Houſes, the laying this *Metropolis* once more in Aſhes by the *Enemies* of our Conſtitution, is nothing to the *inflaming* the Nation, and rendring the *QUEEN* and Her *ADMINISTRATION odious* to the People.

Shall it then be an *Excuſe* for the Doctor here, when he has laid down the *Premiſes*, to ſay, that he has not in *Words* expreſſed the *Concluſion*?

Shall the *meaneſt* of the *People*, clearly and *rightly* collect, This is Doctor *Sacheverell*'s *Doctrine*; and ſhall not *we* in *accuſing*, and *your Lordſhips* in *judging*, be allowed to collect it, when we are endeavouring to preſerve the *Queen* and *Conſtitution*, and *all* that is *dear* to us?

Surely, my Lords, we ſhall. Nor is the *ſtrict Conſequence* that your Lordſhips find in this Clauſe, always *neceſſary* in Caſes of this Nature: But I was willing to ſhew it here, that your Lordſhips may ſee with what Juſtice this was made the great *Topick* whereupon to declaim againſt *Hardſhips*, and to couple ſuch *Inferences* with *Innuendo*'s, as if both were the *ſame*.

As for taking one *Part* of one *Sentence*, and another Part of *another*, whoever makes a *Concluſion* in *Logick* ever does it; and only *then* does amiſs in it, when in doing it he departs from the proper Rule, and where the *Conſequence is not juſt*; which I have *ſhewn* is *not* the Caſe here, and no Body has *attempted* to make out that it *is*.

'Tis as little to the Purpoſe what is ſaid, that he has not reſtrained this to Perſons of the *HIGHEST CHARACTERS AND STATIONS*; which I ſhew'd ſo fully before, that it has been thought more adviſable to *pretend* I *admitted* what I believe I plainly *diſprov'd*, than to *offer* any Anſwer to my Reaſons.

I'll only add, that 'tis *not pretended*, that there is one *Word* in the *Sermon* that looks like the *leaſt Hint*, that *only inferior* Officers were meant; and 'tis plainly *ſhewn*, that *others* were *intended*: And then the Doctor's *Excuſe* amounts, *at beſt*, but to this: He has indeed ſpoke in reproachful Terms of *Magiſtrates in general*, he has pointed to thoſe that *have*, and thoſe that *beſtow*, the *Honours* of the *Church*, and *Places* and *Preferments* in the *State*; he has pointed to the *Chief*; his *Reaſoning*, when he ſhews the *Malignity* of the Sin from *Examples* of Perſons of *Characters and Stations* is the *ſtronger*, the *Greater* theſe Perſons are, as the Examples of the *Greateſt* are the moſt *Contagious*; but yet he relies upon it, that ſince the *general Mention* of Perſons of Characters and Stations takes in the *Meaneſt* as well as the *greateſt*, 'tis *not to be doubted* but the *all-diſcerning People*, eſpecially when ſufficiently *fir'd* and *enrag'd*, will *reſtrain* the Words to the moſt *innocent Meaning*, and *apply* them *only* to *inferior Officers*, *Conſtables*, and thoſe in the neareſt Degrees to them.

This is the Sum of this *notable* Excuſe.

Let *this* therefore, where, by bending their united Force againſt it, they ſeemed to have the *greateſt Hopes* of making ſome *Impreſſion*, ſerve for the *Specimen* choſen *by themſelves*, of the *Hardſhips* of *Inferences* and *Innuendo*'s in this Charge.

" The Third Clauſe, " *That he chargeth Her* " *Majeſty, and thoſe in Authority under Her, with* " *a general Male-Adminiſtration*; The firſt, That " he *ſuggeſts that Her Majeſty's Adminiſtration*, " *both in Eccleſiaſtical and Civil Affairs, tends to* " *the Deſtruction of the Conſtitution*; are ſo *manifeſt*, that after what *has* been ſaid, and is *unanſwer'd*, it would be but loſing Time to attempt to make them more plain.

And their Defence, and the Books and Pamphlets read on this Head, are not to the Purpoſe.

For ſure, the ſhewing that there have been ſome *Paltry Scriblers*, *few* in Number, many long ſince *dead*, ſome *mad*, ſome that have undergone the infamous Puniſhment of the *Pillory*, moſt of them *proſecuted* or *unknown*, does not prove that there are *Seminaries* for the *open Profeſſion* of thoſe Blaſphemies and Impieties; much leſs, that they are *ſuffered* by the *Government*, or that *their Follies* can be called an *open Violence* upon the Church, or *their* Faults made the *general Character* of the *Nation*, and *charg'd* upon the *Queen* and Her *Adminiſtration*.

When a *ſcandalous Book* is publiſhed, or *contagious Sin* committed, any Subject who has a *real Zeal* to *prevent the Miſchief ſpreading*, may apply to the *proper Magiſtrate* to ſuppreſs it; and if *inferior* Magiſtrates neglect their Duty, may carry the Complaint, againſt *them* and *it*, to their *Superiors*.

But is it to be *endur'd*, in any eſtabliſhed *Government*, that a Man *paſs over* all the *Magiſtrates*, and make an *Appeal* to the *People*, not only againſt the *Offenders*, but againſt the *Magiſtrates* too?

This is properly *Faction*, this is *invading* the *Royal Authority*; 'tis, in the Doctor's own Words, " *A rebellious Appeal to the People as the Dernier* " *Reſort of Juſtice and Dominion*;" *'tis erecting a Popular Tribunal*, where not only *SCRIBLERS*, but the *QUEEN* and Her *AUTHORITY* are to be try'd.

The Doctor indeed *pretends* that his *Zeal* was only againſt thoſe *Offenders*, and ſuch as keep not within the *Bounds* of the Toleration Act; that his Warmth of Speech, was only to *ſtir up* the *Magiſtrates* to put the *Laws* ſtrictly in *execution*; and he ſolemnly proteſts he *intended* no Reflection on the *Queen*, or *Her Miniſtry*; that by the *Dangers* of the *Church*, he *meant* only thoſe *Judgments*, which the juſt *Anger* of a provok'd *God* might be reaſonably expected to inflict on ſo *wicked* a People.

I can't pretend to repeat his very Words, but I apprehend this to be his Senſe, and beg pardon if I miſtake his Meaning.

My Lords, I am amazed at the Doctor's *Solemn Proteſtations*. I will avoid *hard Words* as much as I can; but if when he *calls God to Witneſs* in ſo *ſolemn* a *Manner*, he ſhould then ſpeak without

Foundation of Truth, plainly *againſt his Sermon*, and be even then uſing the little *Arts of Evaſion, and diverting the Queſtion*, inſtead of that *Sincerity* which ought to *accompany* ſo ſolemn an *Oath*, I leave it to your Lordſhips to give a Name to ſuch Behaviour.

Is it *poſſible* to ſay he *intended not* to *reflect* on the *Adminiſtration?*

Give me Leave to read to your Lordſhips *Two* Pages in his Sermon, to which I before referred; and be pleaſed to obſerve, as I go along, how much they are applicable to *unknown Authors*, or the *Dead*, to *Aſgill*, the *Obſervator*, the *Review*, or other *Writers*, that he has made ſo *filthy a Collection* out of; or to *Atheiſts*, or *Diſſenters exceeding the Limits preſcribed by the Toleration*; or to *Occaſional Conformiſts*, Diſſenters too in *the main*, but when the *Occaſion* of a *Place* calls them to *Church*; and your Lordſhips will have *one Inſtance* of his *Sincerity* in his *Solemn Proteſtations*.

" 2. *Secondly*, In regard to the *World*, What a " vaſt Scandal, and Offence muſt it give to all Perſons of *Piety* and *Integrity*, to ſee Men of " *Character*, and *Stations*, thus ſhift and prevaricate " with their *Principles*, and ſtarting from their " *Religion* upon any Occaſion of *Difficulty*, or " *Tryal*, and like the *Diſciples*, flying from, and " forſaking our *Saviour*, when his Life lay at " Stake? To ſee Men's *Opinions ſit as looſe* about " 'em as their Garments, to be put on, or off, for " *Convenience?* What can *unwary* Perſons conclude " from ſuch *Tergiverſation*, and *Hypocriſy*, but that " all Religion is *State-Craft*, and *Impoſture?* That " All *Godlineſs is Gain*; and that the *Doctrines* of " the *Church* lie not ſo much in Her *Articles*, as " Her *Honours*, and *Revenues?* Without doubt, " this *Modern Latitude*, and infamous *Double* " *Dealing*, as it can proceed from nothing but the " *rankeſt Atheiſm*, ſo it muſt propagate it where- " ſoever it goes; and 'tis not to be queſtion'd, but " that the *Wonderful Increaſe*, and *Impudent Ap-* " *pearance* of all *Sects* and *Hereſies* in this Kingdom " at preſent, beyond what was ever known in *for-* " *mer Ages*, is chiefly to be attributed to it. But " this *Crime* is as *pernicious* to *Human Society*, as " *Religion*; for it deſtroys all *common Honeſty*, " *Faith*, and *Credit* in the *World*, and in the Place " of it, ſets up an *Univerſal Trade* of *Couzenage*, " *Sharping*, *Diſſimulation*, and downright *Knavery*. " For, what *Dependance* can there be upon a Man " of *no Principles?* What *Truſt* in *Equivocations*, " *Evaſions*, and *Lyes?* Nor indeed could any one " be ſuppos'd ſo ſottiſh, as to place the leaſt Con- " fidence in theſe *Men*, did they not *bait* their " *Hook*, and *cover* their *Treachery* with the ſacred " and plauſible *Pretences* of *Friendſhip*, whereby " they are capable of doing *much more Miſchief*, " than a *bare-fac'd* and *profeſs'd Enemy*. In what " moving and *lively Colours* does the Holy *Pſalmiſt* " Paint out the *crafty Inſidiouſneſs* of ſuch wilely " *Volpones? Wickedneſs*, ſays he, *is therein, De-* " *ceit and Guile go not out of their Streets. For it is* " *not an open Enemy that has done me this Diſho-* " *nour, for then I could have born it: Neither was* " *it mine Adverſary, that did magnify himſelf* " *againſt me, for then peradventure I would have* " *hid my ſelf from him. But, it was even Thou!* " *my Companion, my Guide, and mine own Familiar* " *Friend. We took ſweet Counſel together, and* " *walked in the Houſe of God as Friends. There is* " *no Faithfulneſs in their Mouths, their inward* " *Parts are very Wickedneſs; their Throats are* " *open Sepulchres, and their Words are ſmoother than* " *Oil, yet be they very Swords.* Like Joab, *they* " *pretend to* ſpeak Peaceably, and *ſmite Us mortally* " *under the Fifth Rib.*

" 3. *Thirdly*, *With regard to a Man's ſelf*, it is " hard to diſtinguiſh whether our *Falſe Brethren* " prove themſelves Guilty of more exceſſive *Kna-* " *very*, or *Folly*. For whatever theſe *cunning*, " *temporizing Politicians* may think, they will find, " after all their *Shuffling*, and *Compliance*, that the " *plain Road* of *Truth*, *Honeſty*, and *Integrity*, is " both the moſt *Prudent*, as well as the *Safeſt* " *Way* they can follow, and that the *Wiſdom of* " *this World* is as much *Fooliſhneſs* with *Men*, as " 'tis with *God*. For certainly there is no Sin that " ſo much *Diſappoints* its *own Ends* as *This* does. " Perhaps *the Man* may obtain the *preſent Advan-* " *tage* he has in *Proſpect*, by relinquiſhing his *Old* " *Friends*, and *Principles*; but is ever ſuch a *Mer-* " *cenary Convert* receiv'd *heartily* into the *Boſom* " of his *former Enemies?* Or are *They* ever found " ſo *Credulous*, and *Good-natur'd*, as to *Forgive*, " and *believe* ſuch an *Apoſtate Cordial* and Sincere, " and fit to be *truſted* in any Matter of *Weight*, or " *Importance*, who has *betray'd* his *own Party* for " the *little ſordid Lucre* of *a Place*, or *Prefer-* " *ment:* And is again ready to be *Retrograde*, " whenever the *Wind* ſhall *Change*, and *Veer* " about? Such a *Falſe Brother* may ſerve the " *preſent Turn* of his *Adverſaries*, who may ſeem, " whilſt they want the *Tool*, to *flatter* and *careſs* " him; but let ſuch a *Turn-Coat* reſt aſſur'd, he " ſhall meet with *Hypocriſy*, for *Hypocriſy*; and " ſince He is got upon the *Stage*, ſhall *Act his Part*, " and be *hiſs'd off* when he has done. Such a " *wiſe Game* do our *Projectors Play*, they *Barter*, " and *betray* their *Friends*, only to *ſell* themſelves " *Slaves* into the Hands of their *Enemies*, who " ſhall *treat* them with more *Inſolence*, *Diſdain* " and *Tyranny*, than *honeſt Men* do with *Scorn*, " and *Contempt*, if they don't go the *whole Lengths* " *of their Party, ſtick at nothing*, though never ſo " *impious*, and abſurd, and run from one *Extream* " to a *quite Contrary*. Thus *little*, thus *baſe*, " thus *odious*, thus *contemptible*, thus *ſervile*, nay " thus *execrable* is the *Traytor*, and *Double-Dealer* " in the Sight, not only of all *honeſt Men*, but " the moſt *profeſs'd Knaves*, and *Hypocrites!* Who " cannot but have a *Tacit Regard*, and *Veneration*, " for a Man of *Steadineſs*, and *Probity*, that upon " *all Occaſions* is *true* to *himſelf*, and his *Cauſe*; is " above the *Threats*, as well as *Flatteries* of this " World, ſtill *truſting* in his *God*, and his own *In-* " *tegrity*, and *Juſtice*, *deſpiſing* his *Intereſt*, or " *Succeſs*, and is under all Circumſtances like that " *God*, and *Religion* he *believes* and ſerves, *with-* " *out Variableneſs*, or *Shadow of Change*, *but is the* " *ſame, to Day, to Morrow, and for ever.* Far- " ther, theſe *Falſe Brethren* cannot be more *odious* " to *God* and *Man*, than they are to *themſelves*, " who are always a *Self-Contradiction*, full of *Con-* " *fuſion* and *Perplexity*, perpetually *haunting* them- " ſelves, the *worſt* of *Dæmons*, maintaining an *irre-* " *concileable War* betwixt the *outward* and *inward* " *Man*, *Conformiſts in Profeſſion*, *Half-Conformiſts* " in *Practice*, and *Non Conformiſts* in *Judgment*. " Such a *Mixture* of *Inconſiſtency* and *Nonſenſe*, " that any one that has the leaſt *Spark* of *Con-* " *ſcience*, or *Reaſon*, muſt *renounce*, and *deteſt*. " But this diſmal Effect has ſuch a *State* of *Habi-* " *tual Hypocriſy*, that it quite *damps* and *extin-* " *guiſhes both*, *quenches* the *Holy Spirit of God*,

" and

" and *crucifies his Son afresh*; and as it *finds* a Man " *void* of *Shame*, generally (without a miraculous " Converſion) *leaves* him incapable of *Repentance*, " and both *damns* him *here*, and *hereafter*; and as " he *choſe* it in *this World*, *appoints* him in the " *next*, his *Portion with Hypocrites and Unbelie-* " *vers, with all Lyars, that have their Part in the* " *Lake which burns with Fire and Brimſtone*, with " the *Grand Father of Falſhood*, the *Devil* and his " *Angels*. And ſo here we leave our *Falſe Bre-* " *thren*, in the *Company* they always *keep Corre-* " *ſpondence* with.

To go on. Is that true, that he *only* calls upon the *Magiſtrates* for *Juſtice* upon theſe Offenders?

If his *Intent* really were to *exhort* the Magiſtrates (*before whom he preached*) to put the *Laws* in *Execution*, one would expect to find it *vehemently preſſed* under the Fourth Head, where he undertakes to ſhew what ſhould be the *Reſult of all*; but I have ſearched carefully, and can find nothing *there*, nor any *where elſe*, of any ſuch Exhortation.

There is indeed a Calling upon the *Paſtors* of *the Church*, who were *not preſent*, to *thunder out Anathema's* againſt Schiſm; which *could* not be to *perſwade* thoſe *Paſtors* that did *not hear* him, but to *condemn* their *Remiſſneſs* to the *People* that *did*. But *all the reſt* is to the *People*, to *adhere to the Fundamental Principles*; to *watch againſt*, MARK AND AVOID, *thoſe that deſert them*; to *give Place*, BY SUBJECTION, *no not an Hour*; to *deſpiſe ſneaking ſhuffling* COMPLIANCES, and *put on their* BRAVEST *Reſolutions, which the* PRESENT *Caſe requir'd*: There is a denouncing *Woe to the fearful Heart and faint Hands*; a ſhewing the *Perils and low Eſtate of the Church*, that her *Sons deſerted her*, that *ſhe lay bleeding of her Wounds*; that her *Adverſaries* were CHIEF, and her *Enemies* AT THAT TIME *proſper'd*.

Is *this* the *Language* of one, that is only laying before *Magiſtrates* the Abuſes of a few *inferior Perſons*, within their *Power*, ſubject to their *Authority*, and whom they could *eaſily cruſh*, and *deſiring* thoſe *Magiſtrates* to *correct them?*

In ſhort, Is it calling upon the *Magiſtrates*, or upon the *People*, for *Juſtice?*

Again:

He ſolemnly declares his *Meaning* in the *Sermon* to have been, That the *Dangers* of the *Church* are only ſuch as ariſe from the *Sins* of the *Nation*, but *not in the leaſt* from Her *Majeſty* and Her *Adminiſtration*.

Let any one caſt his Eye upon the *Sermon*, or upon the *Dedication* of that preach'd at *Derby*, and try how the ſeveral *Expreſſions* ſuit this *Scheme*; and he will ſee, the Doctor had nothing of it in View *then*, but that 'tis *contriv'd ſince*, for him to *pretend now*.

What *Dangers* of the *Church and Conſtitution* he means in the *Sermon*, is too *plain* to be *ſhifted* off by a *Proteſtation*: He tells you expreſly *what* they are, and *from whom*; from *Men*, whom he deſcribes as being *in* the *Adminiſtration*, who *undermine and betray the Church*, and *enable others to deſtroy it*; they are *ſuch* as he apprehends, not from the *Hands of God*, but from the *Treachery* and *Violence* of *Men*.

Accordingly, the *whole* tends to *ſtir up Anger, Indignation* and *Fury* againſt *thoſe Men*; not to move *Humiliation* and *Prayers to God*, to avert thoſe impending *Judgments*.

But poſſibly he may expect to be *underſtood*, not of an *immediate* Vengeance of *God*, or *his delivering* us into the Hands of a *Foreign* Enemy, but his *permitting* wicked *Men at home* to *overthrow* the Church.

If we take it to be ſo, this *ſolemn* Proteſtation is a mere *Evaſion*, and a *ſhifting the Queſtion*.

'Tis true, the *Overthrow* of the *Church and Conſtitution* is the *heavieſt Judgment* can befal us, and if it does happen, muſt be accounted the *Act of Divine Juſtice* puniſhing us for our *Sins*. All *National Puniſhments* are certainly the more *immediate Acts* of the *Juſtice* of *Providence*; and the *Inſtruments* made uſe of to bring them about, are very often *wicked Men*.

The *Prophane Writers*, the *Atheiſts*, the *Abuſers of the Toleration*, the *Vilifiers of Holy Orders*, of *the Church*, and *of Chriſtianity*, and other *wicked Men*, may have given great *Provocations* to *Almighty God*; and if I ſhould ſay ſo great, as may give juſt Cauſe to fear a *Judgment* upon us, that *may endanger* the *Church* and *Conſtitution*; yet *ſtill* the *Queſtion* is, *What Hands* are about to *execute* this *Judgment* upon us? *We charge* him as repreſenting the *Church in Danger under Her Majeſty's Adminiſtration*; as ſuggeſting that Her *Majeſty's Adminiſtration, in Church and State, tends to the Deſtruction of the Conſtitution*; and conſequently, that the *Hands* of thoſe in the *Adminiſtration* are about to *execute* ſuch *Judgment*: And *he* ſolemnly *proteſts*, he apprehends *no Danger, but from God*.

My Lords, This is *trifling*; for *every* ſuch *Danger* is from *God*, and is his *Judgment*, whoever they be, whether *Her Majeſty*, and *Her Miniſtry*, or *any others*, that *immediately* bring it upon us.

This therefore, inſtead of *anſwering*, is *evading*, and *diverting* your Lordſhips *View* from the *Perſons* he charges to be *working* the Ruin of the Church, to *God* the *Supreme Director* and Overruler of all the Actions and Deſigns of Men. As if the Reflection on the *Queen* and Her *Adminiſtration* were the leſs, for ſaying, that *they* are the *Inſtruments* in the *Hand of God* to ſcourge the *Nation* for its *Sins*, and to execute his *Vengeance* in *overthrowing the Church and Conſtitution*.

So that I am afraid, *this* Part of his Solemn Proteſtation is either *falſe*, or *evaſive*, or *both*.

And let ſo much ſuffice to be added on theſe Clauſes.

To what I offer'd to your Lordſhips on the Clauſe of *keeping up Diſtinction of Factions and Parties*;

I deſire to add the *Weight* of *One Authority*, out of the *Excellent Sermon* preach'd by the moſt Reverend *Prelate*, my Lord Archbiſhop of *York*, and *produced by the* Doctor.

The Words are theſe:

" They are Factious, they are Setters up and A- " bettors of Parties, who endeavour to deſtroy, or " unſettle, or diſparage, or in the leaſt hurt or " weaken the Government, and the Laws as they " are eſtabliſh'd; let the *Principles* on which they " go, or the *Pretences* they make, be what they " will.

Whether the Doctor hath not endeavoured in the higheſt Degree to *diſparage the Government*, and conſequently to *weaken* it, your Lordſhips will judge.

As to the other Clauſes, *they* have *offered* very little, and I will not *repeat* what I ſaid before.

Only I would take notice, that under the Head of *ſtirring up to Arms*, ſomething was urged by the Council, in relation to what I ſaid upon ſome Texts of Scripture, but ſo entirely *miſtaking* my Meaning, that I think my ſelf *unconcerned* therein.

As for *perverting Scripture*;

The Council would ſeem to *pretend* ſomething or other to be the *Miſtake of the Printer*, without ſaying *where* the Miſtake is, or *how they* would have it read.

I'll tell your Lordſhips what the *Miſtake* is; it is Printing the Second Chapter of *Lamentations* inſtead of the Firſt, and Miſplacing the References to *Lamentations* and *Zechariah*; which I ſcorned to take Advantage of, and, in what I ſaid, *rectify'd*.

But this ſerv'd for a *Shew* of an *Excuſe*.

They ſaid ſomething more on this Head, but not to what was *my* Objection; but *promiſed* the *Doctor* ſhould *clear all*.

My Lords, I think I might reaſonably here put an End to the Trouble I am giving your Lordſhips; but that I apprehend *ſome Things* which fell from the Doctor, and which have not fall'n in my way already, may be proper to be *taken notice* of, ſo far as concerns what is within *my Province*.

I own, his *Speech* was extremely *well compos'd*, fitted not ſo much to *inform*, (his Caſe would not bear that) as to *move*, (wherein his Hopes were more juſtly placed;) not ſo much to *ſtate* the Queſtion, and *clear* it, as to *divert* it: All the *plauſible Topicks* were *labour'd*, and all the *Arguments* that *preſs'd hardeſt* upon Him, and *moſt requir'd* an Anſwer, *paſs'd over in Silence*; the Whole fram'd to give the *Paſſions* Maſtery over *Reaſon*, and to induce a *Perſwaſion*, that ſo *good*, ſo *excellent* a Man as he painted himſelf, that has ſo many *Virtues*, ſo great *Sincerity*, ſo true a *Zeal* for Religion, *could not* be Guilty of this Charge, tho' *plainly prov'd* upon him: The *Proteſtations* were *ſtrong* and *hearty*, and ſuch as will *read well* amongſt the People; *clear* of all thoſe *qualifying* Clauſes, that might perhaps have made it *ſuit better* with the *Truth* of his Caſe, but would have had the *Inconvenience* of *giving* to the Readers *Suſpicion of Guilt*. An agreeable *Concern* for *Religion* and *Virtue* ran thro' all; which will always ſtrike an Audience, and ſeems intended to make ſome *Amends* for the *Rage* and *Fury*, and *Zeal* for *Party* in the *Sermon*.

I only wiſh, for the Doctor's Sake, the *Compoſer* had preſerv'd a little more Regard, as well to what was *fit* to be ſaid *here*, (where the Truth of the whole Matter is known) as to what was fit to be ſaid *abroad*, and given it a little more *Reſemblance* of the Doctor and *his Sermon*; That he had not calculated ſo many Parts of it for an *Appeal to the People*, and to obtain *their* Acquittal upon his *own Word*. And I muſt needs ſay for *my ſelf*, (tho' my liking, or diſliking it, is of very little Moment) had it had *fewer* and *leſs Solemn Appeals* to God Almighty, or *more Truth*, or *I known leſs* of the Matter, I ſhould have lik'd it much better.

He begins with making his *Order*, the *Church* and *Chriſtianity* to be concern'd in the Cauſe; intending it, I preſume, to be underſtood abroad as a Charge upon his Accuſers, that in his Perſon they arraign all theſe.

But I ſhall not pretend to follow him throughout the whole Speech, only point out ſome Fallacies in it.

My Lords, Great Regard is to be had to the *Word*, much more to the *Solemn Declaration*, much more to the *Oath* of a *Clergyman*, when he is *free* and *unbiaſs'd*.

But when he *ſtands in Judgment*, when the *Rod* is *over him*, when there is only *one way* open for Eſcape from the juſt Puniſhment due to his Crimes, by *proteſting* his *Innocence*; neither his *Word*, nor his *Declaration*, nor his *Oath* is to be regarded.

That Method will acquit *all* that are accus'd; and the *leſs Conſcience* any ſuch Wretch has, the *ſurer* and *eaſier* will be his *Eſcape*.

And therefore your Lordſhips will judge, by what the Doctor has *taught* the People, what he has *publiſh'd*, and not by what he *pretends* to be his *Intentions* in doing it.

He makes Complaint of the *Generality of his Charge*, that it was ſuch that he *knew not where it would point*.

My Lords, Suppoſe we had follow'd the *more common* Way, and ſet forth *all the Paſſages* we have read, or the *whole Sermon and Dedication* verbatim, (as we might have done) without pointing out *what* we objected to, or *why*; had *that* left him leſs in the dark? It was therefore more for his *Advantage*, that we ſhould tell him the *particular Points* we would inſiſt upon, than if we had left our ſelves at Liberty *at the Tryal*, to *make* as many *Points* as we then pleaſed.

He lays it down for a Rule, That the *higher the Charge is, the more clear ought the Proof to be*.

My Lords, The *Proof* here is *indiſputable*; the *Sermons* and *Books* are not denied to be his. And *theſe* are all that *ſtrictly* make the *Evidence* in the Caſe; the reſt is but *Argument*, and ſhewing them to be Libellous in the Particulars in the Charge.

But take Proof in a *larger* Senſe, ſo as that it may extend to the *Reaſoning* upon the Evidence, and to the making good the Charge, as in this Caſe is perhaps not improper:

I have no Reaſon, in *reſpect of this Charge* againſt him, to conteſt his Rule, becauſe the *Proof* of it is *clear* in *that Senſe* too.

But yet, for the Sake of *Juſtice*, I ſhall take the Liberty to ſay, that, *as apply'd* to this Caſe, it is a *Fallacy*.

This Sort of *Proof* ariſes from the *Senſe and Doctrine* of his *Books*.

And I preſume, the Doctor cannot hope, that becauſe this is charged to be ſo *high* a *Crime*, as *Defaming* and *Undermining* the *Government*, any more *favourable Meaning* is to be put upon his *Words*, than if it were the *leſs Crime* of *Defaming* a *Private* Perſon; or that *your Lordſhips* ſhould not underſtand in this *Caſe*, (that which every body *elſe* that hears it, underſtands) and which your *Lordſhips would* have underſtood, if it had not *endanger'd* the *Government*.

I own, I cannot comprehend why your *Lordſhips* ſhould be more ſhy of Defending the *Government*, than a *private Reputation*; or *moſt afraid* of *Cenſuring* that which is of infinitely the *moſt dangerous* Conſequence, if it eſcape *uncenſured*.

On the contrary, in the Caſe of thoſe Things which tend to the *Overthrow* of the *Conſtitution*, where the Rules and Methods of *Inferior Courts cannot* apply a proper Remedy, your *Lordſhips* (upon the Impeachment of the Commons) *may*. Let the *Contrivance* lye never ſo *deep*, be never ſo *artfully wrought*, when it ſtrikes at our *All*, it would be *abſurd* to ſay, the *Commons* may not bring it to the Bar of Juſtice, and your *Lordſhips* prevent its dreadful Effects, and give it the Puniſhment it deſerves.

My Lords, Without *that Power*, your *Conſtitution* were *weak* and *precarious*.

The

THE Doctor obſerves in what manner the *Charge* againſt him is *ſupported*, not by *expreſs Sentences* of his, but by *Inferences*, and *joining independent Sentences*, (as to that part I have conſider'd it already); and he ſeems to expect, that if he were Guilty of Suggeſting and Maintaining the Things charg'd upon him, the *Paſſages might as eaſily be pointed to in his Sermon, as the Doctrine in thoſe be produced*; *and that bare reading, without a Comment, would convict him.*

No, my Lords --- Even Doctor *Sacheverell* is not *yet* arrived at that Pitch, as to *Arraign the Government* as directly and openly, as to *preach a general Doctrine.*

This Fallacy ſeems very *groſs.*

For is it reaſonable to think, that a Man that intends to unhinge the *Government*, to expoſe an *Adminiſtration*, to fire the *People*, to raiſe *Sedition*, ſhould ſpeak *directly and plainly?* No --- he is to cover his Deſign even from *thoſe* he is to *draw in*; he is to *pretend* Zeal for Religion, *inſinuate* himſelf by degrees, not *ſhock* his Hearers *at firſt* with a Declaration againſt a *Queen they are fond of*; he muſt *pretend* Zeal for Her Majeſty, to preſerve *their* good Opinion of *himſelf*, while he is doing that which by *degrees* will alienate *their* Affections from *Her*. *This* he *muſt do*, tho' there were none to *puniſh*, and to prevent the Daſhing *his own* Hopes of Succeſs. But when he knows that the *Power* of the *Adminiſtration* he is to Revile and Rail at, is *over* him, and at *hand*; that is a farther Reaſon for *Caution:* Therefore in ſuch *Diſcourſes*, *dark Phraſes* are to be ſtudied, *confus'd Deſcriptions* will be frequent, with a perpetual *Perplexity of Expreſſion*, between *ſaying* what his *Rancour* will not let him *with-hold*, and *with-holding* what his *Fear* will not let him *ſpeak out. Schemes of Speech* are to be contriv'd, that have *two* Meanings; the *one* more obvious and plain, to have its *full Effect* upon the *People*; and the *other* (that will occur to no Body elſe) a *Reſerve* to be *offer'd* to a *Court of Juſtice.* This is *naturally* to be expected in *Seditious Diſcourſes.* But if your *Lordſhips* will paſs *this* by, which has ſpoke infinitely more plain and audaciouſly than any other (I believe) that ever ſo publickly dar'd Authority, your Lordſhips may expect to ſee a *new Diſcourſe* from the Doctor, where *Sedition*, that had but a very *thin Diſguiſe* in *this*, ſhall *there* have *none at all.*

And this may ſerve for an Anſwer to what is urg'd from his *zealous Expreſſions for the Queen*; for if the *whole* Diſcourſe have quite *another Tendency*, it is plain that thoſe are only Parts of the *Blind* and *Diſguiſe.*

He complains, That he *is Accuſed for what he has omitted*, as if done with Deſign; and his *Silence is made Criminal.*

My Lords, I was the Perſon that took Notice of his *Omiſſions*, but I did *not* make them a part of his *Charge.*

Indeed, when he in his *Anſwer* proteſted (as now he does *more Solemnly*) his *Loyalty*, I took that Profeſſion into Conſideration, as a part of his Defence, which I ought to take notice of.

I had learn'd that the beſt way to *try* the Truth or Falſity of *Pretenders* to Virtue or Religion, was by their *Fruits.*

Accordingly I conſidered his *Management of his Text* in this Sermon, how *agreeable* it was to ſuch *Profeſſion*, and to ſee what *Fruits of Loyalty* I could find there.

And your Lordſhips will now apply thoſe Obſervations to his *ſolemn Appeal* to God before your Lordſhips, that his *Intentions in that Sermon* were to *exert* his BEST ENDEAVOUR *for the Security of Her Majeſty.*

I ſhew'd your Lordſhips, that he omitted the only *true Notion* of Falſe Brotherhood in *State*, which took in the *Non-Jurors* and *Diſaffected*, tho' his *Text* led to it; that he had omitted to make the *proper Uſe* of the *Doctrine of Paſſive Obedience*, which was to *preſs Obedience* and *Submiſſion* TO *HER MAJESTY*, tho' the *Day* and the *Doctrine* ſeem'd both to require it.

That he had ſet up *another Notion* of Falſe Brotherhood, which I ſhew'd to be, upon *his own* Principles, wrong.

By *theſe* I try'd his Pretences, and ſhew'd, that if *they* were *ſincere*, this Behaviour was *unaccountable*; but if he were *at Heart* for the *Pretender*, I made it manifeſt that all his Procedure was *juſt*, nay, that even *his Notion* of Falſe Brotherhood was *right* to him that was of *that Mind*, and that his *Application* of the firſt of *Lamentations* was *exact* and *fine* upon *that* Suppoſition, which is never to be *juſtified* or *excus'd* on any *other.*

This I *then* preſs'd no farther, than to ſhew that his Sermon had in it no *Fruits of that Loyalty* whrch he pretended.

But I may make a farther Uſe of it *now*, as a plain *Contradiction* to his *ſolemn Declaration.*

For has he *pretended* to give any *Anſwer* to this?

Was I wrong in *my* Notion of Falſe Brotherhood, or was he right in *his?* Has he made that *Uſe* of *Paſſive Obedience*, as to preſs *Submiſſion to the Queen* from it? Has he not let the *Non-Jurors eſcape*, tho' his Text led him to ſpeak againſt them, and advanced a wrong Notion of Falſe Brotherhood *meerly* to fall foul upon thoſe that juſtify the *Reſiſtance in the Revolution*, and cut off thereby every *Colour of Title* to the *Pretender?* Or does he offer to *reconcile* that *Proceeding* with his *Pretence?* No --- And then, tho' *bare Omiſſion* were not a *Fault*, yet I may now aſk; Is *that Omiſſion* conſiſtent with his *Proteſtation* of an Intention to exert his *beſt Endeavour* for Security of the *Queen? Did* he *exert*, or *intend to exert* his *beſt* Endeavours, that omitted things ſo very obvious? Nay, where does he ſhew that he has exerted any ſuch Endeavour *at all?*

On the *contrary*, he has fallen into the *Methods* us'd by thoſe that are againſt Her Majeſty, to *undermine* and *weaken* her Title, and to *diſparage her Government*, and to render it *odious* to the People.

He Complains *that where he preſſes Obedience to the Queen, we ſay he means the Pretender.*

My Lords, It was one of the *Omiſſions* that I urg'd againſt him in the manner I have juſt mention'd, that he *no where preſſes Obedience to the Queen.*

Does he think it had not *become* him to ſhew *where* he did preſs it, if he *could?*

Or what Name does he think is to be given to his *taking it for granted*, that he had done *that*, which it was expreſly *charged* he had *not done*, and which he *cannot ſhew* he *has?*

He ſeems to complain of *ſome Expreſſions* that have been us'd againſt him by the *Managers*, as nor becoming *this Place*, or *his Order.*

My Lords, I hope we ſhall always demean our ſelves with *juſt Reſpect* towards your *Lordſhips*.

And as to *him*, he is to conſider, that there is a wide Difference between what a *private Man* ſays of *others*, much more of his *Governors*, in *Converſation*, or in *popular Aſſemblies*, and what is ſpoke of an *accus'd Perſon* at his *Tryal*. In the former Caſe, it is not *fit* to ſpeak *ill* of them, that which is *true*; in the other, the *Crime* is to be *repreſented as it is*, and the *Perſon* is to have *no Reſpect* paid him that ſhall any way tend to *prevent* ſhewing the *full Enormity* of the *Crime* in all its *true Colours*. And if any thing has been ſaid, which otherwiſe his *Orders* would have ſecur'd him from, let him remember that his *Crime* deprives him at *this Time* of that *Protection*; where 'tis *one Aggravation*, that he has *abus'd* his *Holy Function*; which it was the Buſineſs of the Managers, both to *ſay* and to *make out*.

He complains that there is *no Allowance made to a Miniſter rebuking Vice and Irreligion with Zeal*, when *he happens thereby to be carry'd into an Expreſſion not well guarded*.

My Lords, *His Zeal* is levell'd more at *Perſons* than *Crimes*, he mentions not *falſe Doctrines* to *confute* them, nor the *Faults* of thoſe *that hear* him, that they may *amend* them; but rails at Perſons *abſent* to *expoſe* them, and raiſe the *Paſſions* of his Auditory againſt *them*; his Zeal leads to *hunt* out Faults, for an *Occaſion* of *Complaint*; to *magnify* whatever is *amiſs*, and charge *all* home upon the *Government*; departing from the Office of an *Ambaſſador of the Prince of Peace*, and preaching *Sedition* and *Rebellion*.

And in ſuch Caſe, his *Orders* are ſo far from being an *Excuſe*, that they are an *Aggravation*; when he who ought to preach *Peace*, *Long-Suffering*, *Gentleneſs* and *Submiſſion*, foments *Diviſions*, creates *Jealouſies*, heightens *Animoſities*, and *diſturbs the Government*.

But where there is a Sermon truly tending to promote *Religion* and *Virtue*, God forbid that any *incautious Expreſſions* in it, tho' juſtly *exceptionable*, ſhould be laid hold on as an Occaſion to *puniſh* the *Preacher*; it *has* not been done, *nor*, I think, *ought* to be.

Yet when a Miniſter preſumes to go *out of his Way*, and to *meddle* with the *Government*, he ought to be more than ordinarily *wary* in his Expreſſions, ſince his *Character* gives his *Reflections* greater Weight and Force with the People, and his *Errors* will therefore do the greateſt *Miſchief*.

And this Man that *Profeſſes to preach Politicks*, and *laughs* at thoſe that tell him 'tis his *Duty* to *preach Peace*, and is *inflaming* the People againſt their Sovereign, muſt not think himſelf entitled to that Favour.

I own I am very well pleas'd to hear the Doctor's Declaration in Favour of the *Succeſſion in the Houſe of Hanover*, and his *earneſt* Prayer for *perpetuating* it. Becauſe, whenever our Sins ſhall be the Occaſion of our loſing the *beſt of Queens*, the *Security* of our *Religion* and *Liberties* for our *Poſterity* depends upon it.

But I a little *wonder*, that he *appeals to God* that in this *Sermon* he had *ſincere Intentions* to *exert his beſt Endeavours for the Security* of the Queen, and *the Proteſtant Succeſſion*. I *hope* he is hearty for both, but ſure, his *beſt Endeavours* for them are *not exerted* in *this Sermon*.

As for the *Queen*, I have ſpoke already.

As for the *Succeſſion*, I own my ſelf entirely at a Loſs, in what part of the Sermon it is, that he has exerted *any* Endeavour at all for the *Security of the Proteſtant Succeſſion*: I do not find *any thing* that I apprehend *can concern* it, except that Place where he *ridicules* the Notion of any Right to the Crown, but an *Hereditary Right*.

THE COUNCIL having in great meaſure declin'd that Head about *Wreſting and perverting divers Texts and Paſſages of Holy Scripture*, and ſeeming to *Promiſe* that the Doctor ſhould give *Satisfaction* therein; I was in great Expectation of *his Performance* there; but am miſerably diſappointed, and cannot but be in ſome Confuſion *for the Doctor*; tho' he ſeems to have entire Satisfaction *in himſelf*.

His Conduct upon this Clauſe, from firſt to laſt, amazes me.

His Anſwer put in before your Lordſhips to the Charge of the Commons, is *throughout* evaſive and reflecting; but in *this part* of it there is a *Maſterpiece* of *Equivocation* and *Malice*, to avoid either *confeſſing or denying* the Charge, and to caſt an *Odium* on the *Commons*, as *Perſecutors of the Clergy*.

The Words are theſe:

" Hard is the Lot of the Miniſters of the Go-
" ſpel, if when they cite the *Word of God* in their
" *general* Exhortations to *Piety* and *Virtue*; or in
" Reproof of Men's Tranſgreſſions, or *where* they
" are lamenting the *Difficulties and Conflicts* with
" which the Church of Chriſt, *whilſt Militant* here
" on Earth, *muſt always* ſtruggle; the ſeveral Texts
" and Paſſages by them cited, ſhall be ſaid to have
" been by them meant of *particular Perſons* and
" Things, and ſhall be conſidered in the moſt cri-
" minal Senſe, and be made by ſuch Conſtruction,
" one Ground of an Impeachment for High Crimes
" and Miſdemeanors.

Theſe are the Words of his Anſwer; and give me leave to aſk, Do they deny, or do they confeſs the Charge?

Neither --- But are an *Appeal* to the *Paſſions* of the *People*, amongſt whom it has been ſo *induſtriouſly* and *irregularly* diſpers'd.

Yet I dare ſay every *unwary* Reader took the Doctor to have *deny'd* this Charge, and felt ſome Indignation againſt the Commons for *making* it.

My Lords, He has now come upon his *Tryal*, he has been charg'd *home* upon this *Head*.

And permit me to ſay, there cannot be a *heavier Charge* upon a *Miniſter of the Goſpel*, nor more *affecting* to any one that has not abandon'd all Pretence to *Common Honeſty*.

Give me leave to mention ſome of thoſe *ſolemn* Words, wherein a Prieſt receives his Orders.
" Receive the *Holy Ghoſt*, *for the Office and Work*
" *of a Prieſt in the Church of God*; and be thou
" *a faithful Diſpenſer of the Word of God*, and of
" his Sacraments, *in the Name of the Father*, *of*
" *the Son*, *and of the Holy Ghoſt*.

This Crime therefore, when committed by a *Prieſt*, is *betraying* that *ſacred Truſt* repos'd in him with his holy *Orders*; 'tis *forging* the Authority of *God*, 'tis aſſuming a *Superiority* over the *inſpir'd Writers*, if not over *Him* that inſpir'd them.

The Doctor therefore, that is *ſenſible* (as he ſays) *of the Load of Guilt and Infamy the Charge of the Commons lays upon him*, and whereof *this* is ſurely the heavieſt Part; What does he ſay to this?

He

He ſays, if *he be guilty he is to anſwer it at another Tribunal, where he is to be judg'd by thoſe Scriptures.*

My Lords, So he is to *anſwer* at that great *Tribunal* for *every Branch* of this preſent *Charge.*

But is *this* all? Is he *negligent* of his *Reputation* in *no other* Inſtance but *this*, that is the *tendereſt* and moſt *affecting?*

Or will he thus *give himſelf* up for a *Falſifier* of the Word of *God*, and yet have the *Confidence* to hope for any *Reputation*, or any *Capacity of doing good* in preaching it?

Is it *thus* the *Dignity* of the *Sacred Order* is to be ſupported?

Is *this* the Cauſe of the *Church*, and of *Chriſtianity*? And are *they* wound up in the Fate of an *Impoſtor* and *falſe Prophet*?

Pardon the Warmth of *Expreſſion*; his *not ſaying* a Word to the Charge, *owns all this.*

My Lords, It is true (as the Doctor has ſaid) the *Sacred Order*, the *Church* and *Chriſtianity* are *concerned* in this Cauſe; but 'tis, that they may be *clear'd* from the *Reproach* brought upon them by *this* unhappy Man.

But if he be *ſelf-condemned*, if he *dare not open his Mouth* on this Subject, how dare he *declare* his *Hopes*, that *thoſe* of your *Lordſhips*, whoſe Studies more particularly lead that way, ſhould *acquit* him?

My Lords, He has made an *Appearance* before your Lordſhips in a *manner very extraordinary*, *not only* as in a Defence of a Proſecution, but as in a moſt *ſolemn Act of Devotion*, before the *moſt Auguſt* Judicature on *Earth*, appealing to a *yet greater* in *Heaven.*

But with what Sincerity! what Candor! or what Senſe of that which he has done!

I am amazed, that a Perſon in *Holy Orders*, in his diſtinguiſhing *Habit*, before this *awful Aſſembly*, ſhould dare to take the *tremendous* Name of *God* into his Lips, and *appeal* to him for the *Sincerity* and *Integrity* of his *Heart*, at *that* very Time when he ſtands charg'd with *this black Crime*, and *is* neither *able* to repel it, nor has the *Sincerity* and *Honeſty* to *repent*, to *take Shame* upon himſelf in the moſt publick manner, and to *ask Pardon* of *God* and *the World* for it.

But while he can thus, with ſuch Aſſurance as your Lordſhips *have ſeen*, and *now* ſee, face *out* ſuch a Crime, and be *equivocating* and *playing double* with your Lordſhips, with God Almighty, and his own Conſcience; what *Regard* is to be had to his moſt *ſolemn Proteſtations*? His manifeſt *Inſincerity* in this *plain* Point, leaves him no Credit in *any thing*; and his having taken the *Abjuration Oath*, gives me not the leaſt Difficulty, after what I have obſerv'd of his *more ſolemn Oath* before your Lordſhips.

My Lords, The juſt *Veneration* we owe to the *Divine Majeſty*, (for the Doctor's Behaviour has made that *now* part of the Caſe) the *Honour* of *Chriſtianity*, the *Church* and its *Holy Orders*, the *Security* of the preſent *Eſtabliſhment* and the *Proteſtant Succeſſion*, the *Safety* of Her *Majeſty's Perſon*, the *Quiet* of Her *Government*, the *Duty* we owe to Her as our *Sovereign*, the *Gratitude* for Her moſt *gracious Adminiſtration*, the *Honour* of our *Prelates*, the *Obligations* we are under to prevent *Seditions* and *Tumults*, to *undeceive the People*, to *quiet* the Minds of the *Proteſtant Diſſenters*, and convince them that the Toleration allow'd them by Law is *not* to be *taken away* from them, to *ſecure* at *preſent*, and *tranſmit* to our *Poſterity* (as far as in us lies) our *Religion* and *Liberties*, and *vindicate* the *Revolution* (which is the *Foundation* on which they ſtand) and the *Glory* of our late *Royal Deliverer*, to whom under God we ow'd it; and to *baniſh Sedition* from the *Pulpit*, which *is*, and ever *ought to be* ſacred to *Divine Purpoſes*, REQUIRE the *Commons* to demand your *Lordſhips* Judgment on this *Offender.*

But, my Lords, *he* obſerves *ſo far* rightly, that *his* Puniſhment is not *all* we aim at.

No, my Lords,--- What we expect from your Lordſhips Juſtice, *is*, the *Supporting* our *Eſtabliſhment*, the *preventing* all *Attempts* to ſap its *Foundation*, and *anſwering* thoſe other *great Purpoſes* I have mention'd; and I hope the *Clergy* will be *inſtructed*, not to preach the *Doctrine of Submiſſion* in *ſuch manner* as to *prepare* the way to *Rebellion*, but to follow the *Advice* and *Example* of my Lord *Archbiſhop* of *York*, rather than *tread in the Steps* of Doctor *Sacheverell.*

And we doubt not, but that *thoſe* to whom our *Proceedings* have been ſo *induſtriouſly miſrepreſented*, will *ſee* and *own* the Favour ſhewn to *this* Man, in the *manner* of the Charge; and *our Care* for the *Honour* of the *Church and Clergy*, in *ſingling* out for an Example for theſe impious Attempts againſt his Country, him that now plainly appears the *Shame* of his own Order.

Lord Nottingham. My Lords, I deſire your Opinion, whether I may propoſe a Queſtion to the Judges *here.*

Thereupon the Lords, being moved to adjourn, adjourned to the Houſe of Lords; and being returned, and ſeated as before, Proclamation was made for Silence.

Note, *During this Adjournment, the Lords on Debate agreed, That the Queſtion ſhould be propoſed in* Weſtminſter-Hall.

Lord Nottingham. My Lords, The Queſtion I humbly propoſe to your Lordſhips, that my Noble Lord on the Woolſack may propoſe to the Reverend Judges, is, Whether by the Law of *England*, and conſtant Practice in all Proſecutions, *by Indictment or Information* for Crimes and Miſdemeanors by Writing or Speaking, the particular Words, ſuppoſed to be Criminal, muſt not be expreſly ſpecified in ſuch *Indictment or Information.*

Then the Lords were moved to adjourn, and accordingly adjourned to the Houſe of Lords; and being returned, and ſeated as before, Proclamation was made for Silence.

Lord Chancellor. I take it, the Queſtion that your Lordſhips are of Opinion to ask the Judges for them to give an Anſwer to, is, Whether by the Law of *England*, and conſtant Practice in all Proſecutions, by *Indictment or Information* for Crimes and Miſdemeanors by Writing or Speaking, the particular Words, ſuppoſed to be Criminal, muſt not be expreſly ſpecified in ſuch *Indictment or Information?*

Mr. *Baron Lovell.* My Lords, I have always taken it to be ſo, and by conſtant Experience we have practis'd it ſo, that all Words and Writings, which are ſuppoſed to be Criminal, ought to be expreſly mention'd in the Information or Indictment.

Mr. *Juſtice Dormer.* My Lords, I am of Opinion, That by the Laws of *England*, and conſtant Practice in all Proſecutions, by Indictment or Information for Crimes and Miſdemeanors by Writing or Speaking, the particular Words ſuppoſed to be Criminal, ought to be ſpecify'd in ſuch Indictment or Information, in the Courts of *Weſtminſter-Hall.*

Mr. *Baron Bury.* My Lords, I am of the ſame Opinion with my Brothers.

Mr. *Juſtice Tracy.* My Lords, I am of the ſame Opinion.

Mr. *Juſtice Gould.* My Lords, I am of the ſame Opinion. It is our Practice in the *King's Bench*; and we ſpecify the Words in the Indictment, or it is Cauſe of Demurrer.

Mr. *Juſtice Blencowe.* My Lords, I am of the ſame Opinion with my Brothers.

Mr. *Juſtice Powys.* My Lords, I am of the ſame Opinion.

Mr. *Juſtice Powell.* My Lords, The Law of *England* is certainly ſo.

Lord Chief-Baron. My Lords, I am of the ſame Opinion.

Lord Chief Juſtice Trevor. My Lords, I am of the ſame Opinion, That by the Laws of *England* the Words ought to be ſpecify'd in the Indictment or Information.

Then the Lords adjourned to the Houſe of Lords, as before

Note, *The Lords did not come again into* Weſtminſter-Hall *'till* Monday *the 20th of this Month of* March; *but in order to the Delivery of their Opinions, did on ſome of the intermediate Days come to theſe following Reſolutions,* viz.

Saturday, March 11.

Reſolved by the Lords Spiritual and Temporal in Parliament Aſſembled, That this Houſe will proceed to the Determination of the Impeachment of Doctor *Henry Sacheverell*, according to the Law of the Land, and *the Law and Uſage of Parliament.*

Tueſday, March 14.

It is Reſolved by the Lords Spiritual and Temporal in Parliament Aſſembled, That by *the Law and Uſage of Parliament*, in Proſecutions by *Impeachments* for High Crimes and Miſdemeanors, by Writing or Speaking, the particular Words ſuppoſed to be Criminal are *not neceſſary* to be expreſly ſpecify'd in ſuch *Impeachments.*

It is Ordered by the Lords Spiritual and Temporal in Parliament Aſſembled, That on *Thurſday* next, at Eleven a Clock, this Houſe ſhall proceed upon the Impeachment of *Henry Sacheverell*, Doctor in Divinity, Article by Article.

Thurſday, March 16.

It is Reſolved by the Lords Spiritual and Temporal in Parliament Aſſembled, That the Commons have made good their firſt Article of Impeachment againſt *Henry Sacheverell*, Doctor in Divinity.

Friday, March 17.

The like Queſtions were ſeverally put concerning the Second, Third, and Fourth Articles, and ſeverally Reſolved in the Affirmative.

It is Reſolved by the Lords Spiritual and Temporal in Parliament Aſſembled, That the Commons have made good the Second, Third and Fourth Articles of their Impeachment againſt *Henry Sacheverell*, Doctor in Divinity.

Saturday, March 18.

It is Ordered by the Lords Spiritual and Temporal in Parliament Aſſembled, That the Queſtion to be put to each Lord in *Weſtminſter-Hall* ſhall be,

Is *Henry Sacheverell*, Doctor in Divinity, Guilty of High Crimes and Miſdemeanors, charged on him by the Impeachment of the Houſe of Commons? And the Anſwer thereunto ſhall be, Guilty, or Not Guilty, *only.*

Monday, March 20.

The Lords coming down into *Weſtminſter-Hall*, and being ſeated in the manner before-mentioned, Proclamation was made by the Serjeant at Arms as follows:

Our Sovereign Lady the Queen doth ſtrictly Charge and Command all manner of Perſons to keep Silence, upon Pain of Impriſonment.

Then another Proclamation was made: *Henry Sacheverell*, Doctor in Divinity, come forth, ſave thee and thy Bail, elſe thou forfeiteſt thy Recognizance.

The Doctor appearing at the Bar accordingly, with his Council, as before:

Lord Chancellor. Your Lordſhips having fully heard and conſidered of the Evidence and Arguments in this Caſe, have agreed upon a Queſtion, which is ſeverally to be put to your Lordſhips in the uſual Order. The Queſtion is this, That Doctor *Henry Sacheverell* is Guilty of High Crimes and Miſdemeanors, charged on him by the Impeachment of the Houſe of Commons.

Lord Chancellor. Lord *Pelham*, What is your Lordſhips Opinion; Is Doctor *Henry Sacheverell* Guilty of High Crimes and Miſdemeanors, charged on him by the Impeachment of the Houſe of Commons?

Lord *Pelham*, Guilty.

The ſame Queſtion was ſeverally put to the reſt, whoſe Names and Votes are as follow.

Lord *Hervey*, Guilty.
Lord *Conway*, Not Guilty.
Lord *Guernſey*, Not Guilty.
Lord *Halifax*, Guilty.
Lord *Haverſham*, Not Guilty.
Lord *Herbert*, Guilty.
Lord *Weſton*, Not Guilty.
Lord *Leimpſter*, Not Guilty.
Lord *Guilford*, Not Guilty.
Lord *Stawell*, Not Guilty
Lord *Dartmouth*, Not Guilty.
Lord *Oſſulſton*, Guilty.
Lord *Osborne*, Not Guilty.
Lord *Craven*, Not Guilty.

Lord

Lord *Cornwallis*, Guilty.
Lord *Berkeley* of *Stratton*, Not Guilty.
Lord *Lexington*, Not Guilty.
Lord *Rockingham*, Guilty.
Lord *Colepeper*, Guilty.
Lord *Byron*, Guilty.
Lord *Leigh*, Not Guilty.
Lord *Mohun*, Guilty.
Lord *Howard* of *Eſcrick*, Not Guilty.
Lord *Hunſdon*, Guilty.
Lord *Chandos*, Not Guilty.
Lord *North* and *Gray*, Not Guilty.
Lord *Paget*, Guilty.
Lord *Willoughby* of *Broke*, Not Gulity.
Lord *Fitzwalter*, Guilty.
Lord *Ferrers*, Not Guilty.
Lord *De la War*, Guilty.
Biſhop of St. *Aſaph*, Guilty.
Biſhop of *Norwich*, Guilty.
Biſhop of *Cheſter*, Not Guilty.
Biſhop of *Lincoln*, Guilty.
Biſhop of *Bath and Wells*, Not Guilty.
Biſhop of *Oxford*, Guilty.
Biſhop of *Peterborough*, Guilty.
Biſhop of *Ely*, Guilty.
Biſhop of *Sarum*, Guilty.
Biſhop of *Rocheſter*, Not Guilty.
Biſhop of *Durham*, Not Guilty.
Biſhop of *London*, Not Guilty.
Lord Viſcount *Weymouth*, Not Guilty.
Lord Viſcount *Say* and *Sele*, Not Guilty.
Earl of *Iſlay*, Guilty.
Earl of *Glaſgow*, Guilty.
Earl of *Roſeberry*, Guilty.
Earl of *Seafield*, Guilty.
Earl of *Orkney*, Guilty.
Earl of *Northesk*, Not Guilty.
Earl of *Leven*, Guilty.
Earl of *Wymes*, Not Guilty.
Earl of *Loudoun*, Guilty.
Earl of *Mar*, Not Guilty.
Earl of *Crawford*, Guilty.
Earl of *Cholmley*, Guilty.
Earl *Powlet*, Not Guilty.
Earl of *Wharton*, Guilty.
Earl of *Greenwich*, Guilty.
Earl of *Grantham*, Guilty.
Earl of *Jerſey*, Not Guilty.
Earl of *Orford*, Guilty.
Earl of *Bradford*, Guilty.
Earl of *Warrington*, Guilty.
Earl of *Scarborough*, Not Guilty.
Earl of *Portland*, Guilty.
Earl of *Plymouth*, Not Guilty.
Earl of *Holderneſs*, Guilty.
Earl of *Abingdon*, Not Guilty.
Earl of *Rocheſter*, Not Guilty.
Earl of *Nottingham*, Not Guilty.
Earl of *Berkeley*, Guilty.
Earl of *Yarmouth*, Not Guilty.
Earl of *Radnor*, Guilty.
Earl of *Suſſex*, Not Guilty.
Earl of *Carliſle*, Guilty.
Earl of *Angleſey*, Not Guilty.
Earl of *Scarſdale*, Not Guilty.
Earl of *Sunderland*, Guilty.
Earl of *Thanet*, Not Guilty.
Earl of *Winchelſea*, Guilty.
Earl of *Stamford*, Guilty.
Earl *Rivers*, Guilty.
Earl of *Yerkſhire*, Not Guilty.
Earl of *Mancheſter*, Guilty.
Earl of *Weſtmorland*, Guilty.
Earl of *Denbigh*, Not Guilty.
Earl of *Northampton*, Not Guilty.
Earl of *Leiceſter*, Guilty.
Earl of *Bridgewater*, Guilty.
Earl of *Dorſet* and *Middleſex*, Guilty.
Earl of *Lincoln*, Guilty.
Earl of *Pembroke*, Not Guilty.
Earl of *Derby*, Guilty.
Marquis of *Dorcheſter*, Guilty.
Lord Chamberlain of the Houſhold, Guilty.
Duke of *Dover*, Guilty.
Duke of *Roxborough*, Guilty.
Duke of *Montroſs*, Guilty.
Duke *Hamilton*, Not Guilty.
Duke of *Buckinghamſhire*, Not Guilty.
Duke of *Bedford*, Guilty.
Duke of *Leeds*, Not Guilty.
Duke of *Shrewsbury*, Not Guilty.
Duke *Schomberg*, Guilty.
Duke of *Bolton*, Guilty.
Duke of St. *Albans*, Guilty.
Duke of *Northumberland*, Not Guilty.
Duke of *Beaufort*, Not Guilty.
Duke of *Ormond*, Not Guilty.
Duke of *Grafton*, Guilty.
Duke of *Richmond*, Guilty.
Duke of *Cleaveland* and *Southampton*, Guilty.
Lord Steward, Guilty.
Lord Privy Seal, Guilty.
Lord Preſident, Guilty.
Lord Treaſurer, Guilty.
Archbiſhop of *York*, Not Guilty.
Lord Chancellor, Guilty.

Then ſome Time being ſpent by the Lord Chancellor in numbring the Opinions of the Lords:

Lord Chancellor. My Lords, I have caſt them up with as much Exactneſs as I can; and I find that there are of your Lordſhips preſent in all One Hundred Twenty one; of theſe Sixty Nine of your Lordſhips have found Doctor *Henry Sacheverell* Guilty of the High Crimes and Miſdemeanors charged on him by the Impeachment of the Houſe of Commons, and Fifty Two have found him Not Guilty.

Then Doctor *Henry Sacheverell* was brought to the Bar, and kneel'd till he was bid to ſtand up by the Lord Chancellor.

Lord Chancellor. Doctor *Henry Sacheverell*, The Lords having fully conſidered of your Caſe, have found you Guilty of High Crimes and Miſdemeanors, charged on you by the Impeachment of the Houſe of Commons.

Doctor *Sacheverell.* My Lords, One of your Lordſhips Officers acquainted me, that it was your Lordſhips Order, That neither I nor my Council might have the Privilege of ſtanding at the Bar while your Lordſhips were giving your Opinions whether I was Guilty of the Crimes laid to my Charge; by which means I was prevented from offering ſeveral Matters to your Lordſhips Conſideration in Arreſt of Judgment, which I now beg leave to offer to your Lordſhips Conſideration, and I deſire my Council may be heard to them.

The firſt is, That no entire Clauſe, Sentence or Expreſſion, contained in either of my Sermons or Dedications, is particularly ſet forth in my Impeachment, which I have already heard the Judges declare to be neceſſary in all Caſes of Indictments or Informations.

I de-

I desire to add another Exception, That the Impeachment is by the Knights, Citizens and Burgesses, Commissioners of Shires and Burghs, in the Name of Themselves, and of all the Commons of *Great Britain*; but the Articles are only by the Knights, Citizens and Burgesses, in the Name of Themselves, and of all the Commons of *Great Britain*; which is neither agreeable to the Impeachment, nor to the Title of the House of Commons since the Happy Union.

Then the Lords adjourned to the House of Lords,

Where they took into Consideration the Matter moved by Doctor *Sacheverell* in Arrest of Judgment; and thereupon ordered,

That this House will, To-Morrow at Eleven of the Clock, take into Consideration what Censure to pass upon the said Doctor *Henry Sacheverell.*

Tuesday, March 21.

The Lords, upon Debate in the House of Lords, agreed upon the Judgment to be pass'd in this Case upon Doctor *Henry Sacheverell,* in the Form hereafter mentioned.

Wednesday, March 22. *in the House of Lords.*

A Message was sent to the House of Commons, to acquaint them, That the Lords are ready to give Judgment in the Case of *Henry Sacheverell*, Doctor in Divinity, if they with their Speaker will come and demand the same.

Thursday, March 23. *in the House of Lords.*

A Message was brought from the House of Commons, to acquaint the House of Lords, That the House of Commons, with their Speaker, do intend immediately to come to the House of Lords, to demand Judgment against Doctor *Henry Sacheverell*; and therefore desire that the Painted Chamber, and Passage to the House (of Lords) may be cleared.

The Messengers were called in and told, the the Lords would give Order as desired.

Which was done accordingly.

Then the House of Lords Adjourned during Pleasure to Robe.

And being resumed,

The Commons, with their Speaker, being present at the Bar of the House of Lords,

The Deputy-Gentleman Usher of the Black Rod brought the Prisoner to the Bar, who after low Obeysances made, kneel'd, until the Lord Chancellor bid him stand up.

Then the Speaker said as followeth, *viz.*

My Lords, The Knights, Citizens and Burgesses in Parliament Assembled, in the Name of themselves, and of all the Commons of *Great Britain*, did at this Bar Impeach Doctor *Henry Sacheverell* of High Crimes and Misdemeanors, and did exhibit Articles of Impeachment against him, and have made good the same:

I do therefore, in the Name of the Knights, Citizens and Burgesses in Parliament Assembled, and of all the Commons of *Great Britain*, demand Judgment of your Lordships against Doctor *Henry Sacheverell*, for the said High Crimes and Misdemeanors.

Then the Lord Chancellor said,

Mr. Speaker, The Lords are now ready to proceed to Judgment in the Case by you mentioned.

Doctor *Sacheverell*, The Lords having found you Guilty of High Crimes and Misdemeanors, charged on you by the Impeachment of the House of Commons; and you being thereupon admitted to the Bar, and acquainted therewith, moved Two Things in Arrest of Judgment.

First, That no entire Clause of either of the Books or Sermons referred to in the Impeachment, is specify'd, or particularly set forth, in any of the Articles of Impeachment.

Secondly, That in the Title of the Articles Exhibited by the Commons, the Stile of the Commons runs thus,

"The Knights, Citizens and Burgesses in Par-
"liament Assembled, in the Name of themselves,
"and of all the Commons of *Great Britain*, &c.

Omitting the Words, Commissioners of Shires and Burghs.

I am to acquaint you, That the Lords took these Points into Consideration.

I. And as to the First, they found

That on Occasion of the Question before put to the Judges in *Westminster-Hall* in this Case, and their Answer thereto, their Lordships had before fully debated and considered of that Matter, and had come to the following Resolution:

That this House will proceed to the Determination of the Impeachment of Doctor *Henry Sacheverell*, according to the Law of the Land, *and the Law and Usage of Parliament.*

And after, to this Resolution;

That by *the Law and Usage of Parliament*, in Prosecutions *by Impeachments* for High Crimes and Misdemeanors, by Writing or Speaking, the particular Words supposed to be Criminal are not *necessary* to be *expresly specified* in such *Impeachments.*

So that, in their Lordships Opinion, the Law and Usage of the High Court of Parliament being a *Part of the Law of the Land*, and that Usage not requiring the Words should be expresly specified in *Impeachments*, the Answer of the Judges, which related only to the Course used in *Indictments and Informations*, does not in the least Affect your Case.

II. As to the Second,

Their Lordships finding, that in the Act made in the Sixth Year of Her now Majesty, *For rendring the Union of the Two Kingdoms more Entire and Compleat*, the Terms *Commissioners of Shires* and *Knights of the Shires*, *Commissioners of Boroughs* and *Burgesses*, are used as Synonimous Terms, signifying the same Thing; they were clearly of Opinion there can be no Weight in that Exception, and accordingly Over-ruled the same; without entring into the further Consideration, how far a Mistake in the Title of the Articles, would Vitiate or Avoid an Impeachment, if such a Mistake had happen'd.

So that the Lords find themselves oblig'd *by Law* to proceed to Judgment against you, which I am order'd to pronounce.

And in which you cannot but observe an extreme Tenderness towards your Character, as a Minister of the Church of *England.*

Therefore this High Court doth adjudge as followeth,

That you Henry Sacheverell, *Doctor in Divinity, shall be, and you are hereby enjoin'd not to Preach during the Term of Three Years next ensuing.*

That

That your Two Printed Sermons, referred to by the Impeachment of the Houſe of Commons, ſhall be Burnt before the Royal-Exchange *in* London, *between the Hours of One and Two of the Clock, on the Twenty Seventh Day of this Inſtant* March, *by the Hands of the Common Hangman, in the Preſence of the Lord Mayor of the City of* London, *and the Sheriffs of* London *and* Middleſex.

Then the Speaker with the Commons returned to their Houſe; and Doctor *Sacheverell* being withdrawn,

The Houſe was Adjourned during Pleaſure, to Unrobe.

The Houſe was Reſumed.

It is Ordered by the Lords Spiritual and Temporal in Parliament Aſſembled, That Doctor *Henry Sacheverell*'s Two Printed Sermons, one Preach'd at *Derby* Aſſizes, and the other at St. *Paul*'s, *London*, referred to by the Impeachment of the Houſe of Commons, ſhall be Burnt before the *Royal-Exchange* in *London*, between the Hours of One and Two of the Clock, on the Seven and Twentieth Day of this Inſtant *March*, by the Hands of the Common Hangman, in the Preſence of the Lord-Mayor of the City of *London*, and the Sheriffs of *London* and *Middleſex*.

To the Lord-Mayor of the City of London, *and the Sheriffs of* London *and* Middleſex.

The Houſe taking into Conſideration a Judgment and Decree of the Univerſity of *Oxford*, paſſed in their Convocation the One and Twentieth of *July*, One Thouſand Six Hundred Eighty Three, given in Evidence by Doctor *Henry Sacheverell* at his Tryal, upon the Impeachment of the Houſe of Commons, and thereupon lately Reprinted, It is Reſolved by the Lords Spiritual and Temporal in Parliament Aſſembled, That the ſaid Judgment and Decree contains in it ſeveral Poſitions contrary to the Conſtitution of this Kingdom, and deſtructive to the Proteſtant Succeſſion as by Law Eſtabliſh'd.

It is thereupon Ordered by the Lords Spiritual and Temporal in Parliament Aſſembled, That the ſaid Judgment and Decree, lately Printed and Publiſh'd in a Book or Pamphlet, entitled, *An Entire Confutation of Mr.* Hoadly's *Book of the Original of Government, taken from the* London Gazette, *Publiſh'd by Authority*; London, *Reprinted in the Year* 1710. ſhall be burnt by the Hands of the Common Hangman, in the Preſence of the Sheriffs of *London* and *Middleſex*; at the ſame Time and Place, when and where the Sermons of Doctor *Henry Sacheverell* are Ordered to be burnt.

To the Sheriffs of London *and* Middleſex.

It is Ordered by the Lords Spiritual and Temporal in Parliament Aſſembled, That the Lord High Chancellor of *Great Britain* do give Order for the Printing and Publiſhing the Tryal of *Henry Sacheverell*, Doctor in Divinity; and that no other Perſon do Preſume to Print the ſame. And further, That the laſt-mentioned Reſolution and Order agreed on this Day, be Printed at the End of the ſaid Tryal.

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